

Law 151-001 | Aviation Law | Spring 2025 | 2 credits

Professor(s): Gregory Walden

Mon. 8:10 – 10:10 pm EST | **Final Exam:** Monday, May 5, 6:00 pm EST

Reading(s): [REQUIRED] Aviation Law -- Cases and Materials (Carolina Academic Press 2006). Other materials will be available over The West Education Network (TWEN). Recent court decisions not placed on TWEN may be accessed through Westlaw. Reading assignments will be provided soon. This list may be revised during the course, based on any new legal developments.

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INSTRUCTOR BACKGROUND

Adjunct Professor Gregory S. Walden has taught Aviation Law at the Scalia Law School since 1998. In addition to teaching Aviation Law, since 2019 Mr. Walden has also taught a course in Automated Vehicles Law. Mr. Walden is a co-author of *Aviation Law – Cases and Materials* (2006) and *Eyes to the Skies: Privacy and Commerce in the Age of the Drone* (Cato 2021). After graduating cum laude from Washington & Lee University in 1977 and magna cum laude from the University of San Diego School of Law in 1980, he clerked for the U.S. Court of Appeals for the District of Columbia, first as a court law clerk and then as a clerk to Judge Robert H. Bork. Mr. Walden served in several positions in the Justice Department before becoming Chief Counsel of the Federal Aviation Administration in 1988. He subsequently served as Associate Counsel to President George H.W. Bush and Member of the Interstate Commerce Commission. Mr. Walden is now a Partner with DGA Group Government Relations LLC. He is Aviation Counsel for the Small UAV Coalition.

COURSE DESCRIPTION

The class will examine current aviation industry controversies such as:

- **Safety:** What lessons should be learned from the investigations into the two Boeing 737 MAX accidents? What is the proper relationship between the FAA and airlines with respect to type and airworthiness certification of aircraft? Are the FAA's inspection, oversight, regulatory & certification programs in need of improvement?

How is the FAA integrating unmanned aerial systems – drones and air taxis – into the National Airspace System? What authority do State and local governments have to address trespass, privacy and nuisance concerns drone operations may raise?

What if any are the limits to the FAA's safety authority?

- **Economic regulation:** What is the proper U.S. government response to: consolidation of the industry; poor treatment of passengers, including tarmac delays, cramped space, refunds for flights not taken, and a lack of transparency in fares and fees? Has DOT received sufficient regulatory authority?

Does the deregulatory model from 1978 still work with a consolidated industry? Is antitrust law still relevant?

- **Security:** What is the proper balance between national security interests and the freedom to travel without harassment and inconvenience? What is the right to travel?

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COURSE OBJECTIVES

Students will receive an introduction into all major aspects of aviation law, with emphasis placed on government regulation of aircraft, airlines, airports, and airline personnel. In particular, students will gain a basic understanding of the structure and forms of domestic and international aviation law.

This course will expose students to the basics of administrative law in the context of DOT and FAA rulemakings and adjudications, and the basics of antitrust law and environmental law as they relate to aviation and airports. This course will also introduce students to several Constitutional provisions, such as the Commerce Clause, the Supremacy Clause, the Takings Clause, the First Amendment, the court-recognized right to travel and the court-created dormant Commerce Clause.

GRADING & PARTICIPATION

Expectations

Student participation is encouraged, both questions and comments. Students are expected to have read the assigned materials in advance of the class.

Grading

The final exam will be 100% of your grade; you will also be eligible for a one-third-grade increase (e.g., from “B” to “B+”) based on substantial class participation and attendance. The written exam will likely last three hours and consist of a mix of short answer and essay questions.

COURSE SCHEDULE & ASSIGNMENTS

Introduction and sources of aviation law (January 27)

- Aviation law in flux? What may be shifting as a result of: the Boeing 737 MAX fatal accidents; new aviation technologies; airline responsibilities and passenger rights post-CVOID; enactment of FAA Reauthorization Act of 2024?
- History and structure of U.S. regulation of domestic and international aviation; sources of aviation law (FAA, DOT, NTSB, TSA)
- Overview of DOT statutory authorities and DOT certification and regulation of air carriers

International aviation (Chapters 1 & 3) (January 27 and February 3)

- International aviation law: Chicago Convention; the Freedoms; bilateral agreements; ICAO; “Open Skies;” cabotage; foreign ownership; right of establishment; the US -EU agreements
- International code-sharing and antitrust immunity
- Current Open Skies issues

Aircraft (Chapter 2) (February 10 and 17)

- Scope of FAA’s authority over aviation safety
- FAA aircraft registration, certification, and regulation
- Key concepts in commercial transportation, general aviation, and the “in-betweens”

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- Federal Aviation Act preemption and other defenses against liability
- Unmanned aircraft systems (drone) & advanced air mobility regulation

Airline personnel (Chapters 2 & 3)

(February 24 and March 3)

- Administrative Procedure Act rulemaking and adjudication – general principles – what *Loper Bright* will mean
- FAA certification and safety regulation of air carriers, aircraft, and airmen & judicial review; FAA enforcement & NTSB appellate jurisdiction & judicial review
- Civil rights laws and criminal sanctions applicable to airline personnel

Accident investigation and litigation (Chapter 4) (March 17)

- Domestic accident investigation and litigation – NTSB and Federal Tort Claims Act
- International accident litigation (Warsaw and Montreal Conventions)

Airlines and passengers: antitrust, competition (Chapters 3, 4, & 6) (March 24)

- Competition and the antitrust laws: barriers to entry and anticompetitive conditions
- Antitrust laws and anticompetitive conduct
- DOJ and DOT authority over mergers, acquisitions, and code-share agreements
- APA rulemaking and adjudication – reprise of general principles

Airlines and passengers: consumer protection (Chapters 3, 4 & 6) (March 31)

- DOT enforcement and adjudication
- Consumer protection – unfair and deceptive practices & unfair methods of competition
- Regulation of travel agents, online travel agents and metasearch sites
- Tarmac delays, ancillary service fees, family seating
- Civil rights protections for passengers: section 40127 and Air Carrier Access Act

Airlines and passengers: ADA preemption; labor & bankruptcy law (Chapters 3 & 4) (April 7)

- Airline Deregulation Act preemption
- Labor law – Railway Labor Act
- Bankruptcy law

Aviation security and the Constitution (Chapters 1 & 6) (April 14)

- International conventions on hijacking, sabotage and other crimes and acts of terrorism
- TSA regulation of air carriers and airports
- 4th and 5th Amendment challenges to TSA regulation and policies; the right to travel
- Airports and the First Amendment

Airports (Chapter 6) (April 21 and 24)

- Takings Clause and relationship between Federal and local governments
- Airport expansion; funding of construction & improvements; noise abatement authority
- FAA safety regulation of airports and regulation of hazards to air navigation
- Statutory and contractual grant assurances
- Federal environmental review – noise abatement and NEPA – & judicial review
- Airport proprietary powers
- Airport rates and charges and state taxation (dormant Commerce Clause; Anti-Head Tax Act; DOT policy; Passenger Facility Charges) & judicial review
- FAA and DOT administrative processes to challenge airport rates and access restrictions