



PRACTICAL AVIATION LAW

J. SCOTT HAMILTON

FIFTH EDITION

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Aviation Supplies & Academics, Inc.
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PREFACE

Practical Aviation Law is designed to be used in conjunction with the *Practical Aviation Law Workbook* as a university text for aviation law courses and, standing alone, as a reference guide for aviation business managers, pilots, mechanics, aircraft owners, and others involved in aviation by vocation or avocation.

Except for certain treaties having worldwide or at least multinational effect, the scope of the book is limited to the law of the United States and may have little relevance to the domestic laws of other nations. Neither does it attempt to explore the entire seamless web of the law—only those areas particularly applicable to aviation. I recommend that students considering a career in aviation business management also take courses in business law and aviation labor relations. While there is some overlap between those courses and aviation law, those give broader and deeper coverage of some of the legal concepts and principles studied here.

As the title suggests, this book takes a practical viewpoint. It aims to provide the reader with basic legal knowledge and perspectives along with an understanding of how the legal system works in relation to aviation activities. It aims to provide that in a form that can be applied to help you recognize and avoid common legal pitfalls, and to recognize when the moment has come to stop what you are doing and consult your lawyer. If this book had a subtitle, it would be *How to Avoid Aviation Lawyers and When to Call One*.

No book can hope to advise you what to do in every conceivable situation. In advising our clients, lawyers must take into consideration not only the law but also the facts and circumstances. In over thirty-five years of practicing law—in private practice, as government and later corporate counsel—I represented clients in well over three thousand

aviation matters involving every subject in this book, and never saw two identical cases. While similar facts give rise to similar considerations, slight differences in the facts and circumstances often lead to major differences in the best approach to solving the problem. Examples in this book and its accompanying workbook are drawn largely from cases I encountered in my practice.

The law itself is also in a constant state of change. Even as I write, the Congress of the United States, fifty state legislatures, and a vast number of administrative agencies are daily making changes to statutes and regulations, while hundreds of federal and state courts are writing and publishing case decisions on the interpretation, application, and constitutionality of those laws and regulations, along with decisions that modify, clarify, or sometimes confuse the common law. Simultaneously, U.S. diplomats are negotiating with their foreign counterparts new or amended treaties to be ratified by their governments. Such changes as have occurred since the fourth edition of this book was published are the main reason for this expanded and updated fifth edition.

While this process of continual change keeps the lawyer's work from becoming routine to the point of boredom, it also means that what was good advice yesterday (or the day this book went to press) may no longer be good advice today. While the fundamental legal principles discussed in this book are less susceptible to sudden obsolescence than, say, a text on the Internal Revenue Code and IRS Regulations, *you are cautioned not to attempt to solve actual individual legal problems on the basis of information contained in this book*. Finding yourself faced with an actual legal problem, you should recognize that the time has come to consult your lawyer.

Acknowledgments

I would like to thank the following people for their encouragement, advice, and support, without which I would not have undertaken and persevered with the writing of this text and the related workbook and teacher's manual. These acknowledgments should not be construed to imply an endorsement of this teaching system by any of the persons or organizations mentioned.

Dr. Stacy Weislogel, chair, Department of Aviation, The Ohio State University, one of the first to urge me to write this book.

Professor Gary Kitley of Auburn University, who recently retired as executive director of the University Aviation Association, an organization that consistently provides a wonderful forum and source of information to those of us who teach aviation-related courses in colleges and universities. He was a source of encouragement not only in the drafting of the original manuscript for the first edition, but also in the continuously expanded international law coverage of each subsequent edition.

Dr. Rex A. Hammarback, director, University of North Dakota Aviation Foundation and formerly a professor in UND's renowned aviation program, who after I had explained my concept for the book said simply and directly: "If you write it, I'll use it."

Hon. John E. Faulk, NTSB administrative law judge (retired), a practicing attorney with the Trachtmann law firm in Melbourne, Florida, and an adjunct professor in the School of Aeronautics at the Florida Institute of Technology. Many of his recommendations based on his classroom experience using this teaching system have been incorporated as improvements to each successive edition.

Professor Terri Haynes, Chadron State College, Chadron, Nebraska. She deserves particular credit for strongly encouraging me to avoid "legalese" jargon wherever possible in favor of plain English to make the book as clear and understandable as possible to students and other readers having no previous training in the law.

Jonathan Stern, Esq., partner in the Washington, D.C. office of the world-renowned Schnader, Harrison, Segal & Lewis law firm and editor of the American Bar Association's *Aviation Litigation Quarterly*. Jon has been especially helpful in providing materials, insights, and updates on the continuing evolution of international law governing airline liability.

Bill Behan, president, AirSure, Ltd., Golden, Colorado. Bill continues to be a reliable source of information on developments in the ever-changing field of aviation insurance.

John and Kathleen Yodice, a father-and-daughter team in the Yodice & Associates law firm in Bethesda, Maryland, who do yeoman service for general aviation as legal counsel for the Aircraft Owners & Pilots Association and other clients and have proved themselves reliable sources of insights into recent developments in FAA enforcement, aviation medical, and airport and airspace access issues.

Professors Robert Kaps of Southern Illinois University (Carbondale) and Timm Bliss of Oklahoma State University, co-authors with me of

the new *Labor Relations in Aviation and Aerospace* textbook and study guide with supplemental readings, published by Southern Illinois University Press, and Professor Jack Panosian of Embry-Riddle Aeronautical University's Prescott, AZ campus, who strongly encouraged that effort. All three of them also use this *Practical Aviation Law* text and motivated me to expand the coverage of Chapter 17 of this fifth edition to provide students a broader taste for that topic.

The Lawyer-Pilots Bar Association, Southern Methodist University's *Journal of Air Law and Commerce*, and the University of Denver's *Transportation Law Journal*, each of which consistently provides wonderful forums and opportunities for attorneys and others interested in aviation law to share knowledge and ideas in print and face-to-face in an atmosphere of professional collegiality. They continue to contribute greatly to the advancement of the legal profession and the quality of legal service to aviation clients.

Colleagues teaching aviation law courses at numerous colleges and universities who provide feedback and suggestions that contribute to the continuous improvement of each successive edition of this teaching system.

My students, past and present, who continue to relentlessly question, challenge, and demand clear explanations and sound reasoning, rightly refusing to settle for less.

Not unlike the airline industry, the publishing industry is in change as companies merge, are acquired, go out of business, or adjust their scope and market focus. Through all this change, successive editors at Iowa State University Press, Blackwell Publishing Professional, and now Aviation Supplies & Academics have recognized the need for this teaching system and its periodic updates, turning my vision into the solid reality you are now holding in your hand.

My family, who encouraged me in this project and more-or-less cheerfully tolerated the many hours I spent sequestered writing and updating this work (often after a full day of practicing aviation law or teaching), and especially my wife Charlotte, who did most of the typing of the original and subsequent manuscripts.

The credit is theirs; the errors are mine.

Notes on the Text

Unless otherwise noted, all opinions expressed herein are entirely my own and do not necessarily reflect the views of my employers, past or present.

All photos and illustrations are by the author, unless otherwise credited.

The use of proper language and phraseology is of crucial importance in the law. The primary use of *italics* in the text is to alert you to a word or phrase you need to understand to grasp the concepts under discussion, though italics are also occasionally used to give special emphasis to a point.



PART I

**ADMINISTRATIVE
LAW**

1

Regulatory Agencies and International Organizations

If you are involved in aviation, you will deal with administrative agency regulations far more frequently than any other area of the law. Indeed, you will probably be confronted with making decisions based on the Federal Aviation Regulations (FARs) on a daily basis. Those regulations also establish standards of legal behavior by which a judge or jury may later decide whether you and your employer are legally liable for negligence in the event of an aircraft accident. Hardly any aspect of aviation today is unaffected by these regulations. That is why we begin with an examination of administrative law, with particular attention to the role of the Federal Aviation Administration (FAA) in administering the federal program of air safety regulation.

Since the 1920s, Congress has created a plethora of regulatory agencies to administer the many federal programs it has initiated. Indeed, federal agencies continue to grow and multiply, under Democratic and Republican administrations alike. We start here with an overview of the numerous administrative agencies most directly involved with some aspect of aviation, distinguishing them from each other according to the specific role played by each in regulating aviation.

The ease with which civil aircraft cross national borders, air transportation's key role in the global economy, and recent horrific effective use of civil airliners as weapons of terror have made the regulation and development of civil aviation a continuing subject of not only national but also international concern.

This chapter also introduces the International Civil Aviation Organization (ICAO) and the International Air Transport Association (IATA), organizations that, although not technically regulatory agencies, play an important role in harmonizing technical standards for civil aviation worldwide.

FEDERAL ADMINISTRATIVE AGENCIES

The terrorist attacks of September 11, 2001, shook the United States to the core. Few industries—indeed, few aspects of American life—were untouched, though some were more deeply affected than others. Civil aviation, having been so infamously and effectively abused in these attacks as a weapon of terror, has borne the brunt of these changes.

One of the results of the attacks was the most sweeping reorganization of the federal government in over a half-century.

Transportation Security Administration (TSA) (www.tsa.gov)

Barely two months after the attacks and for the express purpose of improving security in all modes of transportation, including civil aviation, Congress enacted the *Aviation and Transportation Security Act of 2001*, creating the Transportation Security Administration (TSA). The TSA was originally established as an operating agency of the Department of Transportation (DOT), but moved into the Department of Homeland Security (DHS) when that agency was created.

Previously, operators of airports served by commercial airlines had been responsible for airport security, relying primarily on contractors, with some FAA oversight. The new law brought the responsibility for day-to-day screening of airline passengers, baggage and cargo into the federal arena, under the TSA, which immediately set about hiring and training security personnel. Most of the new federal screeners were the same individuals previously employed by those contractors that had been performing the function prior to its federalization. With a change of uniform and some additional training, they returned to the same work.

The TSA also took over from the FAA the responsibility for inspecting and testing security measures at airports, with the added responsibility for the same at other transportation facilities, including foreign aircraft repair stations. Congress also empowered the TSA to receive, assess, and distribute intelligence information related to transportation security. The new agency was directed to develop plans, policies, and