UNITED STATES AVIATION LAW, 1822-1942: A CASE STUDY IN UNIFORM STATE LEGISLATION

A Thesis

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by

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TABLE OF CONTENTS

TABLE OF CASES

Chronologically speaking, the United States is a very small territory; . . . and when nations are measured in hours and states are measured in minutes, it is necessary that the force which regulates and controls should be uniform in all its phases and basically provided by an authority empowered to speak for the nation. Aircraft cannot recognize state lines and it may be said that international borders are only slightly stronger barriers--such is the nature of aerial traffic.

Clarence M. Young

(Former Assistant-Secretary of Commerce for Aeronautics)

"The Province of Federal and State Regulation of Aeronautics"

Journal of Air Law 1: 423, at 424.

CHAPTER I

INTRODUCTION

Suppose the pilot-owner of an aeroplane manuevers his craft in a careful and reasonable manner, but due to an unknown cause, the plane spins out of control and crashes to the earth below completely destroying an expensive chicken-coop and several hundred dollars worth of poultry of the plaintiff-farmer. Would the recovery of damages by the farmer be influenced by the fact that his place of residence was in one state rather than another; that the operator of the aircraft was the owner; that the pilot was not negligent in his operation; that the accident occurred prior to 1922, or after 1938?

These questions and many more have been set forth by thousands of interested parties, students, and spectators in regard to the problems of uniform aviation legislation. To answer these queries it is necessary to peruse the records concerning both the rise and fall of uniform state legislation in this particular field and the basic laws and trends of aviation.

Scope of the study. The problem of uniform state legislation in relation to air law as presented by this study does not include the two conventional divisions of

air law, that of radio and aviation. Rather, this research paper dwells entirely upon the various legal aspects of aviation. Necessary consideration will be given the rules of airflight, ground rules, attitudes of liability and insurance, regulatory acts comprising the necessary qualifications for licenses and fees, and the more minute problems of jurisdiction and the constitutionality of the acts or portions thereof.

Purposes of the study. The problem which is the basis of this study of uniform state action is founded upon an attempt to: (1) explain and illustrate by this case study that there is but one true form of uniform law--that is, the national law, that state law striving for uniformity is merely a federalistic substitute; (2) demonstrate the vast trend in this federal state from stress on the individualistic approach of the doctrine of states' rights to a more cooperative effort approaching a congenial administration of justice; (3) accumulate and bring up to date the important aspects of the information available on the subject of uniform state legislation in the field of air law; (4) compare the law of aviation under the influences of the common law, the uniform state laws, and the national laws; and (5) evaluate the results of the evolution of the stages of aviation laws from the chrysalis of the common law, through the larva state of uniform state action, to the adulthood of national control.

Importance of the study. The necessity for this thesis is not based solely on the lack of any major, compilatory work and the tremendous need for definitive information. A basic point of importance is the focusing of attention upon the most rapidly growing field of law and governmental control. The aircraft industry, which is ever-expanding, long ago commenced a race with the railroads and motor bus companies for a position of preeminence in the field of transportation. To illustrate the mushroom-like growth of aviation and its related problems, in the year 1931, William Marshall Freeman wrote:

> For the law of aviation is as yet in its early childhood. That it must and will grow until it forms an important department of law admits of no doubt. At present there is practically no case-law directly applicable.[1]

Yet in 1947, Commerce Clearing House, a publishing company of current legal information, set forth four huge volumes pertaining to aviation law; three of these dealt with national statutes and problems, while the fourth contained in one thousand three hundred sixty-seven pages all of the significant cases from 1822 to 1945. Freeman's statement quoted above could be corroborated by this case book, which devoted but two hundred fifty-five pages to cases prior to 1931, or 18.65 percent of the total number of pages as against 87.88

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1 William Marshall Freeman, Air and Aviation Law, (London: Sir Isaac Pitman and Sons, Ltd., 1931), p. v.

percent of the total number of years. Certainly with the rapid modern growth of the industry and its governmental aspects the importance of understanding the law concerning aircraft regulation should be obvious and clear.

Definition of terms used. The majority of the uniform acts pertaining to aeronautics devote their first sections to the definition of the important words or phrases used in the respective act. As these important acts have been included in the appendix, it would be superfluous to list the definitions here. However, there are some differences even among these authorities as to the exact meanings of certain terms; so to avoid unnecessary confusion when a word of disputed meaning is used in the text the intended meaning will either be expressly stated or can be deduced from the uniform law that is being discussed.

Organization of material. In order to interpret adequately the facts of any present day problem it is imperative to be acquainted with the historical aspects of the situation. The Latin phrase Experentia docet applies not only to individual experiences of one person, but also to the lessons that history illustrates. A wise man contemplates the mistakes and successes of past attempts to cope with the same, or similar problems, before he determines the course that the present action should follow.

Preceding consideration of the vital issues of the existing problem is the discussion of the historical aspects of the study of uniformity. Queries as to what has been done in this field of aviation in relation to uniform legislation; who has been responsible for the promotion of this work; what have been the results, good or bad; form the basis for this particular section of the thesis.

The next division is devoted to the specific law itself, combining the actual legal problems and case law applicable to this aspect of aviation. The many and difficult points of controversy encompass such issues as the ownership of airspace when contemplating the aspects of trespass; the transportation of both persons and property when examining the incidents of contract; the doctrines of absolute liability and res ipsa loquitur when analyzing the elements of negligence and the use of dangerous instrumentalities, respectively; the question of compulsory insurance; and the ever-present power of jurisdiction. While the complete restatement of the tenets of air law is outside the scope of this investigation, the general outline herein presented should enable the reader to comprehend more easily the reasons for the need of uniformity in legislation, and the causes behind its development.

The factors tending to create uniformity are considered following the above-outlined approach to the law itself. By

way of explanation, after the common law, state legislation, and national statutes have been examined in the light of the specific problems, the various items having brought pressure to bear to produce uniformity are then next in logical line for scrutiny. Many of the incidental directives will not be considered for sake of brevity; however, the major forces such as the American Bar Association, the National Conference of Commissioners on Uniform State Laws, the American Law Institute, the Department of Commerce with particular emphasis upon the Civil Aeronautics Authority, as well as the state boards, interstate compacts, the "full faith and credit"[2] doctrine as applied to conflict of laws, and similarity of the law school education of all of the nations lawyers and judges and many of the legislators will be carefully treated.

The last major division of this study embraces the various acts supporting uniform state legislation in air law, the development and results. Also in this chapter will be consideration of the organization that has planted, cultivated, and supported the laws until their demise. The states which accepted the laws as proposed and those states which modified one or more sections of the acts are also of vital interest. The early acts such as the Uniform Aeronautical

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2 United States Constitution, Article IV, Section 1: "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State."

Act, the Uniform Aviation Liability Act, the Uniform Law of Airflight, and the Uniform Air Jurisdiction Act will be treated more lightly than the Uniform Aeronautical Regulatory Act, the Uniform Air Licensing Act, or the Uniform Airports Act of later dates.

CHAPTER II

HISTORICAL ASPECTS

While it is true that aeronautical case law began in the United States in 1822,[1] the first year of state aviation legislation was 1911.[2] During this year Judge Simeon E. Baldwin proposed a resolution in favor of state regulation of aeronautics to the American Bar Association committee on jurisprudence and law reform. The committee refused to adopt the proposal on the ground that the matter of air law was not of sufficient interest to the public to merit such recognition. The governor of Connecticut, Judge Baldwin, turned from the Association to his state legislature and secured passage of the first air navigation act in the United States. From this period to more recent times the individual states have, in various ways, passed laws governing the field of aeronautics.

In the early days of the development of aircraft the uniformity of legislation was comparatively unimportant in

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1 Guille v. Swan, 19 Johnson 381. (See p.11)

2 "Aerial navigation had its beginning in 1783, when the first balloon was sent up near Lyons, France, and reached an altitude of about a mile. Since then progress in aeronautics has advanced so rapidly that aviation is now the basis of a great and rapidly growing industry." Leonard H. Axe, Aviation Insurance, (New York: Insurance Institute of America, 1931) p. 7.

contrast to today when coast to coast flights may be completed in the brief span of a morning between a late breakfast and luncheon, or in the afternoon before teatime and dinner. Since aviation began outgrowing the intrastate controls placed on it by the individual states and became an interstate business, the passing of conflicting legislation by the states would result in one of two alternatives: either the laws would be flagrantly disobeyed and unenforced, or the advancement of the aviation industry would be retarded.[3] To achieve some degree of homogeniety for the issues which have developed in regard to conflicting legislation, at least two aids have presented themselves: the uniform state laws which have been proposed and the patterning of individual state laws after those first established by the national government.

The need for more equitable air laws has been of increasing importance since the first legislation was passed. As long ago as 1925, government and industry officials alike began clamoring for legislative intervention. As Lt. Col. W.J. Davis says:

> It takes a good deal of nerve to say we need more laws of any kind. The general feeling is that the body politic is pretty well stuffed with laws already.
>
> But after studying air commerce in other countries, I am firmly convinced that the one greatest need of

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3 Fred D. Fagg, Jr., "A Survey of State Aeronautical Legislation," Journal of Air Law, 1:452 at 453, 1930.

American aviation is Federal Legislation.[4]

What Davis probably had in mind was the obvious necessity of uniform requirements relative to the licensing of aircraft and pilots. Whether this issue would be met by federal legislation or by uniform state acts was immaterial to Mr. Davis. The important item was that the problem be solved. He went on to say:

> It used to be that Big Business went ahead first, and had laws to fit it afterwards. But not anymore. In these days investments wait on clearly defined legal rights. Even the Standard Oil Company would not buy a rich oil field until every Indian heir to the third generation signs a quitclaim deed.[5]

In 1937, Col. Edgar S. Gorrell again asked for a revision and revamping of legislative materials.[6] He indicated that federal control was the best solution. At this early date the goal seemed to be national legislation and uniform state control was progress in that direction.

Are we to believe that the intermission period of the strength of the uniform acts was merely an introduction to absolute centralization of policy? Is the effect of the

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4 W. Jefferson Davis (Lt. Col. O.R.C.), Putting Laws over Wings. (Reprinted from the American Bar Association, August, 1925) p. 1.

5 Ibid., pp. 2-3.

6 Col. Edgar S. Gorrell, America's National Policy on Aeronautics, (Address delivered by the President of Air Transport Association of America, at the Western Aviation Planning Conference, Sacramento, California, September 23, 1937) n.b. pp. 4 and 12.

uniform state legislation to substitute for centralization, or is this approach merely a stepping-stone from the decentralized approach to that of control resting in the hands of the national government?

The first step in the direction of national control came in 1872, with passage of the Post Roads Act. During the interval from the first act to the present, some twenty-five or so federal aviation laws and even more amendments have become official. Now the control of the air is a function of the national government.[7] Without further investigation it would seem obvious that the history of uniform state legislation amounts to a discussion of the rise and fall of the policies tending toward uniformity.

In the early development of air law of the United States there are four pertinent fields that are interrelated

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7 Rowland W. Fixel, The Law of Aviation, (Charlottesville: The Michie Company, 1945) p. 58: "Effective December 1, 1941, the Civil Aeronautics Board, provided that 'no person shall pilot a civil aircraft in the United States unless such person holds a valid pilot certificate or in violation of any term, condition, or limitation of such certificate, provided, an alien may pilot a civil aircraft in the United States in accordance with a pilot certificate issued or validated pursuant to a reciprocal arrangement entered into between the United States and the foreign government from which such alien holds a valid pilot certificate . . . and no flight of civil aircraft, other than a foreign aircraft whose navigation in the United States has been authorized according to law, shall be made or authorized to be made in the United States, unless there is outstanding for such aircraft a valid aircraft airworthiness certificate or in violation of any term, condition, or limitation of such certificate.'"

in one sense but still are quite separate. These fields, comprising the decisions of the courts, statutory law, administrative regulations, and treaties,[8] all have aimed their interests, whether consciously or not, in the direction of assisting the cause of uniformity.

Case law. The vital issues raised in the many cases concerning aviation will be discussed more specifically in the chapter devoted primarily to a résumé of case law and general legal problems. However, a few salient comments may serve to illuminate further discussion.

The celebrated case of Guille v. Swan[9] began the grand march of aviation cases. Because the aeronaut-defendant was operating a free balloon which was subject to the will of the winds, the court held that he should have foreseen the danger which might develop, and, in fact did; for the balloon descended with the aeronaut hanging out of the cabin and calling for help to a friend below. The friend, in addition to two hundred or so spectators, came to the operator's rescue by way of the plaintiff's garden. The aeronaut was held liable by the court not only for the damage that he himself

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8 William P. MacCracken, Jr., "The Growth of Aeronautical Law in America," Journal of Air Law 1:415, 1930. Mr. MacCracken was formerly Assistant Secretary of Commerce for Aeronautics, Secretary of the American Bar Association, and a member of the advisory board of the Air Law Institute.

9 19 Johnson 381, 1822.

caused to the plaintiff's vegetable garden, but also that injury inflicted by his rescuers.

To be strictly logical, the courts of today should not apply this doctrine of absolute liability. This first case was determined on the basis of lack of possible control of the instrument by the aeronaut while today the pilot exercises a large measure of control over the craft.

In determining the first few cases in any new area of discovery, such as radio, aviation, and electricity, the court must search for precedent from neighboring established fields. The habit of stare decisis is so firmly entrenched in the Anglo-Saxon legal tradition that the case law in new territories of discovery is founded upon appropriate first-cousin relationship. Air law in regard to aviation has turned to the rules of admiralty among other areas for precedents which will, in turn, be the grandfather reasons for later decisions.[10]

The Crawford Brother Number Two case[11] attempted to

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10 Edward A. Harriman, "Carriage of Passengers by Air," Journal of Air Law 1:33, 1930: "Ancient precedents regarding nautae caupones et stabularii are important, but not conclusive, when dealing with the law of railroads, hotel syndicates, and garages. For the same reason, precedents in the law of carrier by land and by sea are important, but not conclusive, in the law of carrier by air." Mr. Harriman, a member of the Washington, D. C., Bar, was formerly a professor of law at Northwestern University.

11 Foss (Berg, Intervener) v. The Crawford Brothers No. 2, 215 Fed. 269, 1914.

apply the rules of admiralty and enforce a maritime lien for repairs to a seaplane that had been wrecked; however, the court held that admiralty rules did not in and of themselves apply, and that such a procedure would require further legislation on the national level. In the case of In re Reinhardt,[12] the applicant, who had been injured while working on a floating seaplane, was denied compensation from the State Compensation Act on the grounds that he had been working on a vessel. Perhaps a rather unsatisfactory explanation may be deduced from the fact that the former case was brought on a federal level while the latter was remedied on the state level. Perhaps the difference in results is based on the variance in facts. Nevertheless, one way or another the first few cases concerning aviation laws were decided; then in turn these decisions served as precedents for present day controversies.

Although case law has not had a direct effect upon the producing of uniform legislation, judicial interpretation has displayed a deliberate tendency to follow the firmly established concepts of the common-law. The influence of the courts seems to offer the proof of its existence in the respect shown by the legislators who in turn have instigated the laws which are patterned after those common-law concepts.

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12 232 N.Y. 115.

Further discussion of the history of case law would necessitate the categorizing of various legal issues which could arise in relation to aviation with the case law development thereof. The major issues will be discussed in a later portion of this paper.[13]

Statutory law including administrative regulations. On the national level of legislation the effect upon uniformity of regulations has been both direct and indirect. From 1872, to the present there have been dozens of aviation laws promulgated[14] which have directly affected the licensing and operating aircraft in the United States. The earlier laws directly affected only those planes and aeronauts engaged in interstate commerce and travel, and the rulings controlling intrastate flying were as lacking in uniformity as the laws of the forty-eight different states, comprising thousands of municipalities that had effected ordinances. The Air Commerce Act of 1926,[15] became the set of baby teeth of the

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13 Infra, Chapter III.

14 See appendix, p.

15 The Air Commerce Act of 1926 possesses a preamble similar to that of the British Air Navigation Act of 1920. English: "WHEREAS the full and absolute sovereignty and rightful jurisdiction of His Majesty extends, and has always extended over the air super-incumbent on all parts of His Majesty's dominions and the territorial waters adjacent thereto: . . . " 10 and 11 George 5, Chapter 80--The Air Navigation Act, 1920.

national government's control over aviation, and it was not until 1938, with the advent of the Civil Aeronautics Act that the adult molars were officially formed. By 1947, after five amendments to the latter law and the addition of seventeen other pieces of national legislation, it might be said that the federal government had finally developed its wisdom teeth.

National legislation in the Thirties crossed state boundary lines[16] and reached all aircraft and aeronauts directly. Before this change in policy occurred, the laws concerning interstate flight had an indirect effect upon the state legislation. During this intermission period the state legislatures, as they modified their statutes, patterned the changes after the federal requirements. In other words, the national legislation brought to the forefront with the Civil Aeronautics Act of 1938, had, with the aid of the states, produced increasing pressure to shape the individual aeronaut and aircraft into the mold of uniformity.

The differences in the first state laws produced unlimited confusion; so the National Conference of Commissioners

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United States: "Congress hereby declares that the Government of the United States has to the exclusion of all foreign nations, complete sovereignty of air space over the lands and territories of the United States including the Canal Zone." Section 6 (a).

16 Intrastate control by the federal government was allowed on the basis of the doctrine of the right of the nation to control navigable airspace.

on Uniform State Laws and the American Bar Association began work within their own organizations in the year of 1920, upon a uniform air law or code. The Uniform Aeronautics Act of 1922, was the result of preparation by the National Conference and approval by the American Bar Association. Although this first act was adopted by twenty-two states,[17] the provisions soon became obsolete with the rapid advancement of the aviation industry.

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17 See appendix, p.

Modifications and adaptations of the act will be found in the following states: Arizona, Colorado, Georgia, Hawaii, Idaho, Illinois, Minnesota, Missouri, Montana, North Carolina, Pennsylvania, Rhode Island, Wisconsin, and Wyoming. The current applicable laws in Colorado, Hawaii, Illinois, Minnesota, Pennsylvania, Rhode Island, and Wyoming may not be considered to be adoptions of the uniform act either because of no substantial adoption at any time or because of subsequent repeal of the original laws adopting the provisions of the act.

United States Department of Commerce Aeronautics Bulletin Number 18: State Aeronautical Legislation Digest and Uniform State Laws, Revised to January 1, 1936, prepared by Professor Fred D. Fagg, Jr., (Washington, D.C.: Government Printing Office, 1936) p. 3: "The act was intended to be purely a nonregulatory law to establish the legal status of air navigation in relation to the general law. It was then thought that Federal legislation would cover all regulatory phases of the usbject leaving nothing of that sort to the States."

W. Brooke Graves, Uniform State Action, (Chapel Hill: University of North Carolina Press, 1934) p. 55: "This Act was prepared in 1922, before commercial flying had made any appreciable progress in this country; the states had no legislation on the subject, and it is doubtful if many of them had any idea as to the kind of legislation that would be necessary or desirable."

In 1929, the National Conference of Commissioners on Uniform State Legislation working with the American Bar Association Committee on Air Law and the Air Law Institute began preparation on the Uniform Aeronautical Code, which was divided into two sections: (1) the Uniform Air Licensing Act[18] and (2) the Uniform Airports Act.[19] The former act was later supplaned by the Uniform Aeronautical Regulatory Act.[20] These acts were withdrawn from the active list of

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18 Adopted by eight states. See appendix, p.

Modifications and adaptations of the act will be found in the following states: Alaska, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maine Maryland, Minnesota, North Dakota, Oklahoma, Tennessee, Utah, and Vermont. The current applicable laws in Idaho, Illinois, Kansas, Kentucky, Oklahoma, and Utah may not be considered to be adoptions of the uniform act either because of no substantial adoption at any time or because of subsequent repeal of the original laws that adopted the provisions of the act.

Fred D. Fagg, Jr., op. cit. (n.16, p.16) p. 3: This act "resulted from the failure of the Air Commerce Act of 1926 to take jurisdiction of all regulatory matters pertaining to aviation--State and Federal."

19 Adopted by four states. See appendix, pp.

Modifications of the act will be found in the following states: Florida, Georgia, and South Carolina.

Commissioners' Prefatory Note: ". . . The Uniform Airports Act is the first of three acts on the law of aeronautics to be presented by the Committee on Uniform Aeronautical Code and adopted by the Conference. It provides for the acquisition, construction, operation, and regulation of airports and landing fields for the use of aircraft, by municipalities, counties, and other political subdivisions."

Uniform Acts recommended by the National Conference of Commissioners on Uniform State Laws in August, of 1943.[21]

All of the uniform acts which have been adopted have been modified to some extent by one or more of the states. Many superficial observers of the struggle for uniform laws have claimed that the labor for the god of uniformity is futile because of resultant modifications by the states. However, the outstanding authority on uniform state legislation, Mr. W. Brooke Graves, has stated that the "Extent of modifications is not alarming."[22] Even a hasty perusal over the general statutory notes relating to these acts would reinforce Mr. Graves' stand.

Other proposed uniform acts which were accorded even less recognition were the Uniform Aviation Liability Act, the Uniform Law of Airflight, and the Uniform Air Jurisdiction Act. These acts were met with such a tremendous wave of opposition that they were never officially recommended

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20 Adopted by four states. See appendix, pp.

Modifications and adaptations of the act will be found in the following states: Hawaii, Rhode Island, South Carolina, Utah, Vermont, and Wisconsin. The current applicable laws in Hawaii, Rhode Island, and Vermont may not be considered to be adoptions of the uniform act either because of no substantial adoption at any time or because of subsequent repeal of the original laws that adopted the provisions of the act.

21 Handbook of the National Conference, 1943, p. 66.

22 W. Brooke Graves, op. cit. (n. 16, p. 16) p. 52.

KEY FOR TABLES I-IV

A *** adopted original section in full

C *** completely changed original section

D *** includes original section plus an addition

O *** original section omitted

P *** partial modification of original section

S *** substance of section adapted to law of state where the uniform law was not officially adopted.

TABLE I

ADOPTION, MODIFICATION, AND ADAPTION OF THE UNIFORM AERONAUTICS ACT

State	Sections														Comments
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	
Arizona	A	A	A	A	P	A	A	A	P	A	P	A	A	O	Contains additional provisions
Colorado		S	S	S							S				Similar act
Delaware	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Georgia				P		A	P	A							Code embodies only sections of act
Hawaii	A	P	A	P	A	A	A	A	D	A	P	A	A	A	Repealed U.A., 1945
Idaho	P	A	A	A	P	A	P	A	O	O	P	A	O	O	Adopted in 1925; revised, 1931
Illinois															Similar act
Indiana	A	A	A	A	A	A	A	A	D	A	A	A	A	A	
Maryland	A	A	A	A	P	A	A	A	A	A	A	A	A	A	
Michigan	A	P	A	A	A	A	A	A	A	A	O	O	A	A	
Minnesota	C	S	S	S	S	S	S	S	P	P	O	P	S	S	Repealed U.A., 1943
Missouri	A	O	A	P	O	A	A	A	P	O	A	O	O	O	Adopts few sections, minor change
Montana	A	P	A	D	A	A	A	A	A	A	A	A	A	A	Addition also
Nevada	A	A	A	A	C	A	A	A	A	A	D	A	A	A	
New Jersey	A	A	A	A	A	A	A	A	A	A	A	A	A	P	
North Carolina	A	A	A	A	A	A	A	A	A	A	O	O	A	A	Addition also
North Dakota	A	A	A	A	A	A	A	A	A	P	A	A	A	A	
Pennsylvania			S	S		S	S	S							Repealed U.A., 1933, similar
Rhode Island															Repealed U.A., 1940
South Carolina	A	A	A	A	D	A	A	A	A	A	A	A	A	A	
South Dakota	A	A	A	A	A	A	A	A	A	P	A	A	A	A	
Tennessee	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Utah	A	A	A	D	P	A	A	A	D	A	A	A	A	A	
Vermont	A	A	A	A	C	A	A	A	P	A	A	A	A	A	
Wisconsin	C	P	A	D	A	A	A	A	D	A	O	A	A	A	Minor changes
Wyoming															Similar act

TABLE II

ADOPTION, MODIFICATION, AND ADAPTATION OF THE UNIFORM AIR LICENSING ACT

State	Sections															Comments
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
Alaska	A	A	A	A	A	A	A	A	A	A	O	A	A	A	A	Several immaterial changes
Idaho																Similar act, 1931
Illinois																Similar act, 1933
Kansas																Act covering similar subject, 1931
Kentucky																Act covering similar subject, 1932
Louisiana	A	O	O	A	A	O	O	O	O	A	O	A	A	A	A	Has 2 additional sections
Maine	A	A	A	A	A	A	A	A	A	A	O	A	A	A	O	Adopted act prior to final approval N.C.
Maryland	P	A	P	A	P	P	A	A	A	A	P	½P	A	O	O	Adopted act prior to final approval N.C.
Minnesota																Repealed U.A., 1943, Similar act
North Dakota	P	O	P	A	A	A	P	O	P	A	O	O	O	A	O	Adopted act prior to final approval N.C.
Oklahoma																Similar act
Tennessee	P	O	P	P	P	P	P	O	P	A	A	A	A	A	A	Several immaterial changes
Utah																Purports to be U.A. but differs materially
Vermont	A	A	A	A	A	A	P	P	A	O	A	A	A	A	A	Adopts substance of U.A. but many verbal changes

TABLE III

ADOPTION, MODIFICATION, AND ADAPTATION OF THE UNIFORM AIRPORTS ACT

State	Sections 1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Comments
Florida	P 1/2	P	P	P	P	A	A	P	P	P	A	O	C	A	A	Changed the title to "The County Airports Act"
Georgia	O	A	A	A	P	A	O	A	A	A	O	O	O	O	O	Enacted act prior to Natl. Conf. adoption of U.A.
Minnesota					O		O	O					O			Adopted act in 1943, repealed it in 1945,
South Carolina	A	A	A	A	A	A	P	A	A	A	P	O	A	A	A	New act similar
Utah	A	A	A	A	A	P	A	A	A	A	A	A	A	A	A	

TABLE IV

ADOPTION, MODIFICATION, AND ADAPTATION OF THE
UNIFORM AERONAUTICAL REGULATORY ACT

State	Sections 1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	Comments
Hawaii					S				S											Added these similar secs. to U.A.
Montana	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	Full adoption and no modifications
Rhode Island																				Enacted own law, same title as U.A
South Carolina	P	P	P	P	P	P	P	P	O	P	A	P	A	A	P	O	A	A	A	Adopted act prior approval of U.A.I
Utah	D	A	A	A	A	P	A	P	A	A	P	P	A	P	A	A	A	A	A	In addition has 3 administrative sections
Vermont		S																		Not adopted act
Wisconsin	A	A	A	A	P	A	C[1/2]	A	P	P	A	O	O	A	A	O	O	O	O	Provides for a State aeronautics board

for adoption by their proponents.

Treaties. International laws established by the method of the many-nations conference and agreement have exercised but a limited portion of indirect pressure towards uniformity in the individual states of the United States. In 1919, the International Air Navigation Convention drew up certain rules and regulations concerning aviation that the signing countries agreed to obey. Although the United States did not actually take part in the agreement, the effect of the rules was felt. This oddity may be explained by the fact that Canada was a signatory and conformed to the Convention's decisions in a treaty entered into with the United States. Temporary arrangements were made also with both British and French Colonies and South America by common consent rather than by particular treaties. Several conventions on air navigation were called as the unification of air law became a practical necessity. Some of the multi-lateral conventions which did not, however, regulate questions of private law were held in Paris, 1919; in Madrid, 1926; and in Havana, 1928.

The Warsaw Convention of 1929, presents another aspect of international aviation law, this particular one being the regulation of questions concerning private law in air transportation which in actuality is the regulation of the

responsibility of the carrier to his passengers and for the cargo. While the United States not only signed but ratified this agreement,[23] the treaty applies only to international aviation and not intra-national; so it merely acts as a pattern for future national and state legislation.

References to other treaties and to other nations' laws in relation to aviation could be made only at the risk of departing from the true theme of the paper and ruminating in a field of international aviation law which has currently been explored to a greater extent than could be adequately considered here. Since this work is concerned mainly with the general approach to the problem of aviation legislation, the coverage of all of the major aspects is more important than a detailed report of one or two. With this thought in mind this chapter dealing with the evolution of air legislation and the factors tending to effect uniformity is brought to a close, and the door is opened upon the several specific problems to be found in the substantive as well as procedural law.

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23 October 29, 1924, 49 U.S. Stat. 3000.

CHAPTER III

LEGAL PROBLEMS AND CASE LAW

Whether or not a court has the power to hear and determine cases based upon aviation issues and whether or not liability for injury to persons and damage to property may be imposed are the skeletal queries of this chapter. The determination of the historic as well as current approaches to the legal questions in addition to the support given by the various acts dedicated to uniform state action is the goal of this section.

I. JURISDICTION

The problems of jurisdiction filtrate through all the levels and sections of law. Whether the case in question deals with administrative, civil, or criminal law, and based on common or statutory law, the query to be dealt with initially is the establishment of court jurisdiction. Jurisdiction is generally conceived to be the power of the court and other courts of the same status to hear the facts of a case and determine the legal questions involved.

In the field of air law the cases involved run the gamut of the general types of law. Now, even administrative law is concerned with certain situations which arise under the authority of the Civil Aviation Board of the national

government. However, as this paper deals in the main with the law of the states, the jurisdictional disputes to be considered will be those to which the criminal or civil law may be applied. The civil law, that is, the law covering disputes between individuals, companies, corporations, and/or governments, finds its problems of jurisdiction determined by such factors as: the place of residence of the parties to the action, which is the general, basic rule; the fact that a federal question is involved; the situs of the contract, and as many others as there are grounds for action. Problems of jurisdiction in criminal law, that is, the law coping with statutory as well as some common-law violations, are more limited and specific than those of civil law; for the one jurisdictional issue concerns the commission of illegal acts aboard aircraft while in flight.

Criminal jurisdiction. When an act committed aboard aircraft while in flight is thought of as illegal, that is, contrary to the law, criminal, the question of legality may be answered in the courts of the territory over which the act occurred; for the court jurisdiction generally accrues in the particular situs where the act was committed. Whether or not the specified act is a criminal offense is within the discretion of the state of the laws of the ruling jurisdiction.

Although the general rule as to the attachment of

criminal jurisdiction as stated above may seem rather simple, the actual application of the principle presents many difficult problems of interpretation. At least six different situations could exist to confound the novice in the determination of jurisdiction.[1] (1) If an aircraft bearing the colors of the United States were to fly over foreign waters, any allegedly unlawful act committed aboard the carrier would bring the perpetrator within the control of the federal courts. This particular ruling[2] is similar to the attitude toward criminal acts committed aboard a United States' ship in international waters.

(2) If the plane in question were foreign in registry but the alleged crime occurred while in flight over waters[3] of the United States, the jurisdiction of the federal court is operative. (3) The federal courts also have jurisdiction if the plane regardless of its locale of ownership or registry is above a federal territory. (4) A further example of a proper use of federal jurisdiction exists even when the aircraft is passing over a non-federal territory, but the occupants are violating federal law, such as smuggling,

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1 "Crimes Committed Aboard Aircraft," Air Law Review 10:303-9, July, 1939.

2 Criminal Code §272, 35 Stat. 272, 18 U.S.C.A. §451 (1934).

3 Latham v. United States, 2 F. (2) 208 (C.C.A. 4th, 1924).

narcotics, immigration, customs.

(5) When the flight is purely within one state, the laws of that state as to jurisdiction prevail. That the act will be tried in the state in question is certain. The particular problem that arises concerns what city or county will answer the question of venue, that is, the proper place of trial. In general, the various states line up behind two distinctly different rules of conduct. The New York view[4] gives jurisdiction to any of the counties through which the plane has passed. This approach eliminates the practical question which arises as to exactly what town or county was beneath the aircraft when the allegedly unlawful act was committed. However, twenty-four states have constitutional

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4 New York Code of Criminal Procedure, §137, amended by Laws of New York (1938) c. 170.--"when a crime is committed in this state in or on board of any railway engine, train or car, making a passage or trip on or over any railway in this state, or in respect to any portion of the lading or freightage of any such railway train or engine car, or when a crime is committed in this state in or on board of any omnibus, truck, aeroplane or other common carrier, the jurisdiction is any county through which, or any part of which, the railway train or car, omnibus, truck, aeroplane or other common carrier, passes, or has passed in the course of the same passage or trip, or in any county where such passage or trip terminates, or would terminate if completed." (Italics not in the original).

Similar laws in the following states: Iowa, Code (1935) §13,453; Minnesota, Laws (1929) c. 219, §7; Missouri, Laws (1929) c. 122 §7; North Carolina, Public Acts (1929) §9; North Dakota, c. 11 (1935), S. B. 245, §1, 2; Pennsylvania, (1929) c. 109, §7; South Carolina, Laws (1929) c. 189, §7; Wisconsin, Laws (1929) c. 348, §3.

provisions which require that the accused be tried by jury in the county in which the supposed crime occurred or allegedly occurred. Therefore, in these last-mentioned states statutes similar to that of New York on this view would probably be deemed unconstitutional. Such was the holding in the case of State v. Reese in which state existed the constitutional provision allowing the accused to be tried by jury in the county in which the crime was committed. A statute which provided that any of the counties through which a railway line passed could exert jurisdiction over any criminal act committed aboard the train, was declared to be a violation of the superior law.

A possible solution to this problem lies in the interpretation of the decision of Morrison v. California[5] where a California statute was involved.

> The decisions are manifold that within limits of reason and fairness the burden of proof may be lifted from the state in criminal prosecutions and cast on a defendant. The limits are in substance these, that the state shall have proved enough to make it just for the defendant to be required to repel what has been proved with excuse or explanation, or at least that upon a balancing of convenience or of opportunities for knowledge the shifting of the burden will be found to be an aid to the accuser without subjecting the accused to hardship or oppression.[6]

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5 291 U.S. 82, 54 Sup. Ct. 281 (1934).

Similar statutes declared unconstitutional in: People v. Brook, 149 Mich. 464, 112 N.W. 1116 (1907); and State v. Anderson, 191 Mo. 134, 90 S.W. 95 (1905).

6 291 U.S. op. cit. p. 88.

The application of this rule as to a certain limited portion of the burden of proof being placed on the defendant to the problem of ascertaining the proper jurisdiction of the accused has been suggested.[7] In this situation the necessary amount of the state's proof would be limited to the showing that the defendant possessed the "means and opportunity" to commit the crime in order to establish proper venue. The accused would then be forced to prove that said crime was not in fact committed while the aircraft was in flight over the particular county in question. This approach to the problem places the burden of proof in the hands of the defendant who, if he possesses an honest claim against such place of trial by the prosecution, will probably have greater access to the evidence establishing his stand. If a defendant desires to allege a specific defense to an action, he should be required to present sufficient evidence to prove his allegations.

(6) A somewhat similar perplexity to the former exists

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7 Proposed Law of Airflight, Criticisms and Suggestions Relating to Tentative Draft Number One of the American Law Institute(1937)131, 141, 142. "In any civil or criminal proceeding in this state relating to any crime operated over two or more counties of this state, proof by the state or the plaintiff that the defendant in such proceeding had the means and opportunity to commit such crime or tort while said aircraft was in flight over this state, shall be sufficient to establish the venue of such crime or tort in the county charged by the indictment, information or other pleading by which such proceeding was instituted, unless the defendant shall prove as a defense that said crime or tort was not committed while said aircraft was in flight over said county."

in interstate aerial navigation. When aircraft is in flight over two or more states, the problem arises as to which state may exercise jurisdiction. If the state is known over which the crime was committed, the issue is less vital; for the accused is merely extradited to the locus of the act. However, if there is no certainty as to the locality of the crime,

> . . . the lack of any mode of determining which body of government shall have jurisdiction results in confusion which may well delay the speedy trial of the accused or may even obstruct justice entirely.[8]

One possible remedy could be found in the federal courts extending their jurisdiction to cover crimes committed aboard aircraft traversing two or more states.[9]

In the Restatement, Law of Airflight the American Law Institute has set forth another suggestion which establishes the presumption that the act was committed in the state from which the aircraft last took-off; and if that presumption is overcome, then the act occurred in the next state into which the plane passed, and so on.[10]

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8 "Crimes Committed . . ." op. cit. (n. 1, p. 28) p.307

9 Uniform Aeronautics Act, §7, is not of much assistance in the problem but merely restates the law as it has stood for some years. See appendix, p.

10 Restatement, Law of Airflight (Tentative Draft Number One) 1937, 27 Uniform Air Jurisdiction Act §3.:

"(a) In the absence of proof to the contrary it shall be presumed that any act or transaction in the air, involved in any proceeding in the courts of this state, was committed

II. TRESPASS

Trespass: "An unlawful act committed with violence, actual or implied, causing injury to the person, property, or relative rights of another."[11] Before the action of trespass may be successfully claimed the person bringing the suit must establish his right of ownership to the property against which the unlawful act was allegedly committed. Under the law of the air there is no waiver of this requirement; the ownership of the property allegedly trespassed upon must be proved.

Ownership of airspace.[12] The old common law followed the Latin maxim, Cujus est solum ejus est usque ad coelus,[13] that of the owner of surface land owning from the bowels of

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or occurred in the state from which the aircraft last took-off previous to such act or transaction. . . .

"(b) If it be established that at the time of the commission or occurrence of the act or transaction, the aircraft had passed the boundaries of the state from which it last took-off, it shall be similarly presumed that the act or transaction was committed or occurred in the state which it next entered and so on from state to state."

11 Black's Law Dictionary, (St. Paul: West Publishing Company, 1933) p. 1753.

See Restatement of Torts, Pamphlet Number Two, Ch. 7, §158, P. 255, states that a person is guilty of trespass if there be an intentional entry regardless of whether harm is done or not.

§159, p. 259--actionable trespass: "on, beneath or above the surface of the earth."

f., g., h., p. 260--If harm results the aviator is liable even though he acted with due care.

12 See f.n. 14, chapter 2, p. 14.

the earth to the heavens. Several early English decisions held that,

> The earth hath in law a great extent upwards not only of water, as hath been said, but of air and all other things even up to heaven; for cujus est solum ejus est usque ad coelum as is holden.[14]

The outstanding authority, Blackstone, followed the same line of reasoning that the owner of the surface of the earth owns to the center of the earth below and to the heavens above.[15] Similarly in the Code Napoleon was written, "Property in the land includes property above the land."[16] A more modern application of the same rule may be found in Hazeltine's Swiss Civil Code:

> The ownership of real estate extends into the air space above and into the soil beneath the surface of the land so far as the owner has an interest in exercising a right of ownership in such air space or in such soil.

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13 This maxim was first mentioned in English legal thought in the case of Bury v. Pope, Cro. Eliz. 118, 1586; which concerned the obstruction of light; it was held that a man had a right to build on his own land in such a manner as to obstruct the lights of his neighbor's thirty to forty year-old house. The phrase was stuck on the end of the report. Whether it was part of the opinion or an addition by the reporter is not known; however, its use has been constant through the old common law since its use in this case.

14 10 Edw. 4, 14 (dispute between the owner and lessee as to the property in young goshawks); 22 Henry 6, 59 (involved the theft of muniments of title); 14 Henry 8, 12 (concerning the right of the Bishop of London to herons and shovellers on property leased.)

15 Blackstone's Commentaries, 2:15.

16 Article 552.

The Uniform Aeronautics Act, approved in 1922 by the National Conference of Commissioners on Uniform State Laws vests the ownership of the airspace above the lands and waters of the state "in the owners of the surface beneath subject to the right of flight described in Section 4," that is, the flight is lawful if not too dangerously low over the property beneath.

Other general aspects of the problem. After ownership of the airspace was established by the proof of ownership of the surface of the earth beneath the airspace in question, the proof of injury in turn entitled the property owner to damages from the transgressor. The case of Guille v. Swan[17] was the first interrogation made along these lines in the United States. The balloonist was forced to pay for the damages which were caused not only by him when his balloon descended on the plaintiff's garden but also by the two hundred or so spectators who tried to rescue him. This case dealt with the absolute liability for injuries to person or property due to the lawful or illegal operation of aircraft whether arising from negligence, accident or otherwise.

A more recent decision dealing with trespass of airspace is Worcester Smith et al. v. New England Air-Craft Company, Inc., et al.[18] The Massachusetts statute[19] as well

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17 19 Johnson 381, (1822).

as that of the federal government[20] agrees that over congested areas airflight should not be less than one thousand feet. As to the minimum altitude elsewhere, the two governments agreed to five hundred feet at the time of the case but differed in a few months when Massachusetts reverted to the one thousand feet minimum while the federal rule was maintained at five hundred feet. This difference was of no effect in the principal case where the facts show that both statutes were violated, for the pilots flew at heights less than one hundred feet over the plaintiff's woodland territory. The plaintiff sought an injunction against the airport for the abatement of a continuing trespass amounting to a nuisance. The injunction was denied, for the airport proprietor neither owned or flew any planes; rather, it was the defendant's tenants who were guilty of the acts which the court held constituted trespass. From the decision it would seem that the individual tenants would be liable for nominal damages even though the airport proprietor could not be held.

> The airport proprietor is not, with respect to his tenants, bound by any doctrine of respondeat superior, and we might hopefully conclude that an airport proprietor will not be liable for actual trespass committed by planes, nor for damages to persons, merely

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18 270 Mass. 511, 170 N.E. 385, (1930).

19 General Laws c. 90, 1922, c. 534, §1.

20 Section 74 of rules promulgated by the Secretary of Commerce pursuant to authority conferred by section 3 (49 U. S.C.A. §173) of that act.

> in his capacity as proprietor. Agency, or other contractual authority for the flying, would have to be shown.[21]

From the statutes cited above and other federal and state laws the fact of private ownership of airspace may by assumed to be limited in altitude to what is necessary for the present use of the property. These early statutes do not create a right to navigate the air, but merely recognize the already existing right to fly over private property and then regulate it through the exercise of the police and commerce power.

The doctrine of the Smith case was reaffirmed in Burnham et al. v. Beverly Airways, Inc., et al.,[22] where an injunction was granted for the continuing trespass over the plaintiff's land at altitudes less than the minimum statutory standard of five hundred feet.

The uniform law applied to this query concerning trespass did not add much to the existing law on the subject, but rather reiterated the doctrine of the navigability of the airspace which is sufficiently far above the land as to not interfere with the reasonable use of the land thereunder. Another factor lending itself to create uniformity in state

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21 George B. Logan, "The Liability of Airport Proprietors," Journal of Air Law 1:263, at 272, 1930. Mr. Logan was a lecturer at Washington University School of Law in St. Louis and a member of the advisory board of the American Law Institute.

22 311 Mass. 628, 42 N.E. (2) 575, (1942).

legislation is the Restatement of Torts as adopted by the American Law Institute on May 12, 1934.

> Section 1002. Trespass May be Upon, Beneath, or Above the Surface of the Earth.
> A trespass on land may be committed by entering or remaining
> (a) on the surface of the earth, or
> (b) beneath the surface thereof, or
> (c) above the surface thereof.
> Section 1038. Travel Through Air Spaces.
> An entry above the surface of the earth, on the air space in the possession of another, by a person who is traveling in an aircraft, is privileged if the flight is conducted
> (a) for a legitimate purpose, and
> (b) in a reasonable manner, and
> (c) at such a height as not to interfere unreasonably with the possessor's enjoyment of the surface of the earth and the air space above it.

This additional rule in principle seems to accept the common law ad coelum approach which has been modified by all the other modern doctrines. However, in practice there is very little difference in the results of the two types of laws, for liability occurs in both cases when the possessor's enjoyment of his property is interfered with in an unreasonable manner; and no liability occurs when no harm is done. The primary difference in the two depends on the interpretation of the legislators' meaning in regard to absolute liability. The sections as set forth by the Restatement state that all entries upon another's property are trespass unless privileged and these entries are not privileged if they interfere unreasonably with the owner's enjoyment of his property. There is nothing mentioned about the defendant's negligence or

fault, but rather all excuses and defenses are obliterated. The answer to the question of absolute liability under the other laws is dependent upon the rules of the jurisdiction in which the case is tried.[23]

III. NUISANCE, NEGLIGENCE, AND STRICT LIABILITY FOR DANGEROUS INSTRUMENTALITIES

> Nuisance. "Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or which unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance."[24]

To a person suffering from a nuisance whether public[25] or private[26] if proper evidence is shown as to his being disturbed by the noise, smell, fear, or danger may be granted one of two kinds of remedies, an injunction for the abatement of the nuisance or compensation by damages for the injury caused.

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23 Further discussion of liability will be found in the next section.

24 California Civil Code §3479.

25 A public nuisance is that type of annoyance which affects more than a few people in a community. Action for suit may not be taken in such a case by a private citizen unless he can show special damages. Otherwise only a representative of the government may take affirmative action.

26 A private nuisance provides vexation for perhaps

The rules as to what parties are permitted to sue in regard to a nuisance created by a business concern, such as a factory, have changed with the years. The old rule prevented recovery to anyone who moved within the vicinity of a known, established nuisance, while the present rule[27] holds that "consent to a nuisance of certain proportions was not consent to the same nuisance in larger proportions.[28] Perhaps a clearer picture could be made with the aid of an illustration. Suppose a small copper plant were operating in a quaint little valley where the plaintiff purchased land upon which to build a home. Although the plant did exude some sulphur vapors, usually a gentle breeze wafted them quickly away. But after the plaintiff had put his life earnings into his home, the copper company doubled, then tripled its size; and the fumes became so obnoxious and unhealthful that the plaintiff and his family were going to be forced to move if they could not receive relief from this greatly increased nuisance. According to the more modern rule the court would probably grant them relief of some kind, for the acceptance of the nuisance as it was at the time of the purchase of the

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one citizen and his family, and that injured person is entitled to bring suit.

27 Logan, op. cit. (n. 22, 0. 36) p. 270.

28 Followed in Ralston v. United Verde Copper Co., Ariz. 37 F. (2) 180, (1929). Affirmed 46 F. (2) 1, (1930).

property did not act as a waiver for future suit when the nuisance was greatly increased in size.

Problems concerning nuisances are annoying even in the field of air law; the above general rules apply here too. Property owners adjacent to airfields have the right to complaint of an alleged nuisance to the airport proprietor who has established the field and invited the particular use made of it. Whether the court would grant an injunction to restrict all flying would be determined after balancing the equities in the situation. If a private field were involved and serious harm was being inflicted upon the plaintiff, an injunction would probably be granted. However, if the question concerned a public field, the court would probably hold that public service and necessity outweighed the private inconvenience and thus refuse the injunction.[29]

Another remedy to prevent low and dangerous flying may be found in The Uniform Aeronautics Act §9,[30] where such nuisance behavior is termed a misdemeanor. This type of legislation strikes at the heart of the problem and attempts to prevent what a reasonable man would deem a nuisance.

Private persons are not the only parties making use

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29 Logan, op. cit. (n. 22, p. 36), p. 271.

30 See appendix, p.

of injunctions, however; for some airports are seeking means to restrict the use of the property surrounding them so as not to interfere with the proper functioning of the airport. In order to remedy this problem of nuisance the only final answer seems to be the zoning of real estate surrounding the airport, plus the aid of the misdemeanor statutes for dangerously low flying.

> Negligence and dangerous instrumentalities. "The omission to do something which a reasonable man guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do."[31]

The general rule as to negligence places the burden of liability on the shoulders of the person who has committed a negligent act and caused injury to the complainant. There are certain defenses to a suit brought on such grounds even if the negligence is admitted; for example, the contributory negligence of the plaintiff would bar his own recovery as would the application of the doctrine of the last clear chance.[32] The important item to note is that the imposition of liability is not absolute; other factors may have entered into the picture.

To hold a person or company liable for all injuries

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31 Black, op. cit., (n. 12, p. 33) p. 1229.

32 The defense doctrine of last clear chance is applied when the defendant admits his negligence but claims that the plaintiff was in a position prior to the accident to have prevented it for the latter was aware of the imminent danger but did nothing to avert the disaster.

caused to persons and/or property regardless of the reason simply because the defendants are the owners or operators of that which caused the harm is to base one's legal arguments on something other than negligence. While it is true that varying degrees of care are owed others by participants in certain occupations, and various degrees of negligence are possible, still absolute liability does not occur for any of the degrees. When a person is dealing with something inherently dangerous to his fellowman, such as a wild animal, dynamite and other explosives, even a reservoir of water,[33] he is deemed to be dealing with extrahazardous activities[34]

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33 Fletcher v. Rylands, (1868) L.R. 3 H.L. 330; where the defendants were owners of a mill and in order to supply it with water constructed a reservoir with the aid of an engineer and contractors. The plaintiffs were lessees of nearby coal mines and were gradually working their way towards the water supply; however, old abandoned shafts which were no remembered by anyone in the case were found to be located between the reservoir of the defendants and the mines of the plaintiffs. Within a few days from the completed filling of the reservoir one of the old mine shafts gave way and the water surged through the underground caverns and flooded the plaintiff's mine. The court agreed that the defendants were not negligent in their behaviour for they had hired competent employees to construct the reservoir. The lower court held that the escaped water was not a nuisance for it did no continuous harm; nor was it a trespass for it did not result directly from the voluntary act of pouring the water into the reservoir. Nevertheless, the House of Lords imposed absolute liability upon the defendants with this particular reasoning as written by Justice Blackburn: "We think that the true rule of law is that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape."

and is held absolutely liable for any injuries caused by the instrumentality should it escape from his control whether by his negligence or even after he had exercised extreme care.

When people talk of imposing absolute liability upon the aircraft companies, the owners, and operators of aircraft, they are in so many words calling the airplane a dangerous instrumentality. Let us carefully examine the implications of this statement. The doctrine of the aeronaut's absolute liability was established in the United States as early as 1822[35] in America's first case concerning air law. Through the ensuing years the airplane has been deemed a dangerous instrumentality such as explosives and ferocious animals, with the only excuse for its cause of injury to person or property as to that act which resulted from an act of God.[36] The persons supporting this view say, "Look at the facts; everyday airplane crashes and deaths due thereto are the general headlines. Does not this prove the dangerousness of the instrument? Besides, when an accident occurs, very often the plane, the operators, and the passengers are demolished, and no witnesses are present; so the evidence to

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34 Also referred to as ultrahazardous activity or dealing with a dangerous instrumentality.

35 Guille v. Swan, 15 Johnson 381, (1882).

36 Acts of God generally include flood, fire, earthquake, and major disasters.

prove the negligence of the operator or his company would be impossible for the 'next of kin' to obtain in order to press charges."[37]

This doctrine is followed not only by the early case law but also in more recent legislation. In the Uniform Aeronautics Act §5[38] the owner or lessor may be held absolutely liable for the acts caused by himself or his lessee. A lessee is also liable for his own injurying acts, but an aviator who is not the owner nor lessee is liable only for the consequences of his own negligence. The American Law Institute as currently as May 12, 1938, reinforced the doctrine of ultrahazardous activity which is defined as follows:

An Activity is ultrahazardous if it

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37 It might be said however, that passengers as well as shippers of goods who desire transportation by air are fully cognizant of the dangers and might be termed associates in the venture.

To refer to admiralty law: "One who elects to cross the ocean must assume the risk of rough water." Stiles v. Munson S.S. Lines, 40 F. (2) 276, (1929).

Similar: Kimmel and Bird v. Pennsylvania Airlines and Transport Co., February 4, 1937, in District Court of the United States for Washington, D.C. -- where the plaintiffs who were passengers for compensation aboard the defendants' aircraft were injured when the plane hit a "down draft" of air. The court instructed the jury that the plaintiffs had assumed the risk of the "perils of the air" and if the pilot was not negligent--that is, had done his job to the best of his ability and skill, as well as any reasonable pilot could have done, the plaintiffs should not recover and the judgment should be rendered to the defendants. The instructions also included that the same result would be true if the injuries were due to "unavoidable accident."

38 See appendix, p.

> (a) necessarily involves a risk of serious harm to the person, land or chattels of others which cannot be eliminated by the exercise of the utmost care, and (b) is not a matter of common usage.[39]

That both sections (a) and (b) are met before an activity may be termed ultrahazardous is imperative. To illustrate:

> . . . aviation has not as yet become either a common or an essential means of transportation. This, coupled with the fact that as yet aeroplanes have not been so perfected as to make them subject to a certainty of control approximating that of which automobiles are capable, and with the serious character of harm which an aeroplane out of control is likely to do to persons, structures or chattels on the land over which it flies make it proper to regard aviation as an ultrahazardous activity. Furthermore, a perfect plane perfectly flown may crash in unfavorable weather.[40]

These two weighty factors pressing toward uniformity of state legislation have played an important role in causing the states to set forth the rules of absolute liability on the part of the owners and operators of the aircraft causing damage to persons or property. It must be noted, however, that of the twenty-two states having adopted the uniform act three states[41] changed the section to read a presumption of liability rather than absolute liability. Five other states[42]

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39 American Law Institute, Student Edition of Restatement of the Law of Torts, (St. Paul: American Law Institute Publishing Company, 1938) Pamphlet No. 5, p. 30, §520.

40 Ibid., p. 33.

41 Arizona, Laws 1929, c. 38, §11, Code Supp. 1936, §175Z32; Maryland, Laws 1937, c. 528; and Nevada, Laws 1947, c. 141, §1 amends Comp. Laws §279.

42 Idaho, Laws 1931, c. 100, Code 1932, §21-106;

modified the section to some extent to relieve the strict interpretation.

From the above statistics it is easily deduced that not everyone favors the doctrine of absolute liability.[43] On the face of the matter it would seem obvious that the foremost opposition to such laws would be the aviation industry itself. And that is the exact truth! Few aviators, owners of single craft or of large airlines have desired to expose themselves to unlimited and absolute liability every time their planes leave the ground carrying passengers and goods and circle over property belonging to grasping owners. For a criticism of the pertinent sections from the Restatement of Torts, Mr. Hampton D. Ewing has countered with the following:

> What is a dangerous instrument is a comparative question. Are not railroad trains, automobiles, boats, sail, steam and motor dangerous instruments, and yet in a legal sense they are not dangerous so as to impose liability without fault or so as to cut off the other defenses stated. No case or other legal authority that aircraft are dangerous instruments in the sense that denies them the usual defenses in tort actions has been cited in the Institute's notes or comments. There is, however, plenty of dictum to the contrary. In Herrick, Olsen, and Interstate Air

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Pennsylvania, Laws 1933, p. 1001, 2 P.S. §§1469, 1472; South Carolina, Laws 1946, p. 1371, Code 1942, §7104; Utah, Laws 1923, c. 24, Rev. St. 1933, §4-0-5; and Vermont, Laws 1939, No. 126, §2.

43 Italy, Poland and Mexico among others imposed responsibility for fault only. To these countries it seemed an economic absurdity to hold the carrier absolutely liable.

> Service, Inc. v. Curtis Flying Service, Inc. and John J. Byrnes, (1932, U.S. Av. R. 110, 122) the court said: 'Something has been said in the course of this trial and in the course of the sumation of one or more of the counsel about an aeroplane being inherently a dangerous instrumentality. I charge you, gentlemen, that aeroplanes are not regarded as inherently dangerous instrumentalities,(italics not found in the original) but the possibility from careless handling is obvious.[44]

There are many who contend that the airplane is not inherently dangerous, as are explosives and ferocious animals and that the second general doctrine, the ordinary rule of negligence with the defenses thereto should apply.[45] This leaves the burden of proof in the hands of the plaintiff, who must set forth sufficient evidence to establish the injury and the acts or omission of acts of the defendant constituting the negligence.

The practical difficulties of obtaining evidence arising while the burden of proof rests with the plaintiff have caused strong feeling against the employment of this doctrine. Arnold W. Knauth comments:

> True, the Bureau of Air Commerce, which investigates many, if not all accidents, undertakes to assign causes for some ninety percent of them. But its reports are not, (and quite properly), admissible as legal evidence, and one of the country's leading

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44 Hampton D. Ewing, The Ground Rules of Torts by Aircraft at the American Law Institute. (Advance Reprint from Air Law Review, vol. V, no. 4, October 1934).

45 The rule of ordinary negligence to determine the liability of the airplane carrier for loss or damage to goods or passengers has been adopted by several states, notably Connecticut and Massachusetts.

> authorities on the law of evidence has examined great numbers of the Bureau's accident files and thereupon stated that only about twenty percent -- one in five -- reveals the existence of legally competent evidence, on which a trial judge could let a case go to the jury, and on which an appellate court might affirm a verdict for the plaintiff.[46]

A third theory applied in many cases has been the doctrine of res ipsa loquitur.[47] Where the happening of a certain event establishes negligence in and of itself, the plaintiff is allowed to present the facts showing the injury, the object that caused it, and then rest the case on this doctrine of evidence which raises a presumption of culpability on the part of the owner or operator of the instrument that was the proximate cause of the injury. The defendant in turn has the burden of proving that the alleged event either did not in fact occur or was not the result of the defendant's negligence. For example, suppose that a passenger on an airliner was seriously injured when the plane which was to take him from Los Angeles to Chicago crashed into the Burbank

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46 Arnold W. Knauth, "Uniform State Aeronautical Liability Act Adopted at Cleveland, July 23, 1938," (argument for the act) Air Law Review 9:352 at 353, October, 1938, Mr.

47 "the thing speaks for itself"

45 Corpus Juris 1200: ". . .as it is not the naked injury but the manner and attending circumstances of the accident that justify the application of the doctrine in an action for the negligent breach of an ordinary duty, it follows as a matter of course, that the applicability of the doctrine must depend upon the peculiar facts and circumstances of each individual case. . ."

foothills. The passenger-plaintiff established the fact of his injury, that the proximate cause of the injury was the crash of defendant-company's plane while defendant-aviator was piloting the craft. After the plaintiff rests his case basing his argument upon res ipsa loquitur, the defendants-company and pilot must prove to the satisfaction of the jury that the injury of the plaintiff was not caused by the crash, that the crash in fact did not occur, or that even though the crash did happen and in turn caused the injury of the plaintiff the defendants were not negligent in allowing the plane to take-off due to bad weather or plane condition, or in the handling of the plane while in flight, and/or the crash was due to some other cause. The advantage of the use of this doctrine is obvious in the lessening of the plaintiff's problem of establishing the negligence on the part of the defendants in a case where such evidence is not available to the complaining party. In this manner the party most likely to have material at hand concerning the cause of the accident would be the defendant-company and/or aviator.[48]

The fourth attempt to work out an answer to the liability of aircraft companies and aeronauts is not by any means the latest in adoption. In the early days of the

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48 Ibid., pp. 1204-1216: "Nature of Proof Required-- . . .Superior Knowledge of Defendant as to Cause of Accident . . .Absence or Unavailability of Direct Evidence of Negligence. . . Existance and Nature of Duty to use Care . . . Accident or Injury and Proof Thereof."

struggling aviation enterprise the companies were determined not to pay out damages in accident claims if such could possibly be avoided. There was little if any legislation on the matter of liability; so the aviation business took matters into their own hands and printed passenger contracts to be signed by the expectant passenger prior to this receiving a ticket for travel.[49] These contracts to limit liability

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49 A typical example of the aircraft companies' protective provision on their tickets concerning the liability of the company in case of injury to passengers is this contract set out by the Transcontinental Air Transport Inc.:

TRANSCONTINENTAL AIR TRANSPORT INC.
St. Louis, Mo.
Non-transferable
When officially stamped
Good for one passage
(Interstate only)
As shown below

NOT A COMMON CARRIER. This company is not a common carrier for hire, and does not hold itself out to the public as a common carrier for hire, and reserves the right to reject any and/or all applicants for transportation; and to accept applicants for transportation upon such terms and conditions as it may deem fit, irrespective of the terms and conditions accorded others who may be accepted for transportation. Reservation must be made and space assigned before ticket is good for passage. Trip must begin on date shown on coupon below.
Transcontinental Air Transport, Inc.

(Signed)
T. B. Clement,
General Traffic Manager

As a part of the consideration for the issuance of this ticket and of the acceptance of me for transportation I hereby agree to the rules and conditions printed on the reverse side of this ticket all of which are understood by me, and are made a part of the contract of transportation evidenced by this ticket.

often went so far as to disclaim liability for any and

. . . . . .
Signature of Purchaser.

CONDITIONS OF PASSAGE

1. The holder of this ticket agrees that this ticket represents merely a personal license and is revocable at the will of the Company, upon refund of the purchase price therefor, without further, liability to the Company.

2. The user of this ticket agrees to observe the rules and regulations of the Company and to obey the instructions of its agents and employees.

3. The user of this ticket agrees that the Company, in the performance of the transportation covered by this ticket, is not a common carrier for hire and/or liable as such, but is a private carrier; and that the Company shall not be liable for injury or death to the person or loss or damage to the property of the said user caused in any manner whatsoever, whether attributable to negligence or not, occurring during and/or arising out of the performance, or failure of performance, of the transportation for which this ticket is issued.

4. The user of this ticket agrees that the Company shall not be liable for any loss or damage caused by the delay or failure of aircraft to depart from any point or arrive at any point according to any schedule, agreement, or otherwise.

5. The user of this ticket agrees that the Company may cancel the trip or any part thereof and land and discharge him or her whenever and wherever it deems fit, upon refund of that part of the fare equal to the unused portion of this ticket, without further liability to the Company.

6. Any and all authorized sellers of this ticket act as the agent or agents of this Company only and not as the agent of any railroad company.

7. The above rules and conditions are binding, also, upon the heirs, and/or personal representatives, and/or anyone claiming through, the user of this ticket.

A brief commentary upon these conditions may be found written by Mr. Harriman, op. cit. (n. 10, 0. 12). Summarized:

1. By terming this ticket as "merely a personal license" the company places it in the same category as theatre tickets and violate no legal concept.

2. The agreement that the carrier is private and not common (for hire, indifferently, as long as there is room and no legal excuse for refusing admittance. Distinctions

everything which might occur in the course of travel,[50] even to the point of refusing to accept the responsibility for any act of negligence or wilful misconduct on the part of the company's employees. This extreme type of indulgence was

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between the two are illustrated in Brown v. Pacific Mutual Life Ins. Co., 8 F. (2)996, (1928)Av. rpts, 186; and North American Accident Insurance Company v. Pitts, 213 Ala. 102. The important item to note is that the common carrier owes the highest possible degree of care and diligence to the passenger while the private carrier owes a duty of ordinary care. The common carrier is a bailee and insurer who is free from liability only when the accident is caused by (1) an act of God, (2) an act of public enemies, (3) inherent vice in the cargo, or (4) negligence on the part of the owner of the goods; and the burden of proof that the loss was caused by one of the excepted methods is upon the carrier.) is permissible in an evidential nature. However, the provision contracting away all liability for negligence or non-performance and so forth is absolutely unlawful.

4. There seems to be no objection to this provision.

5. This right of cancellation and refund even in the middle of the trip is allowable providing the carrier acts reasonably as to the place where the passenger was discharged. (A definite problem might arise if the passenger were given his correct fraction of the purchase price of the ticket and then set down in the middle of Death Valley on a blistering July day after which the plane winged its way safely to its proper destination.)

6. & 7. These sections seem to present no difficulties.

50 The general rule in the United States is that common carriers cannot contract themselves out of the responsibility laid on them by the law nor more specifically their liability for negligence. N.Y.C. & J.R.R.R.Co. v. Lockwood, 84 U.S. (17 Wall.) 357 (1873); Bank of Ky. v. Adams Express Co., 93 U.S. 174 (1876); Baltimore, etc. R.R. v. Voight, 176 U.S. 498, 20 Sup. Ct. 585 (1900); Kansas, etc. T.T. Co. v. U.S., 282 U.S. 760, 51 Sup. Ct. 304 (1930).

Williston, Contracts (1920) §1107.

Harter Act--February 13, 1893, c. 105, §1-2, 27 STAT. 445 (1893), 46 U.S.C.A. §190, 191 (1926) prohibited any contract exempting the owners of vessels from claims resulting from negligence or lack of ordinary care.

promptly discredited by the courts on the grounds of the well-established common-law rule that no one may contract away his possible future tort liability for the negligence of himself of his agents.

However, not all ticket provisions attempted to exempt companies from all liability[51] and there is case law to support such contracts.[52] If there is an express contract, an

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51 Another example of the early ticket provision which limits liability is § of the Boeing Air Transport Corporation ticket, which was probably permissible:

"LIMITATION OF LIABILITY. This is a Class A ticket. the fare under a Class A ticket is lower than under a Class B ticket. In consideration of said reduced fare, the passenger agrees that the company shall in no event be liable to said passenger, his heirs or representatives, for injury or damage to said passenger in an excess of $25,000.00"

§6 of the early ticket put out by Colonial Airways Corporation is somewhat similar to the example above but different just enough in detail so as probably to be held invalid by the courts.

"That the holder voluntarily assumes the ordinary risks of air transportation, and stipulates that the company shall not be responsible save for its own negligence of duty, and that the liability of the Company to the holder hereof or his legal representatives, in case of accident resulting in death or physical disability, in any event, and under any circumstances, is limited as follows:

Class A contract (Minimum rate) Maximum liability $5,000
Class B contract (Double rate) Maximum liability $10,000
Class C contract (Triple rate) Maximum liability $15,000.

52 Clarke v. West Ham Corp., 2 K.B. 858 (1909); Lord Coleridge established the rule in regard to reduced fares in consideration or lower limited liability by stating that transportation systems had the right to limit liability by giving reduced fares; however, the passenger must have the option of buying the more expensive ticket and thereby gaining more protection.

The Canadian rule as set forth in Grand Trunk v. Robinson, (1915) A.C. 740 P.C., allows a contract limiting or even

offer and acceptance of terms with a consideration therefore, it is legally permissible to contract for exemption from liability for other particular reasons. This type of limited liability may refer to a complete absolution from liability for reasons other than negligence or may restrict the amount for which the company could be held liable for certain types of injuries in specific types of accidents.[53]

Although every state in the union including Washington, D.C., Alaska, Hawaii, and the Phillipines, with the exception of Alabama, Georgia, and Oklahoma, had passed early legislation of some sort regulating aircraft, there was no mention of liability in twenty-three of the above states, Washington, D.C., Alaska, and the Phillipines.[54] Those states which adopted the first uniform state laws were in no better position, for these contained no reference to where liability should lie in regard to carriers and their passengers. Arizona, Connecticut, and Pennsylvania drew the line at injury

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exempting the carrier from liability in exchange for a reduced fare.

New York follows the English and Canadian rule in the case of Anderson v. Erie Railway Co., 171 N.Y. App. Div. 687, 157 N.Y.S. 740, (1916); (affirmed 223 N.Y. 277, 1918).

53 This type of approach to liability conforms to the rules set up by the 1929 Warsaw Convention for the unification of regulations concerning international air transportation, which was ratified by the United States on October 29, 1934, 49 Stat. at Large 3000. (No liability for unavoidable accidents or where there was contributory negligence.)

54 Department of Commerce, Aeronautics Branch, Aeronautics Bulletin, Number 18, revised to September 1, 1929.

caused by negligence, whereas Louisiana and Virginia required insurance[55] to be carried by the companies to remedy any future squabbles which might develop. Because of this lack of definite legislation as well as the inadequate attempts the aircraft companies had individually made to remedy their problems concerning liability, a representative group of the traffic managers of the larger companies convened to set up a uniform passenger contract to be used by all the regular companies to present a united front to the legislature, the courts, and the public. The result of this conference was the adoption of the Uniform Passenger Contract[56] by nine

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55 Because the 1922 Uniform State Law for Aeronautics had been considered obsolete and later withdrawn from the active lists of Uniform Laws in August, 1943, the proposed Aviation Liability Act attempted to repeal a substantial part of the former law but incorporated the highly controversial provisions regarding passenger liability and compulsory insurance.

Under the Warsaw Convention compulsory insurance is enforced by the penalties of fine, imprisonment, and exposure to unlimited liability. The agreement made at the Rome Convention on Damages by Aircraft to Persons and Property on the Surface, signed on May 29, 1933, by twenty-six national delegates including the United States, follows a rule similar to that of the 1929 convention.

56 Howard Wykoff, "Uniform Passenger Liability Rules," Journal of Air Law, 1:512-520, 1930.

UNIFORM PASSENGER CONTRACT, drafted by the Committee of the American Air Transport Association.

"In consideration of the issuance to me of this ticket for transportation, I hereby agree as follows:

"ONE: (1) That said ticket represents a revocable license and that the company or companies represented herein may, with sufficient cause to it or them, decline to carry me, and in that event the sole responsibility of the company or companies shall be to refund to me, through regular

regular companies[57] and the acceptance in principle by many others.

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channels, the price paid by me for said ticket; (2) that if I am accepted as a passenger, I voluntarily assume the ordinary risks of air transportation and stipulate that the company or companies represented herein shall not be responsible save for its or their own neglect of duty; (3) that after the commencement of the flight, I may be landed or discharged in such manner and in such place or places as the pilot, in his sole discretion, shall see fit, and in that event the only responsibility of the company or companies named herein shall be to refund to me such proportion of the price paid by me for this ticket as the distance between the place of landing and the place of destination bears to the whole length of the flight for which this ticket has been issued.

"TWO: (4) That this ticket is non-transferable and if presented for passage by any person other than myself may be taken up and cancelled without refund. (5) The presentation of this ticket and the use of it by any person other than myself shall be considered a fraud and trespass upon the company or companies.

"THREE: (6) I further agree that the company or companies represented herein shall not be liable for any loss or claim arising out of delay or failure, for any reason, with or without advance notice, of aircraft to depart from any point or arrive at any point according to any schedule, agreement, statement or otherwise, except negligence upon the part of the company or companies represented herein.

"FOUR: (7) The air transport company is not responsible beyond its own lines and in selling this ticket and checking baggage thereon for transportation beyond its own lines, this company acts as agent for the other transportation agency or agencies. (8) The liability of the air company for loss or damage to baggage and/or personal property is limited to the amount of $100.00, unless a higher valuation be declared and an additional charge paid therefor." Journal of Air Law 1: 228 and 328.

57 The above Uniform Passenger Contract was approved by nine regular companies: Colonial Airways Corporation, National Parks Airways, Hawaiian Airways Company, Limited, Rapid Air Lines, New Airways, Stout Airways, Clifford Ball, Inc., Universal Aviation Corporation, Continental Air Services, Inc.

These particular sections dealing with the question of the liability of the aeronaut and his employer toward the groundman, the injured passenger, the surface-land owner whose property was damaged, and the shipper of goods which were ruined or destroyed, seem to focus their center beam on at least four alternative answers. There is the common law approach of resting judgment upon the plaintiff's proof of the defendant's negligence, while a more liberal application of this same basic ground of recover would be the addition of the doctrine of res ipsa loquitur. This latter approach constitutes a middle way, a stepping-stone to the other pole of absolute liability. Although the early legislation tended to hold the aviation industry absolutely liable for injury caused by them, more recent legislation and court decisions seem to repute or at least modify the doctrine of absolute liability. Very often where this strict doctrine is still employed, the use of compulsory third-party insurance softens the harsh requirements.

From the point of view of the industry the very greatest benefactor would be the unadulterated version of negligence, the requirement that the plaintiff prove the negligent act of the defendant that caused the injury.[58] When the

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58 W.J. Davis, "Comments on the Proposed Uniform Aviation Liability Act," Air Law Review 9: 359-371, October, 1938. The financial burden of compulsory insurance or liability without fault would greatly handicap private flying, and if such

public interest considers its own welfare, the absolute liability doctrine reinforced by compulsory insurance seems to provide the most adequate protection, while the aid or res ipsa loquitur would run a slow second.

IV. ADDITIONAL ISSUES OF LIABILITY

The airport proprietor has been dealth with indirectly in the sections concerning trespass and nuisance concerning his liability arising off the field to surrounding property owners. There is another important aspect to be considered, that of the danger of litigation arising from liability occurring on the field.[59] The peculiar relationships of the landlord to his tenants and their employees, the proprietor to the general public, and the passengers, as well as the specially-invited invitees considered to be casual or temporary tenants are additional issues of interest.

Landlord-tenant relationship. There are two specific divisions of this general topic that may be applied in the case of airport proprietors. The first problem deals with

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restrictions should be made upon aviation, they should apply to all common carriers alike.

59 If an aircraft is entitled to use an airfield, the airport proprietor has the duty to see that the field is safe for use and give warning for any danger of which he knew or should have known. Burnham v. Beverly Airways, 311 Mass. 628, 42 N.E. (2) 575 (1942).

the issues surrounding the rented hangar or building. Generally speaking, the landlord is liable for defects in the condition of the premises only if the defects are hidden to all but him.[60] There is no obligation on the part of the landlord to remedy defects that were on the premises at the time of the rental unless an express contract so requires.[61]

However, a very different situation arises in the case of the whole area of the landing field, the runways, lights, signalling devices and public approaches to the field and buildings. These premises are enjoyed in common with the other tenants and the airport proprietor. The basic common-law landlord-tenant rules are appropriate in this instance. Here the tenant is under no duty to be aware of the defects of the surrounding premises that are not entirely within the possession and control of the tenant.[62] The tenant does not assume any risk concerning these surrounding environs. To

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60 Logan, op. cit. (n. 22, p. 36) p. 264.
Doyle v. Union Pacific R.R., 147 U.S. 413 (1893).
Byers v. Essex Investment Co., 281 Mo. 375 (1920).

61 36 Corpus Juris 205: "In the absence of a covenant on the part of the landlord to repair, no obligation will be implied to remedy defects in the demised premises existing at the time of the demise, and the landlord is not liable for subsequent injuries resulting from such defects."

62 Common examples of such surrounding premises are: lobbies, elevators, court yards, main halls, etc. Roman v. King, 289 Mo. 641, 233 S.W. Rep. 161 (1921).

restate the general approach:

> . . . A landlord, who rents out parts of a building to various tenants, reserving the halls, stairways and other approaches for the common use of his tenants, is under an implied duty to use reasonable care to keep such places in a reasonably safe condition.[63]

Owner-public relationship. There is no major dissimilarity in the duty owed to the public by the owner in contrast to that owed to the employees of the tenants, with the exception of what may constitute contributory negligence and lack of ordinary care. Because the presence of the employees of the tenants would be more greatly anticipated than that of the general public, the landlord would probably owe a comparatively greater duty to the employees than to the general public. However, in the same vein of thought, the public would probably have less knowledge and familiarity with the premises than was possessed by the employees, so that the former might be allowed to recover damages in a suit based on negligence where the employees would be barred by contributory negligence.[64] The burden of proving the failure of the proprietor to exercise the required amount of care resulted in the plaintiff's injury rests with the public-plaintiff.

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63 36 Corpus Juris 213.

64 Logan, op. cit., (n. 22, p. 36) p. 266.

Proprietor-passenger relationship. In a previous section the problem of the liability of the common carrier to the passenger was rather fully explored. One may be reminded that the carrier owes the highest degree of care to the passenger and according to some authorities[65] that carrier has the burden of proving the injury of the passenger was not due to its failure to exercise that required degree of caution. This particular relationship of the proprietor and the carrier being one and the same does not often exist, at least in the larger cities; for the commercial airports are patterning their construction after the "grand central station" plan of the railroads with the ownership of the depot resting in the hands of the municipality[66] or another corporate body.

Owner-special invitee relationship. The term "special invitee" is employed to refer to the users of the itinerant planes. These are the operators of planes whose presence is desired by the proprietors in order to obtain the fees for the temporary housing of the planes or for revenue gained from servicing the crafts and supplying the necessary equipment.

To these, the airport proprietor owes the duty of

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65 10 Corpus Juris 1025 and 1029.

66 A municipality may be held liable for any torts committed by it or its agents to the same extent as a private operator. Imperial Airways Ltd. v. National Flying Services, King's Bench Division, June 16, 1932.

> exercising ordinary care to keep the landing field and its facilities in a reasonably safe condition for the uses anticipated. . . a question of fact. . . . It appears, however, to the writer that the measure of care owed to these stranger-visitors, expressly invited to land their planes, is a higher measure of care because they are almost free from the possibility of contributory negligence.[67]

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67 Logan, op. cit. (n. 22, p. 36) p. 268. In regard to Mr. Logan's belief that a higher measure of care is due because of the lack of contributory negligence--to be more accurate, perhaps he meant, that because of the near freedom from the possibility of contributory negligence there would be a greater opportunity for liability to be inflicted for any injury or damage which might occur.

CHAPTER IV

UNIFYING FACTORS

While the trend of aviation law has been illustrated to have been pointing in the direction of absolute uniformity throughout the nation from its inceptions, this unification has not been a free and completely uncontrolled movement. There have been organizations and agencies that have made a conscious effort to achieve this goal; there have been social and economic factors which have added impetus to the work.

One particular organization has dedicated its entire existence to studying, writing, discussing, adopting, and promoting uniform state legislation. This group which now deals with twenty or so different fields of law was well started in its work before it conceived the idea of developing a uniform law for aviation. The National Conference of Commissioners on Uniform State Laws placed the problem in the hands of the proper committee in 1920, and at the earliest date possible, the annual meeting in 1922, the act was adopted. The reason for the seeming delay of two years was due to a standing rule of the organization that a proposed act had to be considered twice before it could be accepted. There was but one meeting a year and in the meantime the committees proceeded with their work individually in developing the uniform laws.

The Uniform Aeronautics Act did not terminate the aviation activities of the Conference, for in 1928, a movement began for the purpose of inciting preparation of the Uniform Aeronautical Code. Even the two acts which were the body of the Code did not bring the labors to an end. There was a definite change in the general approach to the problem by 1935, however, not a slowing down of activity but rather a desire to include, during the developing process of the aviation laws, other organizations that were also working for uniformity.

During the molding of the first uniform act, although a committee in the American Bar Association began work at the same time as the Conference, the A. B. A. was not included in the policy-making work; its work merely consisted of approval of the act prior to presenting it to the states for adoption. It was not until 1935 that the committee on uniform aviation laws of the A. B. A. joined forces with the similar Conference committee. From this time forth there was never a meeting without a quorum of each committee. The A. B. A. was no longer merely an approving and promotional committee. Mr. W. A. Schnader, Chairman of the Committee on the Uniform Aeronautical Code--another project of the National Conference, in discussing this cooperation between organizations in an address at the Eighth Annual Convention of the National Association of State Aviation Officials on October 13-15, 1938,[1]

attributed much of the success of the combination of the committees to the great assistance offered by Professor Fagg. It might be said that Professor Fagg was an unifying agent to the forces of unification.

The letters A. L. I. stand for two great institutions in the development of the law. The American Law Institute, the older of the two, finds its primary purpose in the clarification of all law. The illustrious guides to many fields of law which aid judge, lawyer, and student alike are the Restatements, which are a compilation of material that the experts in each field determine the existing law to be. Model codes have also been set forth by the Institute with the purpose of stating what the law should be in an ideal fashion. The Restatement of Torts, in the making from 1923 to 1934, has devoted several sections to aeronautical law as the experts believed it to have existed at the time of the writing. Further work of the American Law Institute is the proposed Law of Airflight.

The second organization to be formed with the identical initials is the Air Law Institute, located at Northwestern University with Professor Fagg as the first managing-director. The purpose of this group has been to promote needed aviation legislation. It might be considered as a lobby continually

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1 W. A. Schnader, "The Uniform Aviation Liability Act," Journal of Air Law 9:664-764, October, 1938.

pricking the state and national legislatures, as well as the groups dedicated to uniformity, in order to further the drive for better laws. Actual cooperation between the Air Law Institute on the one side and the special committees of the National Conference and the A. B. A. on the other came to the fore during the work in 1937, on the Uniform State Aeronautical Code.

The Department of Commerce of the national government has handled the interstate problems of aviation since 1926.[2] From that date until 1938, the Department seemed to be enforcing a master pattern from which many of the states through the uniform acts or on their own initiative developed similar licensing and regulatory law;[3] so during this period the national legislation could be said to have exercised a unifying effect. Since that year of 1938, however, the Civil Aviation Authority, now Board, has effected unification.

Other factors lending themselves to create uniformity were state boards, Conference of Governors and other interstate conventions of legislative, as well as executive leaders, and interstate compacts. All forces but the last have

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2 In this sector again could be discovered the continuous work of Professor Fagg by the study prepared for the Department. Department of Commerce, op. cit. (n. 55, p. 55).

3 Robert P. LaMont, Air Law Review 2:53-64, January, 1931, Mr. LaMont, who was at this time Secretary of Commerce, said: "One of the most important single contributions to the rapid and safe development of aeronautics in this country is standardization in the regulatory laws of the various states." p. 54.

had the opportunity to unite freely with no outside restraints as to their reasonable purposes, while the agreements among the states must be sanctioned by Congress. While it is true that not much aeronautical development can be seen which has stemmed from the work of one of these forces, their mere presence denotes a trend toward susceptibility to uniform proposals in the minds of the members of the state governments. A very important indication it is too, for the dynamics of the thoughts of individual leaders in government is a probable indication of the future progress of that nation. Secondary items of influence, such as similar educational backgrounds of legal training of a large portion of the legislators who in a like manner absorb the same or patterning case books, aid indirectly to procure an atmosphere more inducive to uniform action.

Economic and political trends display a drifting toward a centralized formation, though not instigation, of policies. Especially in the areas of transportation and communication, is a central as well as uniform control of utmost importance. Aviation is no exception.

CHAPTER V

STATE VERSUS NATIONAL CONTROL

The history of aeronautical legislation in the United States has been the tale of two youngsters climbing a single tree, first one is higher and safer, then the other. All has gone well, but there is room for only one at the top. Because of the supremacy of national law, there is no question but that the national legislation is on the topmost branch now. The question is, considering the good of the aviation industry and the public, which level of government may equitably and adequately handle the problem the better.

State control. From 1911, when Governor Baldwin first officially voiced his desire to instigate some form of uniform state legislation concerning aviation, to 1928, when the Civil Aeronautics Act was passed, an unorganized campaign has taken place to encourage more uniformity in state aeronautical laws. Since the latter date, when the national government reached the topmost limg, little has been written or said about further pieces of appropriate state legislation.

The initial cry was for the requirement of state licenses and permits. In the early days of flying few aircrafts or flyers had met any minimum safety and skill standards in order to obtain a license. Because both operator and plane were below a reasonable minimum safety requirement, the percentage

of accidents were far greater than necessary. After the majority of states had passed legislation of some sort to remedy this situation, the next complaint concerned the need for uniformity in the requirements among the states. A plane and operator could take-off from one state and meet the basic standard, and then land in a second state which possessed either higher or lower requirements than the first state.

The Air Commerce Act of 1926 cured this ill by imposing national licensing requirements against aircraft and pilots engaged in interstate flying and then offered the privilege of this licensing to those who were engaged in purely intrastate activity. The issue that was then in evidence was related to the problem of the lack of uniformity in intrastate operations, which was not remedied until the national act in 1938.

A pertinent query was raised by the infant industry concerning the control of aviation by means of any legislation. The Chairman of the Committee on Air Law of the American Bar Association, Mr. Chester W. Cuthell, as late as 1930,[1] did not favor either state or national legislation on the subject. Perhaps allowing his position as counsel for one of the large aircraft corporations to influence his stand on the subject, Mr. Cuthell compared the amount of planes sold per

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1 Chester W. Cuthell, "The Scope of State Aeronautical Legislation," Journal of Air Law 1:521, 1930.

year, five to six thousand, with the number of automobiles sold in the same period of time, five million, to illustrate the fact that the aircraft industry was still in its infancy. Because of the swaddling clothes--"My general thought on the whole subject is to let the parade go by for a while, not to attempt to reverse the proper order of enactment of laws, proper in a democracy."[2]

Possibly conceding that a small portion of state legislation might be advantageous to the airlines, the celebrated counsel suggested that there were certain tasks the states might take upon themselves which would meet with the approval of the airlines. Examples of these aids were: (1) licensing acts reaching every flyer and every plane, regardless of whether the flight is intra- or interstate;[3] (2) enabling legislation for the acquisition of airports;[4] (3) zoning ordinances surrounding the airports;[5] (4) traffic officers and other law enforcement provided for the big airports if not all the landing fields.[6]

> We are a small business. We do not need very much more regulation than we have. We do not want to see any more of the old maxims applied to our new problems. We want to let the show go by for a few

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2 Ibid., p. 522.

3 Ibid., p. 524.

4 Ibid., p. 525.

5 Ibid., p. 525.

more years before we do very many more things.

> I would like to see the states confine their activities to the licensing, the watching of the development of the business, cooperating with the business, all to the end that we may have a truly national system of passenger transportation.[7]

Very little more need be said in the explanation of the attitude of Mr. Cuthell. There have been very few industries that have desired more legislation confining their general range of activity. The doctrine of laissez-faire has not been scorned by business. No one other than business need be considered when laws are contemplated seems to be the obvious attitude. An observer would be very surprised if a man in Mr. Cuthell's position would favor national control of his industry; for he desires as little restriction as possible, and any scanty aid he might desire could be furnished him on the state level.

Not all persons who have expressed a desire for the promotion of aviation have been as cursory in their approach to the problem of legislation. Dr. Fred D. Fagg, Jr., former director of the Air Law Institute and professor at Northwestern University,[8] felt that not only was state legislation necessary but also was uniformity.

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6 Ibid., p. 527.

7 Ibid., p. 528.

8 At present Dr. Fagg is President of the University of Southern California.

> The matter of providing for the licensing of aircraft and of airmen is one of the two most important subjects when considering the desireability of uniformity in state legislation. In this regard, uniformity is desireable for a two-fold reason: (1) to insure protection of the public by guarding against faulty equipment and unskilled personnel; (2) to promote aviation by establishing a single standard (or set of standards) to facilitate aircraft construction and the training of airmen for an industry whose operations are, by nature, interstate.[9]

This outstanding leader in the field of the developing aviation law went on to explain that the real objection to state licensing is aimed at the probability of non-uniformity and the resultant injury to the industry.[10] In 1936, Dr. Fagg was still trying to illustrate the great need for uniform legislation even though he recognized that there was a distinct place for both federal and state laws; the important item for which he worked was the uniformity of state legislation.[11]

The importance of state legislation lessens when the national legislature duplicates the subject matter. There is automatic uniformity when the youngster personifying the

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9 Fagg, op. cit. (n. 3, p. 8) p. 452

10 Ibid., p. 466.

11 Department of Commerce, op. cit. (n. 55, p. 55) p. 2, 3. Because the 1926 national act applied only to interstate aviation, the problem arose concerning intrastate flying. "The remedy, under the existing Federal law, requires suitable state legislation--legislation which, among other things, must take into consideration the imperative need for uniformity throughout the United States, in the matter of airworthiness of aircraft, competency of airmen, and, most particularly, in the operation of aircraft in the air." p. 2.

national government is on the topmost branch of that tree.

National control. Because the problem of the control of air traffic is at the same time a national and an international problem, and the Constitution grants the treaty-making power to the national government only, the states as such could not possibly possess exclusive control over aviation legislation. Added weight to the side of state control is the fact that Orville Wright, of Kitty Hawk fame, displayed definite favoritism for state legislative control and aversion to any national control of aviation laws. Now with the foot in the door, so to speak, in the consideration of national control, other arguments will be presented.

Putting the facts on the table as they now exist in this fanciful struggle for supremacy, Rowland W. Fixel explains the predicament thusly:

> Although attempts have been made to secure uniform aviation air laws in the several states dealing with strictly local phases of the rights of states respecting aviation, the enactment of the Air Commerce Act of 1926 and the Civil Aeronautics Act of 1938 have made such aviation law in the United States the law of the land, except as to such matters as are not covered by the Federal law, or which are secured to or granted to the several states.[12]

The national government seems to have the situation well in hand; the question that arises, however, is whether

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12 Roland W. Fixel, The Law of Aviation, (Charlottesville: The Michie Company, 1945) pp. 7-8.

this body has the power and the right to control the airspace over the entire nation. At the time of the Constitutional Convention there was no one who could use the navigable airspace above our fair land; so there was no reason for the founding fathers to debate over the ownership of same. As a result of this deletion the national government has been forced to find constitutional support for its acts from sections that were written for other purposes. Through the Commerce Clause[13] Congress may enact legislation governing the commerce among the states as well as all navigation conducted on navigable streams, lakes or rivers. From this broad power as a precedent it would seem plausible and logical for the national legislature to be able to enact legislation covering similar circumstances in the navigable airspace.

Clement L. Bouvé reaches the same results concerning the legality of national control of aviation legislation with the aid of a different argument. After deciding that navigable airspace is property, and agreeing that at the time of the origin of the federal state there was no ownership or sovereignty of the airspace by either the national or state governments, Mr. Bouvé proceeds to argue, even in 1936, that as the states do not have the power to acquire property after their admission into the union, only the national government

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13 United States Constitution, Article I, Sec. 8.

has the power of territorial acquisition.

> . . . no power in the States of the Union to acquire aerial (or other) territory ex propio vigore.[14]

> There can be no doubt that the power to acquire territory has, since the adoption of the Constitution, been held on all hands, to be vested exclusively in the General Government. It has been based upon the exclusive power of that Government to admit new States into the Union, to carry on war and to enter into treaties.[15]

This authority does not contemplate the desirability of such control; his primary concern is with the legality, which he seems to establish in a convincing manner. Further evidence of the legality of such legislation may obviously be drawn from the fact that the extensive act of 1938, not only has been in existence and in full operation for ten years but also has been reinforced by several amendments during that decade.

Dr. Fagg has questioned the authority of the federal government to regulate intrastate flying by beginning with the major premise that the United States is a government of limited powers, and so the national government has no authority to interfere with state business.[16] And then he counters with the exception of the railroad cases where "the government is not without authority to regulate where intrastate

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14 Clement L. Bouvé, State Sovereignty or National Sovereignty over Navigable Airspace. (Reprinted from the April, 1936, issue of the Journal of the D.C. Bar Association) p. 10.

15 Ibid., p. 12.

operation constitutes a burden on interstate commerce."[17]

Further exploration in this field of national control leads us to the comments of Mr. W. J. Davis, who has written that there:

> . . . Should be uniformity of regulation in the following: (1) regulation governing aviation throughout the country (2) airport rules (3) marking of airports (4) state and municipal legislation for the acquisition and control of airports (5) zoning around municipal airports."[18]

As to the interrogation of whether this uniformity was to be gained on the national or state level, he does not answer clearly. A later article was devoted to the blasting of the Uniform Aviation Liability Act[19] but included a recommendation to omit further consideration of this particular uniform act and that the Uniform Aeronautics Code comprise only: (1) Uniform Air Regulatory Act, (2) the Uniform Airports Act, (3) Uniform Law of Airflight, and (4) Uniform Air Jurisdiction Act.

From the vitriolic manner of Mr. Davis, one gathers

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16 Mr. Bouvé's argument differs in that he states that this matter of air legislation was never the state's business.

17 Dr. Fred D. Fagg, Jr., "Incorporating Federal Law into State Legislation," Journal of Air Law 1:199 at 200, 1930.

18 W. J. Davis, "Recommendations to the National Conference of Commissioners on Uniform State Laws," Air Law Review 8:334-340. October, 1937. Mr. Davis was Chairman of the Committee on Aeronautical Law of the Los Angeles Bar Association and a California Commissioner on Uniform State Laws.

19 W. J. Davis, "Comments on the Proposed Uniform Aviation Liability Act," Air Law Review 9:359-371, October 1938.

that wherever national laws adequately meet a problem, the aviation industries within the states prefer this control to the spotty work[20] done under the uniform acts. There appears then to be two major views in favor of national control: (1) national legislation is the only type of control which is legal; (2) the aviation industry prefers that national control for the entire United States is uniform and is not merely speckled with varying degrees of similarity. The advantage to the public seems to rest in the control which presents the greatest degree of uniformity in the means and methods of extablishing liability for loss as well as the safety precautions to prevent such loss. This viewpoint also gives another score in favor of national control.

Compromise? Before the Civil Aeronautics Act of 1938, there was a desire to compromise the national and state control in order that there be an improvement to some degree of the bit of lackadaisical legislation in operation. Outstanding leaders such as Col. Edgar S. Gorrell clamored for a revision and modernization of the national laws.[21] If only a cleaning job were done, he thought, perhaps the wheels of the business might turn more smoothly; maybe new parts would not be needed.

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20 For examples of the few states that have adopted the major uniform aviation acts, see appendix, pp.

21 Gorrell, op. cit. (n.6 , p.10) p. 4.

Mr. Clarence M. Young recognized the issue exactly when he stated:

> The primary problem involved is the proper adjustment and distribution of control between the two governmental powers so that the benefits of uniformity will be guaranteed to the nation and that the progress of aeronautics will not be impeded.[22]

He relegated to the states the duties of enforcement and protection. This is merely a practical suggestion, for the national government would be in need of another agency to administer the enforcement of these national laws as it would be rather foolish to give a job of policing and guarding an airport or landing strip to an agent of the Federal Bureau of Investigation. There are other problems which would then arise, however, such as how the power would be legally delegated.

If the end is efficient, well-running machinery of administration and legislation, there is no question but that uniform state legislation itself, or even a combination with national control is rather futile. If the end is good government for both industry and the public, perhaps the bit of state work can be sacrificed leaving the major portion of national legislation to suffice equitably and adequately. In many such

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22 Clarence M. Young, "The Province of Federal and State Regulation of Aeronautics," Journal of Air Law 1:423 at 427, 1930. Mr. Young was Assistant Secretary of Commerce for Aeronautics at the time of this article.

problems the answer depends primarily on whether efficiency of government is an end itself or merely the means to an end. Here in this intellectual mire of uncertainty as to the proper level of the federal state to administer the law, the goal of the government dedicated to the welfare of its citizenry seems to be best reached through national control.

CHAPTER VI

CONCLUSION

What has happened to that plaintiff-farmer who had several hundred dollars worth of poultry and equipment destroyed when the pilot-owner and his plane crashed? The chapters on history and legal problems explain that the law as to liability of aeronauts has never been uniform. Prior to 1922, the common law followed the ruling in the Guille case requiring absolute liability for the damages caused by an aeronaut and his aircraft, and this attitude was reenforced by the first uniform aviation act. However, not all the states that have adopted the act have accepted the doctrine; some have rejected it completely, while others have merely modified it. Those states accepting this mode of thinking hold the owner and the lessee absolutely liable for damage although this is not true concerning other pilots, for they are liable only for their own negligence. There are many states that apply this latter fule to all operators. The facts that the pilot of the aircraft was the owner who was not negligent set into motion the play of conflicting laws; therefore, the year and the jurisdiction are of vital importance in the determination of the case.

The historical approach to aviation legislation was cultivated in the well-seeded rows of the common law including

modern court interpretations in case law of statutory rules, the national and state statutes, and treaties. The development of the major uniform laws was also considered in this section. After a proper frame of reference was established, the next object for scrutiny was a real attack upon the substantive issues of the law of aeronautics with a little background material showing the whys and wherefores of their development. The questions of jurisdiction, trespass, nuisance, and liability in various forms offer enough debatable material to fill several volumes.

Not only are the various acts supporting the uniform state action in air law of vital significance in this study but also the factors lending themselves to create this uniformity are of great importance. The American Bar Association and the National Conference of Commissioners with the aid of the Air Law Institute are the three outstanding organizations working directly for better uniform state laws. Indirect influence in the direction of uniformity has been exercised by the Department of Commerce, the national law in general, state boards, national conferences of state officials, interstate compacts, and the general equilizer of education.

All uniform state legislation, whether a uniform bill of lading act, sales act, trust receipts act, stock transfer act, or a criminal extradition act, have been directed to solve governmental issues. Political problems of policy

determination are in the hands of the individual legislatures. If the general direction of the policy of the states is to progress in similar directions, then there must be unifying pressures brought to bear.

This case study illustrates that uniform acts are not always the panacea. Here is an example of where the government has sought state uniformity which later proved to be inadequate. National legislation resulted.

The fact that at least one example of uniform state legislation has ceased to exist in a working form in the United States seems to demonstrate one of the weaknesses and shortcomings of a federal nation in contrast to a centralized government. There are certain procedural rules which must be promulgated by the central government in order to be uniform in the absolute sense.

Is there here a peculiar set of facts which explains the fall of uniform acts in the field of aviation? The role of uniform state legislation has existed as a temporary means to remedy a bad situation. Regulatory, procedural law must not differ from state to state in such a simultaneously all-encompassing field of transportation as aviation. The uniform acts in regard to regulation of aircraft and pilots were merely a tent to give brief protection until the firm, strong building of national legislation could be erected. In 1938, this structure was substantially finished in the form of the

Civil Aeronautics Authority with but few necessary alterations in the following decade.

Problems of substantive law still rest with the states. However, there is little difficulty in that area in regard to conflicting national and state legislation, for both the majority of uniform state laws and the national legislation have steered clear of these very debatable issues. Jurisdictional problems, which are in reality procedural difficulties, have been considered to a limited extent on both the state and national levels. The real substantive issues determining where liability will fall is the present problem in diversity of rulings.

Although the National Conference of Commissioners on Uniform State Laws withdrew the major Uniform Acts from their active list in 1943, all but a few of the states that originally adopted one or more of the acts in some form or another have not revoked them. This lack of action demonstrates either the desire of the states to maintain some semblance of control over aviation within their borders or else inertia on the part of legislators. If the fact is the latter, no comment is needed; but if the former fact is the truth, a substitution of uniform laws might be plausible. Providing the Commissioners would present another small act discussing liability in a reasonable manner, the acceptance of this plan by the states would bring to a close the last in the series of major

problems concerning uniformity of legislation in the law of aviation.

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APPENDIX

CHRONOLOGICAL TABLE OF FEDERAL AVIATION LAWS

Year	Date	Title
1872	June 8	Post Roads
1914	Oct. 15	Clayton Antitrust Act
1915	March 3	National Advisory Committee for Aeronautics
1925	Feb. 13	Amendment of Sec. 11 of Clayton Antitrust Act
1925	Feb. 21	Alaska Air-Mail Service Act
1926	May 20	Air Commerce Act of 1926
1926	May 20	Railway Labor Act
1928	May 24	Public Airports
1934	June 7	Amendment of Secs. 1-4 of Railway Labor Act
1934	June 19	Amendment of Secs. 9 and 11b
1934	June 19	Amendment of Sec. 11 of Clayton Antitrust Act
1934	June 21	Amendment of Secs. 1, 4, 5, 6, 7(3), 8 of Railway Labor Act
1935	Aug. 1	Saving Clauses: Motor Transportation when Incidental to Air Transportation
1935	Apr. 10	Addition of Title II (Common Carriers by Air) to Railway Labor Act
1936	June 25	Amendment of Sec. 1 of Railway Labor Act
1937	July 9	Air Navigation in the Canal Zone
1938	March 21	Saving Clauses: Unfair Practices in Commerce
1938	April 15	Experimental Air Mail Act
1938	June 23	Civil Aeronautics Act of 1938
1939	Aug. 9	Aircraft Confiscation Act
1940	June 29	Administration of Washington National Airport

1940	July 2	Amendment of Sec. 405 (1) of Civil Aeronautics Act of 1938
1940	Aug. 13	Amendment of Secs. 2-3 of Railway Labor Act
1940	Aug. 27	Transportation of Foreign Mail by Aircraft
1940	Sept. 5	Federal Highway Act of 1940
1940	Oct. 14	Special Arrangements in the Transportation of Mail in Alaska
1940	Nov. 19	Defense Highway Act of 1941
1942	May 16	Amendment of Sec. 412 (b) of Civil Aeronautics Act of 1938
1942	May 16	Amendment of Sec. 1003 (b)" " " Act of 1938
1944	March 4	Stowing Away on Aircraft
1944	July 1	Amendment of Sec. 7 (b) of Air Commerce Act of 1938
1944	July 3	Multiple Taxation of Air Commerce
1944	Dec. 20	Federal-Aid Highway Act of 1944
1946	May 13	Federal Airport Act
1946	July 11	Administrative Procedure Act
1946	Aug. 2	Federal Tort Claims Act
1946	Aug. 8	Amendment of Sec. 803 of Civil Aeronautics Act 1938
1946	Aug. 12	National Air Museum
1946	Aug. 14	Rate of Postage on Domestic Air Mail
1947	May 15	Addition of Secs. 4-6 of Administration of Washington National Airport
1947	July 30	Temporary Congressional Aviation Policy Board

1947	July 30	Surplus Airports, Airport Facilities, and Equipment Disposal
1947	Aug. 4	Amendment of Sec. 1003 (b) of Civil Aeronautics Act of 1938
1947	Aug. 6	Functions and Duties of the Coast and Geodetic Survey

AVIATION LAW REPORTER 1:1125 CCH, 1947, 3 vol. Chicago, N.Y., Wash.

UNIFORM AERONAUTICS ACT

Approved by the National Conference of Commissioners
On Uniform State Laws in 1922

§1. Definition of Terms.--In this Act, "aircraft" includes balloon, airplane, hydroplane, and every other vehicle used for navigation through the air. A hydroplane, while at rest on water and while being operated on or immediately above water, shall be governed by the rules regarding water navigation; while being operated through the

air otherwise than immediately above water, it shall be treated as an aircraft.

"Aeronaut" includes aviator, pilot, balloonist, and every other person having any part in the operation of aircraft while in flight.

"Passenger" includes any person riding in an aircraft, but having no part in its operation.

§ 2. Sovereignty in Space.--Sovereignty in the space above the lands and waters of this State is declared to rest in the state, except where granted to and assumed by the United States pursuant to a constitutional grant from the people of this State.

§ 3. Ownership of Space.--The ownership of the space above the lands and waters of this State is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in Section 4.

§ 4. Lawfulness of Flight.--Flight in aircraft over the lands and waters of this State is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water beneath. The landing of an aircraft on the lands

or waters of another, without his consent, is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the aeronaut shall be liable, as provided in Section 5.

§ 5. Damage on Land.--The owner of every aircraft which is operated over the lands or waters of this State is absolutely liable for injuries to persons or property on the land or water beneath, caused by the ascent, descent or flight of the aircraft, or the dropping or falling of any object therefrom, whether such owner was negligent or not, unless the injury is caused in whole or in part by the negligence of the person injured, or of the owner or bailee of the property injured. If the aircraft is leased at the time of the injury to person or property, both owner and lessee shall be liable, and they may be sued jointly, or either or both of them may be sued separately. An aeronaut who is not the owner or lessee shall be liable only for the consequences of his own negligence. The injured person, or owner or bailee of the injured property, shall have a lien on the aircraft causing the injury to the extent of the damage caused by the aircraft or objects falling from it.

§ 6. Collision of Aircraft.--The liability of the owner of one aircraft to the owner of another aircraft, or

to aeronauts or passengers on either aircraft, for damage caused by collision on land or in the air, shall be determined by the rules of law applicable to torts on land.

§ 7. Jurisdiction Over Crimes and Torts.--All crimes, torts and other wrongs committed by or against an aeronaut or passenger while in flight over this State shall be governed by the laws of this State; and the question whether damage occasioned by or to an aircraft while in flight over this State constitutes a tort, crime or other wrong by or against the owner of such aircraft, shall be determined by the laws of this State.

§ 8. Jurisdiction Over Contracts.--All contractual and other legal relations entered into by aeronauts or passengers while in flight over this State shall have the same effect as if entered into on the land or water beneath.

§ 9. Dangerous Flying a Misdemeanor.--Any aeronaut or passenger who, while in flight over a thickly inhabited area or over a public gathering within this State, shall engage in trick or acrobatic flying, or in any acrobatic feat, or shall, except while in landing or taking off, fly at such a low level as to endanger the persons on the surface beneath, or drop any object except loose water or loose sand ballast, shall be guilty of a misdemeanor and

punishable by a fine of not more than $(.....), or imprisonment for not more than (.....), or both.

§ 10. Hunting from Aircraft a Misdemeanor.--Any aeronaut or passenger who, while in flight within this State, shall intentionally kill or attempt to kill any birds or animals shall be guilty of a misdemeanor and punishable by a fine of not more than $(.....), or by imprisonment for not more than (.....), or both.

§ 11. Uniformity of Interpretation.--This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it, and to harmonize, as far as possible, with Federal laws and regulations on the subject of aeronautics.

§ 12. Short Title.--This act may be cited as the Uniform State Law for Aeronautics.

§ 13. Repeal.--All Acts or parts of Acts which are inconsistent with the provisions of the Act are hereby repealed.

§ 14. Time of Taking Effect.--This Act shall take effect (.....).

UNIFORM AERONAUTICS ACT

Table of States Wherein Act Has Been Adopted

State	Laws	Effective date	Present form of act
Arizona	1929, c. 38	3-6-29	Code 1939, §§ 48-101 to 48-122.
Delaware	1923, c. 99	3-23-23	Rev. Code 1935, §§5776-5786.
Georgia	1933, p. 99	3-23-33	Ga. Code Ann. §§ 11-101 to 11-110.
Hawaii	1923, Act 109	4-30-23	Rev. Laws 1945, §§ 4921-4933.
Idaho	1931, c. 100	3-11-31	Code 1932, §§ 21-1-1 to 21-110.
Indiana	1927, c. 43	3-3-27	Burns' Ann. Stats., §§ 14-101 to 14-112.
Maryland	1927, c. 637	4-26-27	Code 1939, Art. 1-A.
Michigan	1923, No. 224	5-23-23	Comp. Laws 1929, §§ 4811-4821.
Minnesota	1943, c. 653	4-24-43	M.S.A. §§ 360.012-360.014, 360.076.
Missouri	Laws 1933, p. 1001	5-25-33	Mo. R.S.A. §§ 15106-15116.
Montana	1929, c. 17	2-18-29	Rev. Codes 1935, §§ 2736.1 to 2736.10.

State	Laws	Effective date	Present form of act
Nevada	1923, c. 66	3-5-23	Comp. Laws, §§ 275-288.
New Jersey ...	1929, c. 311	5-6-29	N.J.S.A., 6:2-1 to 6:2-12
N. Carolina ..	1929, c. 190	3-16-29	G.S. §§ 63-10 to 63-23.
N. Dakota	1923, c. 1	2-5-23	R.C. 1943, 2-0301 to 2-0310
Rhode Island..	1929, c.1435	5-15-29	Oug. Act.
S. Carolina ..	1929, No. 189	3-16-29	Code 1942, §§ 7100-7111.
S. Dakota	1925, c. 6	2-24-25	SDC 2.0301 to 2.0309.
Tennessee	1923, c. 30	2-16-23	Code 1938, §§ 2716-2726.
Utah	1923, c. 24	5-8-23	Code 1943, 4-0-1 to 4-0-9.
Vermont	1923, No. 155	3-26-23	P.L. §§ 5219-5249
Wisconsin	1929, c. 348	8-2-1929	St. 1945, §§ 114.01-114.10.

UNIFORM AERONAUTICAL REGULATORY ACT

Approved by the National Conference of Commissioners
On Uniform State Laws in July, 1935.

An Act providing for the regulation of aeronautics within this state, and for uniformity in certain regards with federal laws regulating aeronautics, and to make uniform the law with reference thereto.

Section 1. Definitions. When used in this act.

2. Aircraft: Design, Construction, and Airworthiness; Federal license.

3. Qualifications of Pilots; Federal License or Permit.

4. Possession and Display of Licenses or Permit.

5. General Powers of Adoption and Notice of Rules, Regulations, and Orders.

6. Investigations and Hearings.

7. Admissibility in Evidence of Investigations and Hearings; Testimony of the ....

8. Enforcement, Cooperation.

9. License, Fees.

10. Refusal of Licenses; Examination of Premises.

11. Appeal from Order.

12. Procedure for Appeal.

13. Failure to File Appeal, Waiver.

§ 1. Definitions. When used in this act:

(a) "Aeronautics" means transportation by aircraft, air instruction, the operation, repair, or maintenance of aircraft, and the design, operation, repair or maintenance of airports, landing fields, landing strips, or other air navigation facilities.

(b) "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of, of flight in, the air.

(c) "Air Instruction" means the imparting of aeronautical information by any aviation instructor or in any air school or flying club.

(d) "Airport" means any area of land, water, or both, which is used or is made available for the landing and take-off, and which provides facilities for the shelter, supply, and repair, of aircraft; which, as to size and design, had (1) at least 1800 feet of effective landing length in all directions, with clear approaches, or (2) landing strips not less than 500 feet wide, permitting

landing in at least six directions at all times, with at least one landing strip aligned with the general direction of the prevailing wind, the landing strip not to cross or converge at angles of less than 40 degrees, nor any of the landing strips to be less than 1800 feet in effective length, with clear approaches, or (3) two landing strips, one aligned with the general direction of the prevailing wind, permitting at least 4-way landing at all times, with clear approaches, the landing strips to be at least 500 feet wide and at least 2500 feet in effective length, and not to cross or converge at any angle less than 80 degrees; and which, as to surface, marking, equipment, and management meets the minimum requirements established from time to time by the (.....).

(e) "Air School" means any person engaged in giving, offering to give, or advertising, representing, or holding himself out as giving, with or without compensation or other reward, instruction in aeronautics--in flying, in ground subjects, or in both.

(f) "Aviation Instructor" means any individual engaged in giving, or offering to give, instruction in aeronautics--in flying, in ground subjects, or in both--either with or without compensation or other reward, without advertising such occupation, without calling his facilities "Air School" or any equivalent term, and without employing or using other instructors.

(g) "Civil Aircraft" means any aircraft other than a public aircraft.

(h) "Flying Club" means any person (other than an individual) who, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instructions, pleasure, or both.

(i) "Landing Field" means any area of land, water, or both which is used or is made available for the landing and take-off of aircraft; which may or may not provide facilities for the shelter, supply, and repair of aircraft; and which, as to size, design, surface marking, equipment, and management meets the minimum requirements established from time to time by the (.....).

(j) "Landing Strip" means any area of land, water, or both, which is used or is made available for the landing and take-off of aircraft, having at least 200 feet of land or of water in its width and at least 1000 feet of land or of water in its length, the use of which shall, except in case of emergency, be only as provided from time to time by the (.....).

(k) "Person" means any individual, or any corporation or other association of individuals.

(l) "Public Aircraft" means an aircraft used exclusively in the service of any government or of any political sub-division thereof, including the government of the United

States, of the District of Columbia, and of any state, territory, or insular possession of the United States, but not including any government-owned aircraft engaged in carrying persons or goods for commercial purposes.

§ 2. Aircraft: Design, Construction, and Airworthiness; Federal license.--It shall be unlawful for any person to operate, pilot, or navigate, or cause or authorize to be operated, piloted, or navigated within this State any civil aircraft, unless such aircraft has a currently effective license issued by the Government of the United States; but this restriction shall not apply to aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of such licensed aircraft, or to a non-passenger-carrying flight solely for inspection or test purposes authorized by the (.....) to be made without such license.

§ 3. Qualifications of Pilots; Federal License or Permit.--It shall be unlawful for any person to pilot within this State any civil aircraft, unless such person is the holder of a currently effective pilot's license or student's permit issued by the Government of the United States; but this restriction shall not apply to any person operating any aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of

such licensed aircraft.

§ 4. Possession and Display of Licenses or Permit.-- The Certificate of the license or permit respectively required of a pilot or a student shall be kept in the personal possession of the licensee or permittee when he is operating an aircraft within this State. The certificate of the license required for an aircraft shall be carried in the aircraft at all times and shall be conspicuously posted therein in clear view of passengers. Such certificate of pilot's license, student's permit, or aircraft license shall be presented for inspection upon the demand of any passenger, any peace officer of this State, any authorized official or employee of the (.....), or any official, manager or person in charge of any airport in this State upon which it shall land, or upon the reasonable request of any other person. In any criminal prosecution under any of the provisions of this act, a defendant who relies upon a license or permit of any kind shall have the burden of proving that he is properly licensed or is the possessor of a proper license or permit. The fact of non-issuance of such license or permit may be evidenced by a certificate signed by the official having power of issuance, or his deputy, under seal of office, stating that he has made diligent search in the records of his office and that from the records it

appears that no such license or permit was issued.

§ 5. General Powers of Adoption and Notice of Rules, Regulations, and Orders.--Except as otherwise specifically provided in this act, the (.....) shall have supervision over aeronautics within the State, including (1) the establishment, location, maintenance, operation and use of airports, landing fields, landing strips, air markings, air beacons and other air navigation facilities, and (2) the establishment, operation, management and equipment, of all air schools, flying clubs and other persons giving air instruction.

The (.....) shall adopt and promulgate rules and regulations establishing minimum standards with which all air navigation facilities, rules, regulations and orders to safeguard from accident and to protect the safety of persons operating or using aircraft and persons and property on the ground, and to develop and promote aeronautics within this State. In order to avoid the danger of accident incident to confusion arising from conflicting rules, regulations and orders of the (.....) shall be kept in conformity as nearly as may be, with the Federal legislation, rules, regulations and orders on aeronautics, and shall not be inconsistent with paramount Federal legislation, rules, regulations and orders on the subject.

Every general rule, regulation, order of the (.....)

shall be posted for public inspection in the main office of the (.....) at least (.....) days before it shall become effective, and shall be given such further publicity, by advertisement in a newspaper or otherwise, as the (.....) shall deem advisable.

Every order applying only to a particular person or persons named therein shall be mailed to, or served upon, such person or persons.

Every rule, regulation, and order, general or otherwise, adopted by the (.....) shall be kept on file with the (Secretary of State).

§ 6. Investigations and Hearings.--The (.....) shall have the power to conduct investigations, inquiries, and hearings concerning matters covered by the provisions of this act and accidents or injuries incident to the operation of aircraft occurring within this State. The (.....) shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas, compel the attendance and testimony of witnesses and the production of papers, books and documents. If any person shall fail to comply with any subpoena or order issued under authority of this act, the (.....) may invoke the aid of any (County or Circuit) Court in this State. The court may thereupon order such person to comply with the requirements of the subpoena or order of the (.....), or to give

evidence upon the matter in question. Any failure to obey the order of the court shall be punishable by the court as a contempt thereof.

§ 7. Admissibility in Evidence of Investigations and Hearings; Testimony of the .....--The reports of investigations or hearings, or any part thereof, shall not be admitted in evidence or used for any purpose in any suit, action, or proceeding growing out of any matter referred to in such investigations or hearings, or in any report thereof, except in case of criminal or other proceedings instituted by or in behalf of the (.....) under the provisions of this act; nor shall the (.....) be required to testify to any facts ascertained in, or information gained by reason of, his official capacity. The (.....) shall not be required to testify as an expert witness in any suit, action, or proceeding involving any aircraft or any navigation facility.

§ 8. Enforcement, Cooperation.--It shall be the duty of the (.....) and every county and municipal officer charged with the enforcement of State and municipal laws, to enforce, and assist in the enforcement of, this act. The (.....) is further authorized in the name of the (People of the State of .....) to enforce the provisions of this act by injunction in the (County or Circuit Courts) of this State.

are authorized to cooperate with the (.....) in the development of aeronautics within this State.

§ 9. License, Fees.--An airport, landing field, landing strip, air school, flying club, air beacon, or other air navigation facility shall not be used or operated, unless it is duly licensed by the (.....). Within sixty days after the effective date of this act any person who owns or operates an airport, landing field, landing strip, air school, flying club, air beacon, or other air navigation facility shall file an application with the (.....) for a license for such air navigation facility.

Licenses shall be granted whenever they are reasonably necessary for the accommodation and convenience of the public, and may be granted in other cases in the discretion of the (.....). The (.....) shall issue licenses for all airports, landing fields, landing strips, air schools, flying clubs, air beacons, and other air navigation facilities in operation when this Act becomes effective, unless the (.....) shall find that the facility is not constructed and equipped in accordance with the standards promulgated by the (.....) or that the school or club is not being operated according to the requirements applicable to those applying for a license to operate a new air school or flying club.

Except in case of emergency, an aircraft shall not

land upon, or take off from, any area in this State other than an airport, landing field, or landing strip; but a license shall not be required of, and the rules, orders and regulations promulgated under the authority of this act shall not apply to, an airport, landing field, landing strip, air beacon, or other air navigation facility owned or operated by the government of the United States.

The (.....) is hereby authorized to make the following charges for the issuance of the following types of license:

For each annual airport license .....($.....)

For each annual landing field license .....($.....)

For each annual air school license .....($.....)

Fees shall not be charged for annual landing strip, flying club, or air beacon licenses.

§ 10. Refusal of Licenses; Examination of Premises.-- In any case where the (.....) rejects an application for permission to operate or establish an airport, landing field, landing strip, air school, flying club, air beacon, or other air navigation facility, or in any case where the (.....) shall pursuant to this act issue any order requiring or prohibiting certain things to be done, (it) shall set forth its reasons therefor and shall state the requirements to be met before such approval will be given or such rule, regulation, or order will be modified or changed. In any case where the

(.....) deems such action necessary or proper, (it) may order the closing of any airport, landing field, or landing strip, or the cessation of operations of any air school, flying club, air beacon, or other air navigation facility, until the requirements laid down by the (.....) shall have been fulfilled. To carry out the provisions of this act, the (.....) and any officers, State or municipal, charged with the duty of enforcing this act, may inspect and examine at reasonable hours any premises, and the buildings and other structures thereon, where such airports, landing fields, landing strips, air schools, flying clubs, air beacons, or other air navigation facilities are operated.

§ 11. Appeal from Order.--Any person against whom an order has been entered may within ten days after the service thereof appeal to the (County or Circuit Court) of the County in which the order was made or the property affected by the order is located, for the purpose of having the reasonableness or lawfulness of the order inquired into and determined.

§ 12. Procedure for Appeal.--The party taking the appeal shall file a praecipe in the office of the clerk of the (County or Circuit Court), and summons shall thereupon be issued by the clerk and shall be served upon the (.....). Upon the filing of the praecipe, the appeal shall be docketed for trial not less than ten days nor more than thirty days

after the service of the summons and shall be tried by the (County or Circuit Court) without formal pleadings. Upon trial of the appeal, the court shall hear evidence as to matters concerning the order in question, as to the condition of the property in question, and the manner of its operation, and shall enter judgment either affirming or setting aside the order of the (.....) or the court may remand the matter to the (.....) for further hearing. The (County or Circuit Court) may in its discretion determine whether the filing of the praecipe shall act as a supersedeas.

§ 13. Failure to File Appeal, Waiver.-- If an appeal is not taken from the order of the (.....) within the period fixed, the party against whom the order was entered, shall be deemed to have waived the right to have the reasonableness or lawfulness of the order reviewed by a court and that issue shall not be tried in any court in which suit may be instituted for the penalty for failure to comply with the order.

§ 14. Penalty.--Any person failing to comply with the requirements, or violating any of the provisions, of this act, or the rules, regulations, or orders adopted by the (.....), shall be guilty of a misdemeanor and punishable by a fine of not more than (five hundred) dollars, or by imprisonment for not more than (ninety) days or both.

§ 15. Constitutionality.--If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end the provisions of this act are declared to be severable.

§ 16. Uniformity of Interpretation.--This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

§ 17. Short Title.--This act may be cited as the "Uniform Aeronautical Regulatory Act."

§ 18. Repeal.--All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed.

§ 19. Effective Date.--This act shall take effect (.....).

UNIFORM AERONAUTICAL REGULATORY ACT

Table of States Wherein Act Has Been Adopted

State	Laws	Effective date	Present form of act
Montana	1945, c. 152	3-1-45	
South Carolina	1935, No. 317	5-21-35	Code 1942, § 7112.
Utah	1937, c. 10	3-22-37	Code 1943, 4-0-19 to 4-0-52.
Wisconsin ...	1937, c. 381	7-14-37	St. 1945, §§ 114.01, 114.015, 114,16, 114.-18-114.25, 114.27, 114.28.

UNIFORM AIR LICENSING ACT

Approved by the National Conference of Commissioners On Uniform State Laws in 1930.

An Act concerning the licensing of airmen and aircraft, concerning air traffic rules and providing penalties for violation thereof, and to make uniform the law with reference thereto.

§ 1. Definition of terms.--In this act,

The term "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment.

The term "Public Aircraft" means an aircraft used exclusively in the governmental service of the United States.

The term "Civil Aircraft" means any aircraft other than a public aircraft.

The term "Airman" means any individual (including the person in command, and any pilot, mechanic or member of the crew) who engages in the navigation of aircraft while under way, and any individual who is in charge of the inspecition, overhauling or repairing of aircraft.

The term "person" means an individual, a partnership, or two or more individuals having a joint or common interest, or a corporation.

§ 2. Federal Law Followed.--It is hereby declared that the policy, principles and practices established by the United States Air Commerce Act of 1926, and all existing amendments thereto, are hereby adopted and extended and made applicable to cover all air traffic in this state, so far as not covered by federal law at any time.

§ 3. Power to Regulate.--The (Vehicle Commissioner) shall administer the provisions of this act, and for such purpose is authorized to make such regulations as are necessary to execute the functions vested in him by this act, including air traffic rules, which regulations shall conform to and coincide with, so far as practicable, the provisions of the Air Commerce Act of 1926, and amendments thereto, passed by the Congress of the United States and Air Commerce Regulations and air traffic rules issued from time to time pursuant thereto.

§ 4. Aircraft License Required.--No civil aircraft shall be flown in this state unless such aircraft either is licensed as provided by Section 6 of this act, or shall have an existing license under federal law.

§ 5. Airman License Required.--No person shall act as an airman of any civil aircraft in this state unless he shall have either an appropriate license as provided in Section 7 of this act, or an appropriate existing license under federal law.

§ 6. Licensing of Aircraft.--The (Vehicle Commissioner) shall provide for the issuance and expiration, and for the suspension and revocation of licenses of civil aircraft, in accordance with regulations promulgated by him, which regulations shall conform to and coincide with, so far as

practicable, the provisions of the Air Commerce Act of 1926, and amendments thereto, passed by the Congress of the United States, and Air Commerce Regulations issued from time to time pursuant thereto.

§ 7. Licensing of Airmen.--The (Vehicle Commissioner) shall provide for the issuance and expiration, for the suspension and revocation of licenses as airmen to persons applying therefor in accordance with regulations promulgated by him, which regulations shall conform to and coincide with, so far as practicable, the provisions of the Air Commerce Act of 1926, and amendments thereto, passed by the Congress of the United States, and Air Commerce Regulations issued from time to time pursuant thereto.

§ 8. Fees.--The (Vehicle Commissioner) shall collect fees as follows:

For the examination and tests of an applicant for an airman's license ..... ($)

For the examination and inspection of an aircraft ($)

For the issuance of certificate of registration for every aircraft ..... ($)

For the issuance of an airman's license ..... ($)

which fees shall be paid over to (the state treasury).

§ 9. Exceptions.--The provisions of this act shall

not apply to civil aircraft or airmen while engaged exclusively in commercial flying constituting an act of interstate or foreign commerce, nor to public aircraft.

§ 10. Penalties for Violation of This Act.--Any person who violates any provision of this act or any rule or regulation promulgated hereunder, shall be punishable by a fine of not more than ($) or by imprisonment for not more than ( ) or both.

§ 11. Validity of Portions of Act.--If any provision of this act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this act, or the application of such provision to any person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

§ 12. Uniformity of Interpretation.--This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize the law of this state with the federal law on the same subject.

§ 13. Short Title.--This act may be cited as the Uniform Air Licensing Act.

§ 14. Repeal.--All acts or parts of acts which are

inconsistent with the provisions of this act are hereby repealed.

§ 15. Time of Taking Effect.--This act shall take effect ( ).

UNIFORM AIR LICENSING ACT

Revised Table of States Wherein Act Has Been Adopted

State	Laws	Effective date	Present form of act
Alaska	1929, c. 75	1-1-30	Comp.Laws 1933, §§ 501-517.
Louisiana	1932, No. 97	7-7-32	Dart's Gen.St. 1932, arts. 11.1-11.8.
Maine	1929, c. 265	4-9-29	Rev.St. 1930, ch.30.
Maryland	1929, c. 318	1-1-29	Code 1939, art. 1A, §§ 13-26.
Minnesota	1929, c. 290	11-1-29	M.S.A. § 360.012 et seq.
North Dakota .	1929, c. 85	3-8-29	R.C. 1943, 2-0101 to 2.0108.
Tennessee	1931, c. 73	7-1-3-	Code 1938, §§ 2726 (1)-2726 (10).
Vermont	1931, No. 90	3-30-31	P.L. §§ 5219-5249.

UNIFORM AIRPORTS ACT

Approved by the National Conference of Commissioners
On Uniform State Laws in 1935.

An Act Providing for the Acquisition, Construction, Operation, and Regulation of Airports and Other Navigation Facilities; Declaring the Ownership and Operation of Airports to be Public, Governmental and Municipal Purpose; Providing the Right of Condemnation for Airport Purposes by Cities and Other Political Subdivisions; Providing for the Issuance of Bonds and for the Levying of Taxes for such Purposes; and Extending Police Regulations to Such Public Airports and to Make Uniform the Law with Reference Thereto.

7. Authority to Acquire Air Rights by Purchase and Condemnation.

8. Authority to Acquire Easements for Lights and Markers.

9. Authority to Police Airports.

10. Construction and Intent of this Act.

11. Constitutionality.

12. Uniformity of Interpretation.

13. Short Title.

14. Repeal.

15. Time of Taking Effect.

§ 1. Municipalities May Acquire Airports.--Municipalities, counties, and other political subdivisions of this state are hereby authorized, separately or jointly, to acquire, establish, construct, expand, own, lease, control, equip, improve, maintain, operate, regulate and police airports and landing fields for the use of aircraft, either within or without the geographical limits of such municipalities, counties or other political subdivisions; but no county shall exercise the authority hereby conferred outside of its geographical limits except in an adjoining county and this only jointly with such adjoining county.

§ 2. Airports a Public Purpose.--Any lands acquired, owned, leased, controlled or occupied by such counties,

municipalities or other political subdivisions for the purpose or purposes enumerated in Section 1 of this act, shall and are hereby declared to be acquired, owned, leased, controlled or occupied for public, governmental and municipal purposes.

§ 3. Private Property May Be Acquired by Purchase or Condemnation.--Private property needed by a county, municipality, or other political subdivision for an airport or landing field or for the expansion of an airport or landing field, may be acquired by grant, purchase, lease, or other means, if such political subdivision is able to agree with the owners of said property on the terms of such acquisition, and otherwise by condemnation (or excess condemnation) in the manner provided by the law under which such political subdivision is authorized to acquire real property for public purposes.

§ 4. Purchase Price may be Paid from Bond Issue or Otherwise.--The purchase price or award for real property acquired, in accordance with the provisions of this act, for an airport or landing field may be partly from the proceeds of the sale of bonds of said county, municipality, or other political subdivision, as the legislative body of such political subdivision shall determine; subject, however, to the adoption of a proposition therefor at a regular or special election, if the adoption of such a proposition is a prerequisite to the issuance of bonds of such political subdivision for public

purposes generally.

§ 5. Authority to Equip, Improve, Establish Fees and Charges and Lease.--Counties, municipalities, or other political subdivisions of this state which have established or may hereafter establish airports or landing fields, or which acquire, lease, or set apart real property for such purpose or purposes, are hereby authorized:

(a) to construct, equip, improve, maintain, and operate the same, or to vest authority for the construction, equipment, improvement, maintenance, and operation thereof, in an officer, board or body of such political subdivision. The expense of such construction, equipment, improvement, maintenance, and operation shall be a responsibility of said political subdivision;

(b) to adopt regulations and establish charges, fees and tolls for the use of such airports of landing fields, fix penalties for the violation of said regulations, and establish liens to enforce payment of said charges, fees and tolls;

(c) to lease for a term not exceeding ( ) years such airports or landing fields to private parties for operation, or to lease or assign for a term not exceeding ( ) years to private parties for operation space, area, improvements, and equipment on such airports or landing fields, provided in each case that in so doing the public is not deprived of its rightful, equal and uniform use thereof.

§ 6. Funds for Operation May Be Raised by Taxation and Otherwise.--The local public authorities having power to appropriate moneys within the counties, municipalities, or other public subdivisions of this state, acquiring, establishing, developing, operating, maintaining, or controlling airports or landing fields under the provisions of this act, are hereby authorized to appropriate and cause to be raised by taxation or otherwise in such political subdivisions moneys sufficient to carry out therein the provisions of this act; also, to use for such purpose or purposes moneys derived from said airports or landing fields.

§ 7. Authority to Acquire Air Rights by Purchase and Condemnation.--When necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and landing fields acquired or maintained under the provisions of this act, the counties, municipalities, and other subdivisions of this state are hereby granted authority to acquire such air rights over private property as are necessary to insure safe approaches to the landing areas of said airports and landing fields. Such air rights may be acquired by grant, purchase, lease or condemnation in the same manner as is provided in Section 3 of this act for the acquisition of the airport or landing fields itself or the expansion thereof.

§ 8. Authority to Acquire Easements for Lights and Markers.--Such counties, municipalities, and other political subdivisions of this state are hereby authorized to acquire the right or easement for a term of years, or perpetually, to place and maintain suitable marks for the daytime, and to place, operate, and maintain suitable lights for the nighttime marking of buildings, or other structures or obstructions for the safe operation of aircraft utilizing airports and landing fields acquired or maintained under the provisions of this act. Such rights or easements may be acquired by grant, purchase, lease or condemnation in the same manner as is provided in section 3 of this act for the acquisition of the airport or landing field itself or the expansion thereof.

§ 9. Authority to Police Airports.--Counties, municipalities or other political subdivisions of this state acquiring, establishing, developing, operating, maintaining, or controlling airports or landing fields without the geographical limits of such subdivisions, under the provisions of this Act, are hereby specifically granted the right to promulgate, amend, and enforce police regulations for such airports or landing fields.

§ 10. Construction and Intent of this Act.--It is the intent and purpose of this act that all provisions herein

relating to the issuance of bonds and the levying of taxes for airports and airport facilities, shall be construed in accordance with general provisions of the law of this state governing the right and procedure of municipalities to condemn property, issue bonds and levy taxes.

§ 11. Constitutionality.--If any provision of this act or the application thereof is held invalid, such invalidity shall not affect provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

§ 12. Uniformity of Interpretation.--This act shall be so interpreted and construed as to effectuate the general purpose of these states which enact it.

§ 13. Short Title.--This act may be cited as the Uniform Airports Act.

§ 14. Repeal.--All Acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed.

§ 15. Time of Taking Effect.--This Act shall take effect .....

UNIFORM AIRPORTS ACT

Table of States Wherein Act Has Been Adopted

State	Laws	Effective date	Present form of act
Florida	1937, c. 17708	5-24-37	F.S.A. §§ 149.01-149.15
Georgia	1933, p. 102	3-5-33	Ga.Code Ann. §§ 11-201 to 11-209.
South Carolina	1937, p. 466	5-10-37	Code 1942, §§ 7112-31 to 7112-42
Utah	1937, c. 9	3-22-37	Code 1943, 4-0-53 to 4-0-67.