A. Course description

Aviation Product Liability Law will focus on the broad range of civil law relating to domestic and international aviation tort matters. The course will benefit students with a specific interest in the legal issues that arise in air crash litigation, integrating civil procedure and tort principles necessary to litigate these specialized cases. It will cover a broad range of topics, including the procedural issues that arise in complex air crash litigation (jurisdictional and choice of law issues), an analysis of substantive matters (strict liability, negligence, and government liability), the domestic and international accident investigative process, compensatory and punitive damages law, and examination of transnational issues addressing the relationship between aviation and admiralty/maritime law. It will also examine U.S. Federal Court procedures and the Federal Tort Claims Act, with attention to that Act’s combatant activities exception and government contractor defense. In addition, the course will cover the government’s role in Air Traffic Control and aircraft inspection, and also examine the General Aviation Revitalization Act.

B. Course outline

Course materials are arranged in a sequence often followed in litigating mass tort/air crash cases. The course will examine both plaintiff and defendant litigation strategies - beginning with choosing the jurisdiction for filing a lawsuit, through trial issues relating to evidence and damages.

C. Course materials

There is no textbook for this class. Instead, this syllabus contains an outline of the subject matter, with citations to the U.S. Constitution, case law\(^1\), statutes, regulations, Restatements of Law, and other materials that address in whole, or in part, the particular area of law we will discuss in class. All of the materials should be accessible on-line or on Westlaw. Should a student be unable to access a case, notify me and a copy will be provided to you.

In advance of each class, students will be assigned cases to be briefed and presented to the class.

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\(^1\) Many cases address more than one relevant topic in the case outline and will be discussed repeatedly throughout the semester.
Students are expected to read and synthesize the all the assigned course materials (even when the student is not making the case presentation), come to each class session ready to answer questions, and participate in discussion analyzing the materials. Given the complexity of the topic, the lectures are intended to aid the students’ understanding of the reading materials.

Because this class meets only once each week, attendance is necessary.

D. Grading policy

Students will be graded through a single take-home final essay. It will cover cases and materials from the course outline, and topics discussed in class. Students also will have the opportunity to raise their grades by making meaningful contributions to the class.

E. Course outline

**Personal Jurisdiction – FIRST CLASS ASSIGNMENT: Jan. 14, 2015**

*Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846  
*Daimler AG v Bauman*, 134 S.Ct. 746  
*World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286  
*Helicopteros Nacionales De Colombia v. Hall*, 466 U.S. 408  
*Ashai Metal Indus. Co. v. Superior Court*, 480 U.S. 102  
*Van Heeswyk v. Jabiru Aircraft Pty*, 276 P.3d 46  
*Weinberg v. Grand Circle Travel*, 892 F.Supp.2d 228  
*Russell v. SNFA*, 2013 IL 113909  
*Crouch v. Honeywell*, 682 F.Supp.2d 788  
*Vibratech v. Frost*, 661 S.E.2d 185  
*Woods v. Nova Companies Belize*, 739 So.2d 617  
*D’Jamoos v. Pilatus*, 566 F.3d 94  
*Raffile v. Executive Aircraft Maintenance*, 831 F.Supp.2d 1261  
*Commerce Trust Co. v. Air 1st Aviation Companies, Inc.*, 366 Ill.App.3d 1335  
*Smith v. Teledyne Continental Motors, Inc.*, 840 F.Supp.2d 927

Warsaw Convention – Article 28  
Montreal Convention - Article 33

**U.S. Federal Court procedural issues**

Removal  
*Bennett v. Southwest Airlines* - 484 F.3d 907  
*Mohammad, Special Administrator of the Estate of Abdulrahim v. Airbus*, 2009 WL 3807090  
Diversity
28 U.S. Code § 1332

Fraudulent joinder
Air Crash near Clarence, 09-CV-1039S, December 12, 2010

Federal officer removal
McMahon v. Presidential, 410 F.Supp.2d 1189
Getz v. Boeing, 654 F.3d 852
Papapetrou v. Boeing, 2008 WL 548770

Federal preemption
Article VI – U.S. Constitution
Cleveland v. Piper, 985 F.2d 1438
Abdullah v. American Airlines, 181 F.3d 363
Elassaad v. Independence Air, 613 F.3d 119
Montalvo v. Spirit Airlines, 508 F.3d 464
Mercer v. SWA, U.S. Dt Ct, N.D. Cal., Sept 19, 2014
Burbank v. Lockheed, 411 U.S. 624
Lewis v. Lycoming, 957 F.Supp.2d 552
Curtin v. Port Authority, 183 F.Supp.2d 664
Hart v. Boeing, 2009 WL 4250122

Federal standard of care
49 U.S.C. 41713(b) – Airline Deregulation Act
49 U.S.C. 40120(c)- savings clause
49 U.S.C. 44701(a)
Abdullah v. American Airlines, 181 F.3d 363
Witty v. Delta, 366 F.3d 380
Greene v. B.F. Goodrich, 409 F.3d 784
Deahl v. Air Wisconsin, 2003 WL 22843073
Air Crash near Clarence, 798 F.Supp.2d 481 (2011)
Air Crash near Clarence, 951 N.Y.S.2d 841(2012)
Air Crash near Clarence, 991 N.Y.S.2d 274(2012)
Air Crash near Clarence, 2013 L 5964480
In re Air Crash at Lexington, 5:06-CV-316-KSF, May 28, 2009
Public HealthTrust of Dade County v. Lake Aircraft, 992 F.2d 291
Elsworth v. Beech Aircraft Corporation, 37 Cal.3d 540

Choice of Law Issues
Restatement (Second) of Conflicts §§145, 146, 175
In re Air Disaster Near Detroit, Mich on Aug 16, 1987, 753 F.Supp. 793,
Pescatore v. Pan Am World Airways, Inc., 97 F.3d 1
In re Air Crash Disaster at Sioux City, Iowa on July 19, 1989, 781 F.Supp. 1307
Brewer v. Dodson Aviation, 47 F.Supp.2d 1166
Bushkin Assoc. v Raytheon Co., 473 N.E.2d 662, 668
In re Air Crash at Little Rock, Ark. On June 1, 1999, 125 F.Supp.2d 357
Air Crash at Belle Harbor, 2007 WL 288298
Air Crash Disaster near Chicago, 644 F.2d 594
Neumeier v. Kuehner, 31 N.Y.2d 121
Tazoe v. Airbus, 631 F.3d 1321
In re Air Crash Disaster Over Makassar Strait, Sulawesi, 2011 WL 91037
Anyango v. Rolls Royce, 971 N.E.2d 654 (Canada)
In re Air Crash at Madrid, Spain, 893 F.Supp.2d 1020, 2011 WL 2183972

Maritime choice of law rules
Lauritzen v. Larsen, 345 U.S. 571
In re Air Crash at Belle Harbor, 2007 WL 288298
Air Crash over Taiwan Straits, 331 F.Supp.2d 1209-10
Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249
In re: Belle Harbor, 2006 WL 1288298 (S.D.N.Y)
In re Air Crash Disaster Near Palamnang, Indonesia, 2000 WL 33593202
In re Air Crash Disaster near Bombay, India, 531 F.Supp. 1175
In re Korean Air Lines Disaster, 117 F.3d 1477
In re Air Crash over Taiwan Straits, 331 F.Supp.2d 1176

Lex Loci Delicti
Restatement (2nd) of Conflicts
Emory v. McDonnell Douglas Corp., 148 F.3d 347
Clawans v. U.S., 75 F.Supp.2d 368
*In re Air Crash at Dubrovnik, Croatia, on Aug 3, 1996*, 2000 WL 840057
*In re Air Crash near Roselawn*, 948 F.Supp. 757

**Federal Tort Claims Act (FTCA)**

*Kodor v. US*, 879 F.Supp.2d 218
*Srock v. U.S.*, 462 F.Supp.2d 812
*Schalliol v. Fare*, 206 F.Supp.2d 689
*Turturro v. USA*, 2012 WL 175 1758154
*Ressler v. USA*, 10-cv-03050-REB-BNB (Sept 20, 2012)
*Turturro v. USA*, 2014 WL 4188076

**FAA Designees**

*Clarence.S. v. S.A. Empresa de Viacao (Varig Airlines)*, 467 U.S. 797
*Magnin v. Teledyne*, 91 F.3d 1424
*Britton v. Rolls Royce*, 2005 WL 1562855
*AIG Europe v. McDonnell*, 2003 WL 257702

**Government discretionary acts**

*U.S. v. S.A. Empresa de Viacao Aerea Rio Grandense (VARIG AIRLINES)*, 104 S.Ct. 2755
*Proctor v. US*, 622 F.Supp. 10
*Baxley v. US*, 767 F.2d 1095
*GATX/Airlog Co v. US*, 286 F.3d 1168
*Heller v. US*, 803 F.2d 1558
*Holbrook v. US*, 673 F.3d 341

**Damages issues**

*In re Air Disaster Near Roselawn*, 948 F.Supp. 747
*Air Crash at Belle Harbor*, 2006 WL 1288298

**Depecage**

*In re Air Crash Disaster Near Chicago*, 644 F.2d 594
*In re Air Crash Disaster Near Roselawn*, 926 F.Supp. 736
*In re Air Crash at Dubrovnik, Croatia*, 2000 WL 840057
*Air Disaster Near Detroit*, 750 F.Supp. 793 (Mich)
**Foreign Sovereign Immunities Act**

*Dole Food v. Patrickson*, 38 U.S. 468

*In Re Air Crash Disaster Near Roselawn, Indiana on October 31, 1994*, 96 F.3d 932

*America West Airlines, Inc. v. GPA Group, Ltd.*, 877 F.2d 793 (1989)

*Barkanik v. Gen. Admin of Civil Aviation of People’s Republic of China*, 923 F.2d 945

*Harris v. Polskie Linie Lotnicze*, 820 F.2d 1000


*In re Air Crash Near Roselawn, Inc. on Oct. 31, 1994*, 926 F.Supp. 736

*Butler v. Sukhoi Company*, 579 F.3d 1307

*Habyarimana v. Kagame*, 696 F.3d 1029 (10th Cir. 2012)

*Bell Helicopter Textron, Inc. v. Iran*, 734 F.3d 1175 (2013)

**Multi District Litigation & Federal Court transfers**

28 USCA §§ 1369(a), 1407

*In re Air Crash Disaster near Chgo, on May 25, 1975*, 644 F.2d 594


**Aviation Litigation in the U.S. Federal Courts**


**Discretionary function**


*Yearsley v. W.A. Ross Construction, Co.*, 309 U.S. 18

**Combatant activity**

28 U.S.C. §2680(j)


*Johnson v. United States*, 170 F.2d 767 (1949)

*Koohi v. United States*, 976 F.2d 1328 (1992)


*Getz v. Boeing*, 2009 WL 636039

**Government contractor defense**

*Boyle v. United Technologies*, 487 US 500


*Sneed v. Bell Helicopter*, 107 F.3d 744 (1997)

Brinson v. Raytheon, 571 F.3d 1349 (2009)
Har duvel v. General Dynamics, Corp. 878 F.2d 1311 (1989)
In re: Joint Eastern & Southern Dt. NY Asbestos Litigation (Grispo), 872 F.2d 626 (1990)
Tate v. Boeing Helicopters, 55 F.3d 1150 (1995)
Scot v MD Helicopters, 834 F.Supp.2d 1334 (2011)

Political Question
McMahon v. Presidential Airways, 502 F.3d 1331
Tiffany v. US, 931 F.2d 271
Getz v. Boeing, 2008 WL 2705099

Transnational Aviation Tort Issues
Warsaw/Montreal Conventions
Pescatore v. Pan Am. World Airways, Inc., 97 F.3d 1

Death on the High Seas Act (DOSHA)
46 USCA §§ 30301 et seq.
Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249 (1972)
Mobil Oil v Higginbotham 98 S.Ct 2010 (1978)
Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207
In re Air Crash Near Nantucket Islands, Mass. on Oct. 31, 1999; 307 F.Supp.2d 465
In re Air Crash Disaster Near Peggy’s Cove, Nova Scotia on Sept. 2, 1998; 210 F.Supp.2d 570
In re: Belle Harbor, 2006 WL 1288298 (S.D.N.Y)
In re: Air Crash off Long Island / TWA 800, 209 F.3d 200 (2000)
In re Air Crash Off Point Mugu, Calif. on Jan 30, 2000; 145 F.Supp.2d 1156
Lu v. Boeing, 2014 WL 1409441(N.D. Ill.)
Helman v. Alcoa, 637 F.3d 986 (9th Cir. 2011)

International and Domestic Air Crash Accident Investigation

International Civil Aviation Organization (ICAO)
Annex 13- Accident & Incident Investigation
In re Air Crash At Taipei, Taiwan On October 31, 2000; 211 F.R.D. 374

National Transportation Safety Board
PART 831—Accident/Incident / Investigation Procedures
PART 835—Testimony of Board Employees
PART 837—Production of Records in Legal Proceedings
In re Air Crash Disaster at Stapleton International Airport, Denver, Colorado, on November 15, 1987, 720 F.Supp. 1493 (1989)
Chiron Corp v. NTSB, 198 F.3d 935 (1999)
In re Air Crash Disaster At Sioux City, Iowa, on July 19, 1989, 780 F.Supp. 1207 (1991)
Criminal prosecution of aviation professionals following air crashes / distinguishing criminal negligence (foreign jurisdictions) and civil liability (United States)
Distinction between NTSB probable cause and legal liability

Aircraft User and Aircraft /Component Part Manufacturer Liability
Restatement (Second) of Torts §402A
Restatement (Third) of Torts Product Liability
Greenman v. Yuba Power Products, Inc., 59 Cal.2d 57
Suvada v. White Motor Company, 32 Ill.2d 612
Winnett v. Winnett 57 Ill.2d 7 (1974)
Woodill v. Parke Davis & Co 79 Ill.2d 26 (1980)
Mikolajczyk v. Ford, 231 Ill.2d 516

Potentially liable parties
S.A. Empressa De Viacao (Varig) v. Walter Kidde, 690 F.2d 1235
Prompt Air, Inc., v. Firewall Forward, Inc., 303 Ill.App.3d 126
Design defect


*Thornton v. Hamilton*, 2014 WL 3107961


*Jablonski v. Ford* 2011 IL 110096

*Fluor Corp. v Jeppesen*, 170 Cal.App.3d 468 (1985)


*In re September 11 Litigation*, 280 F.Supp.2d 279

*Shurr v. A.R. Siegler, Inc.*, 70 F.Supp.2d 900


*Estate of Cook v. Gran-Aire, Inc.*, 182 Wis.2d 330

Failure to warn

*Nesselrode v. Executive Beechcraft*, 707 S.W.2d 371(1986)

*Argubright v. Beech Aircraft Corp.*, 868 F.2d 764

*Emory v. McDonnell Douglas Corp.*, 148 F.3d 347

*Sikkelee v. Precision Automotive*, 876 F.Supp.2d 479 (Pa. 2012)

*Walton v. AVCO*, 530 Pa.568

*Davis v. Cessna Aircraft Corp.*, 182 Ariz. 26

Negligence


*In re Air Crash at Belle Harbor, New York on November 12, 2001*, 508 F.Supp.2d 244


*In re Air Crash Near Clarence Center, New York, On February 12, 2009* 2012 WL 1029505

*In re Korean Air Lines Disaster of September 1, 1980*, 1985 WL 9447

*Lawson v. Management Activities, Inc.*, 69 Cal.App.4th 652

*Elsworth v. Beech Aircraft Corporation*, 37 Cal.3d 540

Warranty

*Banko v. Continental Motors*, 251 F.Supp. 229

*Colgan Air, Inc., v. Raytheon Aircraft Co*, 507 F.3d 270

*In Re: Air Crash At Lexington, Kentucky, August 27, 2006*, Civil Action (Master File) No. 5:06-CV-316-KSF, United States District Court, E.D. Kentucky, Central Division, Lexington, July 2, 2008.

**Paramount Aviation Corp v. Agusta**, 288 F.3d 67

**Crashworthiness**

*Meil v. Piper*, 658 F.2d 787
*McGee v. Cessna*, 82 Cal.App.3d 1005

**Defenses**


**Sophisticated User**

*First National Bank And Trust Corporation v. American Eurocopter Corp*, 378 F.3d 682
*Polinger v. Delta*, B204958, Ct App Calif, 2nd Appellate District, Division Eight; August 10, 2009

**Product liability in International Law**

*Hague Convention On The Law Applicable To Products Liability*, Section 22
Product liability law in Brazil, Canada, England, France

**Evidence**

*Pease v. Lycoming Engines*, 2012 WL 162551
*British Airways v. Boeing*, 585 F.2d 946 (9th Cir. 1978)
*Champlain Enterprises, Inc v. United States*, 957 F.Supp. 26
*Elsworth v. Beech Aircraft Corporation*, 37 Cal.3d 540
*Stecyk v. Bell Helicopter Textron*, 1998 WL 744087
*Damian v. Bell Helicopter Textron*, 352 S.W.3d 124

*In re Air Crash Near Clarence Center, New York, on February 12, 2009*, 2013WL 5964480
Van Steemburg v. General Aviation, 243 Ill.App.3d 299
Davis v. Cessna Aircraft Corp., 182 Ariz. 26
Galowich v. Beech Aircraft Corp., 209 Ill.App.3d 128

Economic Loss Doctrine
Trans States Airlines v. Pratt & Whitney Canada, Inc., 177 Ill.2d 21
Philippine American Life Insurance v. Raytheon Aircraft Co., 252 F.Supp.2d 1138
Four Corners Helicopters, Inc., v. Turbomeca, S.A., 979 F.2d 1434

General Aviation Revitalization Act (GARA) of 1994
49 U.S.C 40101

State law preemption
Competitor Liaison Bureau v. Cessna, 2011 WL 1344455

Application to successor corporations
Sikkelee v. Precision Automotive, 876 F.Supp.2d 479 (Pa. 2012)
Scott v. MD Helicopter, Inc. 834 F.Supp.2d 1334 (2011)
Groschowski v. Romey, 340 Wisc.2d 611 (2012)
Stewart v. Precision, 7 A.3d 266 (2010)
Thornton v. Hamilton, 2014 WL 3107961

What is a manufacturer
Burton v. Twin Commander, 254 P.3d 778 (2011)
Burroughs v. Precision Airmotive, 93 Cal.Rptr.2d 124 (2000)
Crouch v. Honeywell, 720 F.3d 333 (2013)

Does GARA protect foreign manufacturers

When does the GARA repose period begin
GARA 2(a)(1)(A)-(B)
Robinson v. Hartzell, 326 F.Supp.2d 631
Sheesley v. Cessna, 2006 WL 1084103
Hiser v. Bell, 111 Cal.App.4th 640
Burroughs v. Precision Airmotive, 93 Cal.Rptr.2d 124 (2000)
Agape v. Covington Aircraft Engines, 2011 WL 2560281, (ED Okla)

Exceptions
Knowing concealment or misrepresentation or fraud
Robinson v Hartzell, 326 F.Supp.2d 631
Burton v. Twin Commander, 254 P.3d 778, 785
Nowicki v. Cessna, 69 So.3d 406 (2011)

Concealment or fraud must be material & relevant
Ovesen v. Mitsubishi Heavy Indus., 2012 WL 1583466

Causal relationship between misrepresentation & harm
Burton v. Twin Commander, 254 P.3d 778, 787

Medical emergency exception
Castillo v Cessna Aircraft, 712 F.Supp.2d 1306

Innocent bystander exception
Competitor Liaison Bureau v. Cessna, 454 Fed.App’x 792 (11th Cir. 2011)

Written warranty exception
Bianco v Cessna, 2004 WL 3185847

Rolling Exception to the repose period
Sheesley v. Cessna, 2006 WL 1084103

What constitutes a “part” to qualify under the Rolling Exception?
Burton v. Twin Commander, 254 P.3d 778, 783 (2011)
Crouch v. Honeywell, 720 F.3d 333 (2013)
Air Traffic Controller liability under U.S. law
14 CFR 91.3 Responsibility and authority of the pilot in command.
14 C.F.R. 121.537
Aeronautical Information Manual (AIM) Section 4. ATC Clearances and Aircraft Separation; 4-4-1. Clearances
FAA JO 7110.65U Ch. 2-1-1 & 2-1-2(a);
Wojciechowicz v. US., 582 F.3d 57
In re Air Crash At Dallas/Fort Worth Airport On August 2, 1985, 919 F.2d 1079
In re Air Crash At Dallas/Fort Worth Airport On August 2, 1985, 720 F.Supp. 1258
Airplanes of Boca, Inc. v. U.S., 254 F.Supp.2d 1304
USAU v. US., 496 F.Supp. 639
Collins v. US., 564 F.3d 833
Alinsky v. US, 415 F.3d 639
LeGrande v. U.S., 687 F.3d 800
Redhead v. US., 686 F.2d 178
Rodriguez v. U.S., 823 F.2d 735
Hamilton v. US. 497 F.2d 370
Beattie v. US., 690 F.Supp. 1068
Hensley v. US, 728 F.Supp. 716
Zinn v. U.S., 835 F.Supp.2d 1280
In re Air Crash Disaster At New Orleans (Moisant Field), Louisiana on March 20, 1969, 544 F.2d 270

Air Traffic Controller liability under International law
ICAO 2.3.1

Damages
In Re Air Crash Disaster Near Chicago, Illinois on May 25, 1979, 644 F.2d 594 (1981)

Punitive Damages
In re Air Crash Near Clarence Center, New York, on February 12, 2009, 798 F.Supp.2d 481
Pescatore v. Pan Am World Airways, Inc., 97 F.3d 1

Pilot Training malpractice
In re Air Crash Near Clarence Center, New York, on February 12, 2009, 2010 WL 5185106
Waugh v. Morgan Stanley & Co, 2012 IL App (1st) 102653
Glorvigen v. Cirrus, 816 N.W.2d 572 (2012)
Garland v. Sybaris, 2014 IL App (1st) 112615

Comparative Foreign and Domestic Legal Standards for Air Carrier Refusal to Transport Passengers
The Tokyo Convention (1963)
49 U.S.C.A. § 44902(b)
Eid v. Alaska Air, 621 F.3d 858