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The Airplane -- A Dangerous Instrumentality

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CASES NOTED

THE AIRPLANE — A DANGEROUS INSTRUMENTALITY

Defendant's airplane, under command of an instructor and piloted by a student, was ascending from a runway after a practice landing. It collided in mid-air with plaintiff's airplane, operated by plaintiff, descending to another runway for a landing. Both pilots were negligent. *Held*, the airplane was categorized, along with the automobile, as a dangerous instrumentality. *Shattuck v. Mullen*, 115 So.2d 597 (Fla. App. 1959).

Torts involving colliding planes are decided through application of the general rules obtaining to land torts.¹ This position is adopted by the Uniform Aeronautics Act.² The relatively few common law jurisdictions that have dealt directly with owner liability have denied owner responsibility (per ownership alone).³ One state inferentially joins this group by statute.⁴ Those jurisdictions reaching a contrary result have done so through statute. They have held the owner liable by creation of a prima facie case,⁵ by use of a presumption,⁶ or by strained statutory construction.⁷

In the instant case the court treated an original Florida problem as if it had already been decided. Cited with approbation was the case of *Grain Dealers Nat'l Mut. Fire Ins. Co. v. Harrison*.⁸ The latter case admitted of no authority outlining its holding. It concluded that the airplane *should* be classified, along with the automobile, as a dangerous instrumentality. It stated it could find no logical basis for differentiating between the automobile and the airplane. Therefore, the Florida law compelled the conclusion.

Shattuck v. Mullen has created in Florida a common law minority wherein the airplane owner is liable to those damaged through negligent

1. *Lansford v. Tucson Aviation Corp.*, 73 Ariz. 277, 240 P.2d 545 (1952); *In re Hayden's Estate*, 174 Kan. 140, 254 P.2d 813 (1953); *Gruenke v. North Am. Airways Co.*, 201 Wis. 565, 230 N.W. 618 (1930).

2. 11 UNIF. L. ANN. 11 (Supp. 1949).

3. *D'Aquila v. Pryor*, 122 F. Supp. 346 (S.D.N.Y. 1954); *Boyd v. White*, 128 Cal. App.2d 641, 276 P.2d 92 (1954); *Southern Air Transp. v. Gulf Airways, Inc.*, 215 La. 366, 40 So.2d 787 (1949); *Rich v. Finley*, 325 Mass. 99, 89 N.E.2d 213 (1949); *Spartan Aircraft Co. v. Jamison*, 181 Okla. 645, 75 P.2d 1096 (1938). *Accord*, *Brewer v. Thomason*, 215 Ark. 164, 219 S.W.2d 758 (1949); *Bruce v. O'Neal Flying Service, Inc.*, 231 N.C. 181, 56 S.E.2d 560 (1949).

4. ARIZ. REV. STAT. § 2-207 (1956) (places liability on pilot and principal or employer).

5. MD. CODE ANN. ch. 1A, § 9 (1957); R.I. GEN. L. ch. 4, § 1-4-3 (1956).

6. NEV. REV. STAT. § 493.060 (1959).

7. *Hays v. Morgan*, 221 F.2d 481 (5th Cir. 1955) (applying Mississippi law); *Lamasters v. Snodgrass*, 248 Iowa 1377, 85 N.W.2d 622 (1957); *Hoebee v. Howe*, 98 N.H. 168, 97 A.2d 223 (1953).

8. 190 F.2d 726 (5th Cir. 1951).

collision of his aircraft with another. The owner's direct control is immaterial.⁹ However, the owner's consent to the operation is necessary.¹⁰

The instant case has precedent for applying the automobile law to that of airplane collision.¹¹ Precedent is also to be found for denoting the airplane a dangerous instrumentality.¹² However, it is suggested that the result is a compilation of nonsense¹³ and that the reasoned, logical view is that the airplane is not a dangerous instrumentality.¹⁴ Assuming, without acknowledging, the result to be socially desirable does not excuse the conclusion. Results reached by courts should only be reached by processes de jure. All other results are properly within the province of the legislature.

A. H. TOOTHMAN

LABOR LAW — ECONOMIC PRESSURE IN THE CONTEXT OF A REFUSAL TO BARGAIN

After the expiration of a collective bargaining agreement, and during the period of negotiations, the union utilized harassing tactics¹ to pressure management into acceptance of a new contract on favorable terms. After

9. *Grain Dealers Nat'l Mut. Fire Ins. Co. v. Harrison*, 190 F.2d 726 (5th Cir. 1951) (applying Florida law); *Lynch v. Walker*, 159 Fla. 188, 31 So.2d 268 (1947); *Atlantic Food Supply Co. v. Massey*, 152 Fla. 43, 10 So.2d 718 (1942); *Blanford v. Nourse*, 120 So.2d 830 (Fla. App. 1960). These cases trace the genesis and summation of the Florida automobile dangerous instrumentality doctrine and its initial extension to the airplane.

10. *Ibid*; ALPERT, *FLORIDA AUTOMOBILE ACCIDENT LAW* 110-40 (1958).

11. *Tiedt v. Gibbons*, 1939 U.S. Av. 63 (Cook County Ct., Ill. 1937); *State v. Henson Flying Service*, 191 Md. 240, 60 A.2d 675 (1948); *Davies v. Oshkosh Airport, Inc.*, 214 Wis. 236, 252 N.W. 602 (1934).

12. *Kadylak v. O'Brien*, 32 F. Supp. 281 (W.D. Pa. 1941); RESTATEMENT, *TORTS* § 520 (1938).

13. Proper classification as ultrahazardous or as a dangerous instrumentality requires that the object not be in common usage and that it involves risk of harm which cannot be removed with *utmost care*. Neither of these conditions is presently fulfilled by the airplane. RESTATEMENT, *TORTS* § 520 (1938).

14. *Johnson v. Central Aviation Corp.*, 103 Cal. App.2d 102, 111, 229 P.2d 114, 120 (1951): "It is true that the law formerly looked upon aviation as an ultrahazardous activity. . . . However, this view has come to be modified and now . . . an airplane is not an inherently dangerous instrument." Accidents involving colliding airplanes should be carefully segregated from accidents involving an airplane with ground objects. The latter group fundamentally sounds in trespass. See, Eubank, *Land Damage Liability in Aircraft Cases*, 57 *DICK. L. REV.* 188 (1953); Vold, *Strict Liability for Aircraft Crashes and Forced Landings on Ground Victims Outside of Established Landing Areas*, 5 *HASTINGS L.J.* 1 (1953).

1. This consisted of various on-the-job activities which were initiated subsequent to the expiration of the old contract and entailed the following: refusal to solicit new business; refusal to comply with company reporting procedures; refusal to participate in the "May Policyholders' Month Campaign"; reporting late at the district offices; refusal to perform customary office duties; refusal to be present at special business conferences; picketing and distributing leaflets to policyholders; soliciting policyholders' signatures on petitions; and presenting these petitions to the company while engaging in mass demonstrations.