ABSTRACTS OF THESES SUBMITTED TO THE McGILL INSTITUTE OF AIR AND SPACE LAW, 1962

EDITOR'S NOTE: *The following are abstracts of some of the theses submitted in 1962 to the Institute of Air and Space Law of McGill University. These abstracts are being published in order to inform readers of research materials available in the law library which would otherwise not be known. Some of the theses are available on microfilm or may be borrowed through inter-library loan.*

I. Property Rights in Airspace

Yehuda Abramovitch

Disputes between landowners and aviation create a fundamental problem in the acceptance of progress towards the space age. Aerial navigation has brought about numerous theories embracing the nature and extent of private rights above the land. In aviation cases, no court has held that a landowner owns the airspace to an indefinite extent. In practice, a landowner has the right of effective use and enjoyment of his property; airspace can then be used, so long as flights do not substantially interfere therewith.

The subject of this thesis is developed first by a discussion of the Latin maxim *Cujus est solum ejus usque ad coelum* and its application to the right of a person to navigate an aircraft in the airspace over privately-owned land.

Secondly, the author discusses the various legal theories which have emerged respecting the use of airspace for aerial navigation, such as the theory of the right of a landowner to the unrestricted use of the airspace over his land, subject to an easement or privilege, the zone theory and the trespass and nuisance theories. These theories are peculiar to and are dealt with under the Common Law of England and the United States. The author adds a short discussion in Part III of the landowner's rights under the Civil Law.

Thirdly, the author deals with the subject of interference with the rights of property owners in the neighborhood of airports by the creation of airport noise, mostly associated with aircraft landing and taking off and engine noise on the airport itself.

Fourthly, there is a short discussion of obstructions to aerial navigation erected by property owners in the vicinity of airports and the right of those conducting aerial navigation to obtain court orders for their removal.

Fifthly, the author deals with methods designed to prevent airport and community disputes.

II. Contractual Limitation of Servants' Liability in Air Carriage
Geoffrey N. Pratt

The purpose of this thesis is to discover whether a servant or agent of an air carrier may take advantage of provisions limiting or excluding the liability of himself or the carrier in contracts of air carriage. The study is restricted to a discussion of the Warsaw Convention which governs international contracts of carriage and of English and American law which govern domestic and non-Warsaw international carriage.

The chapter on English law contains an examination of the privity of contract doctrine which, *inter alia*, prevents a person from relying upon a provision for his benefit in a contract to which he is not a party.

The chapter on American law contains an examination of the tariff system and before tackling the main problem, endeavours to find out to what extent an air carrier may limit or exclude his *own* liability.

The problem is considered important for the reason that unless the carrier's servants and agents are protected by the limitation provisions in the contracts of carriage, their purpose will be clearly defeated. It is shown briefly that the purposes behind and the reasons for limitation of liability apply to the servants and agents just as much as to the carrier and that if they are not covered by them, the effect, as far as the carrier is concerned, is to deprive the limitation of his liability of all efficacy unless he is the actual wrongdoer, a comparatively rare occurrence nowadays.

III. Choice of Law in Contracts of International Carriage by Air
Peter H. Sand

The thesis deals with a problem of Conflict of Laws, namely choice of the law applicable to contracts of international carriage by air. Since each international carriage *ex definitione* has contacts with at least two different national laws, conflicts are frequent.

1. The Warsaw Convention of 1929 left a number of cases unsettled, and contains important gaps.

2. The transformation and translation of the Convention into 57 national legal systems created additional conflicts.

3. National courts are giving conflicting interpretations of the Convention.

4. Supplementary treaties, such as the Hague Protocol of 1955, and the Guadalajara Convention of 1961, created supplementary conflicts.

5. The uniform "Conditions of Contract" of the International Air Transport Association do not, and indeed cannot, solve the problem of choice of law.

6. National courts tend to apply their own national law (*lex fori*) to most cases.

7. International rules on choice of law in contracts of international carriage by air would be desirable. These rules should be determined rationally, on the basis of legal policy considerations.

The thesis is based on a comparative study of 120 cases from 10 countries, and of their respective contacts with various national laws.

IV. Piracy and Air Law

Maria Luisa Villamin

Successive waves of hijacking (forcible seizure) of aircraft have brought the attention of the whole world to the fact that the newest form of transportation has been hit by "air-age piracy".

This study traces the development of the effort to codify the law on piracy *jure gentium* (by law of nations) as early as 1925 and the gradual incorporation of aircraft into its concept. For this purpose the Matsuda Draft Provisions for the Suppression of Piracy, the Harvard Research Draft Convention on Piracy and the Geneva Convention on the High Seas are principally dealt with to find out if the maritime concept of piracy *jure gentium* is applicable to that by aircraft, taking into consideration the nature and speed of the latter and the Air Law on the subject of sovereignty over the airspace. Whether hijacking is also included in the concept of piracy *jure gentium* under the above-mentioned Conventions is also discussed. The position of existing Air Law on the subject of piracy *jure gentium* by aircraft and piracy by analogy (hijacking) is stated.

V. Air Carriers' Liability in Australia

Martin Anthony Bradley

The thesis describes Australian law relating to air carriers' liability in respect of persons, cargo and baggage carried by them within Australia.

That law consists of the common law of carriers and Part IV of the Commonwealth *Civil Aviation (Carriers' Liability) Act* 1959. Part IV of the Act applies to certain classes of carriage by air. Those classes of carriage by air to which that Part does not apply are governed by the common law of carriers. Consequently in Chapter II the scope of Part IV is delimited.

Part II of the thesis describes the common law of carriers. It first deals with the classification of carriers at common law and then discusses the rules of law appropriate to each class and the liabilities of the carrier at common law in relation to the passengers, baggage and cargo carried by him.

In Part III of the thesis, the substantive provisions contained in Part IV of the Act are discussed in detail, the main emphasis being on the liability of the carrier for death or injury of passengers.