

Law and Legal Systems

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OVERVIEW

- I. The 4 Sources of Law
- II. The 2 Systems of Law
- III. The Concept of Aviation Law
- IV. Aviation: Legal Framework
- V. The Evolution of Air Law in a Nutshell

I. The 4 Sources of Law

4 Key sources of law:

1. **Common law** (or “case law”)

Made by judges in the courts

2. **Legislation** (or “statutory law”)

Made by national parliaments (“Acts” or “Statutes”)

3. **Supra-national laws and regulations**

(eg: EU Directives)

4. **International conventions and treaties**

(eg: Chicago Convention)

II. The 2 Systems of Law

2 Key systems of law:

- **Common law**
 - Developed over hundreds of years in courts, and embodied in decisions made and developed by successive generations of judges
- **Civil law**
 - Also civilian law or Roman law, derived from the Code of Justinian (534 AD) and influenced by canonical, feudal, and local practices

What's the difference?

•Common law

- Judge-made decisional law
- Found in thousands of reported **cases**
- Gives precedential authority to prior decisions on the principle that it is unfair to treat similar facts differently on different occasions
= The doctrine of **judicial precedent** (“*stare decisis*”)

•Civil law

- Core legal principles initially developed as customs **codified** and serve as main source of law
- **Codes** are generalised, avoiding factually specific scenarios
- Judges are bound by the primary force of the codes, to which case law is of secondary importance

Different countries have different legal systems:

• Common law jurisdictions

- 1/3 of the world's population (approx. 2.3 billion people) live in common law jurisdictions
- UK, Commonwealth countries (eg: Australia, New Zealand and most of Canada) and ex-British Empire (eg: most of the US, India)

• Civil law jurisdictions

- Continental European countries
- Including **Turkey** (laws derived from the Swiss Civil Code and the German Commercial Code, with French and Italian influences)

! This course primarily focuses on common law principles, given their historical influence on the international air law !

III. The Concept of Aviation Law

Is there such a thing as ‘Aviation Law’?

- Air law? Aviation law? Aeronautical law?
- Law about aviation?
- What special laws are there?



IV. Aviation: Legal Framework

The legal framework for aviation was shaped by:

Security & Safety

Aviation's global nature



A. The 2 pillars: Security & Safety

➤ 1st Pillar: National Security

- Derived from the maxim:

“Cujus est solum, ejus est usque ad caelum et ad infernos”
(For whomever owns the soil, it is theirs up to Heaven and down to Hell)

→ Foreshadows trespass litigation with every flight

→ Basis of State’s claims of sovereignty over their national airspace

- Aviation’s legal framework has to take account of operations and events:

- on the ground
- in the air
- in multiple countries and jurisdictions

➤ **2nd Pillar: Safety**

- 1st pillar considerations + safety concerns

➔ Aviation's Golden Rule:

Everything is illegal
UNLESS you have special permission

**NO ACCESS WITHOUT
PERMISSION**

B. Aviation's global nature

- The laws relevant to aviation are made up of:
 - The 4 key sources of law:
 - common law
 - legislation
 - supra-national directives
 - conventions/treaties
 - The 2 systems of law:
 - common laws
 - civil laws
- International and multi-jurisdictional
 - The legal system of every jurisdiction and its interface with other jurisdictions have **enormous** significance for this global industry



V. The Evolution of Air Law in a Nutshell

1. EARLY AIR LAW

- **1783 – French Royal Proclamation Paris**
 - Montgolfier brother's 1st successful balloon flight
 - Government finds balloons not dangerous (safety) and thus prohibits interfering with them
- **1784 – French National Decree**
 - No balloon flights without police permission
 - Rationale:
 - The start of sovereignty as basis for all aviation law
 - Also the start of aviation's Golden Rule:



Everything is illegal UNLESS you have special permission

2. CHICAGO CONVENTION 1944

• Origin

- Winner's justice following WWII
 - 54 Participating States
 - Germany, Italy & Japan not invited
 - Soviet Union and Saudi Arabia abstained
- Based on realisation of the importance of air transport in future
- Basis formulated in 1943 (meeting Churchill & Roosevelt in Quebec)
- Need for a new treaty by 1944



• Tensions

- USA vs. Europe: very different economic circumstances (Europe's manufacturing capacity extremely limited)
 - US pro open skies
 - ≠ UK pro restrictive order to avoid 'wasteful competition'

- **Main Principle: Sovereignty of airspace**

Art 1: “*The Contracting States recognize that every State has complete and exclusive sovereignty above its territory*” (cf. Paris Convention)

- ‘Freedoms’ of the Sky

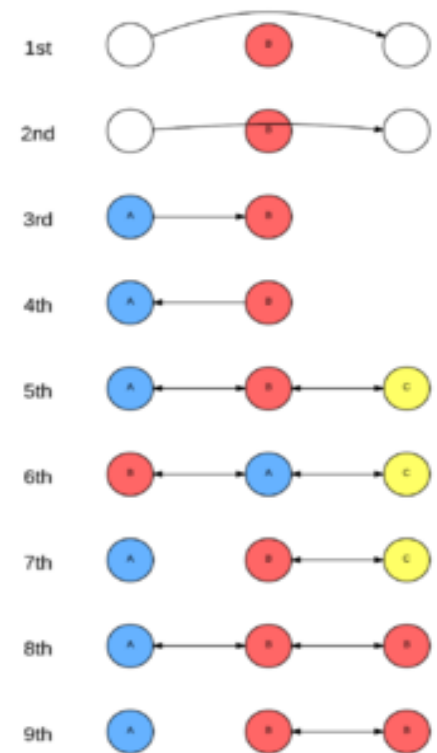
- Denied, as every State can prohibit aircraft from other States from entering its airspace
- Only if approved
- cf. Golden Rule in aviation

- Codification & unification of public international air law

- Supersedes Paris & Havana Conventions
- Universal acceptance (191 Parties in 2015)

- Economic rights (e.g. traffic rights)

- Via side agreements (bilateral & multilateral)



3. INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)

- **Origin**

- Part II of Chicago Convention contains the charter of ICAO
- Established in 1946 and became a specialized UN agency in 1947

- **Legislative power**

- Standards & Recommended Practices (SARPs) and
- Procedures for Air Navigation Safety (PANS)

! SARPs are annexed to Chicago Convention, although do not have the same status as a treaty – only quasi-binding



4. INTERNATIONAL AIR TRANSPORT ASSOCIATION (IATA)

- **The creation of the modern IATA (1945)**
 - By Act of the Canadian Parliament
 - After a conference in Havana
 - To avoid ‘wasteful competition’
- **Created to agree commercial aspects of aviation**
 - Fares
 - Service levels
 - Governments exchanged freedoms, airlines agreed fares
- **IATA established ‘Conferences’ for both pax & cargo**
 - Tariff
 - Services
 - Agency



- **Decision making power**
 - Resolutions require unanimity
 - Recommended Practices require majority approval
- **Until 1980s**
 - Operated with assumed anti-trust 'halo'
 - Tariff conferences, in many States had immunity
 - Conferences effectively built the interline system
- **Today**
 - IATA handles the financial system for the repatriation of airline fares, both:
 - Between agents and airlines
 - Amongst airlines

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