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Digest of Recent Cases

DIGEST OF RECENT CASES

AIRPORTS — FLYING SERVICES — ADJOINING PROPERTY OWNER — LOW FLIGHTS — NUISANCE

Scott v. Dudley

6 CCH Aviation Law Rep. 17,107 (Ga. Nov. 7, 1958)

Unpaved runway of defendant's airport which was used as a training field for pilots, terminated 150 feet from the plaintiff's private school for children with deficient speech and hearing. Plaintiff sued to permanently enjoin the defendant, his servants, agents and employees, from flying planes over the school at altitudes which interfere with the efficient operation of the school. The court allowed equitable relief of this type within certain prescribed altitudes, and did not bar such relief under the statute of limitations as the activity here was a continuing nuisance with a new cause of action arising every time a flight is made.

FLIGHT ENGINEERS — SENIORITY RIGHTS FOLLOWING MILITARY SERVICE — UNIVERSAL MILITARY AND TRAINING ACT

McIver v. United Air Lines

6 CCH Aviation L. Rep. 17,265 (S.D. N.Y. Jan. 26, 1959)

Plaintiff was a flight engineer employed by the defendant airlines at the time of his induction into military service, and upon his return in 1953, was restored to the same position. He now seeks to establish, by way of summary judgment, retroactive seniority rights in order to fill a co-pilot vacancy. The court denied the motion holding that under the Universal Military Training and Service Act, a returning veteran is not entitled to automatic progression where the position to be held depends upon an exercise of discretion on the part of his employer. However, plaintiff was allowed to amend his complaint so that he might establish, if he could, the existence of a custom or practice on the part of the employer to grant seniority automatically.

CONDEMNATION — AIRSPACE EASEMENTS — JET PLANES — NAVIGABLE AIRSPACE

Matson v. United States

6 CCH Aviation Law Rep. 17,310 (Court of Claims March 4, 1959)

Plaintiff sued to recover compensation for the taking of his property by the United States through its use of the property's navigable airspace. The court held that although the Federal Aviation Act of 1958 changed the definition of "navigable airspace" to include airspace needed to insure safety in landing and take-off, obviously in contemplation of a more extensive use of jet aircraft; the act did not change the rule that continuous invasions of airspace at low altitudes constitute an invasion of the land for which the property owner should be reimbursed.

AIR CARRIER TARIFFS — LIMITATION OF LIABILITY — LOSS OF PASSENGER'S FUR COAT

Mustard v. Eastern Air Lines, Inc.

6 CCH Aviation L. Rep. 17,323 (Mass. March 9, 1959)

Plaintiff passenger, who lost her fur coat which she carried upon defendant's airliner, claimed that the tariff provision which limits an air carrier's liability for loss of a passenger's personal property unless a higher valuation is requested and paid for, applies not only to articles turned over to the custody of the carrier, but also to articles retained in the passenger's custody. The court firstly sustained the validity of such loss liability provisions, and secondly, found such provisions to encompass all property offered for transportation, whether it is to be weighed or not.