Michigan Law Review

Volume 57 | Issue 1

1958

Air Law - Imputed Negligence - Liability of Airplane Owner for Negligence of Pilot

George E. Lohr S.Ed.
University of Michigan Law School

RECENT DECISIONS

AIR LAW—IMPUTED NEGLIGENCE—LIABILITY OF AIRPLANE OWNER FOR NEGLIGENCE OF PILOT—Plaintiff, passenger in an airplane owned by defendant as proprietor of the flight school and piloted by a flight trainee with defendant's permission, suffered injuries in a crash allegedly caused by the negligence of the pilot and brought this action against defendant owner to recover damages. The trial court sustained defendant's motion to dismiss the complaint. On appeal, *held,* reversed and remanded for new trial. If the allegations of negligence of the pilot are found to be true, defendant would be liable for plaintiff's injuries even though he was not in actual control of the airplane. The governing statutory provisions define "operation of aircraft" to include causing or authorizing the operation of aircraft,[1] and make it unlawful to "operate an aircraft" in a careless or reckless manner so as to endanger others.[2] Such operation makes the owner negligent per se and liable for the resulting damage. *Lamasters v. Snodgrass,* 248 Iowa 1377, 85 N.W. (2d) 622 (1957).

At common law, airplane ownership alone is not a sufficient basis upon which to predicate liability for torts caused by the negligence of the pilot.[3] Many states, however, have statutes specifically making the owner of an aircraft liable for injury to persons or property on the land or water caused

[1] Iowa Code (1954) §328.1(14): " 'Operation of aircraft' or 'operate aircraft' means the use of aircraft for the purpose of air navigation, and includes the navigation or piloting of aircraft and shall embrace any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise)."

[2] Iowa Code (1954) §328.42: "It shall be unlawful for any person . . . to operate an aircraft in the air space above this state or on the ground or water within this state in a careless or reckless manner so as to endanger the life or property of another."

[3] Spartan Aircraft Co. v. Jamison, 181 Okla. 645, 75 P. (2d) 1096 (1938). However, in 1938 the drafters of the *Restatement of Torts* considered aviation at its stage of development at that time an inherently dangerous activity. TORTS RESTATEMENT §520, comments *b, d, g* (1938). It was stated that one engaging in such activity should be liable for all resulting foreseeable harm without regard to the degree of care exercised. TORTS RESTATEMENT §519 (1938). The more modern view is that aviation is not inherently dangerous and that ordinary rules of tort law govern the liability of owner and operator. Boyd v. White, 128 Cal. App. (2d) 641, 276 P. (2d) 92 (1954); 4 A.L.R. (2d) 1306 (1949); but see Grain Dealers Nat. Mut. Fire Ins. Co. v. Harrison, (5th Cir. 1951) 190 F. (2d) 726. Thus an owner may be held liable under the doctrine of *respondeat superior.* Bruce v. O'Neal Flying Service, Inc., 231 N.C. 181, 56 S.E. (2d) 560 (1949). Other probable common law grounds of owner liability for damages caused by his airplane while it is being used by another include lending the airplane to one known by the owner to be reckless or incompetent [see Johnson v. Central Aviation Corp., 103 Cal. App. (2d) 102, 229 P. (2d) 114 (1951); Central Flying Service v. Crigger, 215 Ark. 400, 221 S.W. (2d) 45 (1949)], and allowing another to use an airplane known by the owner to be in defective condition [see Brewer v. Thomason, 215 Ark. 164, 219 S.W. (2d) 758 (1949). See also D'Aquilla v. Pryor, (S.D. N.Y. 1954) 122 F. Supp. 346]. Some states have specifically provided by statute that rules of liability applicable to torts on land are equally applicable to certain aircraft mishaps. E.g., Mo. Rev. Stat. (1949) §305.040.

by ascent or descent of the aircraft or the dropping or falling of any object therefrom, without regard to the owner's negligence.[4] Statutes defining "operation of aircraft" in a manner similar to the Iowa statute are also quite widespread.[5] For the most part these latter provisions have been copied from a portion of the federal Civil Aeronautics Act.[6] Only two cases in addition to the principal case have been faced with the question whether statutes of this type have expanded the common law liability of the airplane owner in tort cases.[7] While the owner was held liable for the negligence of the pilot in each of these cases, both involved injuries to persons on the ground rather than to a passenger in the plane.[8] The factual context of the principal case is one which raises interesting questions of policy. The plaintiff here was a passenger in the aircraft who would have avoided harm had he decided not to accompany the pilot. In recognition of the difference between the position of a guest and that of an innocent person not in the plane, some states have enacted statutes refusing to allow the guest to recover against either the pilot or the owner absent severe misconduct on the part of the pilot.[9] On the basis of the language in the present Iowa statute, however, there appears to be no logical way to deny the owner's liability to a guest for "careless or reckless" actions of the pilot once it is recognized that the owner's liability has been extended to third persons. An analogy might be drawn from statutes of this type to motor vehicle statutes which commonly make the owner liable for negligent acts of one to whom he lends his automobile.[10] Such statutes have generally been regarded as proper legislation protecting the public from irresponsible drivers without imposing an undue burden upon the owner.[11] It would seem that the holding in the principal case has the same policy considerations to recommend it. Legislation which places the burden on the aircraft owner to protect himself adequately through insurance, thus relieving innocent parties from the risk of incurring injuries caused by a financially

4 Uniform Aeronautics Act §5, 11 U.L.A. 161 (1938). The defense of contributory negligence is available under this act. Although almost half the states adopted the Uniform Aeronautics Act at one time, it has since been repealed in several of them. In 1943 this act was removed from the Active List of Uniform Laws. See 19 TEMPLE L. Q. 496 (1946).

5 Such statutes are to be found in Alabama, Connecticut, Delaware, Illinois, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, North Carolina, Texas, and Vermont.

6 52 Stat. 979 (1938), 49 U.S.C. (1952) §401(26).

7 Hays v. Morgan, (5th Cir. 1955) 221 F. (2d) 481; Hoebee v. Howe, 98 N.H. 168, 97 A. (2d) 223 (1953).

8 One writer has severely criticized the result of the Hays case, on the basis of both statutory interpretation and public policy. Witherspoon, "When Is the Owner of an Aircraft Liable?" 60 COMM. L. J. 312 (1955).

9 E.g., Cal. Pub. Util. Code (Deering, 1951; Supp. 1957) §21406. Compare automobile guest statutes; e.g., Mich. Comp. Laws (1948) §256.29; Iowa Code (1954) §321.494.

10 E.g., Iowa Code (1954) §321.493.

11 See 21 MINN. L. REV. 823 (1937).

irresponsible pilot, seems socially desirable. There is little reason to believe such a result would unduly discourage private air travel;[12] certainly there has been no apparent decline in the area of motor vehicle travel where such laws are now in force.

On the basis of statutory interpretation, however, the soundness of this decision is open to greater question. Since the definitional provision here involved was copied in Iowa and many other states from a federal statute,[13] it is at least doubtful that the various state legislatures intended to create such an important extension of liability by a statute enacted in this manner. This seems particularly true since the significance of the copied provision had not yet been established by any federal decision. This uncertainty is fortified by the fact that some of the states enacting the provision do not have an analogous section in their motor vehicle acts,[14] though the difference in policy considerations is not apparent. In Iowa the doubt that such a result was intended is further increased by a later and seemingly inconsistent provision in the same act.[15] The need for some provision for owner liability to third persons for the negligence of the pilot seems apparent. However, in view of the arguably justifiable creation of an exception for liability to guests and in view of the magnitude of the change which the decision in the principal case effects in common law, it is suggested that a similar decision on the question in other jurisdictions should await a less dubious expression of legislative intent.

George E. Lohr, S.Ed.

[12] But see Witherspoon, "When Is the Owner of an Aircraft Liable?" 60 COMM. L. J. 312 (1955).

[13] Civil Aeronautics Act, 52 Stat. 979 (1938), 49 U.S.C. (1952) §401(26).

[14] This is true in both Mississippi and New Hampshire where Hays v. Morgan, note 7 supra, and Hoebee v. Howe, note 7 supra, were decided.

[15] Iowa Code (1954) §328.37 provides that it shall be illegal "to operate, or cause or authorize to be operated" any civil aircraft without a certificate of registration. This seems to indicate that "operate" is not intended to include within its meaning "cause or authorize to be operated," and is contrary to the definition section of the statute set out in note 1 supra. It can be argued, however, that "cause or authorize to be operated" in §328.37 should be interpreted as redundant, thereby making this section consistent with the definition section.