State governments and local airport authorities own and operate most U.S. major airports. The federal government performs air traffic control and many other aviation functions. The law governing liability of the government for injuries and damages is an important aspect of aviation law. Central to this issue is the doctrine of governmental immunity. Can a government agency be held liable for its negligent acts and omissions? When is it immune from lawsuits for liability? The answer is that the government is sometimes immune and at other times not immune. It is important to know how to identify and analyze sovereign immunity.

The social policy reason for sovereign immunity is based on protecting the state from the economic burden of liability for its governmental functions. All members of society, including those injured or damaged, are interested in preserving and saving public funds. The theory therefore holds that individual members of society should bear the expense of damages and injuries caused to them by their government.

Counter to this policy is an emerging sense that liability should be the same for government as for private persons. The injuries and damages of private persons are the same regardless of whether they are caused privately or by the state. The injured and damaged person still needs to be made whole. In recognition of this fact, the legal systems of some countries no longer recognize the doctrine of sovereign immunity.

It is extremely important to distinguish between sovereign immunities of the 50 states and sovereign immunity of the federal government. The immunity of the state from the consequences of its negligent acts is based on common law, as modified by state law. However, the immunity of the federal government is entirely statutory. It is governed by the Federal Tort Claims Act, discussed in more detail below. Major accidents often involve locally owned airports as well as the federal air traffic control system and raise legal issues regarding their differing immunity regimes.

A. State Law on Sovereign Immunity

At common law, state and local authorities, such as counties and cities, are immune from liability for governmental functions. Under common law, they are
not immune from liability for commercial activities. Governmental functions include collection of taxes, police and firefighting services and the like. Governmental functions are to be distinguished from commercial functions that historically were performed by private companies such as garbage collection and operation of bus and railroad stations. The operation of airports by state and local authorities is similar to the operation of bus and railroad stations and, therefore, not entitled to common law governmental immunity.

Many state legislatures, concerned with expenditure of public funds, are broadening the definition of immune activity to include airport functions. City of Knoxville v. Bailey, 222 F.2d 529 (1955) is an example of such a legislative redefinition of governmental functions. The court held that, under Tennessee law, airports may be held liable up to the amount of insurance they have acquired (also see Virginia Tort Claims Act, Va. Code Ann. 8.01-195.1 et seq.). It is noteworthy that governmental immunity of the state itself may vary significantly from the immunities of its various state agencies. (Virginia is an example; see Hoggard, 172 Va. 150, 200 S.E. 612 (1939)). There is no uniform regime for all the states. Therefore, it is important to research state law as part of any analysis of sovereign immunity. Some states have adopted laws similar to the Federal Tort Claims Act, and, therefore, the case law interpreting the FTCA may be relevant. The Knoxville case presents a useful review of state immunity issues.

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Knoxville v. Bailey
222 F.2d 520 (1955)

MARTIN, Circuit Judge.

In this action, brought by Mrs. Edna V. Bailey for damages for personal injuries, a judgment for $30,000 on the verdict of a jury was entered in the district court against both defendants, the City of Knoxville and Delta Air Lines, Inc., now appellants. The judgment is unusual in form, in that it expressly provides that the award against the City of Knoxville ‘will be collected only from its insurance carrier, Great American Indemnity Company, New York,’ pursuant to a public liability policy issued by that company for the protection of the City of Knoxville. The judgment provides that this limitation will in no manner restrict the collection of the award against Delta Air Lines, Inc.

Mrs. Bailey was injured by falling, while attempting to descend from one platform or landing to another adjacent to the building at the municipal airport owned and operated by the City of Knoxville. The Delta Air Lines leased from the city space in the terminal building for customary commercial usage of an air line and, by contract with the city, used the airport facilities for the landing and taking off of its planes and for receiving and discharging its passengers. Mrs. Bailey