

42nd Annual AAAE
Airport Law Workshop
Phoenix, AZ

Session #1

Why Is Airport Law Weird?



KAPLAN KIRSCH

Speaker



Peter Kirsch

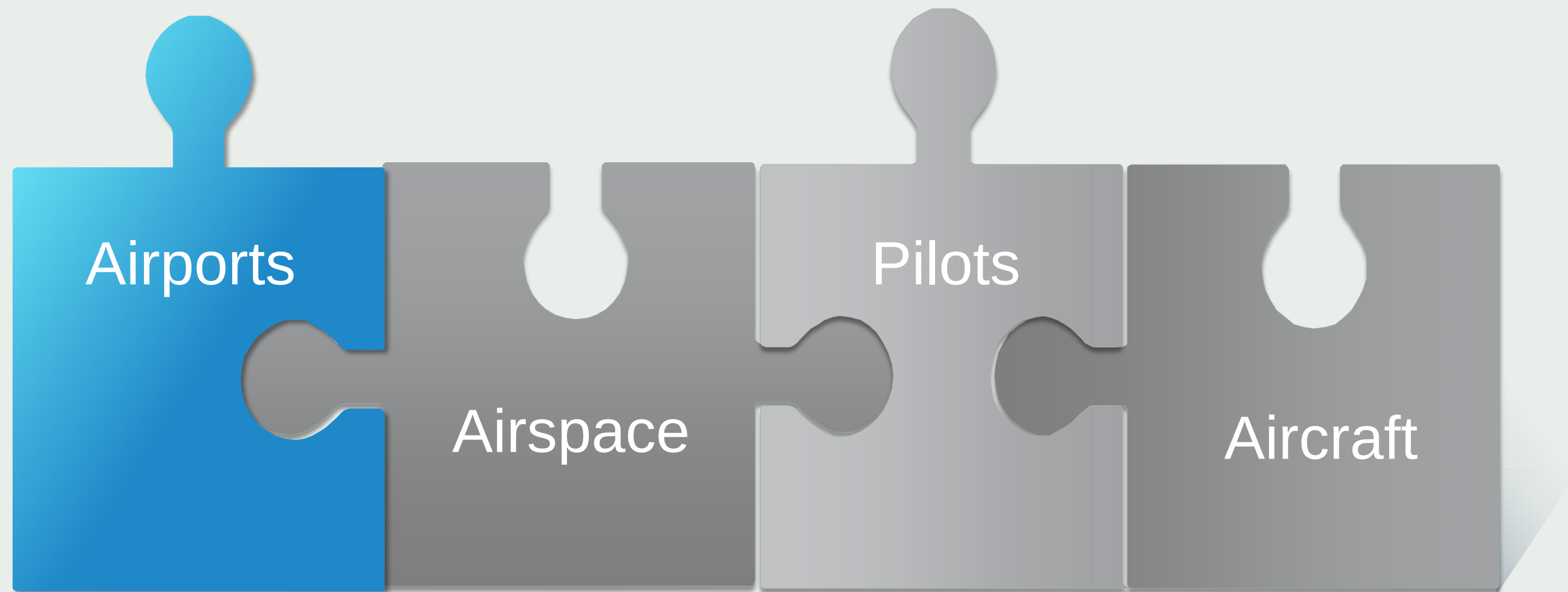
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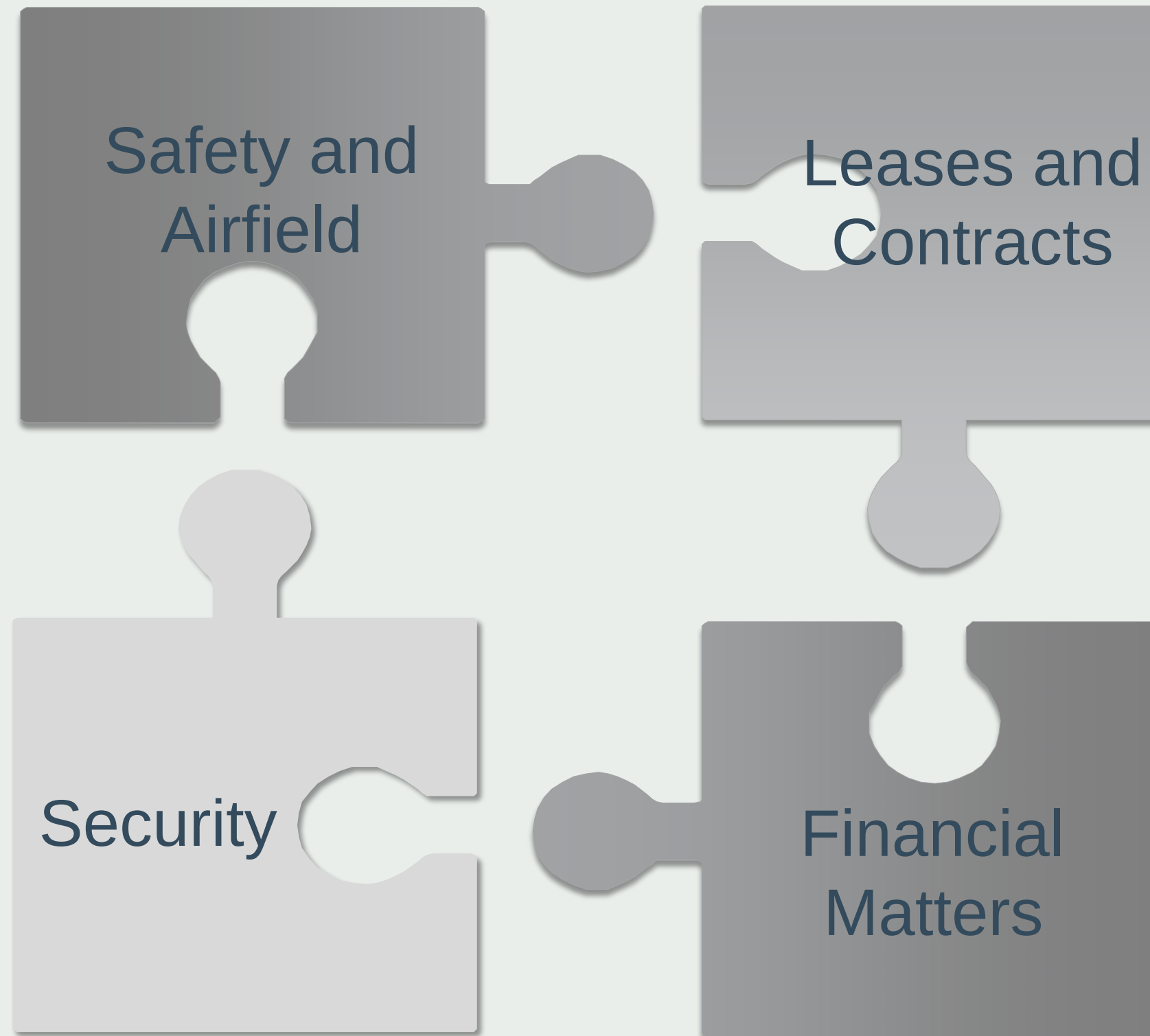
Presentation Agenda

1. What *is* airport law?
2. Major legal principles and issues
3. Sources of airport law
4. History of airport law

What is *Aviation* Law

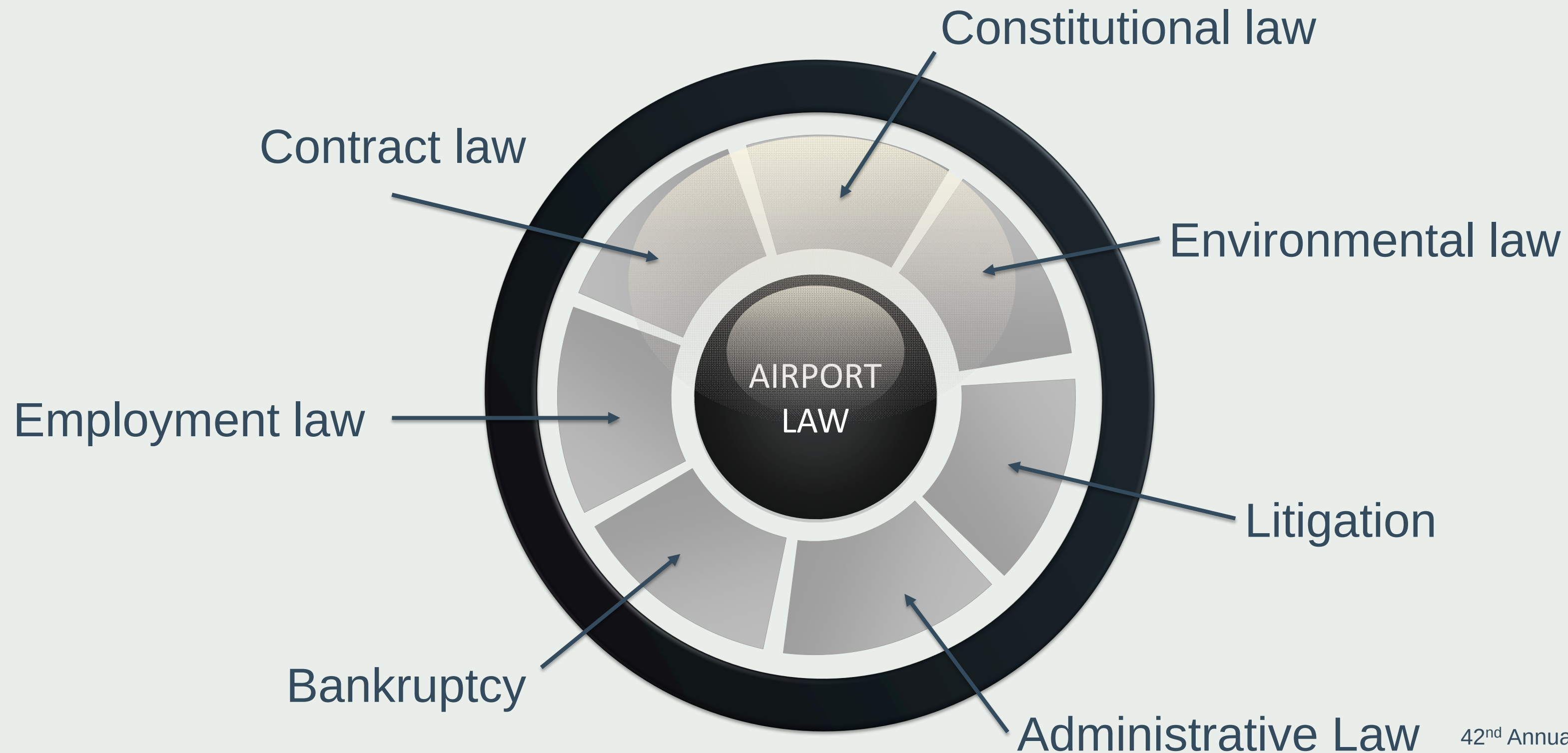


Components of *Airport* Law



Focus is
on federal
law but
don't forget
state law

Legal Disciplines (examples)



Overarching Legal Principles

- Federalism and preemption: the evolving role of federal government
- Public use and access
- Balancing private property rights



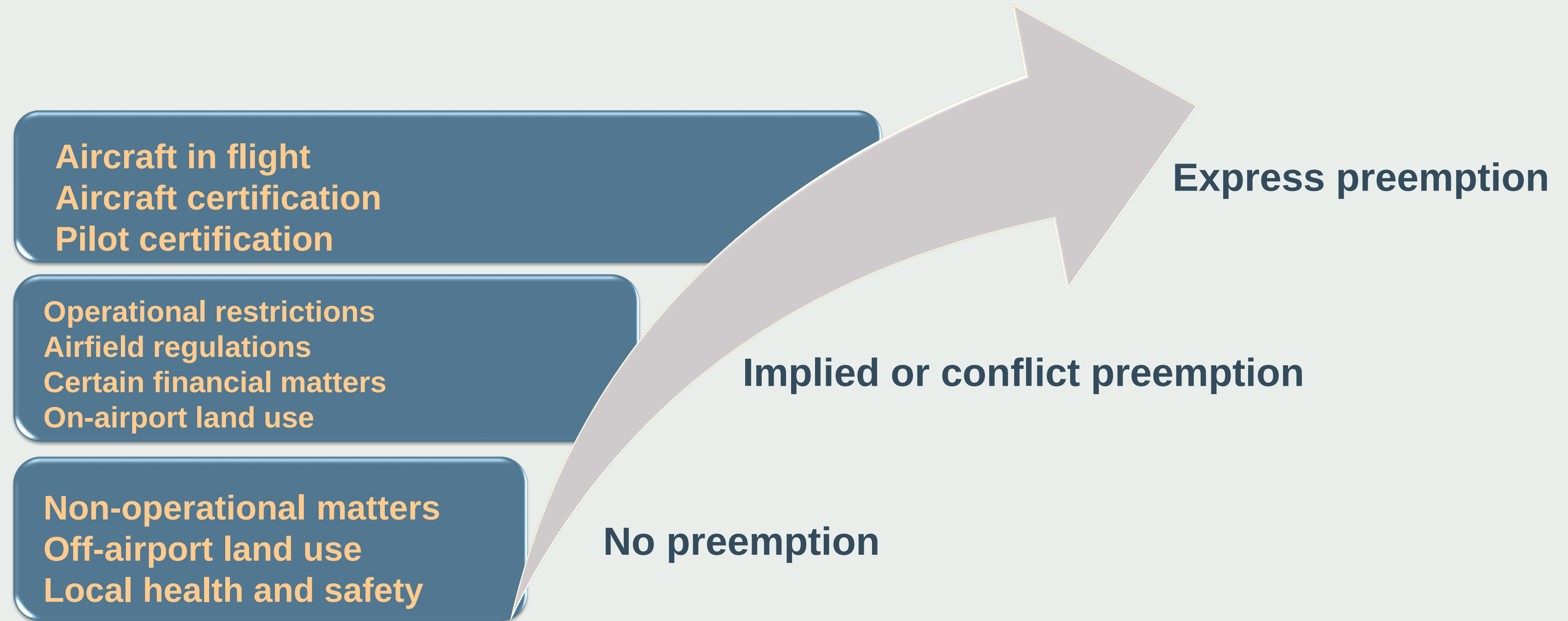
Legal Principles: Federalism and Preemption

- U.S. Constitution: Supremacy Clause
- Types of preemption
 1. Express
 2. Implied field
 3. Conflict
 - o Impossibility
 - o Obstacle
- Inherent tension and blurry lines

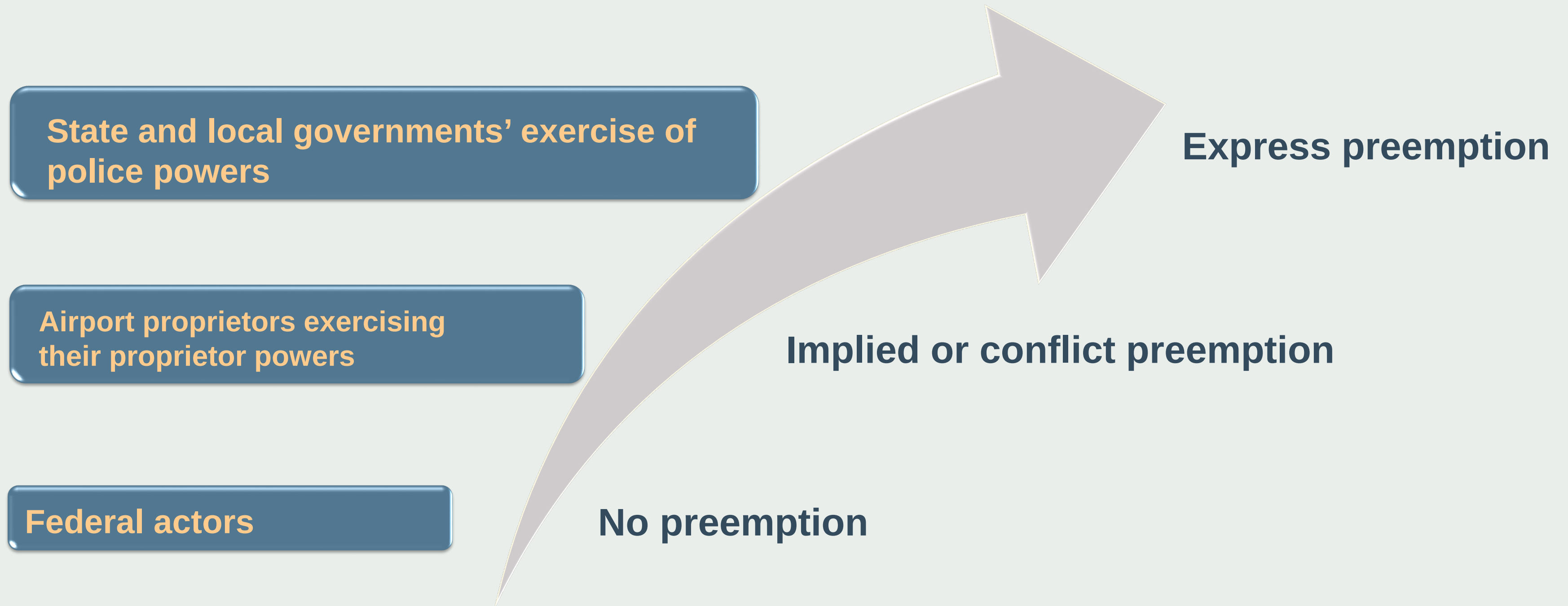
ARTICLE VI. SUPREMACY CLAUSE

The Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

What is preempted in the airport world?



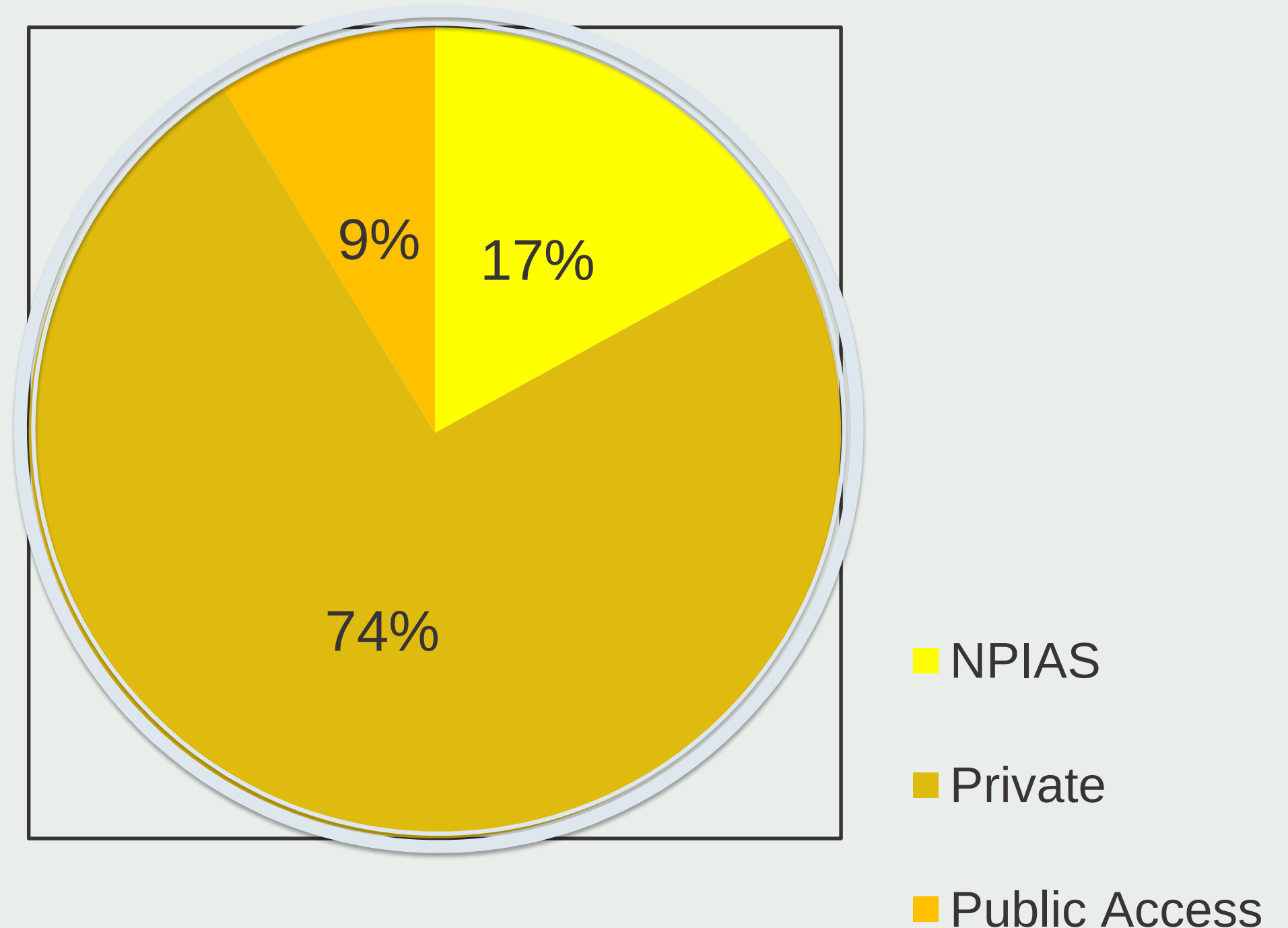
Who is preempted in the airport world?



Legal Principles: Public Use and Access



- ❑ Airports as a public asset
 - o NPIAS - part of national transportation system
 - o Public Access
 - o Private – virtually no federal regulation
- ❑ Types of airports
 - o Legally often minor importance
 - o Significant for federal funding, other federal policy interactions
- ❑ Prohibition on exclusive rights (1938)
 - o Exclusive = excluding
 - o Exclusive = one-and-only (monopoly)
- ❑ Prohibition on unjust discrimination (1946)



Legal Principles: Balancing Private Property Rights

Cuius est solum, eius est usque ad coelum et ad inferos

*Whoever owns the soil,
it is theirs all the way to Heaven
and all the way to Hell*

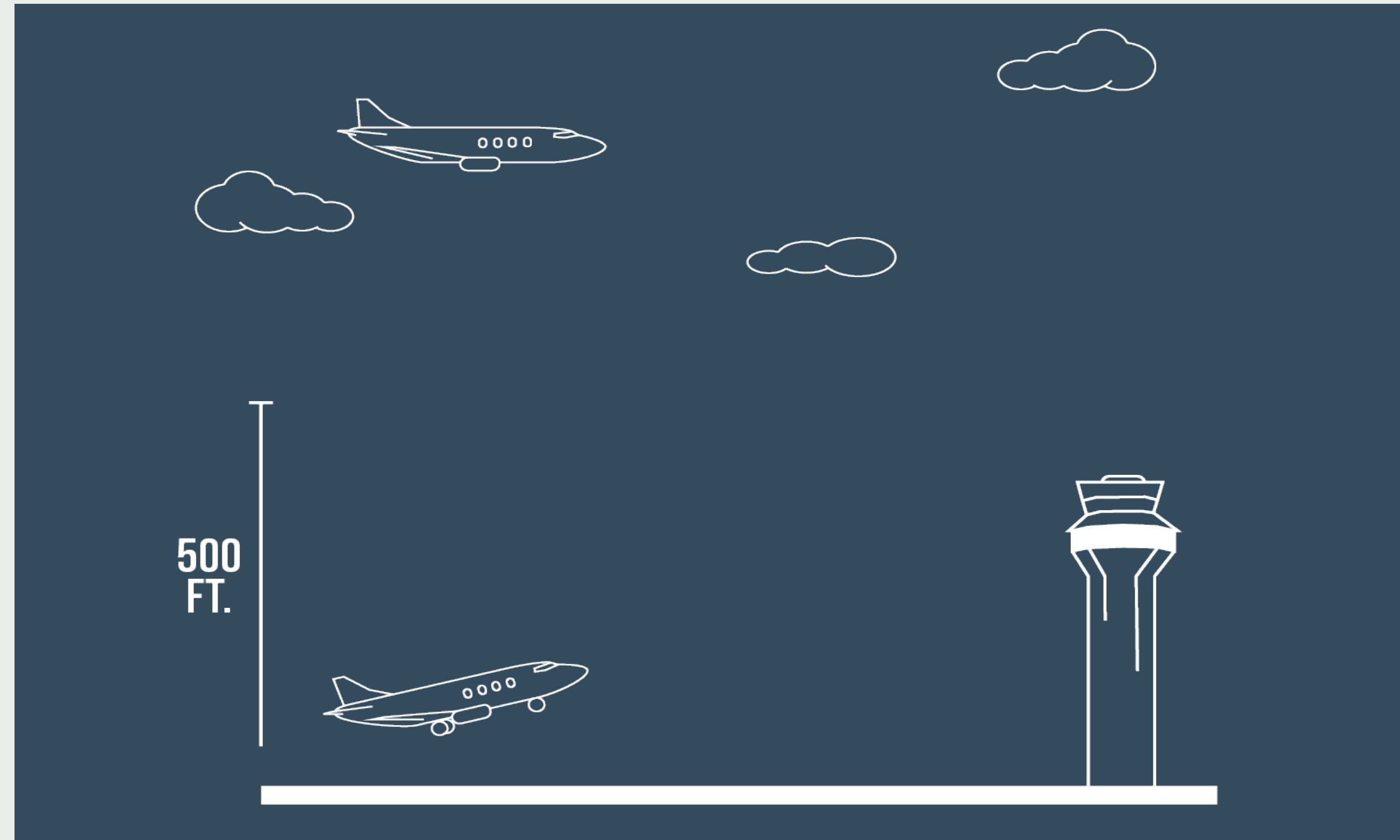
“The doctrine that ownership of land extends to the periphery of the universe has no place in the modern world.”

United States v. Causby, 328 U.S. 256 (1946)



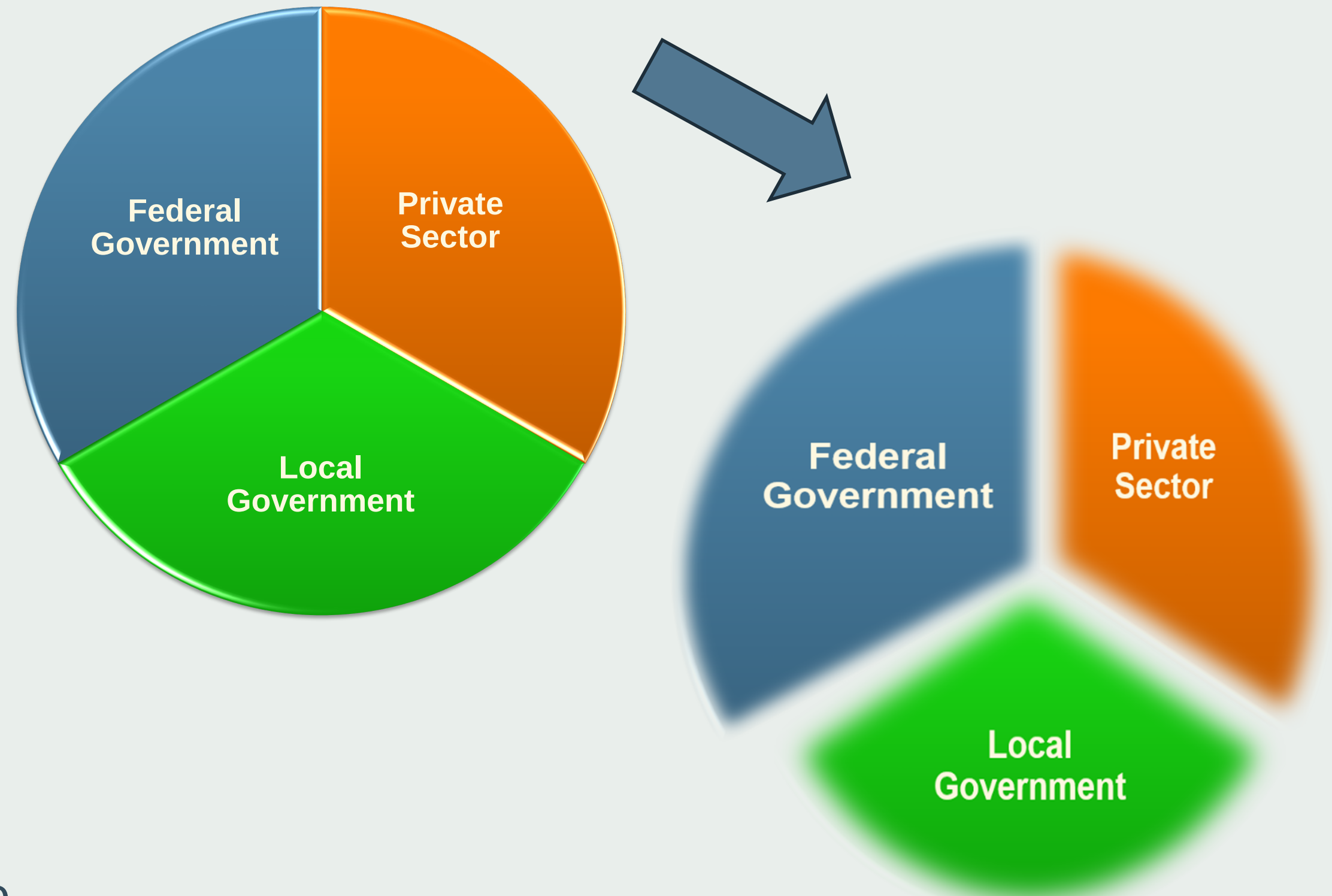
Legal Principles: Drawing the Line for Private Property Rights

- Where do private property rights give way to public rights?
 - 500 feet (rural)
 - 1000 feet (urban)
 - Minimum safe altitude
 - Airspace needed for the use and enjoyment of land
- Landing and take-off of aircraft
- Nuisance vs. takings
 - Noise and interference



Legal Principles – Public and Private Roles within the System

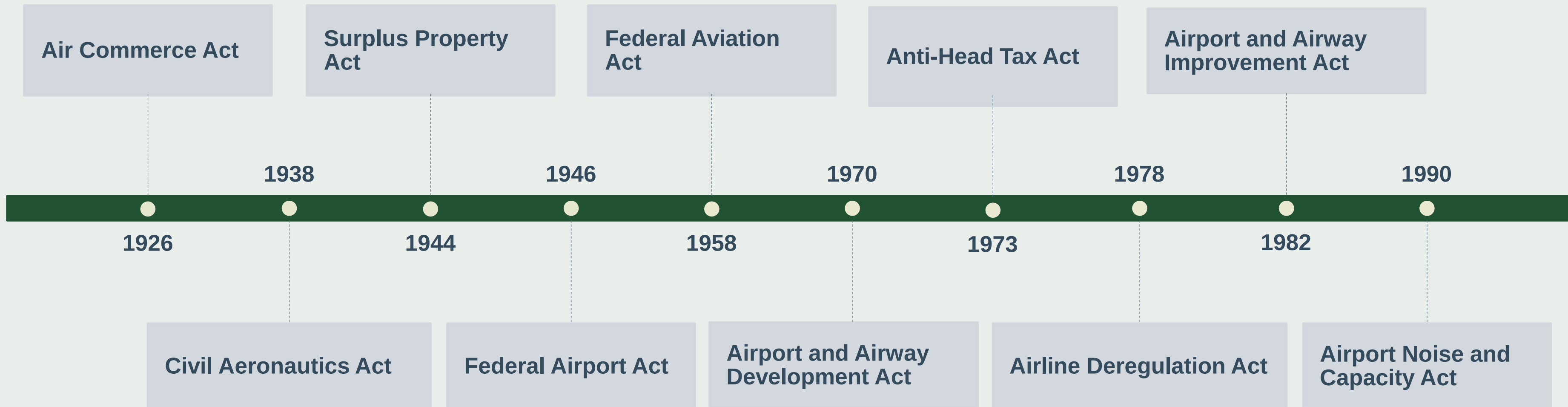
- Historically: bright lines on roles
 - Airspace
 - Airports
 - Air Service
- Laws and regulations based upon those lines
- Recently: law has blurred the lines, especially for airports
 - Airspace remains largely federal
 - Airports increasingly regulated by federal government
 - Airports increasingly see private engagement
 - Air service remains largely private sector



Sources of Airport Law – Where is the Law?

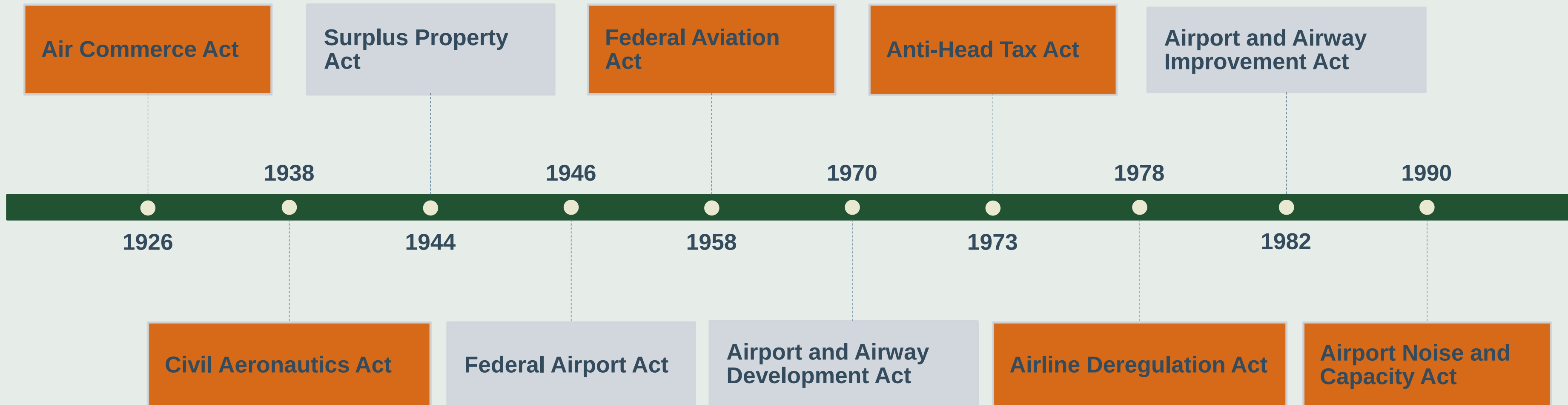


History of Airport Law



History of Airport Law

Defining Federal Authority and its Limits



History of Airport Law

Defining Federal Authority and its Limits

Air Commerce Act (1926)

- “An act to encourage and regulate the use of aircraft in commerce, and for other purposes”
- Declared complete sovereignty of the airspace over the lands and waters of the United States
- Prohibited granting of an exclusive right for the use of any civil airway, airport, emergency landing field, or other air navigation facility under Secretary of Commerce’s jurisdiction

Civil Aeronautics Act (1938)

- Created the Civil Aeronautics Authority and conferred regulatory authority over airspace, safety, and air carrier certification; some functions later transferred to the Civil Aeronautics Board
- Authorized grants for civil and military airfields
- Required a survey of the existing system of airports and report to Congress regarding whether federal government should participate in construction, improvement, development, operation, or maintenance of a national system of airports

Federal Aviation Act of 1958

- Prompted by multiple mid-air collisions and concern regarding aviation safety
- Created Federal Aviation Agency and vested with power over safety regulation (airspace, aircraft, pilots)
 - Later renamed Federal Aviation Administration when relocated to Department of Transportation in 1967
- Civil Aeronautics Board retained jurisdiction over accident investigation and economic regulation of air carriers



History of Airport Law

Defining Federal Authority and its Limits

Anti-Head Tax Act (1973)

- Prohibited states and local governments from taxing air travelers, the sale of air transportation, and gross receipts from air transportation (49 U.S.C. § 40116(b))
- May still collect other taxes (e.g., property taxes) and reasonable rental charges, landing fees, and other service charges from aircraft operators for using facilities owned by that state or local government (49 U.S.C. § 40116(e))

Airline Deregulation Act (1978)

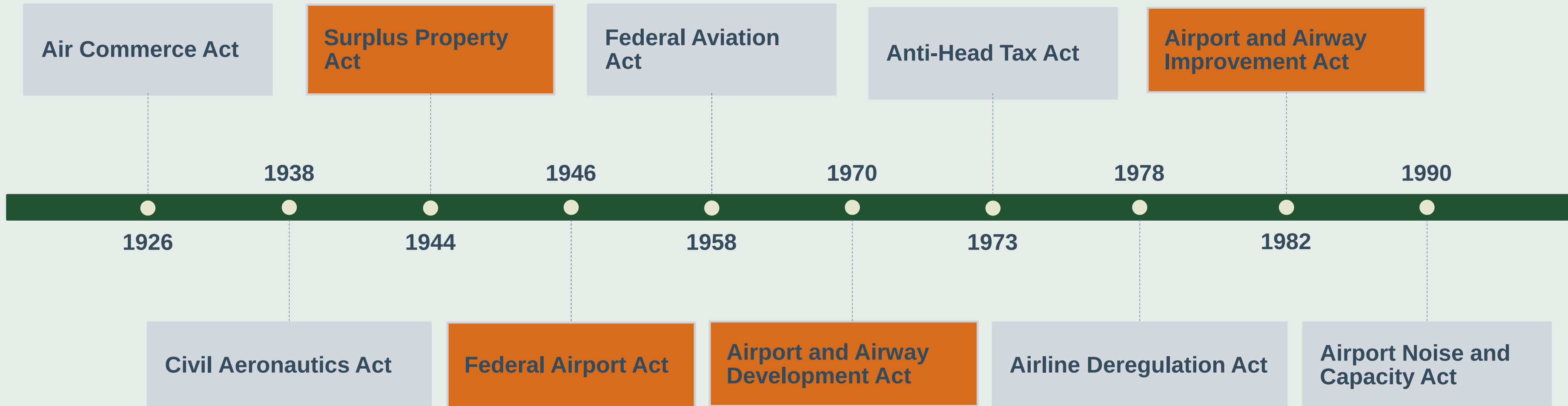
- Eliminated Civil Aeronautics Board, which previously established airline routes and rates
- Prohibited states and local governments from enacting or enforcing any “law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier” (49 U.S.C. § 41713(b)(1))
- Exception for airport owner or operator “carrying out its proprietary powers and rights” (49 U.S.C. § 41713(b)(3))

Airport Noise and Capacity Act (1990)

- Required phase-out of heavy Stage 2 aircraft by 2000 (deadline later set to 2015 for remaining aircraft)
- Prescribed procedures for local restrictions on light Stage 2 aircraft
- Prescribed procedures and required FAA approval for local restrictions on Stage 3 aircraft

History of Airport Law

Federal Gifts . . . with Strings Attached



History of Airport Law

Federal Gifts . . . with Strings Attached

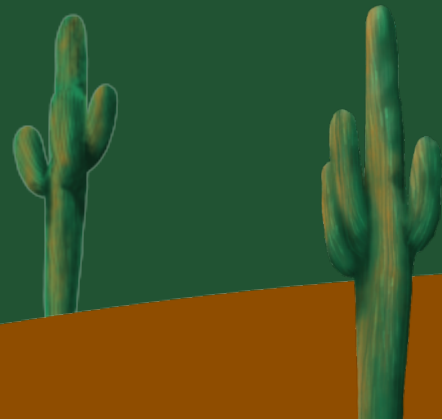
Surplus Property Act (1944)

- Provided for the orderly transfer of excess or surplus federal property, including airports
 - 500 airports were declared surplus after World War II ended
- Deed restrictions included:
 - Public use
 - Reasonable conditions
 - No unjust discrimination
 - No exclusive rights



History of Airport Law

Federal Gifts . . . with Strings Attached



Federal Airport Act (1946)

- Origins of grant program and established key features that remain in place today
 - Federal assistance with local match
 - Apportionment and discretionary funds
 - Federal approval based on inclusion in National Airport Plan
 - Grant Assurances

Airport and Airway Development Act (1970)

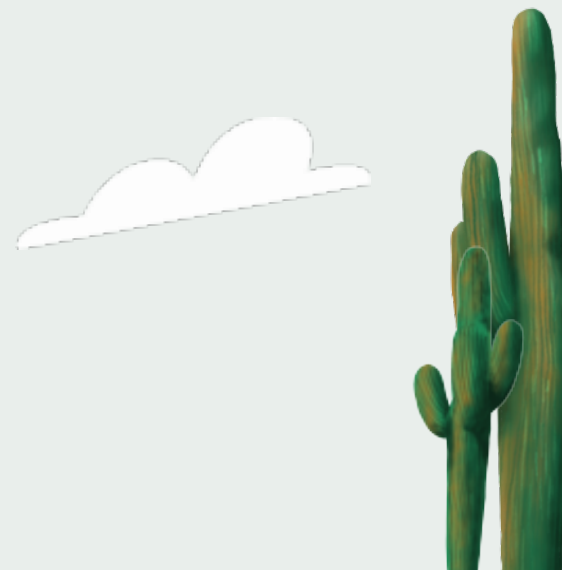
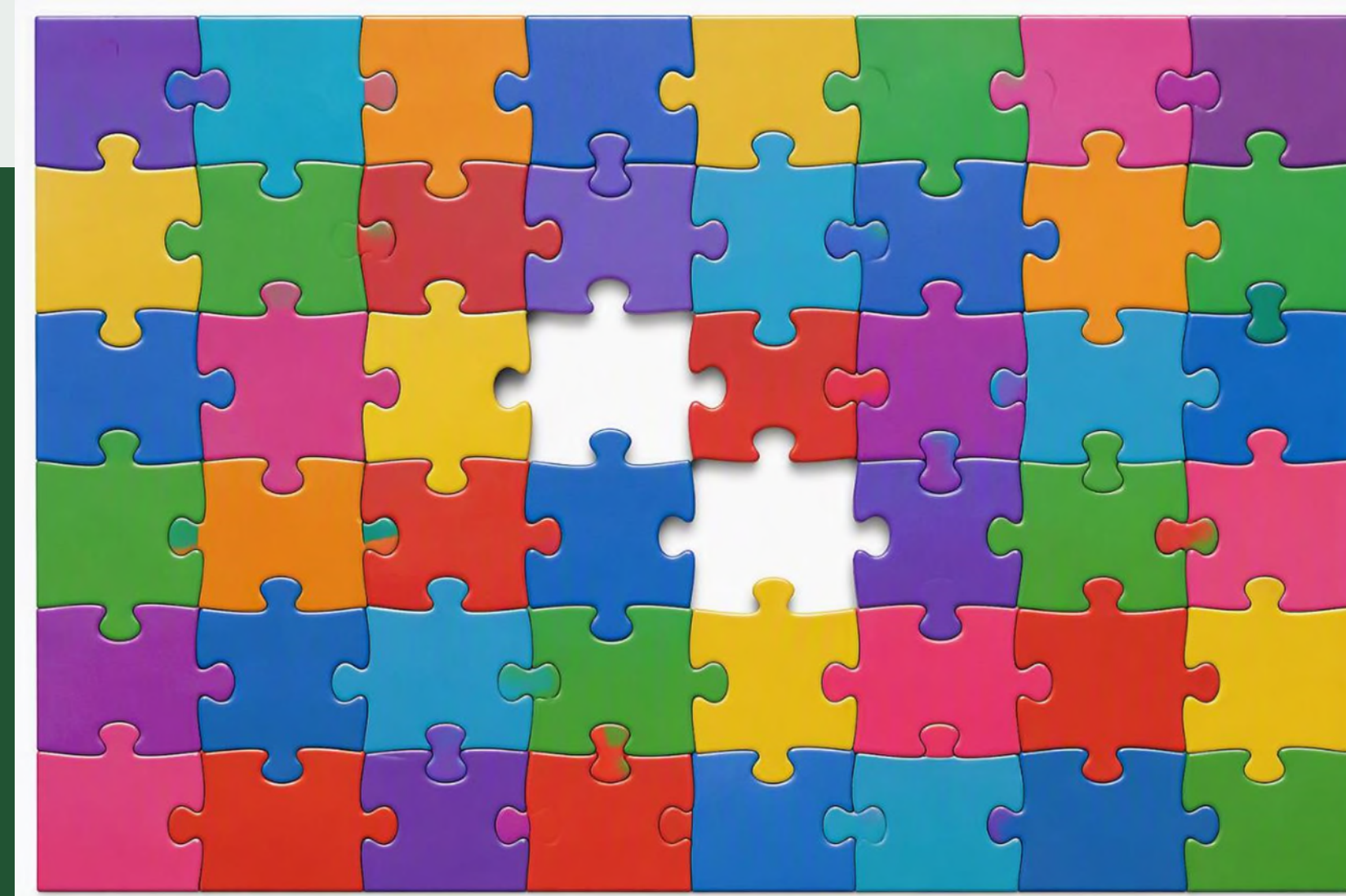
- Created the Airport and Airway Trust Fund
 - Funded by ticket tax, fuel tax, cargo tax, aircraft registration fee
- Two grant programs: (1) Planning Grant Program; (2) Airport Development Aid Program

Airport and Airway Improvement Act (1982)

- Established the Airport Improvement Program
- Numerous subsequent acts (reauthorization usually on a four-year cycle)
- Added to Grant Assurances and contained first prohibition on revenue diversion, subsequent legislation strengthened Independent statutory provision prohibiting revenue diversion at 49 U.S.C. § 47133

Putting it all together – why does history matter?

Source of legal authority matters. Is it:
Largely statutory (safety)?
Largely regulatory (airport operations)?
Largely contractual (grant requirements)?
Underlying rationale and policy determine:
Scope and extent
Applicability of preemption
Venue for legal challenges, questions



Conclusion – what is ~~weird~~ interesting?

- ✓ Preemption lines
- ✓ Regulation by contract
- ✓ The Golden Rule



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Questions?




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Thank You!



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