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## The Law of Aviation, by Rowland W. Fixel

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## THE LAW OF AVIATION\*

With the enormous development of the science of aviation which has occurred in the past decade, it is not surprising that the legal aspects of this subject should now come under consideration. It needs no prophet to see that aviation is going to raise some extremely difficult legal problems and that legislatures, administrative authorities and courts will all be called upon to assist in working out a code of rules for regulating this activity. The book under review is an attempt to bring together all that has already been done in this field and to suggest, by references to cases and other authorities which cover more or less analogous situations, the line of legal development which may reasonably be expected.

As already indicated, there are as yet almost no legal decisions on the subject of aviation and the text of the book, except in so far as it merely summarizes legislative and administrative acts, is perhaps subject to the criticism of being somewhat speculative. However, the author can hardly be blamed for his failure to cite definite authorities as to questions upon which no such authorities exist. And it is believed that his conclusions are reasonably consistent not only with analogous cases but with the line of the development which the law should take. The views of the author seem to have been arrived at with due regard for the two fundamental principles which must govern aviation law—i. e., the desirability of developing the scientific and practical aspects of this activity and the protection of the non-flying public. The proper balancing of these two considerations is undoubtedly the chief task in the development of aviation law and the author's suggestions should furnish assistance to the courts and other authorities in reaching desirable results.

The two most important subjects discussed are the sovereignty in air space and the right to navigate over the land of another person. As to the first of these, the author's conclusion that sovereignty is absolute and permits the regulation or even prohibition of flying over any part of the territorial jurisdiction, seems clearly sound. His opinion on the other point, that there is a legal right to sail over the land of another private individual, seems also correct, with the restriction (which the author him-

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\**The Law of Aviation.* By Rowland W. Fixel. Matthew Bender & Company. Albany, N. Y. 1927. Pages xv, 403. Price \$7.50.

self clearly indicates) that the flight shall not be so close to the ground as to endanger the lives, property, or probably even the feelings of the landowner, his family and other persons rightfully upon the land. No doubt some such principle will have to be eventually recognized but there can be little question that this involves making some "new law" since it conflicts with the supposed common law rule that a land-owner owns "*usque ad coelum*". This phrase sounds like (and probably is) a piece of medieval metaphysics, but it must be confessed that the courts apparently still recognize it. See *Butler v. Frontier Telephone Co.*, 186 N. Y. 486, 79 N. E. 716, where a land-owner was held entitled to maintain ejectment to obtain the removal of a wire stretching across his land but not touching it at any point. As has been said, the position taken by the author seems sound but perhaps he has not fully recognized the difficulties which the courts may have in reaching this result.

A few other similar questions are discussed but as to these the author is generally able to cite authorities upon questions so analogous that it would seem reasonably clear that his conclusions would be accepted by the courts without difficulty. Most of the rest of the text is taken up with summaries of actual legislative and administrative regulations. These regulations are set forth at length in the book and this covers more than one-half of its actual length. Indeed the compilation and reprinting of these written regulations is in itself sufficient to justify the publication of the book.

The principal aeronautical regulations are, first, the International Flying Convention of 1919 and secondly, the United States Federal Air Act of 1926, together with the regulations thereunder promulgated by the Secretary of Commerce. The International Flying Convention has been ratified by most of the important nations and a number of the smaller ones. It was signed but not ratified by the United States—a situation which has a curiously familiar sound. Fortunately our Federal Air Act is very largely consistent with the International Flying Convention and there will probably be no serious conflicts of jurisdiction.

The book also contains a compilation of the state laws respecting aviation. It may be a surprise to learn that twenty-six states (including Indiana) and the Territory of Hawaii have some statutory regulations with respect to flying. Curiously enough, however, two of the most important of these states, New York and Ohio, have merely incidental references to aviation in statutes for other purposes. The New York statute relates to tax exemptions and the Ohio statute to hunting. The others have rather complete statutes for the regulation of flying or at least statutes respecting aviation fields. Seven states and the Territory of Hawaii have passed the so-called "Uniform State Law for Aeronautics." All of these are set out in full and since there is a full index, the book will certainly serve as a valuable reference work even if it is considered to have no other function.

It is believed, however, that if proper allowance is made for the serious handicap under which the author worked (he was attempting to write a treatise on a branch of the law which hardly yet exists) the work is very well done and the book should prove of permanent value. It will probably go out of date very speedily but at the present time it furnishes a careful and intelligent statement of the line of development which the law of aviation should take and which it is reasonably to be hoped that it actually will take. For the practitioner who is called upon to give advice upon matters within the scope of this book—and there are or will be many such questions—the book is unhesitatingly recommended.

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