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The Law of Aviation, by Rowland W. Fixel

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greatly needed scientific Code of Procedure under the principle of One Form of Action. But this work cannot be done in the law offices. It can be done in the law schools if sufficient time and effort can be found there for the undertaking. It would serve a useful end if Professor Magill’s book could be used as a first year book, to be followed by Professor Throckmorton’s book in either the second or the third year.

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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-

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 right-
fully 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
titled 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 con-
clusions 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 re-
printing of these written regulations is in itself sufficient to
justify the publication of the book.

The principal aeronautical regulations are, first, the Interna-
tional Flying Convention of 1919 and secondly, the United States
Federal Air Act of 1926, together with the regulations there-
under promulgated by the Secretary of Commerce. The Interna-
tional Flying Convention has been ratified by most of the im-
portant 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 Conven-
tion and there will probably be no serious conflicts of juris-
diction.

The book also contains a compilation of the state laws re-
specting 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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NOTICES

(These Notices are preliminary; they do not preclude Reviews later.)


Perhaps this little book is an appropriate companion to the detective stories in the magazines and the "thrillers" that are constantly produced at the cinema houses. It would seem that life is hard enough without too much emphasis on horror and crime. These matters however have a fascination for the public and they must be considered by lawyers in their work for the improvement of the administration of justice. It may be said at once that this book contains more than trials involving murder, piracy and treason. For instance, it contains a very interesting description of a trial by combat which was held in 1380 in the presence of the young King Richard II. There is also a description of a trial of a dead man for heresy together with an account of trials for witchcraft and cases that involved the punishing of the jury when it refused to find the verdict that complied with the wishes of the judge and the Crown officers. These accounts are highly readable and informative as a matter of legal procedure. Nearly all of the cases illustrate how extremely limited were the functions of the jury under the early English law as compared with the jury's powers in this country under present practice. It is interesting to note how the judges harassed and browbeat the jury in the early trials and how certain lawyers stood up manfully to criticize those judges in open court. Those judges were the personal appointees of the King and hence it was considered that to criticize them might be *lese majeste*. When we remember further that they had far greater powers than any judges have now, it is the more surprising to note this independence of counsel and the absence of any punishment for contempt of court.

The account of trials for witchcraft is particularly interesting. Although some of the evidence that was admitted would now be considered highly prejudiced, it seems that the amount of carefully weighed evidence in support of witchcraft was very great. Moreover there was thought to be ample authority in the Bible for witchcraft and the common law at that time recognized witchcraft and provided for its punishment. It seems that