

1979

Book Reviews

Paul B. Larsen

John O. Tyler Jr.

Allan W. Markham

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Recommended Citation

Paul B. Larsen et al., *Book Reviews*, 44 J. AIR L. & COM. 879 (1979)
<https://scholar.smu.edu/jalc/vol44/iss4/8>

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AVIATION TORT LAW, by Stuart M. Speiser and Charles F. Krause. Vol. 1, 1978, The Lawyers Co-operative Publishing Co. and Bancroft-Whitney Co. 808 pp.

Aviation tort law practice is growing, not because of deteriorating air safety, but because of great increase in air carriage. A specialized aviation bar, of which the authors are prominent members, has developed, and much has been written about this law practice. Recently, several books have been directed towards educating practitioners in the fundamentals of aviation law. *Aviation Tort Law* adequately indicates the maturity of this aviation practice, and is a welcome blend of tutelage and scholarship.

The contents of Volume I are choice of law (conflicts), procedure, causation, negligence, defenses to negligence, and air carriers' liability under the Warsaw Convention. Presumably subsequent volumes will deal with the liability of aircraft manufacturers and governmental liability for operation of air traffic control. Based upon my reading of this first volume, I predict that the projected series may fulfill the need of the aviation bar for a treatise on aviation law.

Aviation Tort Law, Volume I, is a well documented handbook. It is carefully compiled and provides deliberate and practical explanations of relevant aviation tort subjects. The book describes the law throughout the United States without special emphasis on the case law in any particular jurisdiction. An abundance of footnotes refers the reader to the important cases and materials on subjects being discussed.

A welcome surprise is that the book does not fall into the trap of being claimant-oriented. Although the authors are prominent claimants' lawyers, the text generally provides a balanced exposition of the law. The only detected exception concerns the chapter on the Warsaw Convention in which Speiser and Krause describe the organized opposition to the Guatemala and Montreal Protocols to the Warsaw Convention, but fail to state that the Protocols were

supported by the American Bar Association's Standing Committee on Aeronautical Law, its International Law Section, and indeed by the American Bar Association itself in the hearings before the Senate Foreign Relations Committee.

The book is well written. The language is plain and not convoluted in explanations of technical or legal concepts. While maintaining a high level of scholarship, the authors do not assume that the reader has expertise on aviation tort law. The sophisticated reader, however, will appreciate the book because of its broad scope, and because it gives insight into the thinking of the two experts who are the authors.

The objective of covering practically everything may lull the reader into relying on the book's comprehensiveness. Occasionally the effort to be comprehensive results in very brief expositions of important subjects. For instance, the discussion of air carriers' negligence could have benefited from a broader and clearer description of the varying state laws on the degree of care owed by common carrier airlines to their passengers. Some states require the highest degree of care by common carriers while other states impose a standard of ordinary care. Litigants need to know how to plead their cases even though the difference in standards of care may in the end not be of great significance.

Speiser and Krause in their introductory chapter on the history and future of air transportation should have referred to primary sources rather than just to secondary sources found in law journals and judges' opinions. Some of the data is not current. While the discussion of choice of law is good, it should have concentrated on the Restatement (Second) of Conflicts in the torts area. This is because the new Restatement appears to be at the conceptional center of conflicts law even though the individual jurisdictions are going their own way. Furthermore, the book is occasionally repetitious. For instance, on page 223 the reader is informed that the doctrine of *forum non conveniens* presupposes the existence of a more convenient forum and on page 227 the same principle reappears.

Time is already beginning to nibble at this statement of the current status of aviation tort law. While the authors have provided a welcome discussion of the tort law applicable to air cargo, the

recent deregulation of domestic air transportation has left cargo carriers free to stipulate terms of liability for the carriage of cargo in their tariffs without supervision of the CAB. The tendency has been for cargo carriers to reduce their burden of risk of carriage and to shift this burden over on shippers.

Mention of the smaller problems with the text is merely cautionary. On the whole the book is recommended as a useful tool for both practitioners and students. I will certainly be consulting it and will recommend to my aviation law students that they read parts of it in preparation for their exams.

*Paul B. Larsen**

GOVERNANCE OF FEDERAL REGULATORY AGENCIES. By David M. Welborn. Knoxville, Tennessee: The University of Tennessee Press, 1977, 179 pp.

Numerous political winds have changed direction as a result of the continuing economic storm this nation has weathered in recent years. Human nature being what it is, fingers are pointed when the going gets rough, and a growing number of fingers are turning in the direction of the "Big Seven" regulatory agencies: the Civil Aeronautics Board, the Federal Communications Commission, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the Interstate Commerce Commission, and the Securities and Exchange Commission. These regulatory agencies are oft depicted as clumsy giants, wielding great power but not wielding it well. The most common criticisms of these agencies center on their failure to consider all relevant interests in decision making, failure to contend adequately with changing economic and technological conditions, and failure to develop and apply clear, meaningful, and predictable standards to guide their decisions.

Professor Welborn's book examines what he terms the "governance" of the seven agencies, that is, their internal organization and power hierarchy. Agency governance is widely viewed as holding

* Georgetown University Law Center, credentials withheld at author's request.

both the cause and the cure of agency performance problems. This book is the product of interviews with about seventy current and former regulators, and it stresses the relationships between chairmen, members, and staff in its analysis of commission performance. After extended analysis of agency characteristics, Professor Welborn concludes that the chairman of a commission customarily sits as a sort of monarch, with the quality of the commission determined in great part by the quality of the chairman. Other commission members are characterized as having only minimal impact on agency performance.

The author concludes his analysis of agency governance with several suggestions for improving commission performance. Chairmen should be chosen with greater care, and the role of commission members should be expanded to make greater use of their skills. Innovative means of handling regulatory tasks should be developed, and commission activities should be better coordinated with other parts of government. The issue of abolishing of regulatory agencies, however, is not addressed.

This is a book written by a political scientist for political scientists, and some sections of the book are, therefore, only marginally interesting to the attorney practicing administrative law. It is nonetheless a timely publication in its field. The proper nature and extent of governmental intervention in the economy is probably the dominant domestic policy concern of the hour, as perhaps best shown by this year's amendments to the Federal Aviation Act. *Governance of Federal Regulatory Agencies* is a book that should be read by anyone seriously interested in regulatory reform.

*John O. Tyler, Jr.**

LIABILITY IN INTERNATIONAL AIR TRANSPORT. By Georgette Miller. Kluwer-Deventer: The Netherlands, 1977, 404 pp.

The title chosen by the author for this work may not convey its complete purpose and content. Indeed the opening sentence of the

* B.A., Texas A. & M.; J.D., Southern Methodist University School of Law. Briefing attorney to Chief Judge of the Texas Civil Court of Appeals for the Fifth District.

author's Foreword reveals: "This book provides an analysis of the judicial interpretations of the Warsaw system, which governs important aspects of international carriage by air."¹ Granted that establishing and limiting legal liability is the primary purpose of the international treaties examined, the author does not limit her research to this one topic. The book provides what appears to be a thorough analysis of court cases on a variety of issues arising under the Warsaw Convention² and subsequent amendments³ in courts of Western Europe (primarily France and Great Britain), the United States, and Canada. In addition to analyzing cases primarily concerned with liability for personal injury and property damage arising in international transportation by air, the author also analyzes judicial decisions addressing such issues as proper forum, standing, parties, and compliance with treaty provisions by the participating carriers.

Although there is relatively little discussion of the situation which existed prior to the original 1929 agreement, the genesis of subsequent amendatory agreements are examined in some detail. There is also discussion of some of the legal problems inherent in an international agreement originally written in French and never "officially" translated into English.

The book concludes with a chapter in which the author assesses the divergence in court decisions interpreting and applying the Warsaw system and suggests possible solutions. The latter is perhaps the least essential contribution in what is an enormously difficult and complicated undertaking. The author also readily admits a professional orientation which may limit the value of the work for those with a common law background: she was professionally trained (and presumably culturally reared) in the French civil law tradition, which in many respects differs significantly from English common law concept. This reviewer is unable to determine if she fully achieved her stated intention "to convey to lawyers

¹ G. Miller, *LIABILITY IN INTERNATIONAL AIR TRANSPORT V.*

² Convention for the Unification of Certain Rules Relating to International Carriage by Air (Warsaw, 1929).

³ The Hague Protocol (1955), Guadalajara Convention (1961), Guatemala City Protocol (1971) and the "Montreal Agreement" (1966) and Montreal Protocols (1975). The author refers to the entire group of international agreements as the "Warsaw System."

who do not belong to the civil law tradition the real meaning of the French cases"⁴ which she analyzes.

Without attempting to judge the author's ability to reconcile civil and common law cases, however (and while it cannot be considered "light" reading), this book is by no means without substantial value to the American student and practitioner of international air transport law. It is by far the most comprehensive attempt to analyze and correlate the major body of Western judicial interpretation of the Warsaw system. The author has brought forth a legal compendium of judicial law which previously was not to be found within a single volume or perhaps even within a single law library. Any future effort to trace or update the development of case law on any aspect of the international agreements must almost of necessity use this book as the starting point. Most significantly, her own effort to propose solutions notwithstanding, the author's research and analysis may very well provide the catalyst, and the vehicle, for future amendments to correct the Warsaw system's current major problem: lack of uniformity in judicial interpretations. With the present high volume of international air travel throughout the world, which is expected to double in only a few years, this is a problem requiring the participating nations' early attention.

*Allan W. Markham**

⁴ See note 1 *supra*.

* J.D., A.B., U. of N. Carolina, Former FAA Chief Legislative Counsel. Mr. Markham is a member of the Washington, D.C. and North Carolina Bars.