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Aviation Law

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Book Reviews

AVIATION LAW by Andreas F. Lowenfeld. New York: Matthew Bender & Co., 1981 Edition. pp. 1411.

In 1972, Andreas Lowenfeld published the first edition of AVIATION LAW.¹ In the introduction to that book, Professor Lowenfeld related the challenge presented by Judge Henry Friendly:

Some years ago, Judge Henry Friendly, who made his career in large part as a brilliant and imaginative general counsel for Pan American World Airways, reviewed an earlier attempt to collect materials on aviation law by asking whether it made sense to treat this subject at all. "In order to make out a case for separate treatment," he wrote, "it must be shown that the heads of a given subject can be examined in a more illuminating fashion with reference to each other than with references to other branches of law." With respect to the book under review, Judge Friendly's answer was "a resounding no."²

Professor Lowenfeld went on to accept the challenge and in the seven chapters of the first edition of AVIATION LAW presented the reader with an overview of the economic, regulatory, tort, and social considerations that have grown up in the law relating to the aviation industry. Professor Lowenfeld also included a note to "practicing aviation lawyers" pointing out that the discussion and focus of the book, while neither that of "instant research" nor hornbook law, would permit those practitioners "to catch up vicariously on the interchanges among students and professors" and obtain an additional insight not otherwise obtained by

¹ A. LOWENFELD, AVIATION LAW (1972).

² *Id.* at xiii.

members of the practicing bar.³

In the introduction to the second edition of *AVIATION LAW*,⁴ Professor Lowenfeld sets the theme for this revised volume as "the process of change."⁵ Indeed, he is correct that the accomplishment of deregulation has brought fast change to the aviation industry. In response to this change the second edition includes a revised discussion of regulation as a preface to a wholly new section on deregulation. Also new to the second edition are detailed discussions on the domestic and international aspect of the reform movements in aviation and a general updating of what has transpired in the nine years since original publication. As in his first edition, Professor Lowenfeld has addressed a note to the practicing bar: "You will not find instant answers—and certainly not definitive answers—between these covers. But you will find a good deal of information, a good many explanations, and I hope a few useful insights."⁶

Professor Lowenfeld perhaps has done himself a disservice for, as a practicing aviation lawyer, I find myself in disagreement with his advice in both the first and second editions of this treatise.

Aviation law is, like the industry itself, a far reaching and all encompassing area. It is this very fact which brought about the comments of Judge Friendly when he criticized the separate treatment given to the area of aviation law due to its multiple disciplines. Indeed, every aspect of the practice of law is touched upon under the generic heading of "aviation law," including contracts, international, tort, regulatory, labor, legislative, and a myriad of subspecialties, all of which are the subject of individual law school courses and trial specialties among the practicing bar. It is this very fact which cuts in favor of the kind of treatment given to aviation law by Professor Lowenfeld and mitigates against the comments by Judge Friendly. This is especially true to the practicing lawyer

³ *Id.* at xv.

⁴ A. LOWENFELD, *AVIATION LAW* (2d ed. 1981).

⁵ *Id.* at xiii.

⁶ *Id.* at xiv.

who may not have the inclination and certainly lacks the time to conduct extensive research in multiple areas.

Professor Lowenfeld indicated that the value of his volume, at least the first edition, to the practicing lawyer was to allow him to vicariously catch up on the interchanges among students and professors. In his second edition he seems to have broadened this advice and perhaps recognized the value of a volume such as his to the practicing aviation lawyer, who must be involved in so many disciplines at the same time. At bottom line, AVIATION LAW in its present form is an invaluable tool for the practicing aviation lawyer.

The value of this book to the practicing lawyer is illustrated by Professor Lowenfeld's treatment of the question of damage compensation for losses arising out of international air transportation. As of this writing, the United States Senate had voted down Montreal Protocols 3 and 4 to the Warsaw Convention. The effect of those protocols would have been to raise the limits of monetary compensation for persons injured in international air transportation. These Protocols had a long and controversial history and, even to this date, the debate over their need intensifies as a result of the Senate's action.

Chapter 7 entitled "Accident Compensation Under the Warsaw Convention" originally appeared in the HARVARD LAW REVIEW in an article by Professor Lowenfeld entitled *The United States and the Warsaw Convention*.⁷ This edition of AVIATION LAW brings up to date the history of the Warsaw Convention, the subsequent amending conventions and protocols prior to their defeat in the United States Senate. Indeed, not only does Professor Lowenfeld give the history of the Montreal Protocols, but, despite the fact that the book brings the reader up to the fall of 1980, the status of the then pending Montreal Protocols 3 and 4 as related by Professor Lowenfeld is accurate almost two years later. While he certainly could not have known what did occur almost two years later, his writing style neither dates, nor detracts from the value of the discussion.

⁷ Lowenfeld & Mendelsohn, *The United States and the Warsaw Convention*, 80 HARV. L. REV. 497 (1967).

Another aspect of the question of the international accident compensation question discussed by Professor Lowenfeld involves the gold value problem as set forth in the Warsaw Convention. The relevance of his discussion is highlighted by a recent decision, *Franklin Mint Corp. v. Trans World Airlines, Inc.*,⁸ wherein the United States Court of Appeals for the Second Circuit indicated that because the United States abandoned the gold standard, the damage limitations provided for in the Warsaw Convention were no longer enforceable.⁹ While this case was decided after the publication of the second edition, Professor Lowenfeld has succinctly set forth the problem with which the Second Circuit found itself faced in *Franklin Mint*.¹⁰

In one of the many fascinating discussions in this book, Professor Lowenfeld details the controversy arising from two major air crash disasters—the March 3, 1974 crash of a Turkish Airlines DC-10 aircraft near Paris, France, and the March 27, 1977 crash of two fully loaded Boeing 747 jumbo jets on the ground in the Canary Islands.¹¹ The discussion is not only interesting in that it presents the reader with case studies on the question of accident compensation and international aviation, but it also provides the reader with a chronological description of what occurred written in the style that more usually is associated with the story telling art of the novelist. It is crisp, easy to read, and exciting in its presentation.

To the extent that I have a criticism about Professor Lowenfeld's treatment of the subject of accident compensation and tort systems, it is that he does not devote enough time to the accident compensation or tort scheme of the United States, especially that revolving around domestic aircraft accidents. The procedural complexities, conflicts of law questions and related subjects are discussed in a relatively superficial fashion in several places, usually within the context

⁸ 690 F.2d 303 (2d Cir. 1982).

⁹ *Id.* at 311.

¹⁰ A. LOWENFELD, *supra* note 4, ch. 7, § 6.51.

¹¹ *Id.* ch. 7, §§ 7.21-7.22.

of the Warsaw Compensation chapter. However, the discussion fails to emphasize the sophisticated and extensive aviation practice which exists in this country and which, unto itself, is unique. While I recognize that I make this comment from the perspective of a practicing aviation accident lawyer, the fact that this book is of such value to my colleagues and myself makes this observation appropriate.

Other chapters that are of more academic interest are those involving problems of aircraft noise (Chapter 6), aircraft hijacking (Chapter 8), and the discussion of who makes aviation policy (Chapter 3). Of course, if a practicing attorney is handling a case that involves one of these issues, be it representing homeowners in a suit against an airport or a passenger injured in a skyjacking, these sections are of more than academic interest, and that attorney will find a wealth of information which will have a direct and immediate impact on his case.

Professor Lowenfeld's writing style is neither stilted nor enmeshed in legalese. The only thing which tends to break the reader's concentration is the necessary inclusion of citations, lengthy quotations, and excerpts from such things as legislative history. Even this fact, however, does not detract from the reader's ability to move quickly through the substance and gain a valuable insight to the subject matter.

One of the particular difficulties that many practitioners generally find with books on today's legal market is the inability to "get into them." The table of contents and indexes are frequently less than ideal and oftentimes deficient. As with most of the Matthew Bender publications, the table of contents and index in AVIATION LAW are highly detailed and provide the reader with a valuable tool for accessing the contents of this lengthy work on an expedited basis. The chapters are logically structured and easily understood in terms of their organization from the table of contents. A good example of this fact is that when considering the question of the *Franklin Mint* case in the context of my own practice, I turned to AVIATION LAW to see what information it might offer to me regarding the gold standard.

Chapter 7, section 6.51 of the book is entitled the "Gold Value Problem." This ease of access is repeated throughout.

As a law student, I always had some question regarding the practice type materials contained at the end of a particular chapter. Frequently, legal textbooks contain case examples, questions, or notes at the end of a chapter which raise issues for discussion in the classroom or form the basis for other types of academic exercises. My skepticism concerning the worth of such sections continues. At the end of each chapter of AVIATION LAW, there is a "Notes and Questions" section which is directed at the law student and/or professor. This is a practice which has been followed by Professor Lowenfeld, as he indicates in the introduction, "in line with the Publisher's Analysis and Skills series."¹² I frankly think they ought to be omitted, and to the extent deemed desirable, should be included in a separate volume that can be made available to law professors teaching aviation law courses using this book.

In my opinion, the inclusion of such notes and questions detracts from the worth of this book as a practicing lawyer's reference book, and clearly casts it in the role of an academic publication. While certainly this may be something desired by the publisher and dictated by marketing decisions, I do not believe that the inclusion of these types of exercises necessarily adds anything substantive to the book so long as the exercises are otherwise available. Indeed, without such notes and questions sections, the book might appropriately be included with Matthew Bender's other books devoted to the practicing attorney, rather than in the Analysis and Skills series. When coupled with, for instance, a student supplement, the same functions are served but the level and worth of material is not narrowed by directing it at the academic side of the practice.

From an overall perspective, the second edition is as useful

¹² *Id.* at xvi.

and informative as the first. It meets the challenge posed by Judge Friendly in admirable fashion.

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