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Aviation Law, Cases and Materials

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Current Literature

BOOK REVIEW

AVIATION LAW, CASES AND MATERIALS. By Andreas F. Lowenfeld.
New York: Matthew Bender 1972. Pp. 929. \$19.50.

Instructors and serious students of the difficult and complex field of aviation law have for years been plagued by the lack of a single, up-to-date volume on the subject of aviation law that is both complete and scholarly. Consequently, research in the field must be undertaken from a number of sources that may or may not treat the particular subject in relation to other subjects bearing on the main problem. It was for this reason that the publication of Professor Lowenfeld's cases and materials on aviation law was looked forward to with great anticipation and expectation. Unfortunately, the casebook falls short of solving this basic research problem.

Professor Lowenfeld, as most readers are aware, is a Professor of Law at New York University School of Law and is recognized as an astute scholar who has broad knowledge in the field of aviation law. The volume produced by Professor Lowenfeld is indeed a scholarly work. It is definitely not bedtime reading and is truly a textbook for the student or practitioner who is seriously interested in the regulatory aspects of aviation. The title of the book, however, indicates far broader coverage of aviation law than the text provides.

Professor Lowenfeld has chosen to deal generally with the regulatory aspects of air transport, and has either not treated, or merely referred in passing to, the tort aspects of this field of law. With the ever increasing use of aircraft as a means of transportation, more people are becoming involved with aviation and concerned with its attendant problems that usually take the form of a tort. Consequently, the average practitioner is more likely to be concerned with the tort aspects of aviation law than the regulatory; for this reason this case book is likely to appeal more to the student of the economics of transportation, the regulatory aspects of

aviation law or administrative law than to the practitioner who is interested in day-to-day representation of the average client.

If we ignore the disappointment occasioned by the fact that the title is somewhat misleading, then the work can be assessed with a single word—outstanding.

Professor Lowenfeld's volume is composed of seven chapters, each treating a distinct subject independent of information considered in other chapters. These chapters vary in length, but each treats its subject in detail. In addition, a separately bound documents supplement contains virtually all the documents relevant to aviation matters needed by the student or practitioner.

Chapter one entitled "Economic Regulation of Domestic Aviation" describes in exhaustive detail the work of the Civil Aeronautics Board in the award of domestic routes and the setting of rates. Professor Lowenfeld studies five important route cases decided by the Board in the 1950's, *Southern Service to the West Coast Case*, *New York-Chicago Service Case*, *Denver Service Case*, *Southwest-Northeast Service Case* and *New York-San Francisco Non-stop Service Case*. The decisions in these cases are set forth at length and are examined in detail with the aim of illustrating problems faced by the CAB in the awarding domestic routes. Further, within the framework of these route cases, Professor Lowenfeld examines CAB procedures and the Board's approach to these problems. Additionally, chapter one covers the 1960 CAB General Passenger Fare Investigation as well as matters of airline mergers.

Chapter two is an in-depth examination of regulation of international air transportation with emphasis on routes and capacity. Bilateral agreements are examined in detail as are the matters of assignment of routes and restraints on capacity. The only cases involving bilaterals that have gone to arbitration, the United States/France and the United States/Italy disputes of 1963, are examined. The author has summarized the facts of each of these disputes, quoted the major portion of the opinion in each case and examined each of these decisions in its historical context. This is one of the few books that has reported and examined the details of these two controversies to any degree.

The passenger fare aspect of international air transportation and its regulation are the subjects of chapter three. Professor

Lowenfeld describes and examines the International Air Transport Association (IATA) and its connection with the establishment of international air fares. Likewise, the role of the CAB in this area is also discussed. Those conversant with aviation affairs recognize that these traffic conferences are not open to the public and that only those who represent the Airlines serving a particular geographic area and the IATA secretariat, including translators and technical experts, are admitted to the Traffic Conference sessions. Thus, Professor Lowenfeld's efforts fill a void in the experience of most students of aviation law. In addition to treating the reader to an inside view of the workings of these conferences, Professor Lowenfeld presents the so-called "Chandler Fare Controversy" in detail and relates it to recent events in the area of determination of international air fares.

Chapter four deals with aviation policy and the role of the supplemental carriers in the total scheme of air transportation. The history and development of the supplemental air carrier industry are examined in minute detail and the author poses some poignant questions concerning this segment of the air transport industry. In addition, the President's role in the area of international air transportation is studied. The classic *Waterman Steamship* case is examined as are subsequent decisions interpreting it. Finally, the *Transpacific* route case is presented. Concluding the chapter, Professor Lowenfeld discusses intrastate operations and the relation between state and federal regulation.

Chapter five treats the problem of aviation noise and efforts made on national and international levels toward a solution of this perplexing technological challenge. The keystone of international air transportation, the *Warsaw Convention*, is examined in chapter six. Professor Lowenfeld presents theories of accident compensation, describes the *Warsaw Convention*, its application and suggests some methods of circumventing the Convention. In addition, attempts to modify the Convention, including the *Montreal Interim Agreement* of 1966 and the *Guatemala City Protocol* of 1971, are described.

The final chapter of the text considers the problem of aircraft hijackings. The phenomenon is considered from a historical viewpoint, and efforts on behalf of the various nations to control this

threat, including the Tokyo Convention of 1963 and the Hague Convention of 1970, are critically analyzed.

As was stated at the beginning of this review, it is a disappointment that Professor Lowenfeld did not deal more with problems associated with the day-to-day practice of aviation law, such as problems of governmental liability under the Federal Tort Claims Act arising from air traffic control operations and weather reporting, military operations, and commercial operations as well as problems arising from the vast unchartered known as general aviation.

Hopefully Professor Lowenfeld will consider the preparation of a second volume covering these matters. Yet in spite of this shortcoming, it can safely be said that this is one of the most comprehensive volumes on the subject yet published and should be seriously considered as a text in any course in aviation law. Moreover, it should have a place on the bookshelf of any serious student of the subject.

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