

1937

Book Reviews

Recommended Citation

Book Reviews, 8 J. AIR L. & COM. 143 (1937)
<https://scholar.smu.edu/jalc/vol8/iss1/9>

This Book Review is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

BOOK REVIEWS

AIR LAW: OUTLINE AND GUIDE TO LAW OF RADIO AND AERONAUTICS. By Howard S. LeRoy. Washington: Privately printed, 1936. Pp. 160.

In a review of the first edition of this work (6 JOURNAL OF AIR LAW 292) we dealt both with the formal defects in bibliographical method to be found in Mr. LeRoy's book and with its substantial omissions. This new edition is cast in the same form as its predecessor, and therefore our remarks upon arrangement and difficulties of reference are still in every respect pertinent. Similarly, the present volume permits us to alter only slightly our observations upon its incompleteness, for though Mr. LeRoy has added new decisions, and new articles, monographs, and notes to the appropriate sections of his small book, he has again chosen them (from the publications of the past year, in the main) by reference to some formless, subjective standard to which the reader receives no introduction. The work does not, of course, claim to be exhaustive: our remarks, in fact, have been directed toward its failure to reach a much less demanding standard—and it will serve usefully only those who seek an introduction to the bibliography of air and radio law, and those who find periodical indexes and current periodical bibliographies difficult to secure.

S. E. THORNE.*

THE LAW OF CIVIL AVIATION. By N. H. Moller. London: Sweet & Maxwell, Ltd., 1936. Pp. xxxi, 550.

This new and valuable text brings the study of British civil aviation law up to date by including the important changes already brought about by the Air Navigation Act of 1936 and the further changes which may come into effect under the Act by future orders and Regulations. The Act is dated July 31, 1936 (26 Geo. 5 & I Edw. 8, C. 44) and is the outgrowth of the report of Lord Gorell's Committee of July, 1934. It attempts to bring English domestic law in line with the international obligations assumed by England under the Rome Convention of 1933, especially in regard to compulsory third party insurance and the limitation of liability for surface damage caused by aircraft.

The volume is limited strictly to the law of civil aviation in the United Kingdom and treats the international Conventions extensively, but only insofar as they determine the law in the United Kingdom. The text, divided into two parts, consists of 339 pages, and 10 appendices covering 163 pages of documentary material. Part I is a study of the Conventions, Acts and Orders which together constitute English civil aviation law.

"International Control" is dealt with in Chapter I and begins with a history of the concept of "sovereignty of the air" and culminates in the Convention of Paris, 1919, as the basic *carta* of international regulation now

* Librarian and Assistant Professor of Law, Northwestern University School of Law.

existing in Europe. The extent of territorial waters and the nature of sovereignty in the air columns above is a problem important to the British Isles and is treated in an original manner.

Chapter II takes up the "Statutory Control of Aircraft," and treats the administrative machinery and the steps leading up to the transfer, by the Act of 1936, of authority to issue Orders and Regulations from the Air Council to the Secretary of State, a purely civil department of State.

Under the title of "Registration and Navigation of Aircraft" the important Orders which constitute the bulk of British air law are described. In this connection the author points out the mobility of administrative Orders as compared with parliamentary procedure, but that this very quality in turn makes it difficult to write a text on British air law for the reason that it may be rendered obsolete at any time by new Orders reversing the present policies of the Regulations.

The Regulations pertaining to airports and their approaches are described in the last chapter of Part I under the title of "Aerodromes, Aerial Lights and Obstructions."

Part II discusses the important legal problems peculiar to aviation: private rights in airspace, liability for surface damage and compulsory insurance to meet the same, and the liabilities arising from the carriage of passengers and goods. The author briefly considers the application of the maxim *cujus est solum* at common law, and the tendency of the English courts to regard an interference with a column of air over land as a nuisance requiring proof of damage to sustain the action, except in a few instances where damage is inferred, such as an overhanging house or a dripping eave. The author believes the question of trespass important in determining whether the courts will recognize an "acquired servitude" or easement in airspace. At this point the case of *Portsmouth Harbour and Hotel Co. v. United States* (1922) 269 U. S. 327, is cited as holding that the passing of shells fired from large guns over private lands constitutes a trespass, which, if repeated, may establish a servitude. This is the only American decision cited in the entire volume, and is treated with "bold face" finality which seems unwarranted. From this decision the author infers that American courts have gone farther in recognizing an aerial trespass than the English courts, which is not substantiated by the American decisions dealing directly with the question. The manner in which private rights in airspace has been settled by compromise in Section 9 of the Air Navigation Act of 1920 and preserved with slight modification by the Act of 1936, is elaborated.

The most valuable and timely chapters in the text to American readers are the 6th and 7th, which deal respectively with the limitation of liability for surface damage done by aircraft and compulsory third party insurance against that liability. By Section 9 of the Air Navigation Act, 1920, the owner of an aircraft was made absolutely liable for surface damage with the lone defense of contributory negligence. When the Rome Convention, 1933, is given effect in the United Kingdom, a system of compulsory third party insurance and limited liability for surface damage comes into force. This, however, will apply only to foreign aircraft of signatory states operating over the United Kingdom and to British aircraft operating over territory of contracting states. The Air Navigation Act of 1936 by Part III makes detailed provisions for the limitation of the liability of aircraft in respect to

surface damage and provides compulsory insurance to secure discharge of this liability when incurred, but Part III of the Act of 1936 does not come into operation until a day to be appointed by an Order of the Secretary of State. The author discusses in detail these three sets of liability for surface damage, the one now in force, and the two which may be given effect in the future, each differing from the other in detail. The limits of liability are contained in the Second Schedule to the Act of 1936, and, for airplanes proper, range from 10,000 pounds to 25,000 pounds, depending upon the weight of the aircraft fully loaded.

The two concluding chapters of the text deal with "Carriage by Air" and the liability of the aviator to passengers and for goods. As in the case of surface liability, several sets of liability co-exist and are discussed. The first is the common law of carriage which has been largely superceded but is nevertheless important. The Warsaw Convention of 1929 established a set of rules now in effect for international carriage by air. These rules were adopted by the Carriage by Air Act, 1932, but were not made applicable to internal carriage until given effect by an Order in Council, which has not been done. Internal carriage contracts of the principal air transport companies are governed by still another set of rules, namely, the private rules established by the International Air Transport Association, which were closely followed by the Warsaw Convention.

The appendices contain the following texts: Convention of Paris, 1919; Air Navigation Act, 1920, incorporating amendments; Air Navigation Act, 1936; Carriage by Air Act, 1932 (Warsaw Rules); Rome Convention, 1933; Accident Regulations; Workmen's Compensation as Applied to Airmen; Prerogative Order, Civil Air Ensign; and International Air Traffic Association's Conditions of Carriage.

EDWARD C. SWEENEY.*

ROCKETS THROUGH SPACE: THE DAWN OF INTERPLANETARY TRAVEL. By P. E. Cleator. New York: Simon and Schuster, 1936. Pp. 227.

This small book contains a discussion of the technical phases of rocket construction and operations, the work of certain rocket societies, and problems anticipated in connection with interplanetary travel. The author expresses the opinion that rockets "are fit only for high speed travel, not on the land or in the air, but in the stratosphere or the vacuum of space," for the reason that speeds in excess of 6,000 miles per hour must be attained for maximum mechanical efficiency, such speeds not being possible near the earth's surface. He mentions, however, several uses for rockets which are practical to some extent at present, such as investigating upper layers of the earth's atmosphere and carrying mail over short distances in mountainous districts. The subject matter is approached scientifically and presented in a very interesting manner.

FRANK E. QUINDRY¹

* Of the Illinois Bar.

1. Of the Chicago Bar.

1936 UNITED STATES AVIATION REPORTS. Edited by Arnold W. Knauth, Henry G. Hotchkiss, and Emory H. Niles. Baltimore: U. S. Aviation Reports, Inc., 1936. Pp. lxxv, 626.

This ninth annual volume of a series contains, in addition to numerous court and Comptroller General decisions, the report of the Interstate Commerce Commission in Air Mail Docket No. 1, 206 I. C. C. 675, recent legislation and international agreements, uniform statutes, C.I.T.E.J.A. material, the 1936 Report of the American Bar Association Committee on Aeronautical Law, the Cutting Accident Report of the U. S. Senate Committee on Commerce, the American Law Institute Restatement of the Law of Torts Relating to the Conditions of Aerial Flight, 1934, and other valuable source material. Among the new features of the volume is a section on commercial forms setting out an airwaybill to be used in international air express service.

The volume is up to the usual fine standard of editing found in the whole series.

FRANK E. QUINDRY¹

1. Of the Chicago Bar.