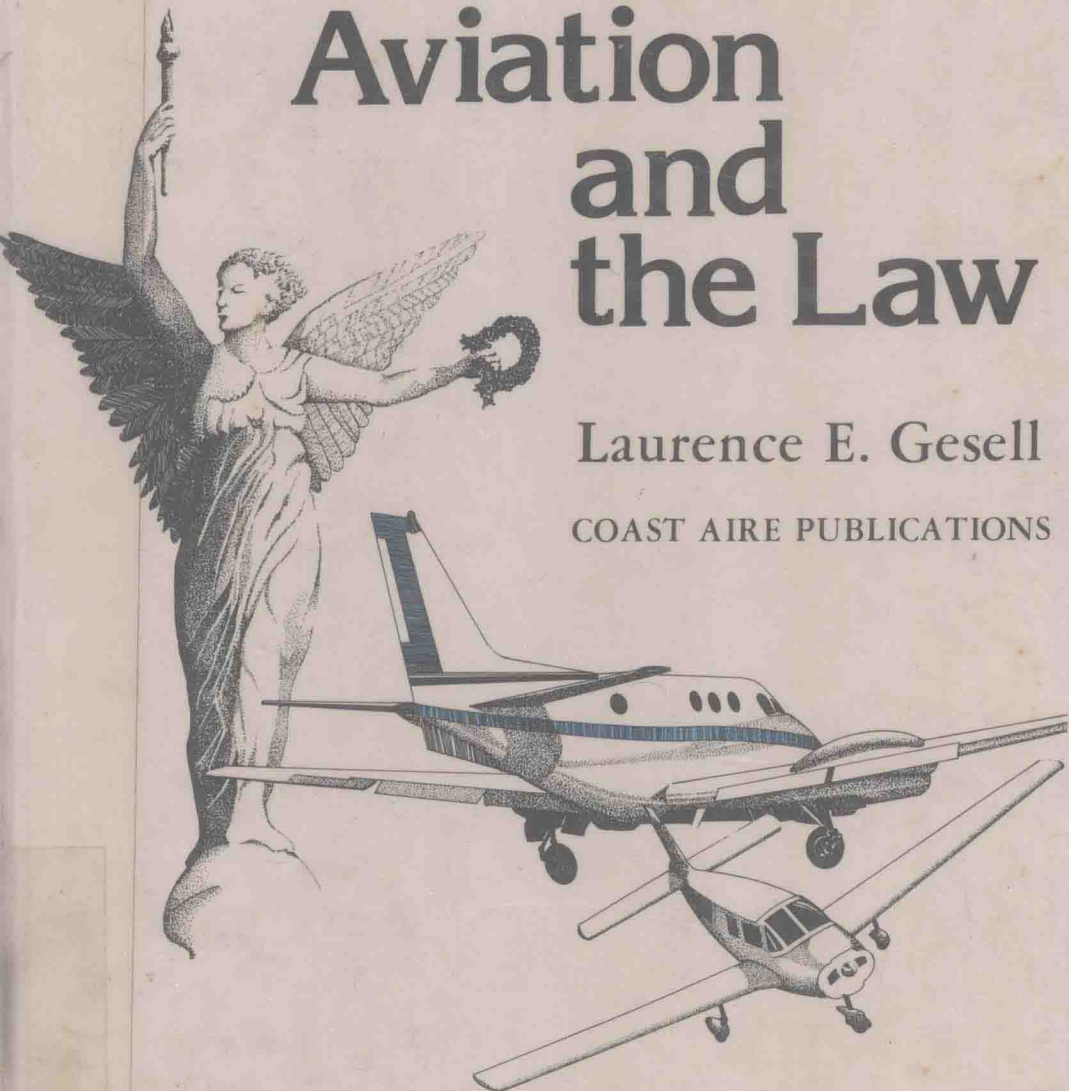


# Aviation and the Law

Laurence E. Gesell

COAST AIRE PUBLICATIONS



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## PREFACE

The purpose of this book is to provide students of aviation with a basic understanding of law, of the legal system, and of how the principles of law may be applied to the many aspects of air transportation.

The book's title, **Aviation and the Law**, is an intentional reflection upon the nature of law, for the study of aviation law must of necessity consider aviation in the broader context of law as a whole. Aviation law is but an integral part of all law. Thus, it is necessary to start from the beginning, and to develop for the reader a basic understanding of the law, of its philosophy, and of its structure and due process.

The book is assembled in five major sections, the first of which gives definition to law, touches upon notions of justice and morality, and upon underlying theories of law.

In Section One is an historical perspective of the origins of United States common law. Included are some thoughts of Aristotle and of Plato, and of later writings by more contemporary philosophers like Nicholas Rescher, R. M. Hare, and Milton Friedman. The origins of U.S. law can be traced to the Code of Hammurabi, thru Mosaic law, Roman law, Canon law, the Magna Carta, Napoleonic Code, and finally to the basic law of the land, the U.S. Constitution.

Section One expounds upon U.S. law by comparing criminal with civil law, by enumerating our basic rights and also by describing the various defenses which may be used against violations of those rights. These defenses give rise to the most common causes for litigation involving aviation. Integrated subsequently into Sections Two through Five are abstracts of actual court cases involving issues of related aviation concern.

Finally in the first section, aviation regulatory law is identified. The federal and state court systems are described. And, for the beginning researcher, there is a guide to the legal research process, with an orientation to the law library, including the procedure for tracing case law histories (or what is commonly referred to as "sheparding").

Section Two of the book addresses criminal law as it relates to the air transportation system. Of primary concern is the issue of airport and airline security, hijacking potential, and other acts of criminal violence.

Section Three is an overview of civil (or tort) law in the field of aviation, focusing upon pertinent issues in their respective specialized areas, and

supported by applicable case law. In this section the aviation industry is divided into the following representative areas:

- Ownership
- Airmen
- Airlines
- Fixed Base Operators
- Airports and
- Manufacturers

Section Four deals with liability for accidents, including an overview of the government's responsibility to investigate aircraft accidents and to promote aviation safety. Presented herein is a case study of an accident investigation conducted by the National Transportation Safety Board (NTSB), and of how that given case was handled later in the civil court system. The case at hand--the infamous crash of Trans World Airlines Flight 514 near Dulles International Airport in 1976.

The final section of the book, Section Five, is an introduction to international aviation law, including its historical development, bilateral governmental agreements in air transportation, competitive problems abroad, and exemplary court cases in this area.

The purpose of this writing is to introduce those in the field of aviation to the subject of law. It is not the intent of this book to make shade tree lawyers of anyone, but everyone can understand the fundamental principles of law. It is hoped that after having read the book, the aviation student will have gained a better understanding of the legal system and will have intuitively acquired a greater appreciation for the legal pitfalls and liabilities inherent in the operational dynamics of the air transportation industry today.

#### 1986 ABOUT THE AUTHOR.....

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