EDITOR'S PREFACE

The Aviation Law Review goes from strength to strength, with this year marking its launch on the Law Reviews website, making this edition accessible to over 12,000 in-house counsel, as well as subscribers to Bloomberg Law and Lexis Nexus worldwide. The Review continues to expand, with new contributions this year from Jarolim Flitsch in Austria, Callenders in the Bahamas, ASBZ from Brazil, Conyers Dill & Pearman from the BVI, the Grandall Law Firm from China, Squire Patton Boggs from France, LYNX from Norway, the SMATSA Aviation Academy of Serbia and Robert Lawson QC, now of Clyde & Co in the UK. My thanks to you all for volunteering and to our seasoned contributors for their continued support. I am grateful for the time and dedication required to compile the contributions for the Review; its importance to aviation lawyers increases every year as a direct consequence of that effort.

Drones, Brexit, lithium batteries and the failure of BA's IT system grounding its fleet for a weekend have been the eye-catching aviation topics of the recent past. The pace of regulation around the world governing the operation of drones is picking up speed as the threats to aviation safety become clearer; either as a result of deliberate misconduct up to and including terrorism on the part of operators, or simple, mindless rubbernecking. The contemplated ban on the carriage of laptops in the cabins of aircraft flying to the United States has provoked significant comment, particularly with reference to the occasional propensity of lithium batteries in laptops to spontaneously combust. Such a combustion from multiple laptops in the hold of an aircraft will provoke some interesting liability and insurance questions should it occur. The exposure of British Airways to claims under EU 261 as a consequence of their weekend nightmare gives pause for thought. One might expect such an event to be extraordinary; even though, reportedly, it was caused by a simple negligent act by a contractor turning off a switch, but with consequences estimated to exceed £100 million, it must be appreciated that for a less substantial airline, the cost could well be existential and hardly in the long-term benefit of the travelling public. Will there be a third-party claim, and will this represent another test of the ubiquitous and iniquitous standard aviation liability exclusion clause?

Elsewhere, in the UK, the use and abuse of accident investigation reports has come under judicial scrutiny. In two cases in 2017, the High Court has rejected attempts by the police and the Coroner to procure production of statements made in the course of investigations of the accident investigation board, with one judge citing the 'serious and obvious chilling effect which would tend to deter people from answering questions . . . with the candour which is necessary when accidents of this sort have to be investigated (which would) . . . seriously hamper future accident investigations and the protection of public safety by the learning of lessons which may help to prevent similar accidents'. The judge went on to point out that since the board has the power to compel witnesses to make statements where even the police

in a criminal investigation do not, that disclosure of statements made to investigators to the police would be in clear conflict of the right of individuals to avoid self-incrimination. These observations are heartily to be welcomed, but in a chilling dictum, the judge in one of the cases also observed 'there can be little doubt but that the AAIB [Air Accidents Investigation Branch], as an independent state entity, has the greatest expertise in determining the cause of an aircraft crash . . . in the absence of credible evidence that the investigation into an accident is incomplete, flawed or deficient, a Coroner . . . should not consider it necessary to investigate again the matters covered or to be covered by the independent investigation of the AAIB.'

While superficially plausible, this observation appears to be made in ignorance of the 'party process' involved in accident investigations whereby much of the technical expertise is afforded by, *inter alia*, manufacturers with an obvious and strong commercial interest in the outcome of the investigation. There is no opportunity for the intervention and cross-examination of witnesses or, indeed, the investigators on behalf of those whose reputations can be damaged or destroyed by the final report, making it inappropriate to be relied upon. The increasing tendency worldwide for civil and criminal courts to accept the verdict of accident investigation boards (which are of very varying quality) as evidence of what happened, and implicitly of fault, is to be deplored.

Additional analysis has been included in this year's European Union chapter concerning the relationship between EASA and individual states regarding safety oversight and regulation, and I am most grateful to Dimitri de Bournonville of Kennedys' Belgian office for agreeing to address this increasingly troublesome topic.

Again many thanks to our contributors, and I hope that our readers will derive great benefit from this edition as they have from those that have gone before.

Sean Gates
Gates Aviation Limited
London
June 2017