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AIRPORTS AND THE COURTS, by Charles S. Rhyne, National Institute of Municipal Law Officers, Washington, D. C., 1944. Pp. viii, 222. \$5.00.

Alden L. Powell

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appreciate the fertility of Kelsen's enterprise. A slight flaw may be found in the study insofar as the author is perhaps too much inclined to see only the merits of the Pure Theory of Law and does not give a sufficient impression of the very serious criticism which it has experienced. And a regrettable gap is the complete omission of an inquiry into the background of Austrian legal tradition and theory which is a highly important component in Kelsen's work. Still, the study remains the best approach to the subject available in English.

ERIC H. VOEGELIN*

AIRPORTS AND THE COURTS, by Charles S. Rhyne, National Institute of Municipal Law Officers, Washington, D. C., 1944. Pp. viii, 222. \$5.00.

This volume is a concise review of principles of law stated or affirmed in some four hundred federal and state court decisions involving acquisition, operation, maintenance, and zoning of public airports, and air-space rights of operators, aviators, and landowners. The author also used information gathered from the files of the National Institute of Municipal Law Officers and the Civil Aeronautics Administration, and from numerous books and articles, to make the volume a rather complete outline of airport law as it now stands.

The main phases of airport law development have been described clearly. The idea of public acquisition and operation of airports has met with little opposition from judges who had become accustomed generally to regard public operation of analogous enterprises such as harbors, docks, and wharves as proper "public purpose" functions. In cases involving tort liability of municipalities, however, a majority of the courts have held that airports are "proprietary" functions, and that a city is liable in damages "for failure of its agents to use ordinary care" in operating its airport.¹

Five theories of air-space rights have emerged from the numerous court decisions on this question. The author feels that the "so-called 'nuisance' theory" is the most reasonable basis for deciding cases of this kind because, unlike trespass, for example, it "gives the aviator one more chance to become acquainted with

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1. P. 74.

the use and claims of the surface owner so that he may adjust his flying accordingly and it is only when he does actual damage . . . that he is subject to liability."² Zoning of areas adjacent to airports generally has been sustained as a police power regulation.

This book, with its extensive bibliography and excellent index, will serve lawyers as a useful guide to present boundaries and future trends in a comparatively new field of law.

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2. P. 163.

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