Unit 5 Common Law Solutions to Environmental Problems

• Lateral & subjacent support
  – Strict liability - unimproved
  – Negligence - improved
Water Rights

• Surface waters
  – Doctrine of riparian rights
    • Reasonable use - NC rule
    • English rule
      – No diminution in flow or quality
      – Except unlimited use for domestic purposes
  • Navigable waters
    – May not obstruct navigation
Water Rights

- Runoff (surface water not in defined channels)
  - Reasonable use - NC
  - Common enemy rule (English)
- Subterranean waters in defined channels
Water Rights

- Percolating groundwater
  - Absolute ownership
  - Reasonable use - NC
Air and Light
Remedies in Tort

• Trespass
  – Intentional physical invasion of land of another
  – Protects right of possession
  – Exemplary (punitive) damages
  – Distinguish from crime of trespass
Remedies in Tort

• Nuisance
  – Protects right to use and quiet enjoyment
  – Public vs. private
  – Class
    • Intentional (theory of most actions)
    • Strict liability
    • Negligence
Elements of negligence

- Existence of a duty
- Breach of duty
- Proximate (legal) causation
- Actual damages
Relief in a nuisance action

- Abatement (injunctive relief)
- Damages (money)
- Both
- Balancing of hardships & benefits
Comments

• Economic impact of common law approach/externalities
• Problems of proving causation
• Lack of guidelines
  – Uncertainty