Nuisance and Other Common Law Solutions to Environmental Issues

I. Right of landowners to Lateral and Subjacent Support

- the right exists without regard to whether the neighboring landowner was negligent
- right applies only to land in its natural state; if the land is improved there is no absolute right to support

II. Air and Light

- limited availability of common law action

III. Remedies in Tort

A. Trespass

Trespass is the unauthorized entry (physical invasion of) onto the land of another. It is an intentional tort. The tort may be found even though no damages exist. The tort exists to protect the landowner's right to possession.

B. Nuisance

1. Definition: The tort of nuisance exists to protect the landowner's right to quiet enjoyment of her property. A physical invasion of the plaintiff's property is not an element of the tort of nuisance.

2. Types

   a. Public: affects a large group of people. Any action to abate it must be brought by the representative of a governmental unit. In addition to a civil action brought by a governmental unit, the governmental unit may also prosecute the alleged perpetrator of a public nuisance under criminal law.

   b. Private: involves a particularized injury to a specific individual(s) landowner. The injured individual(s) landowner may bring a tort suit against the alleged perpetrator.

   c. A nuisance may be both public and private if a large group is affected, and, in addition, some individuals have particularized injuries. Possibly because of this factual ambiguity, courts and attorneys have not always distinguished between public and private nuisances.

3. Theories (private nuisance)

   a. Strict liability
b. Intentional (most frequently used basis for nuisance suits)

c. Negligence

    Elements: 1. Existence of a **duty**
               2. **Breach** of that duty
               3. **Causation in fact and legal causation**
                  (**Proximate cause**)
               4. **Damages**: must be actual

4. Relief (private nuisance)
   a. Abatement (injunctive relief)
   b. Damages (money)
   c. Both

5. Balancing of hardships and benefits

IV. Right-to-Farm laws

V. Economic Impact of the Common Law Approach
   A. Externalities
   B. Lack of guidelines/Impact of uncertainty on business decisions