

## I. NUISANCE AND SOME ECONOMICS



Atlantic Cement Co.’s plant in Ravena New York as it is today. It now belongs to the Lafarge Co. The picture is taken from the grounds of a consolidated school. Much scrubbing equipment has been installed. A major revamping for environmental purposes was done between 2014 and 2017. The company is now proposing to replace the plant with one of much larger capacity using an entirely different system of cement production that is supposedly more environmentally friendly.

1. *Boomer*
  - a. What did the New York Court of Appeals do in *Boomer* that the lower courts had not already done?
  - b. The court does not answer Judge Jasen’s dissenting argument. What is the answer?
  - c. If we are to “balance the equities” how do the following things cut:
    - i. Defendant’s investment was \$45 million; plaintiffs’ permanent damages \$185,000
    - ii. Plaintiffs were residential users, not industrial, commercial, or agricultural
    - iii. Other residents of the area who were not parties to the suit were harmed by defendant’s activities
    - iv. There was no measurable threat to public health shown
    - v. Defendant had complied with all relevant zoning and environmental protection laws
    - vi. Defendant could not have easily predicted that it would be held to be a nuisance, but it could have predicted that its operations would harm those like plaintiffs

- d. Remedies that were available to the court
- 2. *Coase*
  - a. How does it work?
    - i. Joint causation
    - ii. Liability rule has no economic effect in a world of zero transactions costs
    - iii. What does that mean for a world that decidedly not one of zero transactions costs
  - b. How doesn't it work?
    - i. One-on-one bargaining
    - ii. Long-term effects of resource transfers
  - c. Consequences for the law?

## II. INTRODUCTION TO NON-POSSESSORY INTERESTS IN LAND

- 1. Introduction to non-possessory interests
    - corporeal vs. incorporeal hereditaments
    - iura in re sua* vs. *iura in re aliena*  
("rights in his own thing vs. rights in the thing of another")
  - 2. the questions on p. S384:
    - a. Any legal effect?
    - b. Changed conditions, changed use
    - c. Abandonment
    - d. Conveyance, succession
    - e. Appurtenance vs. in gross
    - f. Residual rights
    - g. Eminent domain
  - 3. Labels dictate result.
    - a. Right in the land of another vs. estate (either leasehold or freehold)
    - b. Burden vs. benefit
    - c. Easement vs. covenant
      - i. driveway easement as easement
      - ii. as covenant
    - d. Affirmative vs. negative
- easements

{

affirmative

negative

negative

affirmative

}

covenants
- e. Appurtenant vs. in gross

- f. Dominant vs. servient
- g. “Runs with the land”