

Law on Easement Act

Brief notes on Easement

-By Adv. Abhishek Gupta
(Delhi High Court)

Mobile: **9999052336/ 8700521407**
E-mail: **adv.abhishek3995@gmail.com**

- Success

NATRAJ LEGAL SOLUTIONS

DEFINITION OF EASEMENT:

Section 4 of Easement Act defines an Easement. An Easement is a right which the owner or occupier of certain land possesses for the beneficial enjoyment of that land, to do or to continue to do something, or to prevent or to continue to prevent something being done in or upon or in respect of certain other land not his own.

Land includes those things that are permanently attached. Beneficial enjoyment includes any convenience or advantage or any amenity.

The owner or occupier is the dominant owner and his land is the dominant heritage. The land on which the liability is imposed is called a servient heritage or tenement and the owner of that, is the servient owner.

Example: 'A' the owner of the house has a right of way over B's land. This is for the beneficial enjoyment of as house. This is an Easement.

Example: A is the owner of a house. He has a right of way over B's land to bring water from a stream. This is an easement.

Example:

- a) Right of way.
- b) Right to nail fruit trees on neighbour's land.
- c) Right to discharge rain water by an eave.
- d) Right to bury the dead in a particular place.

ESSENTIAL FEATURES:

- (i) **Appertenance:** An easement is a right which the owner or occupier of land possesses as such. Hence, the easement is always annexed to the dominant tenement.
- (ii) **Right in re aliena:** An easement is a right over the servient tenement. There is no easement over one's own land.
- (iii) **Beneficial to dominant owner:** Gale, a jurist points out that one of the essentials of an easements is that it should conduce to the beneficial enjoyment of the dominant tenement.

- (iv) **Profits a Prendre**, i.e., profits arising out of the soil of the dominant tenement, are also easements if annexed to the property.

EASEMENTS CLASSIFIED:

Easements are classified by the Easement Act as follows:

(i) **Continuous or discontinuous easement**

- **Continuous easement:** It is one whose enjoyment is or may be, continual without the act of man.

Example 1: A drainage from one land to another, A water channel from A's land to B.

Example 2: A's right to receive light & air by windows without obstruction by his neighbour

- **Discontinuous easement:** A discontinuous easement is one that needs the act of man for its enjoyment.

Example 1: A right of way annexed to A's house over B's land; Right of Refrains; Right to use staircase; Right to go to open yard, and, get water from a well.

(ii) **Apparent & non apparent easement**

- **Apparent easement:** An apparent easement is one the existence of which is shown by some permanent sign. This would be visible on careful examination.

Example: There is a drain from A's land to B's land and from there it is led to open yard. This is apparent only by inspection; Artificial water-courses or openings for taking water.

- **Non apparent easement:** Non apparent easement is one which has no permanent sign & hence not visible for inspection.

Example: A's right annexed to A's house, to prevent B from building on his own land. This is non-apparent.

PROFITS A PRENDRE:

According to the Easements Act the right to "*Profits a Prendre*" is part of the definition of Easement, e.g. Right to take earth from another persons land, for making earthenware is a profit a prendre. This is the "benefit made out of land" of the other person.

Right of a person to raise paddy seedlings on B's land, & after wards transplanting on his own land, was held a "profit a prendre".

Example:- Right to fishery; Right to take fruits of trees during seasons like tamarind, mangoes etc.

The right is exercised on the "land appertenant", to the dominant tenement. Hence, there should be dominant & servient heritages; it is dominant owner, who exercises this right of profit a prendre over the servient heritage. It is the right to do "something", on the land of the servient tenement for the more beneficial enjoyment of the dominant heritage, by the dominant owner.

EASEMENT OF NECESSITY:

An Easement of necessity is an easement without which the property cannot be used at all. Convenience is not the test but absolute necessity is the test. When one person transfers immovable property to another, if an easement in other immovable property of the transferor is necessary for enjoyment the property transferred, the transferee is entitled to such easement.

Example:-

- (a) A sells a land called B used for agricultural purposes. The land is sold to C. The land is accessible only by passing through A's land. C is entitled, to the right of way by necessity for agricultural purposes.
- (b) A, the owner of a house sells B a factory built on the adjoining land. The transferee C has a right to run the factory & to pollute the air, when necessary, with smoke and vapors from the factory.
- (c) A sells his land called B over which A had a right of way to bring water. C is the buyer. For A to enjoy his house the right of way

to bring water is absolutely necessary. Hence, A has a right over the land B.

When a partition is made of the joint property of several persons, if an easement over the share of one of them is necessary for enjoyment of share of the other coparcener the latter shall be entitled to such easement.

Example: In a partition A becomes the owner of an upper room on the I floor. B becomes the owner of the room immediately beneath it. A is entitled to the support from B's room as it is absolutely necessary for his safety.

Leading cases:

- Morgan Vs. Kirby
- Gajapathi Vs. Raja of Vijayanagaran

QUASI-EASEMENT:

As per Section 13 of Easement Act, when a person transfers immovable property to another then:

- i. If an easement is apparent and continuous and necessary the transferee is entitled to such easement.
- ii. If such an easement is apparent continuous and necessary to enjoy the said property the transferor has a right to such easement over the property transferred by him.
- iii. In a partition if such an easement is apparent and continuous and necessary for enjoyment the share of one co-parcener over the other, he is entitled to such easement.

Example:

- a) A right attached to B's house to receive light and air through a window without obstruction by his neighbour A. This is a continuous Easement.
- b) Rights attached to As land to lead water across B's land by an aqueduct and to draw off water by a stream. The drain is discoverable by careful inspection. This is an apparent easement.

Easements are called 'quasi', as those arising out of circumstances i.e., when the common properties are converted into tenements by sale,

mortgage partition etc. In such a case, there is an 'implied grant'. There is no express grant or transfer. Hence, in a sale or partition, even if there is no grant of such an easement, the courts construe that there is an implied transfer of an easement.

The leading case: Pyer Vs Carter

PRESCRIPTIVE EASEMENTS:

Section 15 of the Easement Act provides for the acquisition of prescriptive easement (Section 25 of the Limitation Act is also the same). The essential requisites for the acquisition are:

- a) The right must be definite and certain.
- b) It must have been enjoyed independently of any agreement with the owner of the land over which the right is claimed.
- c) It must be enjoyed: (i) Peaceably (ii) Openly (iii) as of right (iv) as an easement (v) without any interruption (vi) for a continuous period of 20 years.
- d) In respect of government land, the period is 30 years.

Computation of 20 years: This is a period ending within 2 years next before the institution of the prescriptive easementary suit. Mere enjoyment for over 20 years gives an inchoate (incomplete) right, but to acquire a prescriptive easement a suit must be filed and a decree obtained from the court.

Example:

- (i) A built a house with a window facing the land of C in 1960. C built in 1979, a-house which cut off the light and air from A's window. A objected & filed a case in 1983 to remove the obstruction. The suit is to be dismissed: the period of 20 years is not completed (1960 to 1979) only 19 years completed.
- (ii) A sues B for obstructing the right of way. B admits the obstruction but denies the right of way. B proves that A had taken written permission at one point of time in 20 years. A suit is to be dismissed. The enjoyment is not for 20 full years.

- (iii) A was receiving light and air through a window facing D's land for 30 years. D built a house in 1982, obstructing the light & air. A must file a suit within 1984 against B, to remove the obstruction, (i.e., within 2 years).

Exceptions (what cannot be acquired):

- a) A right which tends to destroy the servient tenement, cannot be acquired by prescription. No prescriptive right can be acquired to an open area to get light and air.
- b) There is no prescriptive right in respect of surface water in undefined channels.
- c) A right to underground water channels which are undefined.
- d) For overhanging of branches over another's land, there is no prescriptive title.

CUSTOMARY EASEMENT:

As per Section 18 of Easement Act, An easement may be acquired by virtue of local custom such an easement is called customary Easement. A customary easement relating to sports and recreation or religious observations are well known. Right to ferry, Riparian right to use water, are examples.

Customary right of fisherman to fish in a river or sea. These easements arise out of local customs which are well established and be enjoyed by any owner of land situated in the locality. Hence, there will be a fluctuating body of persons enjoying this right. Courts take judicial notice of these easements. A claimed that his right of privacy was affected by B, who built a house with wide windows to command a view of the interiors of the house of A. Held, the local custom was confined to Zanana and did not apply to A.

Some examples:

- (i) By the custom of a village every cultivator was entitled to graze his cattle on the common pasture. This is a customary easement.
- (ii) People living in a township have the right to bury the dead in a particular place. This is a customary easement.

ACQUISITION OF EASEMENT:

Modes of Acquisition of Easements:

The various modes of acquiring an easementary right are as follows:

1. **Express Grant:** An easement is acquired by an express grant made in the deed of sale, mortgage or other transfers. The grantor uses express terms to convey his intention. If the value of the immovable property is above Rs.100/- it should be in writing and duly registered.

2. Implied Circumstances:

a) **Easement of necessity:** Easement of necessity is an easement without which the property cannot be used at all. When one person transfers his immovable property to another, if an easement in other immovable property of the transferor is necessary for enjoying the property transferred, the transferee is entitled to such easement.

Example:

(i) A sells a land called B used for agricultural purposes. The land is sold to C. The land is accessible only by passing through A's land. C is entitled to the right of way by necessity for agricultural purposes.

(ii) In a partition A becomes the owner of an upper room on the 1 floor. B becomes the owner of the room immediately beneath it. A is entitled to the support from B's room as it is absolutely necessary for his safety.

b) **Quasi-Easement:** When a person transfers immovable property to another then:

(i) If an easement is apparent and continuous and necessary the transferee is entitled to such easement.

(ii) If such an easement is apparent continuous and necessary to enjoy the said property the transferor has a right to such easement over the property transferred by him.

- (iii) In a partition if such an easement is apparent and continuous and necessary for enjoying the share of one co-parcener over the other, he is entitled to such easement.

Examples:

- (i) A right attached to B's house to receive light and air through a window without obstruction by his neighbour A. This is a continuous Easement.
- (ii) Rights attached to A's land to lead water across B's land by an aqueduct and to draw off water by a stream. The drain is discoverable by careful inspection. This is an apparent easement. Easements are called 'quasi', as those arising out of circumstances i.e., when the common properties are converted into tenements by sale, mortgage partition etc. In such a case, there is an 'implied grant'. There is no express grant or transfer.

EXTINCTION OF EASEMENTS:

The modes of extinction of an easement are specified in Sections 37 to 47.

(i) Dissolution of Servient Owner's right (Section 37)

If the grantor ceases to have any right in the servient tenement because of some reason preceding the imposition of an easement, then the right extinguishes.

Example: A in 1960 let Sultanpur to B for 20 years. B in 1961 imposed an easement on the land in favour of C. In 1980, B's interest came to an end; with this, the easement given to C also extinguished.

(ii) Expiry of time or happening of an event-

When the easement is for a limited period or is acquired on a certain condition, the easement ends when the time expires or the condition fulfilled.

(iii) **Extinction by release-**

When the dominant owner releases the easement to the servient owner, the easement is extinguished. The release may be express or implied.

Example: A has a right to discharge water through the eaves to B's yard. A authorised 'B' build to such a height as not to discharge water through the eaves. B builds. The right is extinguished.

(iv) **Termination of necessity-**

Easements of necessity become extinguished when the necessity comes to an end.

Example: A grants 'B' a land which has an easement of necessity of right to passage over as land. B later buys a part of the land of A over which he may pass to reach his land. The necessity ends. Hence, the easement also ends.

(v) **Useless easement-**

When the easement is incapable of being beneficial at any time and under any circumstances, it ends.

Example: A grants a right to B, a doctor, the use of a dispensary. But, B takes sanyasa for ever. So not beneficial to him. Hence, the easement ends.

(vi) **Permanent change in dominant heritage-**

When there is a permanent change in the dominant heritage, with the increase of burden on the tenement, the easement terminates (subject to certain exceptions).

Example: A has a hut where he is living. He has a right of way over B's land. The hut is demolished and a mini-theatre is built. The right of way stands extinguished.

(vii) **Permanent alteration of servient heritage-**

If by Vis Major reasons, the servient tenement is destroyed, the easement comes to an end.

Example: A has a right of way over B's land. Due to earthquake B's land is cut off and has become a crater. The easement ends.

(viii) **Extinction by destruction of either of the heritages-**

If either the dominant or the servient is destroyed, the easement ends. The reason is there cannot be any easement without the two tenements.

(ix) **Unity by ownership-**

If the servient & dominants become one, i.e., by purchase etc., the easement ends.

(x) **Non-enjoyment-**

If the easement is not enjoyed for 20 years, the right extinguishes.

SUSPENSION OF EASEMENT (SECTION 49):

1. An easement is suspended, when the dominant owner becomes entitled to possession of the servient heritage for a limited interest.
2. When the servient owner, becomes entitled to possession of the dominant heritage for a limited interest, the easement is suspended.

Here, when both the dominant & servient heritages become one, the easement is suspended.

Example: A has a right of way over B's land. A takes out B's land on rent for 2 years. The easement is suspended for 2 years.

REVIVAL OF EASEMENT (SECTION 51):

1. When an easement is extinguished by destruction of dominant or servient heritage, it revives.
 - if the heritage is restored in 20 years (by alluvial).
 - if rebuilt in 20 years.
2. In the case of unity of ownership, the easement survives by orders of a competent court. In the case of unity of ownership, if the unity ends for any other reason, the easement survives.
3. A suspended easement revives when the cause for suspension is removed. A has a right of way over B's land. A taken on rent B's land for 5 years. Easement is suspended. After 5 years, B rents out to C. The easement revives.

LICENCE:

Definition under Section 52 of Easement Act-

When one person grants to another (or to definite number of other persons) a right to do or to continue to do, in or upon the immovable property of the grantor, something, which would be unlawful in the absence of such a grant, the right is called a licence.

The right should not amount to an easementary right or an interest in the property.

Essentials of licence:

The essentials of licence are:

- (i) Licence if not connected with the '*ownership*' of any land. It creates only a personal right of obligation. This is Right in personam.
- (ii) It is purely a right arising by permission. Hence it can be revoked by the grantor.

- (iii) A licence legalises an act which could otherwise have been an unlawful act.
- (iv) Licence is always in respect of immovable property.

Revocation of License (Deemed revocation):

License is revoked in the following circumstances:

- (i) If from the cause preceding the grant of a licence, the grantor himself ceases to have any interest in the property, the licence is revoked, Here the grantor's interest itself comes to an end.
- (ii) By express or implied release by the licensee.
- (iii) When it is for a fixed period, on the expiry of the period the licence comes to an end.
- (iv) If the licence is given under a condition that it shall become void on the performance or non-performance of a specified act, on the fulfillment of the condition, the licence is terminated.
- (v) If the property subject to licence is destroyed or permanently altered by a superior force (Vis Major), the licence terminates.
- (vi) Where the licensee himself becomes the owner of the property concerned (Merger), the licence ends.
- (vii) When the licence is granted for a particular purpose, the licence is terminated when the purpose is accomplished or abandoned or becomes impracticable.
- (viii) If the licence is granted to a licensee as holding a particular office, employment or character, the licence terminates when that office ceases to exist.
- (ix) If the licensee does not use the licence for 20 years, licence comes to an end.
- (x) Accessory licences come to an end when the major licence itself terminates.

Example:

- (a) 'A' grants a licence to B to live in A's Factory quarters. A leaves the job. The licence is revoked.
- (b) A, the owner of a building has granted a licence to B to use for a hotel B buys the building. The licence is terminated.

Licence when transferable (Section 56) or Transferable licence:

According to Section 56 of the Act, a license can be transferable under the following conditions-

1. A license to attend a place of public entertainment may be transferred by the licensee. This may be gathered from the grant or contract, or from surrounding circumstances or local usage. For instance, P grants Q, a right to walk over P's field whenever he pleases. The right is not annexed to any immovable property of Q. The right cannot be transferred.
2. Transfer by licensee- The general rule is that the licensee cannot transfer his license. If he transfers then the transferee becomes a trespasser and can be or may be ejected.

Licence when irrevocable (Section 60):

Section 60 provides that license can also be irrevocable. If the license is coupled with a transfer of property and the transfer is in force, it cannot be revoked. This is subject to the agreement. Hence, the power can be reserved. The rule is that a bare license may be revoked but if coupled with a transfer of the property, then it is irrevocable.

A license coupled with an interest in a land is binding. A license coupled with profit a prendre is irrevocable, for example, Right to excavate earth and carry it to make earthen wares, right to cut and carry timber on payment of royalty.

If the licensee, has executed some work which is permanent in nature and has incurred expenses, the licence cannot be revoked and hence, is irrevocable. For example, there are two companies, namely X and Y having lands adjoining to each other. The agents were common who

managed to put up the building and tank on X's land for use by Y. License is irrevocable as the rule applied as was held in "Ramson V dyson".



-By Adv. Abhishek Gupta



Delhi High Court

Mobile: 9999052336

Email: adv.abhishek3995@gmail.com