

## LAW OF EASEMENTS

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### ABSTRACT

*This study aimed to learn the law of easements definition, nature, and scope of easements. And, the essential elements of easements, kinds of easements, nature and scope of Profits-a-Prendre and easements, nature and scope of acquisition of easements, nature and scope of extinction of easements are explained in this article.*

**Keywords:** Easements, Acquisition, Extinction, Profits-a-Prendre.

### INTRODUCTION

Man is a social animal. Man always accepts help from others blindly. Humans think that they want to safeguard their property the property should not be occupied by any other. With this concept, the easement has originated. If a human has an immovable property, then certain rights are involved in the enjoyment of that property. Such rights are referred to as Easements. An easement is a non-possessory right to use and the right to entry onto the real property of another without possessing it. Easements are like real covenants and equitable servitudes.

### DEFINITION OF EASEMENTS

Section 4 of the Easements Act defines it as a right where the occupier or the owner of certain property as such, for the enjoyment of his land, to do or continue to do something or to prevent or continually prevent something being done, in or upon the other hand, not his land is an Easement

**Example:** X has a house beside the road and next to X, Y has a house if Y wants to go to his house or go to his work to his home, or if he wants to go back then also, he wants to walk in front of X house by the road, here Y have a right to go in X property.

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## MEANING OF EASEMENT

The word “easements” comes from the Latin term “aisementum” which means “privilege, convenience, or comfort”. A person having the right to enjoy his property over the land of another person for a specific purpose, that right is called an easement right. But the title of that property remains continuous with the real owner of that property.

**Examples of Easements:** Following are some examples of easements:

- Right of way for pedestrians or motor vehicles
- Right to take water from a well
- Right to irrigation
- Right of light or air
- Right of support of land

**Parties in Easements:** There are two parties in easements which are as follows:

1. Dominant
2. Servient

**Dominant:** The property or the heritage, there are some privileges, is called the dominant owner.

**Servient:** The property upon which the liabilities are imposed is called Servient Heritage.

## ESSENTIALS OF EASEMENTS

There are mainly four main essentials of easements:

- Dominant and servient heritage
- Separate owners
- Beneficial enjoyment of property
- Positive or negative

**Dominant and servient heritage:** Two properties should exist to enjoy the rights of easements. It is right to exist when dominant and servient heritage is not the same.

**Separate owners:** Two owners should exist for the enjoyment of easement rights. Easements do not exist, if the property belongs to the same owner.

**Beneficial enjoyment of property:** The dominant owner enjoys express or implied enjoyment of the property.

**Positive or negative:** Easement is a right that exists in both ways negative and positive. Positive easement here dominant owner enjoys his right to the property on the other hand negative easements; the dominant owner does not allow the servient owner to enjoy the property.

#### **Differences between Easement and License:**

- In an easement, the right is about the property. While on the other hand, the license is just a personal right.
- Therefore, easement rights are right in rem and can be enforced against the whole world. On the other hand, while the license is granted a license gets only right in personam.
- An easement can have both the character that is positive and negative, but the license has only a positive character.

#### **KINDS OF EASEMENT**

According to the Easement Act easements are of four kinds which as mentioned below:

1. Continuous and Discontinuous easement
2. Apparent and non-apparent easement
3. Public and private easement
4. Positive and negative easement

**Continuous Easement:** Easements that are continuous without any interference i.e., do not require human act for its enjoyment is called continuous easement. It adds a special quality to the property.

#### **For example:**

- Right to get light by windows
- Right to flow water on others' land by drainage

**Discontinuous Easements:** The easement, which needs human act for enjoyment is necessary is known as discontinuous easement.

**For example:** Right to way

**Apparent easement:** An apparent easement is also known as an express easement, its existence from any permanent sign that would be visible is called a permanent easement.

**For example:** Right to flow water from drainage.

**Non-apparent easements:** Non-non-apparent easement is also called an invisible easement. It is used but there is no proof of using it.

**For example:** The right annexed to another's land.

### PROFITS-A-PRENDRE AND EASEMENT

Profits-a-prendre is a right like easements right. It entitles a person to enter the property of another and take something from the soil of it.

**For example:**

- Right to take soil
- Right to take a gravel
- Right to take minerals
- Right to hunt etc.

A right that enables to removal and appropriation of any part of the soil or attached to the soil for the profit motto, which belongs to another is called "profit-a-prendre". Section 4 of the Indian Easements Act makes it clear that profits-a-prendre is also included within the scope of the definition of easements.

### ACQUISITION OF EASEMENTS

Section 8 of the Indian Easement Act, an easement is created by an express grant provided it is neither opposed to public policy nor prohibited by law. Such a grant is express, implied, constructive, or presumed. Let's examine how easements are acquired.

**Easement by grant:** Express grant is a type of acquisition of easement. Express by grant is done by writing a written agreement between the parties for a particular purpose and should be signed by both parties. Here the title of the land will remain with the dominant owner.

**Implied grant:** An implied grant is a type of acquisition of easement. Implied by grant is done without a written agreement between dominant and servient.

**Easement by necessity:** Section 13 provides an easement of necessity; it is an easement created by necessity. It will arise only in the property not used and not where it is necessary for the enjoyment of the property.

**For example:** A sells land to B for agricultural purposes, and the land is sold to C, the land is accessible only bypass through A's land, and D is entitled to a right of way by necessity for agricultural purposes.

#### **EASEMENT BY QUASI NECESSITY**

The owner or occupier does not use his property without exercising the right of easement over the servant's heritage. Thus, absolute necessity is the test and the convenience.

**For example:** X sells his land to Y for agricultural purposes. Here, Y cannot access his land without passing through Z's land. Thus, the easement of necessity is seen.

#### **EASEMENT BY PRESCRIPTION**

Acquisition of an easement by prescription means when one person gains the title of rights of use of a certain land against the real owner under the legal rules. A prescriptive easement allows someone other than the original property owner to gain the right to use a property. These property rights can be acquired in several ways, but prescriptive easements are only established if a party openly uses the land in question for several years without being granted the owner's permission.

**Custom:** It is a type of acquisition of easement. Easements are obtained by the goodness of local customs. As the custom of some villages, every farmer of that village passes their cattle through the common fields such acquisition of rights is called acquisition by custom.

## **RIGHTS WHICH CAN NOT BE ACQUIRED BY PRESCRIPTION**

**Easement by local custom:** Section 18 provides that easements created by a local custom these easements are called 'customary easements. Custom must be ancient, must be in existence from time immemorial, it should obtain the force of law in a specific locality. It must be certain, peaceful, and reasonable, and should not opposed to morality or public policy.

**Easement by transfer of dominant heritage:** Section 19 provides that easements may be passed by transfer of dominant heritage to the servant heritage. However, this section does not apply where no easement at all existed while the two tenements belonged to the same person.

**For example:** A has land to which a right of way is annexed. A's land to B for twenty years. The right-of-way vests in B's and his legal representatives continue if the lease continues.

**Easement by legislation:** An easement may be created by making a law. If the legislature of a State or the Parliament passes an Act that confers easement right upon the tenants or any other holder of the property that right becomes instantaneously effective and the holder of the property specified by the act becomes entitled to avail the easement.

## **EXTINCTION OF EASEMENT**

**Dissolution of Servient Owner's right:** If a right is present by a servient tenement if it is cancelled due to reasons in that manner the right of easement ends as well.

**For example:** X grants a piece of land to Y for 20 years, Y imposes an easement in favor of Z, Y's interest comes to an end, and the easement right granted to Z ceases to end as well.

**Expiry of time or happening of an event:** If the easement is obtained on some conditions, or for some purpose, or some period. On the fulfillment of certain conditions or purpose or expiry of the time, the right of easement is extinguished as well as by Section 6 of the Act.

**Extinction by release:** The owner of the dominant heritage releases the right of the easement to the servant owner, and the right ceases to exist. Such a release can be both expressly and impliedly made.

**For example:** P has a right to discharge water to Q's yard. To stop water, from entering Q's yard, P said to Q that built a building to such a height, as to not discharge water. Q built it and P's right end.

**Useless easements:** Useless easement means there is no use of such right in the future and now, then that right end.

**Permanent change in the dominant heritage:** If the nature of the dominant heritage changes permanently with an increase in the burden of on tenement, then the right of easement ceases to exist as the purpose it was the beneficial enjoyment of the dominant heritage.

**For example:** A's house is located such that he has a right of way by passing through B's, house. Later, due to earthquakes, B's house got cut off and thus, the right of easement ends.

**Extinction by the destruction of either heritage:** If both heritages got destroyed, the easements ended as two properties needed to exist from the rights. A person acquires easements.

**The following are the persons who can acquire easements:**

**Co-owner:** In the easement act, the Co-owner can obtain an easement from the other co-owners of immovable property without their consent for the beneficial enjoyment of the property. On the other hand, the co-owner cannot transfer his rights to others, without the co-owner's permission.

**Co-tenants:** As per the easement act co-tenants can acquire an easement from other co-owners without their consent for the beneficial enjoyment of the property. On the other hand, co-tenants cannot transfer their rights to others without the permission of other co-tenants.

**Trespassers:** As per the easement act, a trespasser is a person using others' land for a long period with no disturbance and then can acquire an easement for the beneficial enjoyment of the property.

**Possessor:** As per the easement act, a person using the piece of land for a period then can obtain the easement without the consent of the real owner of the property for the beneficial enjoyment of the land.

**Mortgagee:** As per the easement act, a mortgagee being a possessor of the property can acquire easement from his mortgager for the beneficial enjoyment of the property.

## CONCLUSION

At last, concluded that easement property right is different from a lease as it did not entitle the right of possession to a person. It only provides some specific reliefs for the violation of certain fundamental right as a result, easement establish a procedure for the ongoing right of one person to use another person's property for a specific purpose and in a specific way. Easement implies the existence of dominant and subservient tenements.





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