

LAW OF EASEMENTS

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Class-room live lectures edited, enlarged
and updated**

LAW OF EASEMENTS
SYLLABUS

1. Definitions: Easement, Dominant & Servient Tenements.
2. Natural rights.
3. Easements Classified.
 - * Positive & Negative
 - * Apparent & Non-apparent
 - * Quasi Easements
 - * Easement of necessity
4. Modes of Acquiring Easements.
5. Prescriptive Easements.
Customary Easements.
6. Legal incidents
Extent
Rule of 45 degrees.
Remedies for Violation of Easements.
7. (a) Extinction
(b) Suspension
(c) Revival

Textual & Reference Books

- Desai.N. : *Indian Easement Act*
Sastri.L.S. : *Indian Easement Act*

QUESTIONS BANK

1. Define an Easement. Explain the essentials of an Easement.
2. How are easements classified ? Illustrate.
3. (a) State and explain the different modes of acquiring easements.
(b) What is disturbance of easement & what are the remedies open for violation of an easement.
4. (a) What are the legal incidents of an easement?
(b) How are easements extinguished, suspended and revived?
5. Define a licence.
What are its essentials?
Distinguish Licence from an easement.
6. Explain when a licence is transferable and when irrevocable.
7. Write short notes on:
 - i) Prescriptive easements,
 - ii) Quasi easements.
 - iii) Customary easements.
 - iv) Apparent & Non-apparent easements.
 - v) Continuous easements & discontinuous easement
 - vi) Easement of necessity
 - vii) Profit a prendre

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CHAPTER1

EASEMENT

Ch. 1-1 Easement defined:

S.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.

Eg.: '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.

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.

Eg.: 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.

Ch. 1-2 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 easement is that it should conduce to the beneficial enjoyment of the dominant tenement.

Further, Profits a Prendre, i.e., profits arising out of the soil of the dominant tenement, are also easements if annexed to the property. • /

Ch.1.3 Easements Classified:

Easements are classified by the Easement Act as follows:

i) Continuous or discontinuous

ii) Apparent & non apparent easements

i) Continuous easement:

It is one whose enjoyment is or may be, continual without the act of man

e.g. A drainage from one land to another, A water channel from A's land to B;

A's right to receive light & air by windows without obstruction by his neighbour.

ii) A discontinuous easement is one that needs the act of man • for its enjoyment.

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.

iii) An apparent easement is one the existence of which is shown by some permanent sign. This would be visible on careful examination.

e.g. 1) 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.

2) Artificial water-courses or openings for taking water.

iv) Non apparent easement is one which has no permanent sign & hence not visible for inspection.

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

Ch.1-4 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 person's 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, & afterwards transplanting

on his own land, was held a "profit a prendre".

Right to fishery; Right to take fruits of trees during seasons eg. tamarind, mangoes etc. are examples.

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.

CHAPTER 2

OF EASEMENT

Ch. 2-1 Easement of necessity: Sn 13

i) 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.

Eg.: (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.

ii) 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.

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 Vijayanagar.

Ch. 2-2 Quasi-Easement. Sn 13

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.

Examples:

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 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. 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 is *Pyer V Carter*).

Ch. 2-3 Prescriptive Easements:

Sn. 15, of the Easement Act provides for the acquisition of prescriptive easement (Sn.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.

Eg.: (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:

ie, 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.

Ch. 2-4 Customary Easement. (Sn.18)

An easement may be acquired by virtue of local custom such an easement is called customary Easement.

Eg.: (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.

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.

CHAPTERS 3

ACQUISITION OF EASEMENT

Ch. 3-1. Modes of Acquisition of Easements:

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

a) **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.

b) **Implied Circumstances:**

(1) **Easement of necessity :**

i) 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.

Eg.: (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 As land. G is entitled to the right of way by necessity for agricultural purposes.

(b) 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.

(2) **Quasi-Easement:**

When a person transfers immovable property to another then:

c 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:

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 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.

c) Acquisition by Prescription:

Prescriptive Easements:

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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.

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The suit is to be dismissed: the period of 20 years is not completed (1960 to 1979) only 19 years completed.

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These easements arise out of local customs which are well established and be enjoyed by any owner of land situated in the locality.

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.

Ch. 3-2 Extinction of Easements.

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

i) Dissolution of Servient Owner's right. (Sn.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.

A in 1960 let Saltanpur 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.

A has a right to discharge water through the eaves to B's yard. A authorised 'B' to 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. ^

A grants 'B' a land which has an easement of necessity of right of 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.

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).

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.

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.

Ch. 3-3 Suspension & revival of Easement:

Suspension Sn. 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.

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 Sn. 51:

1. When an easement is extinguished by destruction of dominant or servient heritage, it revives.

a) if the heritage is restored in 20 years (by alluvial).

b) 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.

**.CHAPTER 4
LICENCE**

Ch. 4-1 Definition

Sn. 52

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.

The essentials of licence are:

- i) Licence is 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.

Licence

- a) A licence is a personal right in respect of immovable property.
- b) Licence is a right in personam.
- c) A licence cannot be assigned.
- d) A licence can be revoked.

A licence is only a permission given by the grantor.

- f) A licence is only a positive one.

Easement

- a) An easement is a right attached to or appertenant to immovable property.
- b) An easement is a right in rem.
- c) An easement can be assigned with the property to which it is annexed.
- d) A right of easement is not revocable at all.

e) An easement is acquired by right of assertive

By dominant owner,

- f) An easement may be negative or positive in character.

Ch. 4-2 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 licencee.

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 fulfilment 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.

Eg.: (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.

Ch. 4-3 Licence when transferable : Sn 56:

Transferable licence:

1. A licence to attend a place of public entertainment may be transferred by the licensee. The intention of the parties decides this ;this may be gathered from the grant or contract, or from surrounding circumstances or local usage..

A grants B, a right to walk over A's field whenever he pleases. The right is not annexed to any immovable property of B. The right cannot be transferred.

Govt. grants B, licence to erect temporary grain shed. B's servants may enter, erect, deposit grain & remove.

3. Transfer by licensee: The general rule is that the licensee cannot transfer his licence. If he transfers the transferee becomes a trespasser & can / may be ejected.

Sn.60: Licence when irrevocable:

1. If the licence is coupled with a transfer of property & transfer is in force, it cannot be revoked. This is subject to the agreement. Hence, power may be reserved.

The rule is that a bare licence may be revoked. But if coupled with transfer of property it is irrevocable.

A licence coupled with an interest in land is binding. A licence coupled with a "profits a prendre is irrevocable, e.g, Right to excavate earth & carry it to make wares, right to cut & carry timber on payment of royalty.

4.If the licensee, has executed work of a permanent character & incurred expenses, the licence cannot be revoked, e.g. A & B were two companies having adjoining lands. There were common agents who managed to put up building and tank on A's land for use by B. Held rule in Ramson V dyson applied. Licence was irrevocable.

THE END

REFERENCE SECTION

Selected Sections

INDIAN EASEMENTS ACT, 1882

CHAPTER I: OF EASEMENTS GENERALLY

4. "Easement" defined

An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of certain other land not his own.

Dominant and servient heritages and owners: The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; and land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Explanation : In the first and second clauses of this section the, expression "land" includes also things permanently attached to the earth; the expression "beneficial enjoyment" includes also possible convenience, remote advantage, and even a mere amenity; and the expression "to do something" includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, or any part of the soil of the servant heritage, or anything growing or subsisting thereon.

(a) A, as the owner of a certain house, has a right of way thither over his neighbor B's land for purposes connected with the beneficial enjoyment of the house. This is an easement.

(b) A, as the owner of a certain house, has the right to go on his neighbors B's land, and to take water for the purposes of his household out of a spring therein. This is an easement.

(c) A, as the owner of a certain house, has the right to conduct water from B's stream to supply the fountains in the garden attached to the house. This is an easement.

5. Continuous and discontinuous, apparent and non-apparent easements

Easements are either continuous or discontinuous, apparent or non-apparent.

A continuous easement is one whose enjoyment is, or may be, continual without the act of man.

A discontinuous easement is one that needs the act of man for its enjoyment.

An apparent easement is one the existence of which is shown by some permanent sign which, upon careful inspection by a competent person, would be visible to him.

A non-apparent easement is one that has no such sign.

(a) A right annexed to B's house to receive light by the windows without obstruction by his neighbour A. This is a continuous easement.

(b) A right of way annexed to A's house over B's land. This is a discontinuous easement.

(c) Rights annexed to A's land to lead water thither across B's land by an aqueduct and to draw off water thence by a drain. The drain would be discovered upon careful inspection by a person conversant with such matters. These are apparent easements.

(d) A right annexed to A's house to prevent B from building on his own land. This is a non-apparent easement.

6. Easement for limited time or on condition

An easement may be permanent, or for a term of years or other limited period, or subject to periodical interruption, or exercisable only at a certain place, or at certain times, or between certain hours, or for a particular purpose, or on condition that it shall commence or become void or voidable on the happening of a specified event or the performance or non-performance of a specified Act.

7. Easements restrictive of certain rights

Easements are restrictions of one or other of the following rights (namely):-

(a) **Exclusive right to enjoy**-The exclusive right of every owner of immovable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products there of and accessions thereto.

(b) **Rights to advantages arising from situation**-The right of every owner of immovable property (subject to any law for the time being in force) to enjoy without disturbance by another the natural advantages arising from its situation.

Illustrations of the rights above referred to

(a) The exclusive right of every owner of land in a town to build on such land, subject to any municipal law for the time being in force.

(b) The right of every owner of land that the air passing thereto shall not be unreasonable polluted by other persons.

(c) The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonably by noise or vibration caused by any other person.

(d) The right of every owner of land to so much light and air as pass vertically thereto.

(e) The right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent and adjacent soil of another person.

Explanation: Land is in its natural conditions when it is not excavated and not subjected to artificial pressure, and the "subjacent and adjacent soil" mentioned in this illustration means such soil only as in its natural condition would support the dominant heritage in its natural condition.

(f) The right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over or through his land shall not, before so passing or percolating, be unreasonably polluted by other persons.

(g) The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel and all water on its surface which does not pass in a defined channel.

(h) The right of every owner of land that the water of every natural stream which passes by, through or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force or temperature; the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature.

(i) The right of every owner of upper land that water naturally rising in, or falling on such land, and not passing in defined channels, shall be allowed by the owner of adjacent lower land to run naturally thereto.

(j) The right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household purposes and watering his cattle and sheep, and the right of every such owner to use and consume the water for irrigating such land, and for the purposes of any manufactory situate thereon, provided that he does not thereby cause material injury to other like owners.

CHAPTER II: THE IMPOSITION, ACQUISITION AND TRANSFER OF EASEMENTS

8. Who may impose easements

An easement may be imposed by any one in the circumstances, and to the extent, in and to which he may transfer his interest in the heritage on which the liability is so imposed.

Illustrations

(a) A is a tenant of B's land under a lease for an unexpired term of twenty years, and has power to transfer his interest under the lease. A may impose an easement on the land to continue during the time that the lease exists or for any shorter period.

(b) A is tenant for his life of certain land with remainder to B absolutely. A cannot, unless with B's consent, impose an easement thereon which will continue after the determination of his life interest.

(c) A, B and C are co-owners of certain land. A cannot, without the consent of B and C, impose an easement on the land or on any part thereof.

(d) A and B are lessees of the same lessor, A of a field X for a term of five years and B of a field Y for a term of ten years. A's interest under his lease is transferable; B's is not. A may impose on X, in favour of B, a right of way terminable with A's lease.

9. Servient owners

Subject to the provisions of section 8, a servient owner may impose on the servient heritage any easement that does not lessen the utility of the existing easement. But he cannot, without the consent of the dominant owner, impose an easement on the servient heritage which would lessen such utility.

(a) A has, in respect of his mill, a right to the uninterrupted flow thereto, from sunrise to noon, of the water of B's stream. B may grant to C the right to divert the water of the stream from noon to sunset:

PROVIDED that A's supply is not thereby diminished.

(b) A has, in respect of his house, a right of way over B's land. B may grant to C, as the owner of neighbouring farm, the right to feed his cattle on the grass growing on the way:

PROVIDED that A's right of way is not thereby obstructed.

10. Lessor and mortgagor

Subject to the provisions of section 8, a lessor may impose, on the property leased, any easement that does not derogate from the rights of the lessee as such, and a mortgagor may impose, on the property mortgaged, any easement that does not render the security insufficient. But a lessor or mortgagor cannot, without the consent of the lessee or mortgagee, impose any other easement on such property, unless it be to take effect on the termination of the lease or the redemption of the mortgage.

Explanation: A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

11. Lessee

No lessee or other person having a derivative interest may impose on the property held by him as such an easement to take effect after the expiration of his own interest, or in derogation of the right of the lessor or the superior proprietor.

12. Who may acquire easements

An easement may be acquired by the owner of the immovable property for the beneficial enjoyment of which the right is created, or on his behalf, by any person in possession of the same.

One of two or more co-owners of immovable property may, as such, with or without the consent of the other or others, acquire an easement for the beneficial enjoyment of such property.

No lessee of immovable property can acquire, for the beneficial enjoyment of other immovable property of his own, an easement in or over the property comprised in his lease.

13. Easements of necessity and quasi easements

Where one person transfers or bequeaths immovable property to another-

(a) if an easement in other immovable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement; or

(b) if such an easement is apparent and continuous and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or lessee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement; .

Where a partition is made of the joint property of several persons,-

(e) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement; or

(f) if such an easement is apparent and continuous and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless the different intention is expressed or necessarily implied, be entitled to such easement.

Where immovable property passes by operation of law, the persons from and to whom it so passes are, for the purpose of this section, to be deemed, respectively, the transferor and transferee.

(a) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land or by trespassing on the land of a stranger. B is entitled to a right of way, for agricultural purposes only, over A's adjoining land to the field sold.

(b) A, the owner of two field, sells one to B, and retains the other. The field retained was, at the date of the sale, used for agricultural purposes only, and is inaccessible except by passing over the field sold to B. A is entitled to a right to way, for agricultural purposes only, over B's field to the field retained.

14. Direction of way of necessity

When a right to a way of necessity is created under section 13, the transferor, the legal representative of the testator, or the owner of the share over which the right is exercised, as the case may be, is entitled to set out the way; but it must be reasonably convenient for the dominant owner.

When the person so entitled to set out the way refuses or neglects to do so, the dominant owner may set it out.

15. Acquisition by prescription

Where the access and use of light or air and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years,

and where support from one person's land or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, support, or other easement, shall be absolute.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contexted.

Explanation I: Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Explanation II: Nothing is an interruption within the meaning of this section unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof, and of the person making or authorising the same to be made.

Explanation III: Suspensions of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

Explanation IV: In the case of an easement to pollute water the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage.

When the property over which a right is claimed under this section belongs to government, this section shall be read as if, for the words "twenty years" the words "thirty years" were substituted.

(a) A suit is brought in 1883 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceable and openly enjoyed by him, claiming title thereto, as an easement, and as of right, without interruption, from 1st January, 1862 to 1st January, 1882. The plaintiff is entitled to judgement.

(b) In a like suit the plaintiff shows that the right was peaceable and openly enjoyed by him for twenty years, the defendant proves that for a year of that time the plaintiff was entitled to possession of the servient heritage as lessee thereof and enjoyed the right as such lessee. The suit shall be dismissed, for the right of way has not been enjoyed "as an easement" for twenty years.

(c) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had admitted that the user was not of right and asked his leave to enjoy the right. The suit shall be dismissed, for the right of way has not been enjoyed "as of right" for twenty years.

16. Exclusion in favour of reversioner of servient heritage

Provided that, when any land upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land.

Illustration

A sues for a declaration that he is entitled to a right to way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C had a life- interest in the land; that on C's death B became entitled to the land; and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

17. Rights which cannot be acquired by prescription

Easements acquired under section 15 are said to be acquired by prescription, and are called prescriptive rights.

None of the following rights can be so acquired-

(a) a right which would tend to the total destruction of the subject of the right, or the property on which, if the acquisition were made, liability would be imposed; (b) a right to the free passage of light or air to an open space of ground; (c) a right to surface-water not flowing in a stream and not permanently collected in a pool, tank or otherwise; (d) a right to underground water not passing in a defined channel.

18. Customary easements

An easement may be acquired in virtue of a local custom. Such easements are called customary easements.

(a) By the custom of a certain village every cultivator of village land is entitled, as such to graze his cattle on the common pasture. A having become the tenant of a plot of uncultivated land in the village breaks up and cultivates that plot. He thereby acquires an easement to graze his cattle in accordance with the custom.

(b) By the custom of a certain town no owner or occupier of a house can open a new window therein so as substantially to invade his neighbors privacy. A builds a house in the town near B's house. A thereupon acquires an easement that B shall not open new windows in his house so as to command a view of the portions of A's house which are ordinarily excluded from observation, and B acquires a like easement with respect to A's house.

19. Transfer of dominant heritage passes easement

Where the dominant heritage is transferred or devolves, by act of parties or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass the easement to the person in whose favour the transfer or devolution takes place.

A has certain land to which a right of way is annexed. A lets the land to B for twenty years. The right of way vests in B and his legal representatives so long as the lease continues.

CHAPTER III: THE INCIDENTS OF EASEMENTS

20. Rules controlled by contract or title

The rules contained in this Chapter are controlled by any contract between the dominant and servient owners relating to the servient heritage, and by the provisions of the instrument or decree, if any, by which the easement referred to was imposed.

Incidents of customary easements : And when any incident of any customary easement is inconsistent with such rules, nothing in this chapter shall affect such incident.

21. Bar to use unconnected with enjoyment

An easement must not be used for any purpose not connected with the enjoyment of the dominant heritage.

A, as owner of a farm Y, has right of way over B's land to Y. Lying beyond Y, A has another farm Z, the beneficial enjoyment of which is not necessary for the beneficial enjoyment of Y. He must not use the easement for the purpose of passing to and from Z. .

22. Exercise of easement-

The dominant owner must exercise his right in the mode which is least onerous to the servient owner, and, when the exercise of an easement can without detriment to the dominant owner be confined to a determinate part of the servient heritage, such exercise shall, at the request of the servient owner, be so confined.

(a) A has a right of way over B's field. A must enter the way at either end and not at any intermediate point.

(b) A has a right annexed to his house to cut thatching grass in B's swamp. A, when exercising his easement, must cut the grass so that the plants may not be destroyed.

23. Right to alter mode of enjoyment

Subject to the provisions of section 22, the dominant owner may, from time to time, alter the mode and place of enjoying the easement, provided that he does not thereby impose any additional burden on the servient heritage.

Exception-The dominant owner of a right of way cannot vary his line of passage at pleasure, even though he does not thereby impose any additional burden on the servient heritage.

24. Right to do acts to secure enjoyment

The dominant owner is entitled, as against the servient owner, to do all acts necessary to secure the fully enjoyment of the easement; but such acts must be done at such time and in such manner as, without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible; and the dominant owner must repair, as far as practicable, the damage (if any) caused by the act to the servient heritage.

Accessory rights : Right to do acts necessary to secure the full enjoyment of an easement are called accessory right.

(a) A has an easement to lay pipes in B's land to convey water to A's cistern. A may enter and dig the land in order to mend the pipes, but he must restore the surface to its original state. :

PROVIDED that the deviation is reasonable. (e) A, as owner of a certain house, has a right of way over B's field. A may remove rocks to make the way. (f) A has an easement of support from B's wall. The wall gives way. A may enter upon B's land and repair the wall. (g) A has an easement to have his land flooded by means of a dam in B's stream. The dam is half swept by an inundation. A may enter upon B's land and repair the dam.

25. Liability for expenses necessary for preservation of easement

The expenses incurred in constructing works, or making repairs, or doing any other act necessary for the use or preservation of an easement, must be defrayed by the dominant owner.

26. Liability for damage from want of repair

Where an easement is enjoyed by means of an artificial work, the dominant owner is liable to make compensation for any damage to the servient heritage arising from the want of repair of such work.

27. Servient owner not bound to do anything

The servient owner is not bound to do anything for the benefit of the dominant heritage, and he is entitled, as against the dominant owner, to use the servient heritage in any way consistent with the enjoyment of the easement; but he must not do any act tending to restrict the easement or to renders its exercise less convenient.

(a) A, as owner of a house, has a right to lead water and send sewage through B's land. B is not bound, as servient owner to clear the watercourse or scour the sewer.

(b) A grants a right of way through his land to B as owner of a field. A may feed his cattle on grass growing on the way:

PROVIDED that B's right of way is not thereby obstructed; but he must not build a wall at the end of his land so as to prevent B from going beyond it, nor must he narrow the way so as to render the exercise of the right less easy than it was at the date of the grant.

(c) A, in respect of his house, is entitled to an easement of support from B's wall. B is not bound, as servient owner to keep the wall standing and in repair. But he must not pull down or weaken the wall so as to make it incapable of rendering the necessary support.

28. Extent of easements

With respect to the extent of easements and the mode of their enjoyment, the following provisions shall take effect:-

Easement of necessity: An easement of necessity is co-extensive with the necessity as it existed when the easement was imposed.

Other easements : The extent of any other easement and the mode of its enjoyment must be fixed with reference to the probable intention of the parties, and the purpose for which the right was imposed or acquired.

In the absence of evidence as to such intention and purpose:-

(a) *Right of way*-A right of way of any one kind does not include a right of way of any other kind;

(b) *Right to light or air acquired by grant*- The extent of a right to the passage of light or air to certain window, door or other opening, imposed by a testamentary or non-testamentary instrument, is the quantity of light or air that entered the opening at the time the testator died or the non-testamentary instrument was made;

(c) *Prescriptive right to light or air*- The extent of a prescriptive right to the passage of light or air to a certain window, door or other opening is that quantity of light or air which has been accustomed to enter that opening during the whole of the prescriptive period irrespectively of the purposes for which it has been used;

(d) *Prescriptive right to pollute air or water*- The extent of a prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose; and

(e) *Other prescriptive rights*- The extent of every other prescriptive right and the mode of its enjoyment must be determined by the accustomed user of the right.

29. Increase of easement

The dominant owner cannot, by merely altering or adding to the dominant heritage, substantially increase an easement.

Where an easement has been granted or bequeathed so that its extent shall be proportionate to the extent of the dominant heritage, if the dominant heritage is increased by alluvion, the easement is proportionately increased, and if the dominant heritage is diminished by diluvion, the easement is proportionately diminished.

Save as aforesaid, no easement is affected by any change in the extent of the dominant or the servient heritage.

(a) A, the owner of a mill, has acquired a prescriptive right to divert to his mill part of the water of a stream. A alters the machinery of his mill. He cannot thereby increase his right to divert water.

(b) A has acquired an easement to pollute a stream by carrying on a manufacture on its banks by which a certain quantity of foul matter is discharged into it. A extends his works and thereby increase the quantity discharged. He is responsible to the lower riparian owners for injury done by such increase.

. 31. Obstruction in case of excessive user

In the case of excessive user of an easement the servient owner may, without prejudice to any other remedies to which he may be entitled, obstruct the user, but only on the servient heritage:

PROVIDED that such user cannot be obstructed when the obstruction would interfere with the lawful enjoyment of the easement.

A, having a right to the free passage over B's land of light to four windows, 6" x 4", increases their size and number. It is impossible to obstruct the passage of light to the new windows without also obstructing the passage of light to the ancient windows. B cannot obstruct the excessive user.

CHAPTER IV: THE DISTURBANCE OF EASEMENTS

32. Right to enjoyment with out disturbance

The owner or occupier of the dominant heritage is entitled to enjoyment the easement without disturbance by any other person.

A, as owner of a house has a right of way over B's land. C unlawfully enters on B's land and obstructs A in his right of way. A may sue C for compensation, not for the entry, but for the **obstruction**.

33. Suit for disturbance of easement

The owner of any interest in the dominant heritage, or the occupier of such heritage, may institute a suit for compensation for the disturbance of the easement or of any right accessory thereto:

PROVIDED that the disturbance has actually caused substantial damage to the plaintiff.

Explanation I: The doing of any act likely to injure the plaintiff by affecting the evidence of the easement, or by materially diminishing the value of the dominant heritage, is substantial damage within the meaning of this section and section 34.

Explanation II: Where the easement disturbed is a right to the free passage of light passing to the openings in a house, no damage is substantial within the meaning of this section unless it falls within the first Explanation, or interferes materially with the physical comfort of the plaintiff, or prevents him from carrying on his accustomed business in the dominant heritage as beneficially as he had done previous to instituting the suit.

Explanation III: Where the easement disturbed is a right to the free passage of air to the opening in a house, damage is substantial within the meaning of this section, if it interferes materially with the physical comfort of the plaintiff, though it is not injurious to his health.

A places a permanent obstruction in a path over which B, as tenant of C's house, has a right of way. This is substantial damage to C, for it may affect the evidence of his reversionary right to the easement.

34. When cause of action arises for removal of support

The removal of the means of support to which a dominant owner is entitled does not give rise to a right to recover compensation unless and until substantial damage is actually sustained.

35. Injunction to restrain disturbance

Subject to the provisions of the Specific Relief Act, 1877 (1 of 1877), sections 52 to 57 (both inclusive), an injunction may be granted to restrain the disturbance of an easement-

(a) if the easement is actually disturbed-then compensation for such disturbance might be recovered under this Chapter;

(b) if the disturbance is only threatened or intended-when the act threatened or intended must necessarily, if performed, disturb the easement.

36. Abatement of obstruction of easement

Notwithstanding the provisions of section 24, the dominant owner cannot himself abate a wrongful obstruction of an easement.

CHAPTER V: THE EXTINCTION, SUSPENSION AND REVIVAL OF EASEMENTS

37. Extinction by dissolution of right of servient owner

When, from a cause which preceded the imposition of an easement, the person by whom it was imposed ceases to have any right in the servient heritage, the easement is extinguished.

Exception: Nothing in this section applies to an easement lawfully imposed by a mortgagor in accordance with section 10.

(a) A transfers Sultanpur to B on condition that he does not marry C. B imposes an easement on Sultanpur. Then B marries C. B's interest in Sultanpur ends, and with it the easement is extinguished.

(b) A, in 1860, let Sultanpur to B for thirty years from the date of the lease. B, in 1861 imposes an easement on the land in favour of C, who enjoys the easement peaceably and openly as an easement without interruption for twenty-nine years, B's interest in Sultanpur then ends, and with it C's easement.

38. Extinction by release

An easement is extinguished when the dominant owner releases it, expressly or impliedly, to the servient owner. Such release can be made only in the circumstances and to the extent in and to which the dominant owner can alienate the dominant heritage. An easement may be released as to part only of the servient heritage.

Explanation I: An easement is impliedly released- (a) where the dominant owner expressly authorises an act of a permanent nature to be done on the servient heritage, the necessary consequence of which is to prevent his future enjoyment of the easement, and such act is done in pursuance of such authority;

(b) where any permanent alteration is made in the dominant heritage of such a nature as to show that the dominant owner intended to cease to enjoy the easement in future.

Explanation II: Mere non-user of an easement is not an implied release within the meaning of this section.

A, B and C are co-owners of a house to which an easement is annexed. A, without the consent of B and C, releases the easement. The release is effectual only as against A and his legal representative. .

39. Extinction by revocation

An easement is extinguished when the servient owner, in exercise of power reserved in this behalf, revokes the easement.

40. Extinction on expiration of limited period or happening of dissolving condition

An easement is extinguished where it has been imposed for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires or the condition is fulfilled.

41. Extinction on termination of necessity

An easement of necessity is extinguished when the necessity comes to an end.

A grants B a field inaccessible except by passing over A's adjoining land. B, afterwards purchases a part of that land over which he can pass to his field. The right of way over A's land which B has acquired is extinguished.

42. Extinction of useless easement

An easement is extinguished when it becomes incapable of being at any time and under any circumstances beneficial to the dominant owner.

43. Extinction by permanent change in dominant heritage

Where by, any permanent change in the dominant heritage, the burden on the servient heritage is materially increased and cannot be reduced by the servient owner without interfering with the lawful enjoyment of the easement, the easement is extinguished unless-

(a) it was intended for the beneficial enjoyment of the dominant heritage, to whatever extent the easement should be used; or (b) the injury caused to the servient owner by the change is so slight that no reasonable person would complain of it; or (c) the easement is an easement of necessity. .

44. Extinction on permanent alteration of servient heritage by superior force

An easement is extinguished where the servient heritage is by superior force so permanently altered that dominant owner can no longer enjoy such easement:

PROVIDED that, where a way of necessity is destroyed by superior force, the dominant owner has a right to another way over the servient heritage; and the provisions of section 14 apply to such way.

(a) A grants to B, as the owner of a certain house, a right to fish in a river running through A's land. The river changes its course permanently and runs through C's land. B's easement is extinguished.

(b) Access to a path over which A has a right of way is permanently cut off by an earthquake. A's right is extinguished.

45. Extinction by destruction of either heritage

An easement is extinguished when either the dominant or the servient heritage is completely destroyed.

A has a right of way over a road running along the foot of a sea-cliff. The road is washed away by a permanent encroachment of the sea. A's easement is extinguished.

46. Extinction by unity of ownership

An easement is extinguished when the same person becomes entitled to the absolute ownership of the whole of the dominant and servient heritages.

A, as the owner of a house, has a right of way over B's field. A mortgages his house, and B mortgages his field to C. Then C forecloses both mortgages and becomes thereby absolute owner of both house and field. The right of way is extinguished.

47. Extinction by non-enjoyment

A continuous easement is extinguished when it totally ceases to be enjoyed as such for an unbroken period of twenty years. A discontinuous easement is extinguished when, for a like period, it has not been enjoyed as such. Such period shall be reckoned, in the case of a continuous easement, from the day on which its enjoyment was obstructed by the servient owner, or rendered impossible by the dominant owner; and, in the case of a discontinuous easement, from the day on which it was last enjoyed by any person as dominant owner:

49. Suspension of easement

An easement is suspended when the dominant owner become entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein.

50. Servient owner not entitled to require continuance

The servient owner has no right to require that an easement be continued; and notwithstanding the provisions of section 26, he is not entitled to compensation for damage caused to the servient heritage in consequence of the extinguishment or suspension of the easement, if the dominant owner has given to the servient owner such notice as will enable him, without unreasonable expense, to protect the servient heritage from such damage.

Compensation for damages caused by extinguishment or suspension : Where such notice has not been given, the servient owner is entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension.

A, in exercise of an easement, diverts to his canal the water of B's stream. The diversion continues for many years, and during that time the bed of the stream partly fills up. A then abandons his easement, and restores the stream to its ancient course. B's land is consequently flooded. B sues A for compensation for the damage caused by the flooding. It is proved that A gave B a month's notice of his intention to

abandon the easement, and that such notice was sufficient to enable B, without unreasonable expense, to have prevented the damage. The suit must be dismissed.

51. Revival of easements

An easement extinguished under section 45 revives (a) when the destroyed heritage is, before twenty years have expired, restored by the deposit of alluvion; (b) when the destroyed heritage is a servient building and before twenty years have expired such building is rebuilt upon the same site; and (c) when the destroyed heritage is a dominant building and before twenty years have expired such building is rebuilt upon the same site and in such a manner as not to impose a greater burden on the servient heritage.

A, as the absolute owner of field Y, has a right of way thither over B's field Z. A obtains from B a lease of Z for twenty years. The easement is suspended so long as A remains lessee of Z. But when A assigns the lease to C, or surrenders it to B, right of way revives

CHAPTER VI: LICENCES

52. "Licence" defined

Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.

53. Who may grant licence

A licence may be granted by anyone in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the licence.

54. Grant may be express or implied

The grant of a licence may be express or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a licence.

55. Accessory licences annexed by law

All licences necessary for the enjoyment of any interest, or the exercise of any right, are implied in the constitution of such interest or right. Such licences are called accessory licences.

A sells the trees growing in his land to B. B is entitled to go on the land and take away the trees.

56. Licence when transferable

Unless a different intention is expressed or necessarily implied, licence to attend a place of public entertainment may be transferred by the licensee; but, save as aforesaid, a licence cannot be transferred by the licensee or exercised by his servient or agents.

(a) A grants B a right to walk over A's field whenever he pleases. The right is not annexed to any immovable property of B. The right cannot be transferred.

(b) The government grants B a licence to erect and use temporary grain-sheds on government land. In the absence of express provision to the contrary, B's servants may enter on the land for the purpose of erecting sheds, erect the same, deposit grain therein and remove grain therefrom.

57. Grantor's duty to disclose defects

The grantor of a licence is bound to disclose to the licensee any defect in the property affected by the licence, likely to be dangerous to the person or property of the licensee, of which the grantor is, and the licensee is not, aware.

58. Grantor's duty not to render property unsafe

59. Grantor's transferee not bound by licence

60. Licence when revocable

A licence may be revoked by the grantor, unless-

- (a) it is coupled with a transfer of property and such transfer is in force;
- (b) the licensee, acting upon the licence, has executed a work of a permanent character and incurred expenses in the execution.

61. Revocation express or implied

The revocation of a Licence may be express or implied. (a) A, the owner of a field, grants a licence to B, to use a path across it. A with intent to revoke the licence, locks a gate across the path. The licence is revoked.

62. Licence when deemed revoked

- (a) when, from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the licence;
- (b) when the licensee releases it, expressly or impliedly, to the grantor or his representative;
- (c) where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires, or the conditions is fulfilled;
- (d) where the property affected by the licence is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right; (e) where the Licensee becomes entitled to the absolute ownership of the property affected by the licence; (f) where the licence is granted for a specified purpose and the purpose is attained or abandoned, or becomes impracticable; (g) where the licence is granted to the licensee as holding a particular office, employment or character, and such office, employment or character ceases to exist;
- (h) where the licence totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between the grantor and the licensee; (i) in the case of an accessory licence, when the interest or right to which it is accessory ceases to exist.

63. Licensees rights on revocation Where a licence is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property.

64. Licensees rights on eviction Where a licence has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the licence, the right for which he contracted, he is entitled to recover compensation from the grantors.

THE END

