



## FACULTY OF JURIDICAL SCIENCES

COURSE: LL.B. 1st Semester

SUBJECT: Law of Property

SUBJECT CODE: LL. B.108

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# Lecture-36



## **WHO MAY ACQUIRE EASEMENT**

According to Section 12 of the Act, 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 the person in possession of the same.

One of the two or more co-owners of immovable property may, as such with or without the consent of the 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.

A right of the easement could not be granted to the plaintiff if the plaintiff claimed the land over which he claimed a right as belonging to him. The question of animus was a question of fact. A person claiming to be the owner of the land had the animus of an owner and not the animus of a person exercising a right of easement over the land of another. Although, the right of the easement could be claimed in the alternative if the plaintiff primarily claimed to be owner also in the alternative pleaded that in case he was not proved to be the owner of the land and the defendant was held to be owner thereof then in that event a right of easement might be granted to him as he had been flowing water and doing other acts of the easement.

**2. Creation of easement by custom or tradition.-** According to Section 18 of the Easements Act, an easement may be acquired by virtue of local custom, such easements are called customary easements.

### **Illustrations**

(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 in a certain town, no owner or occupier of a house can open a new window therein so as substantially to invade his neighbour's privacy. *A* builds a house in the town near *B*'s house. *A* thereupon acquired an easement that *B* shall not open new windows in his house so as to command a view of the portion's of *A*'s house which is ordinarily excluded from observation and *B* acquired a like easement with respect to *A*'s house.

**Practice does not amount to custom.-** From the nature of things, a custom is something the originator of which is known to none by certainty. Ex-hypothesis, therefore, the plaintiff cannot claim to have started a custom. But, the practice cannot lead to the legal consequence to which a custom leads.

**Customs-What it means?-** Custom is one which is claimed by a particular class of the inhabitants of a locality and not any individual as of personal rights.

## MCQ

**1.** According to Section 12 of the Act, an easement may be acquired by

**(a)** the owner of the immovable property

(b) the co owner of the immovable

(c) on his behalf, by any the person in possession of the same.

(d) Any one of the above

**2. Creation of easement by custom is provided in section**

**(a) 16**

**(b) 17**

**(c) 18**

**(d) 19**

**3.** 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.

(a) True

(b) False

(c) Can not say

(d) None of the above

**4.** 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. Can he thereby acquire an easement to graze his cattle in accordance with the custom?

(a) Yes

(b) No

(c) Can not say

(d) None of the above

**5.** By the custom in a certain town, no owner or occupier of a house can open a new window therein so as substantially to invade his neighbour's privacy.

(a) True

(b) False

(c) Can not say

(d) None of the above