



# FACULTY OF JURIDICAL SCIENCES

COURSE: **BALLB &BBALLB**

SUBJECT: Law of Property

SUBJECT CODE: **B A L 603 &BBL 603**

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# Lecture-33



## **Easement**

According to Salmond, “easement is that legal servient which can be exercised on some other piece of land for the benefit of a piece of land.”

According to Peacock, “Easement is such a privilege without profit which an owner of dominant heritage receives from the owner of the land due to which owner of that property cannot exercise his complete rights or does nothing for the advantage of the earlier occupiers.”

In *Copeland v. Greenhalf*, it was held that easement is a right and it must relate to doing of an act upon or in respect of certain other lands which is not his own. It is clear that for constituting an easement the subject-matter of the right must be definite, certain and specific.

In *K. Kolandaisamy Gounder v. Manickan*, it was held that an easement is a privilege by which owner of one tenement has the right to enjoy over the tenement of another.

### **Origin and development of easement**

The easement is a right which originated when the human race wildlife, established an organised society and started living in cities and villages. Thus, the origin of the easement can be traced from the beginning of human civilisation. As soon as it was experienced that everybody should have an exclusive right to possess property immediately the theory based on equity was also propounded that the welfare of the public lies in using their property in a way so as not to affect the property of another.

The origin of rights relating to the easement may be traced from the time of the development of civilisation when man began to live in one place and naturally began to treat towards his comforts. After some time an idea began to arise in his mind that he should exercise his right in such a way that they should not come in the way of others. For example, nobody should pour water on the land of others, should not make any construction towards other's land, should not pass through the land of others, should not open windows towards the of others, *etc.* The aforementioned restrictions on the use of rights alone are called easements.

Rights relating to easement have been in practice in India since ancient times. These rights were recognised during Hindu and Muslim periods also. After the rule of Britisher's law relating to easement took a new turn. In India, English law relating to easement was applied.

In 1871, the Limitation Act was passed in which rights relating to easement were recognised. After some time only in 1877, another Act was passed which superseded the earlier Act, 1871. This Act for the first time provided legal rights relating to the person and the rights of easement

relating to property were ascertained. This Act was not retrospective in nature. It does not affect rights acquired prior to 1891.

In *Deenkar v. Ganapati*, it was held that “the word ‘easement’ has originated from France. While applying principles of equity in cases of privileges word “easement” have been used in English common law but in principle and practice the Indian Easement Act is different from the principles of common law, particularly in cases of interpretation of nature of licenses.”

This Act was extended to Uttar Pradesh, Bombay, and Delhi in 1891 and to Madhya Pradesh, Madras, and Koorg in 1892.

### **Difference between customary right and customary easement**

Difference between customary right and the customary easement is as follows:-

- (i) Customary right is related to a particular class of people or to a particular place whereas customary easement is an easement *in personam*.
- (ii) Customary right is a complete right, it can be acquired by any person whereas customary easement is used for the beneficial enjoyment of the property, *i.e.*, it is related to dominant heritage.

### **DOMINANT AND SERVIENT HERITAGE AND OWNERS**

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

### **Illustrations**

- (a) *A*, as the owner of a certain house, has a right of way thither over his neighbour *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 neighbour *B*'s land and to take water for the purpose of his household, out of a spring therein. This is an easement.
- © *A* dedicates to the public the right to occupy the surface of certain land for the purpose of passing and re-passing. The right is not an easement.

Thus, an easement is a privilege without profit, which the owner of one tenement has a right to enjoy in respect of that tenement in or over the tenement of another person.

## MCQ

1. " Easement is that legal servient which can be exercised on some other piece of land for the benefit of a piece of land." definition given by

- (a) Salmond,
- (b) Peacock
- (c) Bentham
- (d) None of the above

2. "Easement is such a privilege without profit which an owner of dominant heritage receives from the owner of the land due to which owner of that property cannot exercise his complete rights or does nothing for the advantage of the earlier occupiers."

- (a) Salmond,
- (b) Peacock
- (c) Bentham
- (d) None of the above

3. The easement is a right which originated when the human race wildlife, established an organised society and started living in cities and villages

- (a) True
- (b) False
- (c) Partially True
- (d) Partially False

4. In which case held that "The easement is a right which originated when the human race wildlife, established an organised society and started living in cities and villages"

- (a) Copeland v. Greenhalf
- (b) K. Kolandaisamy Gounder v. Manickan
- (c) *Deenkar v. Ganapati*
- (d) None of the above

5. In which year Indian Easement Act extend to Uttar Pradesh

- (a) 1890
- (b) 1891
- (c) 1882
- (d) 1893