

FACULTY OF JURIDICAL SCIENCES

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Lecture-35



CREATION OF EASEMENT

Sections 8 to 19 of the Easements Act lay down the various modes for the creation of the easement. These are as follows:-

1. Creation of easement by the grant. (Sections 8 to 11)
2. Creation of easement by Custom or tradition. (Section 18)
3. Creation of easement by prescription. (Section 15)
4. Creation of easement by necessity. (Section 13)

1. Creation of easement by grant.- According to Section 8 of the Easements Act, an easement may be imposed by anyone in the circumstances and to the extent, in and to which he may transfer his interest in the heritage on which the liability is to be imposed.

Illustrations

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

(b) *A* is a tenant for his life of certain land with the 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.

© *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.

INTERPRETATION OF WORD “IMPOSE”

The word “impose” in Section 8 cannot be taken only to mean the imposition of easement by the direct action but it also includes to “impose” by omission to take steps to prevent acquisition by prescription.

No particular words are necessary for grant.- Where the grant is oral the question whether it is a grant of an interest in land or an easement or a mere license is a question of fact to be determined by the Court from the words used and the circumstances under which they were used.

PRESUMPTION AS IMPLIED GRANT

The question of whether a grant can be implied or not would only arise in a case where there is no express grant. The absence of an express grant would negative an implied grant is quite untenable. If there is no express specification of the easement of any right but if it is mentioned in the deed that a specific area has been left for a road to the access to the house sites and the remaining plots were sold. The road was being used by the plaintiffs as access to their plots, it can easily be inferred that the road was left for the purpose of the access even though it was specifically stated in the deed.

TRANSFER OF EASEMENT WITH DOMINANT TENEMENT

Once an easement has become legally appurtenant to a dominant tenement, it will *ipso-facto* pass on a conveyance of that dominant tenement.

SERVIENT OWNERS (SECTION 9)

A servient owner can impose an easement on the servient heritage but the imposition should not lessen the utility of any existing easement. It would lessen the utility only when imposed if that had been consented by the dominant owner. The right to impose such easement is also subject to the provision of Section 8 of the Act which states that an easement may be imposed in the circumstances and to the extent, in and to which he may transfer his interest in the heritage on which liability is to be imposed.

MCQ

1. Creation of easement provided under Indian Easement Act 1882

- (a) section 8-18
- (b) section 9-18
- (c) section 8-19
- (d) section 9-19

2. Sections 8 to 11 of the Easements Act lay down

- (a) Creation of easement by the grant.
- (b) Creation of easement by Custom or tradition
- (c) Creation of easement by prescription
- (d) Creation of easement by necessity

3. Choose the correct answer

- (a) There can be no easement without dominant tenement and a servient tenement.
- (b) Rights, which are by a community or class of persons by virtue of a customary right, are not easement but are right in gross.
- (c) Both (a) and (b).
- (d) Neither (a) nor (b).

4. Easement cannot be created by

- (a) law
- (b) grant
- (c) necessity
- (d) prescription

5. Easement by grant may be created

- (a) expressly
- (b) impliedly
- (c) by presumption
- (d) all the above