



FACULTY OF JURIDICAL SCIENCES

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Lecture- 40



License is a personal right granted to a person 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, such a right is called as a license. It is a permissive right and is personal to the grantee. Hence in other words it is a validation of the owner of a property for the acts of the licensee which would otherwise be committed unlawfully.

License has been explained under Section 52 of The Indian Easement Act 1882

The following three characteristics are essential for granting a legally valid license-

1. The owner of the property must grant or allow a person or a definite number of persons a right to do or continue to do something in the immovable property of the grantor.
2. Such an act which is granted by the grantor to the grantee would be unlawful if such a right is not conferred upon him.
3. The right vested in the grantee should not amount to an easement or an interest in the property.

Hence a license is not connected to the ownership of the property. It is merely a personal privilege unrelated to any other property of the licensee. It is a non-transferable and non-heritable right

Associated Hotels of India Ltd. v. R.N. Kapoor, the Court held that a license is a document given to the licensee to use a property under certain terms and conditions while it remains in the possession of the actual owner of the property. Thus the legal possession remains with the owner of the property and a mere license is granted to the licensee to use the property of the owner for a particular purpose. However, in the absence of such license, the act performed by the licensee on the property would be unlawful.

Who can grant a license?

A license cannot be granted by the licensor if he does not possess the lawful interest in the property and the licensee cannot receive such a license. The grantor can create or confer upon a right in a grantee resulting in a license without any formal agreement or conduct. A license may be granted expressly or impliedly from the conduct of the grantor or through an agreement. It is

merely a permission granted, it need not be created by expressly by words. It can be inferred or implied from the conduct or actions of the party.

Ludhichem Industries v. Ahmed R. V. Peer Mohammad, the Court held that an agreement for license is effective only till the grantor or licensor has the right, title or interest in the property owned by him. On termination of his interest, the agreement for license will lapse.

Accessory Licenses

All licenses conferred upon a person for the enjoyment of any interest or for the exercise of a right are deemed to be implied in the constitution of the license. Such licenses are called as accessory licenses. Thus whenever a right or interest in any property is granted everything necessary to make the grant effective is deemed to be implied in such grant. Such a grant is however subject to a contract between the parties. When the contract expressly mentions not to enjoy certain rights this section cannot be invoked.

For example, A sells fruits grown on the land of B. B is entitled to take it away if he so demands.

When is the license transferable?

A license granted to a licensee by the licensor cannot be exercised by his servants or agents. However, a license to attend a place of public entertainment may be transferred by the licensee unless a different intention is specifically expressed or implied from the conduct. For example, movie tickets, for tickets to a fair etc.

Illustration

The Government grants X the license to build a temporary building-like structure on a Government land. In absence of the contrary X cannot transfer his license. Hence license is a mere personal privilege and is ordinarily non-transferable. Therefore it should be exercised by the person to whom it is granted.

Duties of the Grantor

The grantor of the license has the following to two duties

To disclose all defects in the property licensed by him

The grantor of a license is bound to disclose to the licensee any defect in the property affected by the licenses, likely to be dangerous to the person or property of the licensee of which the grantor

is and the licensee is not aware. Therefore if the licensor fails to disclose such defects and any injury is inflicted on the licensee, the licensor will be liable for damages.

Grantor's duty not to render the property unsafe

The grantor of the license is bound not to do anything likely to render the property affected by the license dangerous to the person or property of the licensee.

The grantor's transferee is not bound by the license, when the grantor of the license transfers the property affected thereby, the transferee is not bound by the license. The license is a personal right conferred on the licensee and hence the transferee of the grantor is not bound by the license.

Revocation of licenses

A license can be revoked by the grantor unless

It is coupled with a transfer of property and such a transfer is in force

If a license is coupled with a transfer of property the transfer will become useless and meaningless if the license is withdrawn. The grantor cannot derogate from his grant.

The licensee acting upon the license has executed work of permanent character and incurred expenses in the execution

When a work of permanent nature is constructed or being constructed the license cannot be revoked by the licensor. It is material to determine whether the work is of a permanent nature or not.

Pratapsingh v Dhumsingh: The Court held that a license is irrevocable if it is proved that the tenants of a particular village had been allowed, by the plaintiffs predecessor – interest, to cut firewood free of charge from the land now belonging to the plaintiffs. A suit was filed by the plaintiffs for a perpetual injunction restraining tenants from interfering, in any way, in future, with the plaintiffs trees. The court construed a license granted to the tenants to go upon the plaintiffs land and cut the firewood free of charge. The court negated this plea, relying on the provision of this Act and held that since the license was coupled with a grant and it was irrevocable.

The revocation of a license may be express or implied. Thus under section 62 of the Act in the following nine cases license is deemed to be revoked.

1. When the grantor ceases to have any interest in the property licensed prior to the transfer of the license.
2. When the licensee releases the license expressly or impliedly to the grantor or his representative.
3. When the license 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 condition is fulfilled
4. When the property affected by the license is destroyed or by superior force, the property is permanently altered. In such a case the licensee cannot exercise his right
5. When the licensee becomes entitled to the absolute ownership of the property affected by the license
6. Where the license is granted for a specific purpose and the purpose is attained or abandoned or becomes impractical
7. When the license is granted to the licensee as holding a particular office, employment or character and it ceases to exist
8. When the license 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.
9. In case of accessory license when the interest or right to which it is necessary ceases to exist.

However when the license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove the goods which have been allowed to be placed on such a property

When the license is granted for a consideration and the licensee without any fault of his own is evicted by the grantor before he has fully enjoyed his right for which he contracted, he is entitled to recover compensation from the grantor.

Conclusion

Hence the article highlights the relevant provisions pertaining to a license under the Indian Easement Act 1882 and clarifies that a license is a mere permission or a personal privilege granted to a licensee to enjoy certain rights in the property owned by the licensor.

MCQ

1. Choose the correct answer

- (I) Simple licence is always revocable at the will of the licensor and it is also not assignable.
- (II) Simple licence is not revocable at the will of the licensor and it is assignable.
- (III) In licence coupled with a grant of interest the licensor cannot in general revoke it so as to defeat the grant to which it is incident.
- (IV) In licence coupled with a grant of interest the licensor can in general revoke it.
- (a) (I), (II)
- (b) (I), (IV)
- (c) (II), (III)
- (d) (II), (IV)

2. Choose the correct answer

- (a) An easement can be revoked at the will of the servient owner.
- (b) A license is not transferable at all under any circumstance.
- (c) A license is always bound to be of positive nature.
- (d) A dominant tenement follows the easement right.

3. A license is not deemed to be revoked under

section 62 of the Indian Easements Act

- (a) when the grantor ceases to have any interest in the property.;
- (b) when the grantor dies;
- (c) when the licensee releases it to the grantor or to his legal representative;
- (d) where it has been granted for a limited period.

4. Duties of the Grantor

- (a) To disclose all defects in the property licensed by him
- (b) not to render the property unsafe
- (c) Both (a) and (b)
- (d) None of the above

5. The revocation of a license may be express or implied.

- (a) True
- (b) False
- (c) Can not say
- (d) None of the above