



# FACULTY OF JURIDICAL SCIENCES

**COURSE: LL.B. 1st Semester**

**SUBJECT: Law of Property**

**SUBJECT CODE: LL. B.104**

**NAME OF FACULTY: Dr. Ravi Kant Gupta**

# Lecture-34



## **INDIAN EASEMENT ACT, 1882**

Word “ an easement” has been defined under Section 4 of the Indian Easement Act, 1882 as follows :

“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 another land not his own.”

### **ESSENTIALS OF EASEMENT**

The following are the essentials of easement:-

1. Dominant and servient heritage;
2. Two separate properties;
3. Right over immovable property;
4. Beneficial enjoyment of property;
5. Easement must be attached with the property; and
6. Easement must be right *in rem*.
7. Easement belongs to the determinate person and not to fluctuating body.

**Main Characteristics of easement.-** Main characteristics of the easement are as follows:-

**(i) It is an incorporeal right.-** Easements are generally incorporeal rights while land on which such rights are based is corporeal property. These rights have no separate existence because they are related to land.

**(ii) It is right in rem.-** Easements are ordinarily available against the entire world, hence they are considered as right *in rem*.

**(iii) It may be positive as well as negative.-** Easements may be positive as well as negative. In positive easements, the dominant owner does something on the property of servient owner whereas in the negative easement, servient owner is stopped to do something.

**(iv) It must be for beneficial use of property.-** Generally, the easement must be for the beneficial use of the property. The main object of the easement is that the owner of the dominant heritage may use and enjoy it in a better manner. Words “better use and enjoyment” is a very wide term and it includes express and implied benefits and comforts. In the case of *Re Allen Bari, Re David Powell v. Madison*, it was held that if residents of any house for better use of their house for sitting and sleeping purposes, such use shall be considered to be “for better use” by the residents.

**(v) New easements may be created.-** According to the change in facts and circumstances, easements may also change and new easements may be created.

**(vi) Dominant and servient heritage.-** For the existence of easement two kinds of properties, *i.e.*, dominant and servient heritage is necessary. Dominant heritage means that for whose beneficial enjoyment rights are exercised and land on which liabilities are imposed is considered to be servient heritage. For example, if X as the owner of his house has the right of entry on the land of his neighbour and to take water from the hand pipe for his domestic use, house of X is dominant heritage and land of Y is servient heritage.

**(vii) Dominant and servient heritage must be separate.-** For exercise for an easement, it is necessary that dominant and servient heritage must be separate. Hence, if both are not separate no easement arises. Moreover, for the existence of easement, it is also necessary that owners of dominant and servient heritage must be different.

In *Radhika Narain and others v. Smt. Shundra Devi and others*, it was held that for the existence of easement it is necessary that obligation of its use must be on the ownership of any person who is not the owner of the dominant heritage.

## **EASEMENT IS A RIGHT TO THE LIMITED USE OF LAND WITHOUT POSSESSION**

It is well settled 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. However, for constituting an easement the subject-matter of the right must be definite, certain and specific.

It is held by the Allahabad High Court in *Mumtaj Ali v. Mohd. Sarif*, the use of the land for the purpose of sitting and sleeping by the plaintiff will amount to a right of easement entitled to be protected by law.

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

## **EASEMENT AND CUSTOMARY RIGHT**

An easement belongs to a determined person in respect of his or their land. A fluctuating body of persons like the inhabitants of the locality cannot claim an easement. Easements are private rights while customary rights are public rights annexed to the place in general.

**Customary easement and customary right-Distinction of.-** Customary easement vests in the dominant tenement; not in the particular person or a group of persons, unless they are rightfully in possession of the dominant tenement in question. A customary right, on the other hand, is claimed by a person or by a group of persons on the basis of the custom recognised by the community as a whole. From the very nature of it has got to be pleaded and proved in the usual manner, indicated by the Evidence Act. The object of proof and the mode of proof are entirely different in two cases. Failure to appreciate this distinction would result in the illegal decree.

## **DISTINCTION BETWEEN EASEMENTS AND NATURAL RIGHTS**

The easement is a specific right subtracted from the general rights constituting ownership of one property and attached to the ownership of another property. An easement is a restriction of a natural right. An easement must be distinguished from natural rights. The natural rights are those incidents and advantages which are provided by nature for the use and enjoyment of a person's property.

# MCQ

**1. Word “ an easement” has been defined under Section 4 of the Indian Easement Act, 1882**

- (a) Section 4
- (b) Section 5
- (c) Section 6
- (d) Section 7

**2. Which of the following are the essentials of easement:-**

- (a). Dominant and servient heritage;
- (b). Two separate properties;
- (c). Right over immovable property;
- (d) All of the above

**3. . Which of the following are the essentials of easement:-**

- (a). Beneficial enjoyment of property;
- (b). Easement must be attached with the property; and
- (c). Easement must be right *in rem*.
- (d) All of the above

**4 . Main Characteristics of easement are**

- (a) It is an incorporeal right.
- (b) It is right in rem
- (c) It may be positive as well as negative
- (d) It must be for beneficial use of property

**5. Match the following**

- (I) dominant tenement (i) the owner of the land, for the beneficial enjoyment of which, the right exists
- (II) dominant owner (ii) the land on which the liability is imposed
- (III) servient owner (iii) the land, for the beneficial enjoyment of which, the right exists

(IV) servient tenement (iv) the owner or occupier of the land on which the liability is imposed

(a) (I)-(ii), (U)-(i), (IH)-(iv), (IV)-(iii)

(b) (I)-(iii), (II)-(i), (III)-(iv), (IV)-(ii)

(c) (I)-(iii), (II)-(ii), (III)-(i), (IV)-(iv)

(d) (I)-(ii), (II)-(iv), (III)-(i), (IV)-(iii)