
A COMPARATIVE STUDY OF EASEMENT AND LICENSE UNDER TRANSFER OF PROPERTY LAW

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ABSTRACT:

This research paper delves into the fundamental concepts of easements and licenses under property law, providing insights into their historical development, types, creation, transfer, and legal implications. This paper also explains the legal complexities of both easements and licenses, providing insights into significant case laws from India that have shaped the understanding and application of easements and licenses in property law.

Overall, this research paper provides valuable information about property rights, offering a comprehensive overview of easements and licenses and their historical development, legal implications, and practical significance in property law.

Keywords: Easements, licenses, property law, common law, civil law, nature of rights, creation and transfer, property rights.

EASEMENTS UNDER TRANSFER OF PROPERTY LAW:

Easement is important in property law because it is a legal right that grants a person or entity, limited access or use of another person's land or property, without transferring ownership or possession. Easements are typically non-possessory, meaning the holder of the easement doesn't have the right to occupy the land permanently. Instead, they have a legal interest in the property to exercise certain rights, such as crossing the land for access, running utilities, or receiving light and air. Easement can help to avoid landlocking, encourage efficient land development, and safeguard vital interests such as scenic views or historic preservation.

THE HISTORICAL DEVELOPMENT OF EASEMENTS UNDER PROPERTY LAW:

The concept of easements in property law has a long history dating back to ancient Roman law, where they were known as "servitudes" and covered rights like pathways, support from neighbouring land, and access to water. These were legally enforceable through agreements or prescription.

The Norman Conquest of England in 1066 introduced the feudal system, which included the concept of servitudes. In this system, land ownership was vested in the monarch, and individuals held land through various feudal tenures. Easements played a vital role in defining the rights and obligations of landowners, especially concerning land access, agricultural use, and various other purposes.

The evolution of easements continued through English common law, developed by judges in medieval England. Common law principles and court decisions were instrumental in shaping the framework for recognizing and enforcing easements. Notably, the doctrine of the "lost modern grant" emerged, allowing for the presumption of an easement's existence if it had been used without interruption for a specified period, typically around 20 years.

English settlers brought the principles of easements to the American colonies, where they became an integral part of American property law. Over time, American courts developed their interpretations of easement law, often drawing inspiration from English common law principles.

In modern legal systems, easements remain a foundational aspect of property law in many countries, including the United States. Modern property law has codified and clarified the rules governing easements, addressing issues such as their creation, termination, and transfer.

The 20th century witnessed significant developments influenced by statutory changes and evolving land use planning practices, which expanded the scope of easements. Today, easements serve a wide array of purposes, including the establishment of conservation easements aimed at protecting natural resources and scenic landscapes.

In the contemporary era, easements continue to be a crucial element of property law, striking a balance between property owner's rights and broader societal interests in access, utilities, conservation, and various other considerations. Their historical development reflects the dynamic evolution of legal and societal perspectives concerning property rights and land use

TYPES OF EASEMENTS:

Easements come in various types, each serving distinct purposes and imposing different obligations on the involved parties. Some common types of easements include:

1. **Easement Appurtenant:** Benefits a specific piece of land, allowing its owner to use another's land for specific purposes, like a right of way.
2. **Easement in Gross:** Benefits an individual or entity rather than a specific property, often used for utilities or access.
3. **Negative Easement Appurtenant:** Restricts the servient landowner from certain activities, like blocking a neighbour's view.
4. **Prescriptive Negative Easement:** Arises through long-standing, uninterrupted use, preventing specific actions.
5. **Continuous Easement:** Allows constant use, such as a road.
6. **Discontinuous Easement:** Permits intermittent use, like seasonal access.

7. **Apparent Easement:** Clearly visible, like a marked path.
8. **Non-apparent Easement:** Not visible, may require documentation.
9. **Express Easement:** Deliberately created, often through written agreements.
10. **Implied Easement:** Arises from circumstances, like implied access when subdividing land.
11. **Easement by Necessity:** Created by law when landlocked, granting necessary access.
12. **Conservation Easements:** Protect natural resources, held by conservation organizations, limiting land use for preservation.

LICENSES UNDER TRANSFER OF PROPERTY LAW:

Licenses play a crucial role in property law by granting permission for specific activities on someone else's property without transferring ownership. They are versatile, flexible, and non-transferable, ensuring property owners retain control. Licenses can be revoked, allowing temporary access without long-term commitments. They are used in various contexts, from business ventures to short-term land use. Licenses simplify property rights management and facilitate informed property transactions and land-use agreements.

THE HISTORICAL DEVELOPMENT OF LICENSES UNDER PROPERTY LAW:

The historical development of licenses in property law has evolved over time. It began in medieval England as informal oral permissions for specific activities on another's land. As time progressed, written documentation emerged in the form of letters of license. However, a crucial aspect remained unchanged: licenses were inherently revocable at the licensor's discretion.

In the 19th century, legal principles governing licenses were refined. "Wood v. Leadbitter" (1845) established that licenses could be revoked unless coupled with a contract or consideration. The concept of estoppel, where a party can't deny prior actions, also played a role in protecting licensees. In the 20th century, property law continued to evolve, recognizing that licenses could

grant rights, especially with contractual agreements or estoppel.

Today, licenses are versatile tools in property law, regulated by legal frameworks and statutes. The historical development shows a shift from informal, revocable permissions to more formal, protected arrangements, meeting modern property needs. Understanding this history is crucial for interpreting and applying license-related principles in property law today.

TYPES OF LICENSES UNDER PROPERTY LAW:

- 1. Express License:** Explicitly granted in writing or orally, outlining terms and conditions.
- 2. Implied License:** Inferred from parties' conduct, based on reasonable expectations.
- 3. Revocable License:** Can be terminated by the licensor at any time without cause, providing flexibility.
- 4. Irrevocable License:** Cannot be terminated by the licensor except under specific circumstances defined by law.
- 5. Exclusive License:** Grants exclusive rights to the licensee, excluding all others, including the licensor.
- 6. Non-Exclusive License:** Allows use but does not exclude others from obtaining similar licenses.
- 7. Statutory License:** Granted by law or statute, often related to specific industries or activities.

A COMPARATIVE STUDY OF EASEMENT AND LICENSE UNDER DIFFERENT LEGAL SYSTEMS:

In different parts of the world, how we handle property rights like easements (the right to use someone else's property) and licenses (permission for specific activities) can be quite different. This depends on whether a country follows common law or civil law traditions. These two systems affect how we create, understand, and enforce property rights.

Easements:

Common Law Systems:

In common law jurisdictions like the United States and the United Kingdom, easements have a rich historical foundation. Easements are like special rights for landowners. The legal framework for easements is largely developed through case laws and judicial decisions. Easements can be created through various methods, including express grants, implication, prescription, and necessity. The flexibility of common law allows parties to craft easements based on their specific needs and intentions.

Civil Law Systems:

Civil law systems, prevalent in continental Europe, approach easements differently. Easements are often codified within civil codes or statutes, providing detailed rules and procedures for their creation, interpretation, and enforcement. These systems tend to require formalities, such as notarial deeds or registration, for creating and transferring easements, enhancing legal clarity and certainty. Unlike common law, easements in civil law systems are more rigidly defined within the civil code, with limited room for interpretation or modification outside of these provisions. Courts in civil law jurisdictions follow these strict rules to decide easement issues, making it less flexible than in common law systems.

Licenses:**Common Law Systems:**

In common law countries, Licenses are like agreements. This means that when someone gives you permission to do something on their property, it's like a contract between you and them. Usually, the person giving the permission can change their mind unless there is a contract or something valuable involved. Common law is flexible, so people can decide the rules for licenses based on their situation.

Civil Law Systems:

In countries with civil law, licenses are treated like formal agreements, just like contracts that give permission. Whether you can end a license in civil law depends on what the agreement says. If

someone doesn't follow the rules in the agreement, there are legal ways to solve the problem, similar to solving contract problems. Even though licenses in civil law might seem similar to those in common law, they are usually considered official contracts that follow the rules in the civil code.

In common law countries like the United States and the United Kingdom, property law relies on longstanding common law traditions, offering flexibility to shape property rights through court decisions, customs, and contracts. In contrast, India follows a civil law system influenced by its colonial history, characterized by strict, written laws. Property transactions, including easements, are governed by the Transfer of Property Act, 1882, in India. This Act, specifically Chapter V, defines easements, outlines their creation, modification, and termination, providing a structured and comprehensive legal framework. The key distinction lies in common law's flexibility and civil law's formality, impacting property rights and obligations. Understanding these perspectives is crucial for navigating property matters globally. Common law offers adaptability, while civil law prioritizes legal clarity and structure.

SIMILARITIES AND DIFFERENCES BETWEEN EASEMENTS AND LICENSES WITH RESPECT TO NATURE OF RIGHTS:

Easements and licenses are two important concepts within property law that allow individuals to use or access someone else's property for specific purposes. However, these two legal concepts differ in various ways, such as their characteristics, how they are created, and how they can be transferred. Understanding these differences and similarities is crucial for property owners and legal professionals alike.

Differences in the Nature of Rights:

1. Permanence vs. Temporariness: Easements represent enduring property rights. They grant the holder (dominant owner) a permanent interest in another's property (servient property). This permanence allows the dominant owner to exercise these rights indefinitely, such as a right of way or a right to light. In contrast, licenses offer temporary privileges. They do not establish lasting property rights. Licenses are personal permissions, often revocable at the discretion of the licensor (owner). The licensee's rights are limited to the duration specified in the agreement, making licenses inherently temporary.

2. Inheritance vs. Non-Inheritance: Easements can be inheritable. When the dominant property is transferred or inherited, the associated easement rights typically pass to the new owner. This continuity ensures that the benefits of easements persist across generations. Whereas, Licenses are generally non-inheritable. They are tied to the licensor-licensee relationship and do not automatically transfer to successors or new owners. When the licensor changes or the property is transferred, the license often expires unless expressly stated otherwise.

Similarities in the Nature of Rights:

1. Legally Recognized Rights: Easements and licenses are both legally recognized property rights under property law. They entail specific legal obligations and can be enforced through legal proceedings. Moreover, licenses, like easements, are acknowledged as legitimate permissions or authorizations granted by property owners. They carry legal weight and can be the basis for legal action if breached.

2. Servient Owner Obligations: In cases of easements, the servient owner (the owner of the property burdened by the easement) has a legal obligation to refrain from interfering with the rights of the dominant owner (the beneficiary of the easement). Similarly, in license agreements, the licensor (property owner granting the license) has an obligation to honor the terms and conditions specified in the license, ensuring that the licensee's rights are respected during the agreed-upon duration.

SIMILARITIES AND DIFFERENCES BETWEEN EASEMENTS AND LICENSES WITH RESPECT TO CREATION AND TRANSFER:

In property law, easements and licenses have similarities and differences when it comes to their creation and transfer:

Similarities:

1. Consent: Both easements and licenses require the consent and agreement of the parties involved. In other words, the property owner granting the right and the person receiving it must both agree to the arrangement.

2. Legally Binding: Easements and licenses are both legally binding components of property law. They establish enforceable rights and obligations for the parties involved.

Differences:

1. Formality: Easements typically involve formal documentation, such as written contracts or legal deeds. Licenses, on the other hand, can be less formal and may even be oral agreements.

2. Transferability: Easements are often transferable with the dominant property (the property benefiting from the easement). When the dominant property is sold, the easement typically goes with it. Licenses are usually non-transferable by default, meaning they do not automatically pass to a new property owner.

3.Revocability: Licenses are generally revocable at the discretion of the property owner who granted the license. This means the property owner can cancel or revoke the license whenever they wish. Easements, on the other hand, are typically more permanent and are not easily revoked, except under specific legal circumstances.

SIMILARITIES AND DIFFERENCES BETWEEN EASEMENTS AND LICENSES WITH RESPECT TO LEGAL IMPLICATIONS:

Similarities:

- 1. Rights and Obligations:** Both easements and licenses grant certain rights to the holder, such as the right to use or access the property in a specific manner. However, they also impose obligations on the property owner to allow this usage or access.
- 2. Consent:** In both cases, the consent of the property owner is crucial. The property owner must agree to grant the easement or license, and the holder must agree to the terms and conditions set forth.

Differences in Legal Implications:

- 1. Property Rights:** Easements create a property interest in the servient property (the property

over which the easement exists), which means the easement becomes an inherent part of the property. Licenses do not create a property interest and are more like personal permissions to use the property.

2. Enforcement Mechanisms: Easements are legally enforceable property rights, and servient property owners can face legal action for interfering with the rights of the dominant property owner. Courts can issue injunctions, order damages, or take other legal actions to remedy easement disputes. Whereas, License agreements are primarily governed by contract law. Breaches of license agreements result in contractual disputes rather than common law enforcement. Licensees can seek remedies specified in the agreement, such as monetary damages, but the legal process differs from that of easements.

CASE LAWS RELATED TO EASEMENTS AND LICENSES IN PROPERTY LAW:

Easement Case Laws:

1. Lakshminarayan Ram Gopal and Son Ltd. v. The Government of Hyderabad¹: In the case of "Lakshminarayan Ram Gopal and Son Ltd. v. The Government of Hyderabad" (AIR 1962 SC 945), the Supreme Court of India addressed the interpretation of the term "easement" within the framework of the Transfer of Property Act, 1882. The central issue revolved around a dispute concerning a claimed right of way for a road. The Court clarified that for a right to be considered an easement under the Transfer of Property Act, it must satisfy specific criteria. It must be a right to use another person's land, and it must be necessary for the advantageous enjoyment of the dominant heritage, which is the property benefiting from the easement. This case's significance lies in its establishment of clear guidelines for defining easements in Indian property law, emphasizing the importance of necessity in determining the validity of an easement right. The ruling has since served as a crucial reference point in subsequent legal proceedings involving easements in India.

2. Narain Das vs. Bhagwan Das²: In the case of "Narain Das vs. Bhagwan Das" (AIR 1970 Raj

¹ AIR 1962 SC 945

² AIR 1970 Raj 122

122), the Rajasthan High Court dealt with the concept of "continuous and apparent easements" under the Transfer of Property Act, 1882. The case involved a dispute over the right to use a well situated on one person's land by the owner of an adjacent property. The Rajasthan High Court clarified that continuous and apparent easements must exist for the continuous and apparent enjoyment of the dominant heritage (the property benefiting from the easement). In this case, the court found that the well in question was a continuous and apparent easement as it had been used openly and regularly over a long period of time. This case is significant because it provided legal clarity on the recognition of continuous and apparent easements under Indian property law. It highlighted that for an easement to be considered continuous and apparent, it must be used openly and regularly for the continuous enjoyment of the dominant property. This ruling has been cited as a reference point in subsequent cases involving similar easement issues in India.

License Case Laws:

1. Damodar S. Prabhu vs. Sayed Babalal H.³: In this case, the Supreme Court of India clarified the distinction between a license and a lease under the Transfer of Property Act, 1882. This case was significant in defining the nature of a license, emphasizing that a license merely grants permission to use the property of another and does not create any proprietary interest in the property itself. The court's ruling provided a clear understanding of what constitutes a license under the Transfer of Property Act, offering valuable guidance for property transactions and disputes involving the classification of rights as licenses or leases in India.

2. Raval and Co. vs. K.G. Ramachandran and Co.⁴: In this case, the Supreme Court of India addressed the interpretation of Section 60 of the Transfer of Property Act, 1882. This section deals with the licensee's right to terminate a license. The case involved a detailed discussion of the conditions and circumstances under which a licensee can lawfully terminate a license agreement. The court's ruling provided crucial legal clarity on the rights and procedures related to the termination of licenses under the Transfer of Property Act, making it a significant reference point for license-related matters in property transactions and disputes in India.

³ AIR 1986 SC 1537

⁴ AIR 1974 SC 1859

CONCLUSION:

In conclusion, a comparative study of easements and licenses in the context of property law reveals distinct differences between these legal concepts. Easements provide a more permanent, non-revocable interest in land, granting specific usage rights to the holder, often tied to the land itself. On the other hand, licenses are typically revocable, personal permissions for land use, which can be terminated at the licensor's discretion. The choice between easements and licenses depends on the parties' intentions, the nature of the rights required, and the level of control they wish to maintain. Property owners and legal practitioners must grasp these disparities to navigate property transactions effectively and protect their interests.

BIBLIOGRAPHY:

<https://www.legalserviceindia.com/legal/article-7879-a-systematic-review-of-license-under-the-indian-law.html>

<https://thelawbrigade.com/wp-content/uploads/2020/07/Vibha-IJLDAI.pdf>

<https://blog.ipleaders.in/an-overview-law-of-easements-in-india/>

<https://www.srdlawnotes.com/2016/05/meaning-and-types-of-easement.html>

<https://lexpeeps.in/case-analysis-lakshminarayan-ram-gopal-v-govt-of-hyderabad/>

<https://indiankanoon.org/doc/99333/>

<https://www.legalbites.in/easement-concept-essential-types>

Easement - concept, essentials elements & types under Indian Easements Act, 1882 | Law column

<https://www.indiacode.nic.in/bitstream/123456789/2338/1/A1882-04.pdf>

<https://lawcorner.in/license-meaning-essential-types-advantage-and-disadvantage-under-tp-act-1882/>