



THE EASEMENTS ACT, 1882



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THE EASEMENTS ACT, 1882

¹ACT No. V OF 1882

[17th February, 1882]

An Act to define and amend the Law relating to Easements and Licenses.

Preamble. WHEREAS it is expedient to define and amend the law relating to easements and licenses; It is hereby enacted as follows :—

PRELIMINARY

1. Short title. This Act may be called the ²* Easements Act, 1882.

[Local Extent.] *Omitted by A. O., 1949, Schedule.*

Commencement. And it shall come into force on the first day of July, 1882.

2. Savings. Nothing herein contained shall be deemed to affect any law not hereby expressly repealed; or to derogate from—

- (a) any right of the ³[Government] to regulate the collection, retention and distribution of the water of rivers and streams flowing in natural channels, and of natural lakes and ponds, or of the water flowing, collected, retained or distributed in or by any channel or other work constructed at the public expense for irrigation;
- (b) any customary or other right (not being a license) in or over immoveable property which the ³[Government], the public or any person may possess irrespective of other immoveable property; or
- (c) any right acquired, or arising out of a relation created, before this Act comes into force.

3. *[Construction of certain references to Act XV of 1877 and Act IX of 1871,] Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981, (27 of 1981.), s.3 and Sch. II.*

¹For Statement of Objects and Reasons, see Gazette of India, 1880, Pt. V, p. 494, for Report of the Select Committee, see *ibid.*, Pt. V, p. 1021; and for Proceedings in Council, see *ibid.*, 1881, Supplement, pp. 687 and 766; and *ibid.*, 1882, Supplement, p. 172.

This Act had been extended to Sindh which was administered by the Governor of Bombay in Council by Act VIII of 1891.

This Act had been applied to Phulera in the Excluded Area of Upper Tanawal to the extent the Act is applicable in the N.W.F.P., subject to certain modifications; and also extended to the Excluded Area of Upper Tanawal (N. W.F.P.) other than Phulera with effect from such date and subject to such modifications as may be notified, see N.-W.F.P. (Upper Tanawal) (Excluded Area) Laws Regulation, 1950. This Act has been extended to the whole of Pakistan by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s. 3 and 2nd Sch. (with effect from the 14th October, 1955).

² The word “Indian” omitted by A. O., 1949, Sch.

³ Subs. by A. O., 1961, Art. 2 (with effect from the 23rd March, 1956) for “Crown” which had been subs. by A. O., 1937, for “Govt.”.

CHAPTER I

OF EASEMENTS GENERALLY

4. “Easement” defined. 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 other land not his own.

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

Explanation.— In the first and second clauses of this section, the expression “land” includes also things permanently attached to the earth: the expression “beneficial enjoyment” includes also possible convenience, remote advantage, and even a mere amenity ; and the expression “to do something” includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage or anything growing or subsisting thereon.

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 purposes of his household out of a spring therein, This is an easement.
- (c) A, as the owner of a certain house, has the right to conduct water from B’s stream to supply the fountains in the garden attached to the house. This is an easement.
- (d) A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B’s field, or to take, for the purpose of being used in the house, by himself, his family, guests, lodgers and servants, water or fish out of C’s tank, or timber out of D’s wood, or to use, for the purpose of manuring his land, the leaves which have fallen from the trees on E’s land. These are easements.
- (e) A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and re-passing. This right is not an easement.
- (f) A is bound to cleanse a watercourse running through his land and keep it free from obstruction for the benefit of B, a lower riparian owner. This is not an easement.

5. Continuous and discontinuous, apparent and non-apparent, easements. Easements are either continuous or discontinuous, apparent or non-apparent.

A continuous easement is one whose enjoyment is, or may be, continual without the act of man.

A discontinuous easement is one that needs the act of man for its enjoyment.