§ 8.6 Generally—Private or Public

Any easement will be assumed to be for the benefit of the parties benefitted by it, i.e., the dominant estate holder or holders, and not for the benefit of the public. For example it has been held that that the public has no right to pass over any portion of a private subdivision road which has not been accepted as a public way.[1] It is also clear that the holder of a private easement can not force the servient estate holder to open private way to the public.[2]

Research References

C.J.S. Easements §§ 6, 21, 53, 164–167.
West's Key No. Digests, Easements ⇐2, 52.

§ 8.7 Generally—Compared to a *Profit a Prendre*

A *profit a prendre* differs from an easement in that it is a right to take part of the land (minerals, stones, sand, gravel) or things produced by or on the land (grass, crops, trees, fish game, seaweed). In all other respects, a profit a prendre is like an easement—it usually is appurtenant to a dominant estate, but may be in gross; it usually is perpetual; and it is not extinguished by nonuse, but it can be abandoned.[1]

A *profit a prendre* that is unlimited as to duration and to quantity is deemed to be exclusive to the dominant estate.[2] In the absence of an express limitation imposed by the grantor, there is no geographical limitation on its exercise.[3]

thereby produced, the names given to them, or used in their creation." The court stated in a footnote "With respect to negative easements as restrictions, the absence from §§ 23 and 26–30 of an express reference to easements such as that found in G.L. c. 184, § 25, does not seem to us of a significance in the face of the apparent general statutory use of the word 'restrictions' as applying to all types of land use restraints other than clearly affirmative easements. [Citation omitted.]."

§ 8.6

1. Murphy v. Donovan, 4 Mass.App.Ct. 519, 352 N.E.2d 210 (1976) and Patel v. Planning Board of North Andover, 27 Mass. App.Ct. 477, 539 N.E.2d 544 (1989).

2. Short v. Devine, 146 Mass. 119, 15 N.E. 148 (1888).

§ 8.7

1. Gray v. Handy, 349 Mass. 438, 208 N.E.2d 829 (1965); Phillips v. Rhodes, 48 Mass. (7 Metc.) 322 (1843); Goodrich v. Burbank, 94 Mass. (12 Allen) 459 (1866). Tiffany, Real Property (3d ed.) §§ 839, 840; Restatement of Property, § 450, special note, comments f and g. Jones, Easements, § 49.

Cretecos v. Lucia, 335 Mass. 678, 141 N.E.2d 833 (1957); Foster v. Lee, 271 Mass. 200, 171 N.E. 229 (1930); Smith v. Wells, 250 Mass. 151, 145 N.E. 50 (1924); Hunt v. City of Boston, 183 Mass. 303, 67 N.E. 244 (1903); White v. Foster, 102 Mass. 375 (1869); Adam v. Briggs Iron Co., 61 Mass. (7 Cush.) 361 (1851).

2. Bates Sand and Gravel Co., Inc. v. Commonwealth, 8 Mass.App.Ct. 331, 393 N.E.2d 956 (1979), judgement aff'd 380 Mass. 933, 404 N.E.2d 81 (1980).

3. First Nat'l Bank of Boston v. Konner, 373 Mass. 463, 367 N.E.2d 1174 (1977); Gray v. Handy, 349 Mass. 438, 208 N.E.2d 829 (1965).

To date, the courts have declined to rule that a *profit a prendre* created for a special purpose is extinguished when it becomes commercially impractical or economically wasteful to attempt to revive the activity that the *profit a prendre* was created to serve.[4]

A *profit a prendre* is an appurtenance that passes to the grantee under the deed of the dominant estate without having to be mentioned.[5]

The owner of land subject to a *profit a prendre* may make any use of the land that is not inconsistent with the exercise of the *profit a prendre*.[6]

Research References

C.J.S. Easements §§ 7–8; C.J.S. Licenses § 88.
West's Key No. Digests, Licenses ⇨44(3).

§ 8.8 Generally—Compared to a License

A license differs from an easement in that a license may be revoked at the will of the licensor and does not create an estate or any other interest in land.[1] It is revoked on the transfer or demise of land subject to the license, and on the death of the licensor.[2] While a license cannot

4. First Nat'l Bank of Boston v. Konner, 373 Mass. 463, 367 N.E.2d 1174 (1977).

5. Gray v. Handy, 349 Mass. 438, 208 N.E.2d 829 (1965) and M.G.L.A. c. 183 § 15.

6. First Nat'l Bank of Boston v. Konner, 373 Mass. 463, 367 N.E.2d 1174 (1977), citing Butler v. Haley Greystone Corp., 352 Mass. 252, 224 N.E.2d 683 (1967).

Ampagoomian v. Atamian, 323 Mass. 319, 81 N.E.2d 843 (1948); Restatement of Property § 486; and 3 H. Tiffany, Real Property § 811 (3d ed.1939).

§ 8.8

1. Chelsea Yacht Club v. Mystic River Bridge Authority, 330 Mass. 566, 116 N.E.2d 153 (1953).

2. Sturnick v. Watson, 336 Mass. 139, 142 N.E.2d 896 (1957); White v. Foster, 102 Mass. 375 (1869); Tiffany, Real Property (3d ed.) § 840.

The Supreme Judicial Court has said the reference to a profit a prendre as a "license" in Stockbridge Iron Co. v. Hudson Iron Co., 107 Mass. 290 (1871) was a misnomer. See Gray v. Handy, 349 Mass. 438, 208 N.E.2d 829 (1965).

See also Lever v. Cook, 355 Mass. 634, 246 N.E.2d 657 (1969); Van Szyman v. Auburn, 345 Mass. 444, 188 N.E.2d 453 (1963); Scioscia v. Iovieno, 318 Mass. 601, 63 N.E.2d 898 (1945); Nelson v. American Tel. & Tel. Co., 270 Mass. 471, 170 N.E. 416 (1930).

For a case discussing the difference between a license and a *profit a prendre* in a situation in which land had been taken by eminent domain, see Bates Sand and Gravel Co., Inc. v. Commonwealth, 8 Mass.App.Ct. 331, 393 N.E.2d 956 (1979), judgment aff'd 380 Mass. 933, 404 N.E.2d 81 (1980). A reservation of a like use to landowner did not convert a *profit a prendre* into a license. A *profit a prendre* can be held in gross, and it need not be exclusive. See also Bates Sand and Gravel Co., Inc. v. Commonwealth, 380 Mass. 933, 404 N.E.2d 81 (1980), in which an "agreement and lease" was deemed to be a *profit a prendre*.

A claim that a license to erect "a post with clock thereon was granted without limit as to time and without reservation . . . of a power to revoke" was rejected by the Court in Union Institution for Savings in City of Boston v. City of Boston, 224 Mass. 286, 112 N.E. 637 (1916). "In this commonwealth the right granted to a private person to use the streets for private purposes is but a mere license, revocable at pleasure of the grantor." However, revocation of a li-