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LAND SERVITUDE IN ANCIENT ROME

The significance of Roman law is determined, above all, by its enormous influence on the further development of civil law. One of the phenomena of modern civil law, which has been known since the time of Roman law, is servitude. The emergence of the institution of servitude rights dates back to the time of Roman law and is considered to be in direct interdependence with the development of the institution of private property. This is due to the fact that the separate property did not have all the features and qualities necessary for its normal usage.

Considerable amount of research has been devoted to the issue of servitude. Various aspects of servitude in Roman private law were examined by such scientists as L. M. Baranov, I. Borisova, V. M. Vovk, M.V. Domashenko, R.A. Kalyuzhnyj, H.I Kovalik, O.A. Podoprighora, E.O. Kharitonov and others.

The servitudes originated from ancient Rome. We should note that it was especially necessary for that time when the right of private ownership of land emerged, as not every land plot had all the properties and qualities necessary for normal and rational usage. Therefore, there was a need for the usage of neighboring land. At the time when the land was owned by a tribe, a family or a community, the issues of this nature were solved easily. However, the gradual deterioration of legal relations regarding the land and the emergence of the institution of the right to private ownership of land led to the fact that the owner of the land was not obliged to help his neighbour, who did not have certain natural benefits on his land. On the basis of such controversial issues, there was a need to secure the right of the owner of a land plot concerning the usage of someone else's land, usually the land of a neighbour.

Land (predialnogo) servitude - is the right to use one landowner another's neighboring land in one way or another. This means that the existence of any land servitude presupposes two types of real estate belonging to different owners. In this case, one of the land plots must have a more favorable position that's why it serves the interests of the owner of the neighboring land by either quality. It is required that these land types of property (land plots) should be neighboring. It means that they have a common border in majority of cases.

Like any property right, the land servitude was connected to a thing (land plot), had an absolute character, and its subject could be protected by means of lawsuit.

Like any limited property right, the land servitude was a right not to his own, but to another's thing (the land of a neighbour). On the basis of such a right, the servitude man received only limited domination over another's land, with narrower powers comparing with the powers of the owner of the encumbered plot.

According to its purpose, the land servitudes had only a distant similarity with the personal ones [1, p. 100]. Land servitude had certain distinctive features that make it possible to understand its essence and its internal content.

Firstly, the servitude could not demand from the owner of a land plot positive actions in his favor (for example, building a road). The person in charge was not to create an obstacle to the servitude to use his right. The only exception to this rule was the so-called *servitu oneris ferendi* - the right to extend the building to someone else's wall or fix it on someone else's support. It should be noted that in this case the owner of the serviced land was to carry out repairs and restore the wall of his building on which the building of a neighbor was based, that is, to carry out some certain positive actions in favor of the servitude man.

Secondly, you can not create servitude for yourself for your own thing, since the owner can use his land in all respects not by the right of servitude, but by the right of ownership.

Thirdly, servitude is indivisible, any part of the servitude can not have an independent legal existence.

Fourthly, servitude should have some interest for the authorized person. It is impossible to recognize the servitude of such restriction of the owner of the land, which does not make any benefits for his neighbour.

On the fifth, the land servitude was free of charge. The owner could not claim remuneration for the usage of his land plot or any compensation for the limitations and inconveniences he suffered as a result of setting up the servitude.

H.I. Kovalik emphasizes that the servitudes were originated in Roman law for the needs of land plots and did not depend on the change of an owner or user of the land plot. Land servitudes, as a kind of servitude in general, had their own characteristic features, which certainly separated them from other civil law institutions and concepts. They have the following peculiarities:

- 1) land servitude may be established in respect of neighbouring plots or land plots located nearby;
- 2) the dominant area should benefit from the servitude ;
- 3) land servitudes should have a constant reason for their existence [2, p. 47].

Land servitude belonged to the person, as the owner of the so-called dominant land plot, that is, the area where the servitude is established. Land servitude belonged not to a person, but to the plot (D. 8. 3. 20. 3). Consequently, in case when the owner of the land plot (in favor of the servitude) was changed, the servitude was passed to a new owner, together with the ownership of the land plot.

Establishment of the servitude could occur, first of all, on the basis of the contract or the so-called testamentary order (*legata*). In addition, until the middle of I century BC the servitudes could be taken by antiquity (*usucapio*).

Thus, there were the following grounds for establishing the servitudes:

- a sentence determining the economic necessity of another person to use someone's property;
- an agreement between two people, one of whom was the owner, and the other one - the recipient of personal servitude;

- obtaining the servitude by inheritance.

At the same time, the main means of establishing rights to someone else's things were:

- mancipation (*mancipatio*), which was used primarily for the rural praedial servitude;
- cession (*in iure cessio*) was used for all the servitudes;
- deductio (*deductio*) was used to establish a servitude for a thing that was alienated in favor of the assignor in the mancipation or cession ;
- legat (*legata*) - testamentary refusal;
- the acquisition of the servitude regarding to the old time of ownership (*usucapio*) [3, p. 159-160].

The subject of land servitude could be land plots, other natural resources, such as natural or artificial reservoirs, other real estate, in particular buildings and structures. Land servitude rights were established for the purpose of encumbrance of land, other natural resources or other kinds of real estate. They, as a rule, were characterized by the impossibility of satisfying the subject of the servitude law of the needs in any other ways, they did not depend on his personality and could be passed on to his successors.

In its turn, land servitudes, due to their purpose, are also the subject to internal classification. Depending on the status of the settlement, within which the land servitude was established, they were divided into urban (*servitutes praediorum urbanorum*) and rural (*servitutes praediorum rusticorum*). Taking into account the fact that the servitude was established in relation to the land or the corresponding closed reservoir, the land servitude could be a land surfaced or watered. The land surfaced servitudes belonged to: the right to pass or go with cartload, drive cattle through someone else's land etc. Water servitudes were the following: the right to take water, watering cattle, crossing the water object, and other lawful actions agreed with the owner [4, p. 107-108; 5, p. 340].

Thus, the servitudes on the land plots played an important role in property law concerning the rights to others' things. Property or real servitudes belonged to the land, and therefore were called land servitudes. They were rights to someone else's land, which were established in favor of the person who was the owner of another land plot. These servitudes were constant, the owners could change, but the servitudes remained the same. Land plots were divided into agricultural (servitudes of rural areas) and urban (property, real) servitudes.

Rural land servitude were permanent and meant the rights to other objects set in favor of the person who owned the dominant property but burdened the person who was the owner of the servant's property in order to improve the agricultural production of the dominant property.

If the right to use someone else's land plot was directed to urban land, the servitude was considered to be urban. The urban land servitudes were also permanent hereditary rights to someone else's property.

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