

poraneously with the taking.”⁶³⁴ If the owner and the government enter into a contract which stipulates the purchase price for lands to be taken, with no provision for interest, the Fifth Amendment is inapplicable and the landowner cannot recover interest even though payment of the purchase price is delayed.⁶³⁵ Where property of a citizen has been mistakenly seized by the government and it is converted into money which is invested, the owner is entitled in recovering compensation to an allowance for the use of his property.⁶³⁶

Rights for Which Compensation Must Be Made.—If real property is condemned the market value of that property must be paid to the owner. But there are many kinds of property and many uses of property which cause problems in computing just compensation. It is not only the full fee simple interest in land that is compensable “property,”⁶³⁷ but also such lesser interests as easements⁶³⁸ and leaseholds. If only a portion of a tract is taken, the owner’s compensation includes any element of value arising out of the relation of the part taken to the entire tract.⁶³⁹ On the other hand, if the taking has in fact benefitted the owner, the benefit may be set off against the value of the land condemned,⁶⁴⁰ although any supposed benefit which the owner may receive in common with all from the public use to which the property is appropriated may not be set off.⁶⁴¹ When certain lands were condemned for park purposes, with resulting benefits set off against the value of the property taken, the subsequent erection of a fire station on the property instead was held not to have deprived the owner of any part of his just compensation.⁶⁴²

Interests in intangible as well as tangible property are subject to protection under the Taking Clause. Thus compensation must be paid for the taking of contract rights,⁶⁴³ patent rights,⁶⁴⁴ and trade

⁶³⁴ *United States v. Klamath Indians*, 304 U.S. 119, 123 (1938); *Jacobs v. United States*, 290 U.S. 13, 17 (1933); *Kirby Forest Industries v. United States*, 467 U.S. 1 (1984) (substantial delay between valuation and payment necessitates procedure for modifying award to reflect value at time of payment).

⁶³⁵ *Albrecht v. United States*, 329 U.S. 599 (1947).

⁶³⁶ *Henkels v. Sutherland*, 271 U.S. 298 (1926); *see also Phelps v. United States*, 274 U.S. 341 (1927).

⁶³⁷ *United States v. General Motors Corp.*, 323 U.S. 373 (1945).

⁶³⁸ *United States v. Welch*, 217 U.S. 333 (1910).

⁶³⁹ *Bauman v. Ross*, 167 U.S. 548 (1897); *Sharp v. United States*, 191 U.S. 341, 351–52, 354 (1903). Where the taking of a strip of land across a farm closed a private right-of-way, an allowance was properly made for the value of the easement. *United States v. Welch*, 217 U.S. 333 (1910).

⁶⁴⁰ *Bauman v. Ross*, 167 U.S. 548 (1897).

⁶⁴¹ *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 326 (1893).

⁶⁴² *Reichelderfer v. Quinn*, 287 U.S. 315, 318 (1932).

⁶⁴³ *Lynch v. United States*, 292 U.S. 571, 579 (1934); *Omnia Commercial Corp. v. United States*, 261 U.S. 502, 508 (1923).

⁶⁴⁴ *James v. Campbell*, 104 U.S. 356, 358 (1882). *See also Hollister v. Benedict Mfg. Co.*, 113 U.S. 59, 67 (1885).