

A landowner granted a sawmill the exclusive right to remove timber from the landowner's property for 10 years in exchange for a quarterly payment based on the size, type, and number of trees removed. Three years later, the sawmill purchased the landowner's property and built a facility for processing timber on the property. Eight years after purchasing the property, the sawmill sold the timbered portion of the land to a buyer, while retaining the portion of the land on which the processing facility was located. The contract made no specific mention of the prior recorded agreement, but the sawmill had come to rely on the supply of timber from the property. Although there are other sources of timber, timber is a necessary raw material for the sawmill. The buyer has refused to permit the sawmill to continue to remove timber from the property purchased by the buyer.

Which of the following is the sawmill's best argument for the continued existence of a profit?

- A. The buyer is estopped from denying the existence of the profit due to the sawmill's reliance on the property as its source for timber.
- B. The profit exists by implication.
- C. The profit was created by written agreement.
- D. Timber is necessary for the sawmill to operate.

Explanation:

A **profit** (ie, profit à prendre) is a nonpossessory right to enter another's land and remove specific natural resources (eg, oil, game, timber—as seen here). Profits are generally created and analyzed similarly to easements. As a result, a profit can be **implied from an existing prior use** if the following elements are met:

Severance of common ownership – the dominant (benefited) and servient (burdened) estates were once a single tract of land, after which the owner retained part of the tract and conveyed the rest to another

Prior existing use – the owner used the servient estate to benefit the dominant estate

Apparent and continuous – prior use was discoverable by a reasonable inspection and continued until the tract was severed

Reasonable necessity – continuance of the prior use is *reasonably* necessary for the use and enjoyment of the land

Here, the sawmill owned the entire property before selling the timbered portion to a buyer. The sawmill had been apparently and continuously removing timber from the land until the sale. And the continued removal of timber is reasonably necessary since the sawmill has come to rely on the supply of timber from the buyer's land to operate. Therefore, the sawmill's best argument is that the profit exists by implication.

(Choice A) A profit can be created by estoppel if the profit holder, in good faith, reasonably and detrimentally relies on *permission* from the owner of the land that serves as the source of the profit (not seen here).

(Choice C) Although the original landowner granted the sawmill a profit by written agreement (ie, an express profit), the profit terminated by merger when the sawmill acquired the property to which the profit was tied.

(Choice D) Profits are usually analyzed in the same manner as easements, but profits *cannot* be created by necessity. Additionally, the availability of other sources of timber would prevent the sawmill from establishing the strict necessity required to create an [easement by necessity](#).

Educational objective:

Profits are generally created and analyzed like easements, so a profit can be implied from an existing prior use.

References

Restatement (Third) of Property: Servitudes § 1.2(2), cmt. e (Am. Law Inst. 2000) (easement and profit defined).

Restatement (Third) of Property: Servitudes § 2.12 (Am. Law Inst. 2000) (servitudes implied from prior use).

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Easements v. Profits
(methods of creation)

	Express grant or reservation	Necessity	Existing prior use	Prescription	Estoppel
Easements					
Profits					

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