

A man purchased a large tract of land that consisted entirely of timberland. In order to take full advantage of the commercial value of his land, the man entered into a written agreement with a timber company. That agreement gave the timber company the right to enter the man's land to harvest as much timber as it wished, at its fair market value, for the next five years. The agreement was promptly and properly recorded.

The timber company's right to harvest timber on the man's land was not exclusive, and the man reserved the right to grant similar rights to others or to harvest timber himself.

The agreement had been in effect for just one year when the state brought a condemnation action to take the man's land for an airport.

In the condemnation action, is the timber company entitled to compensation?

- A. No, because the agreement between the man and the timber company created only a license.
- B. No, because the timber company's right to harvest timber on the man's land was not exclusive.
- C. Yes, because the agreement between the man and the timber company created a profit à prendre.
- D. Yes, because the timber company paid value for the right to harvest timber on the man's land.

## Explanation:

### Licenses, easements & profits

**License** Revocable privilege to enter & use another's land for specific purpose

**Easement** Nonpossessory interest in land that gives easement holder right to:  
use another's land for specific purpose (ie, affirmative easement) *or*  
prohibit other owner from doing something on land that owner would otherwise be allowed to do (ie, negative easement)

**Profit** Nonpossessory interest in land that gives profit holder right to enter another's land to remove products of soil (eg, timber, minerals, oil)

A **profit à prendre**—also called simply a profit—is a **nonpossessory interest in land** that gives the profit holder the right to enter another's land to remove specific natural resources (eg, timber). Because a profit is an interest in land, the **profit holder** (eg, timber company) is **entitled to compensation if the government condemns** the property under the power of eminent domain. This is true regardless of whether the profit holder paid value or has an exclusive right to remove the resources (**Choices B & D**).

**(Choice A)** Unlike easements and profits, licenses do *not* create an interest in the land. As a result, a licensee is not entitled to compensation in a condemnation action. But here, the timber company had a profit—not a license.

### Educational objective:

A profit à prendre is a nonpossessory interest in land that allows the profit holder to remove natural resources from another's land. This interest entitles the profit holder to compensation if the government condemns the property.

### References

Restatement (Third) of Property: Servitudes § 1.2(2) (Am. Law Inst. 2000) (defining profit à prendre).

Bates Sand & Gravel Co., Inc. v. Commonwealth, 404 N.E.2d 81, 82 (Mass. 1980) (finding that a profit à prendre is an interest in land entitled to compensation in a condemnation action).