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## Eminent Domain – Just Compensation – Wartime Imposed Ceiling Prices

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leasehold.<sup>14</sup> These cases do not overrule the established doctrine, but side-step it to allow the condemnee the amount he would receive in a voluntary sale.<sup>15</sup>

In the instant case the expropriation for a term originally less than the entire leasehold period, with an option to renew, which was exercised exhausting the lessee's interest, is considered as if it were a taking of the entire leasehold interest rather than an expropriation for a shorter period. This case extends the definition of a "taking of an entire leasehold" to include one which does not entirely exhaust the lessee's interest originally, but which does so by the exercise of an option to renew, thus disallowing the cost of removal under both sets of facts.

### EMINENT DOMAIN—JUST COMPENSATION—WARTIME IMPOSED CEILING PRICES

The United States expropriated a commodity from a long term speculator whose purpose was to hold and sell at future high prices. At the time of the taking, the maximum market price, specified by regulation under the Emergency Price Control Act,<sup>1</sup> was lower than the purchase price and storage costs of the commodity to the owner. The Court of Claims took cognizance of these facts and allowed compensation greater than this ceiling price.<sup>2</sup> *Held*, that just compensation as measured by fair market value was correctly determined by the ceiling price established by the OPA, because this was the only legal maximum selling price. *United States v. Commodities Trading Corp.*, 70 Sup. Ct. 547 (1950).

The exercise of the power<sup>3</sup> of eminent domain for necessary public use is subject to the constitutional requirement that just compensation be made for the property taken.<sup>4</sup> The amount of remuneration paid as compensation follows no strict formula,<sup>5</sup> but is normally determined as a judicial function,<sup>6</sup> by the fair market price at the time of the taking.<sup>7</sup> In a free

14. *James McMillan Printing Co. v. Pittsburgh, C. & W. R.R.*, 216 Pa. 504, 65 Atl. 1091 (1902); *Metropolitan West Side El. R.R. v. Siegel*, 161 Ill. 638, 44 N.E. 276 (1896).

15. *Metropolitan West Side El. R.R. v. Siegel*, *supra* note 12.

1. 56 STAT. 23 (1942), 50 U.S.C. APP. § 901 (1946).

2. *United States v. Commodities Trading Corp.*, 83 F. Supp. 356 (Ct. Cl. 1949).

3. See *United States v. Gettysburg Ry.*, 160 U.S. 668, 681 (1896) (implied power); THOMPSON, REAL PROPERTY § 2575 (Perm. ed. 1939) (inherent power).

4. U.S. CONST. AMEND. V; cf. *Monongahela Navigation Co. v. United States*, 149 U.S. 312, 341 (1892).

5. *United States v. Cors*, 337 U.S. 325 (1949); *United States v. Petty Motor Co.*, 327 U.S. 372, 377 (1946); *Wilson Mfg. Co. v. United States*, 161 F.2d 915, 918 (7th Cir. 1947).

6. See *National City Bank of N.Y. v. United States*, 275 Fed. 855, 859 (S.D. N.Y. 1921).

7. *Louisville Flying Service, Inc. v. United States*, 64 F. Supp. 938 (W. D. Ky. 1945); *C. G. Blacke Co. v. United States*, 275 Fed. 861 (S.D. Ohio 1921).

market, the value of the property<sup>8</sup> taken is based on the amount at which a sale would be consummated by willing bargainers<sup>9</sup> irrespective of the possible use to which the government will subject the property.<sup>10</sup>

With the advent of war, limitations<sup>11</sup> were imposed upon sellers of commodities. These controls restricted the normal criteria for measuring just compensation in the most vital part—the free market.<sup>12</sup> Congress, as a consequence of this emergency, also authorized the president to requisition all materials necessary for the successful prosecution of the war.<sup>13</sup> Since the use of this power did not restrict or suspend the requirement to pay just compensation,<sup>14</sup> and the free market was for all practical purposes destroyed, a new standard, ceiling price, came into being as the measure of compensation.<sup>15</sup> The lower federal courts, while generally following this new concept,<sup>16</sup> did frequently indicate that other factors,<sup>17</sup> such as future use,<sup>18</sup> storage expenses,<sup>19</sup> retention value,<sup>20</sup> and replacement value,<sup>21</sup> should be taken into consideration.

The Supreme Court on the other hand, impliedly rejects all determinants other than ceiling price. In an earlier case,<sup>22</sup> the Court merely decided that the petitioner did not sustain the burden of proving that the ceiling price was not just compensation. But, in the instant case it was determined that ceiling price "should be accepted as the maximum measure of compensation."<sup>23</sup> Justice Jackson, who dissented in both cases, said, "It is hard to see how just compensation can be the legal equivalent of a controlled

8. *Brooks-Scanlon Corp. v. United States*, 265 U.S. 106, 123 (1924) (value may be less than cost); *Kinter v. United States*, 156 F.2d 5, 7 (3d Cir. 1946); *Love v. United States*, 141 F.2d 981, 982 (5th Cir. 1944) (value may be greater or less than investment).

9. See *Brooks-Scanlon Corp. v. United States*, *supra* note 8, at 125.

10. *United States v. Powelson*, 319 U.S. 266 (1943); *United States v. Miller*, 317 U.S. 369 (1942); see *Boston Chamber of Commerce v. Boston*, 217 U.S. 189, 195 (1910).

11. See note 1 *supra*.

12. See note 6 *supra*.

13. 55 STAT. 742, 50 U.S.C. APP. § 721 (1942).

14. *United States v. New River Collieries Co.*, 262 U.S. 341 (1923); *United States v. McFarland*, 15 F.2d 823, 826 (4th Cir. 1926).

15. *Cudahy v. United States*, 155 F.2d 905 (7th Cir. 1946).

16. *Graves v. United States*, 62 F. Supp. 231 (W.D. N.Y. 1945); accord, *Edward Stahel & Co. v. United States*, 78 F. Supp. 800 (Ct. Cl. 1948); *Walker v. United States*, 64 F. Supp. 135 (Ct. Cl. 1946).

17. *Sudametal Sociedad Anonima v. United States*, 88 F. Supp. 293 (Ct. Cl. 1950); *Williams v. United States*, 77 F. Supp. 207 (Ct. Cl. 1948); *Wilson Mfg. Co. v. United States*, *supra* note 5, at 917; accord, *Lord Mfg. Co. v. United States*, 84 F. Supp. 748 (Ct. Cl. 1949) (allowed less than the retail selling price, because plaintiff seller controlled the market and kept the price high); *United States v. Buxton Lines*, 165 F.2d 993 (4th Cir. 1948) (just compensation was more than nominal even though the owner of the property profited from the requisitioning).

18. *Fabrica Uruguaya De Neumaticos, S. A. v. United States*, 84 F. Supp. 745 (Ct. Cl. 1947).

19. See *Kaiser v. United States*, 69 F. Supp. 588, 590 (Ct. Cl. 1947).

20. *Amer-Hawaiian S.S. Co. v. United States*, 85 F. Supp. 825 (S.D. N.Y. 1949); *United States v. Commodities Trading Corp.*, *supra* note 2.

21. *John J. Felin & Co. v. United States*, 67 F. Supp. 1017, 1021 (Ct. Cl. 1947), *rev'd* 334 U.S. 624 (1947).

22. *United States v. John J. Felin & Co.*, 334 U.S. 624 (1947).

23. See *United States v. Commodities Trading Corp.*, 70 Sup. Ct. 547, 552 (1950).

price unless a controlled price is also always required to equal just compensation. . . ." <sup>24</sup> Justice Frankfurter delivered the majority opinion in *United States v. John J. Felin & Co.*,<sup>25</sup> but dissented in the principal case. He claimed that the question of compensation was a factual one, and that though the ceiling price was not irrelevant in resolving compensation, it should not be the sole determining factor. Continuing, he wrote that "generally fair and equitable"<sup>26</sup> ceiling prices might give rise to such individual hardships as to make taking at this price *unjust* compensation.<sup>27</sup> However, both justices agreed with the majority that "retention value" was not to be used in determining compensation. Justice Frankfurter felt that it was valid to reject retention value because it might be speculative, but because the Court refused to consider costs in measuring compensation, he disagreed with the majority.<sup>28</sup>

In deciding this case, the Court states that a payment in excess of the controlled price will be allowed upon proof that this price is not just compensation. However, there is no indication as to what condition or hardship will be considered sufficient for a payment greater than the established price. The effect of this decision seems to permit the government to requisition at the same price that was set to restrict inflationary selling. If at the time of the enactment of this ceiling price, the legislature had intended that it should be applied as the measure of just compensation, there might have been a problem of deciding whether this was a taking of property without due process.

### HABEAS CORPUS—JURISDICTION OF FEDERAL COURTS— CONFINEMENT BY MILITARY COMMISSION

After the unconditional surrender of Germany and before the cessation of hostilities with Japan, German citizens engaged in military service for the Japanese government in China. They were convicted by a Military Commission of the United States Army in China of violating laws of war, and were transferred to Germany to serve their sentences. Their petitions for habeas corpus against the Secretary of Defense were denied in the District Court, but were reinstated by the Court of Appeals.<sup>1</sup> *Held*, that although the detaining official is within its territorial jurisdiction, a federal court does not have jurisdiction of the petition for writ of habeas corpus by a prisoner who at any relevant time is not. *Johnson v. Eisentrager*, 70 Sup. Ct. 936 (1950).

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24. *Id.* at 558.

25. See note 22 *supra*.

26. 56 STAT. 31, 50 U.S.C. APP. § 924 (1942).

27. *United States v. Commodities Trading Corp.*, *supra* note 23, at 553.

28. *Id.* at 552.

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1. *Eisentrager v. Forrestal*, 174 F.2d 961 (D.C. Cir. 1949).