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Price determination by the parties or a third party: Contractual precautions to adopt

In a decision published in the *Bulletin* on June 4, 2025[1], the Commercial Chamber of the *Cour de Cassation* (French Supreme Court) reaffirmed a fundamental principle of contract law: The determination of the price lies exclusively with the will of the parties or, where applicable, a third party designated by them – but never with the judge.

This decision highlights the importance of complying with Articles 1591 and 1592 of the French Civil Code, which respectively provide that the price must be determined and identified by the parties, or left to the determination of a third party expressly designated for that purpose.

This article outlines the key rules governing price determination in a sales contract, in order to avoid the risk of nullity.

Article authored in collaboration with Mirabelle Ly, trainee

A price that is determined or objectively determinable: A condition for the validity of the contract

Article 1591 of the French Civil Code provides that "*the sale price must be determined and identified by the parties*". In other words, a sales contract is only valid if it provides for a fixed price or, failing that, a price that

is objectively determinable without external interference, in particular from the judge.

This principle applies to any contract transferring ownership, such as a conventional standard sale, a in-kind payment by substitution[2], or even a letter of intent for the acquisition of shares [3].

However, some contracts fall outside this regime – such as consignment agreements, where the price is set at a later stage based on the outcome of the sale.

Case law accepts that the price need not be expressly stated in the contract, so long as it can be determined on the basis of objective criteria[4]. As such, the price may be determined by reference to a pricing schedule, an official market quotation, or a market price – as illustrated in the December 14, 2004 decision of the First Civil Chamber of the *Cour de Cassation* concerning potato prices based on official quotations[5].

On the other hand, any price based solely on the will of one party, or subject to a future agreement that has not yet been defined, is deemed unlawful.

In practice, a price that depends on a future event may be valid, provided that the event is not entirely under the control of one of the parties[6].

Trial judges have full discretion to assess the validity of the price stipulated in a sales contract. They may annul the contract if the price is deemed ridiculously low or devoid of seriousness[7].

As such, a sale may be annulled for inadequacy of price where the agreed amount is ridiculously low compared to the actual value of the good – for instance, a plot of land sold for €2.03/m² while its actual value at the time of sale was €37/m²[8].

An exception is made, however, where the low price is justified by the seller's donative intent. In such cases, courts may recharacterize the transaction as an indirect gift, provided doing so does not misrepresent the true intent of the parties[9].

Ultimately, price determination in a sales contract reflects the balance between contractual freedom and judicial oversight, aimed at preventing abuse and ensuring legal certainty in transactions.

Price determination by a third-party: A possibility governed by Article 1592 of the French Civil Code

Article 1592 of the French Civil Code provides that the price may be "*left to the determination of a third party*". This provision expressly authorizes the parties to a sales contract to delegate to a third party the task of determining the price of the thing being sold.

Validity of price determination by a third-party

Case law has confirmed the validity of this method, provided that the sale price has not yet been set and that

the third party is either designated in the contract or can be designated based on contractually defined terms and conditions.

If the third party is unable or unwilling to carry out the assignment, the sales contract is not formed, and the transfer is void for lack of a determined price[10], unless the parties have provided for the appointment of another expert. Furthermore, if the price cannot be determined, the nullity of the price determination clause renders the entire agreement null and void.

In this context, the third party's engagement letter is of critical importance. Too often overlooked, it must clearly and precisely define:

- the third party's assignment (which must involve determining the price, not merely providing an indication);
- the valuation method(s) to be used;
- the completion timeline; and
- the procedures for challenging or replacing the third party.

It should also be emphasized that the judge may never substitute the defaulting third party, as doing so would breach the principle that the price may be set only by the parties or a third party designated by them.

The limited role of the third-party appraiser: Neither arbitrator nor judge

The third party designated to determine the price of a good does not act in a judicial or arbitral capacity, nor as a mediator. He/she does not serve as a judge or arbitrator, but rather as a neutral appraiser tasked with objectively assessing the value of the good in question. As such, he/she must determine an exact price, not merely provide an indicative range[11].

In the absence of any specific provisions to the contrary, the third-party appraiser may interpret the contract, provided such interpretation does not distort its meaning[12].

The determination provided by the third-party appraiser is not immune from challenge. It may be contested or disregarded in case of:

- a serious breach of duty (e.g., misappropriation, manifest error);
- a mistake as to substance[13], fraud, or duress[14];
- a gross error, such as a double valuation of the same asset[15].

The Law of July 19, 2019[16] regulates the appointment of a new appraiser in the event the first one failed to fulfil his/her assignment.

A gross error is characterized by clear inconsistencies that a reasonably diligent professional would not have committed. The *Cour de Cassation* has acknowledged the existence of such an error, for example, where an

expert relied on a date imposed by a court without regard for economic realities[17]. Conversely, an appraisal carried out in accordance with accounting standards and in compliance with the *audi alteram partem* principle, cannot be set aside[18].

Finally, it is important to reiterate that the judge may never substitute the third-party appraiser in determining the price, as doing so would contravene Articles 1591 and 1592 of the Civil Code. This principle was firmly reaffirmed by the Commercial Chamber of the *Cour de Cassation* in its June 4, 2025 decision[19].

Securing your contracts: practical recommendations

The validity of a sales contract largely depends on how the price is determined. Whether set by the parties themselves or by a third party, the price must neither be arbitrary nor subject to unilateral discretion. Legal precision in drafting price clauses and in defining the third party's role is, therefore, essential to prevent disputes.

To ensure legal certainty and avoid litigation, it is recommended to:

- always include clear provisions on the method for determining the price;
- expressly provide for the appointment of a third-party appraiser in case the price is undetermined; and
- detail the terms for appointment, replacement, and scope of intervention of the third-party appraiser in a clear engagement letter.

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[1] Commercial Chamber of the *Cour de Cassation*, June 4, 2025, No. 24-11.580 (in French only)

[2] Third Civil Chamber of the *Cour de Cassation*, October 7, 1998, No. 97-11.448 (in French only)

[3] Commercial Chamber of the *Cour de Cassation*, November 6, 2012, No. 11-26.582 (in French only)

[4] Third Civil Chamber of the *Cour de Cassation*, September 26, 2007, No. 06-14.357 (in French only)

[5] First Civil Chamber of the *Cour de Cassation*, December 14, 2004, No. 01-17.063 (in French only)

[6] Commercial Chamber of the *Cour de Cassation*, April 7, 2009, No. 07-18.907 (in French only)

[7] Third Civil Chamber of the *Cour de Cassation*, March 26, 1969, No. 67-12.733 (in French only)

[8] Third Civil Chamber of the *Cour de Cassation*, May 25, 2011, No. 10-14.875 (in French only)

[9] First Civil Chamber of the *Cour de Cassation*, January 6, 1969, No. 67-10.401 (in French only)

[10] Commercial Chamber of the *Cour de Cassation*, May 24, 2017, No. 15-20.213 (in French only)

[11] Commercial Chamber of the *Cour de Cassation*, May 29, 1972, No. 70-13.104 (in French only)

[12] Commercial Chamber of the *Cour de Cassation*, April 4, 1995, N° 92-22.020; *Commercial Chamber of the Cour de Cassation*, December 19, 2006, No. 05-10.198 (in French only)

[13] Since the 2016 reform of French contract law, the concept of "*mistake as to substance*" has been replaced by "*mistake as to the essential qualities*".

[14] Commercial Chamber of the *Cour de Cassation*, November 12, 1962, Bull. civ. No. 444 (in French only)

[15] Commercial Chamber of the *Cour de Cassation*, February 4, 2004, No. 01-13.516 (in French only)

[16] Article 37 of the Law No. 2019-744 on the Simplification, Clarification and Modernization of Corporate Law (in French only)

[17] Commercial Chamber of the *Cour de Cassation*, May 3, 2012, No. 11-12.717 (in French only)

[18] Court of Appeals of Paris, May 29, 2008, No. 07/00506 (in French only)

[19] Commercial Chamber of the *Cour de Cassation*, June 4, 2025, No. 24-11.580 (in French only)