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Determination of the price by a third party

A contract to deliver a thing at a price determinable by a 3rd party is recognized in our law as ascertainable content and therefore valid provided the 3rd party is ascertained or ascertainable.

A contract to deliver a thing at a price determinable by a 3rd party is subject to a suspensive condition.

Problem arises when one of the parties prevents the fulfillment of the condition by e.g. destroying the thing sold. It could be fictitious fulfillment or prevention of performance

Fictitious fulfillment

The price is regarded as fixed when it is not. The court cannot fix its own price but must try to determine what the 3rd parties' price would have been according to all the available evidence. The doctrine of fictitious fulfillment rests on a fiction, in that the condition is deemed to have been fulfilled when it has not.

Prevention of Performance

A solution would be to consider the party who is preventing the 3rd party from determining the price as committing a breach of contract i.e. prevention of performance. The innocent party can claim damages if he rescinds the contract or not. The court will have to calculate a price for the damages, a price that the 3rd party would have stipulated.