

Another Performance together with the price

A trade in is an e.g. of a contract of sale where the counter-performance consists partly in money and the delivery of an article.

Factors: The parties' intention is the decisive factor for determining the category of the contract.

If their intentions cannot be determined then the principal part of the counter-performance will be conclusive. If there is still uncertainty, it will be regarded as a contract of sale, as contracts of sale occur more often than exchanges.

Exchange is an agreement in terms of which one party undertakes to deliver a thing to another party in exchange for the counter delivery of another thing.

A contract of sale for a reasonable price

A sale at a reasonable price was unthinkable at common law; however English law acknowledges a sale at a reasonable price. In other cases the view is that a sale at a reasonable price is invalid.

In GENAC PROPERTIES JHB VS NBC ADMINISTRATORS the AD remarked obiter that it is difficult to determine according to what principal a sale at a reasonable price is invalid. To aver that a contract of sale at a reasonable price is invalid is unconvincing; after all we are concerned with the intentions of the parties. It is a question of legal policy whether such a contract should be a valid contract of sale.

A contract of sale in which no price is stipulated

A tacit undertaking to pay a certain price is valid. For a contract to be binding the party's respective performances must be fixed or ascertainable. If it can be said that the parties tacitly agreed to an ascertainable performance on the part of the receiving party, the contract will be above suspicion ❖ two possibilities arise

1. If the seller is a merchant, it can be said that there is a tacit agreement to pay the sellers usual price.
2. If the seller does not have a usual price, it can be said that there is a tacit agreement to pay the market price.

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Alternative Sale

Is a sale where \perp seller has to deliver one of several specific things. \perp alternative thing must be specified individually and not as part of specie. Eg S sells P one of his 3 horses - Brave Moment, Melody Song or Big Donald. If no person is indicated in \perp contract to make \perp selection. \perp debtor must select.

Generic Sale

Is a sale where \perp seller has to deliver a thing described according to its nature. S sells P 100 bags of mealies of a particular grade. Genus can be limited eg S sells P one sheep of his flock for R300. If no person is indicated in \perp contract to make selection. \perp debtor must select.

THE UNDERTAKING TO PAY A PRICE

THE PRICE AS A SUM OF MONEY.

It is only a contract of sale if there is an undertaking by one party to pay a price in exchange for \perp thing delivered by \perp other party. No price ... No contract of sale.

In SA a price of a contract of sale must be in an accepted currency Rands & cents or a currency which can be converted into Rands & cents