

The determination of the price in contract law

## Abstract

The reflection on the pricing on the bargaining business involves large and varied profiles of the general theory of the contract.

First of all, it is necessary to verify the feasibility of a hermeneutic option, which is able to set up a particular class of contract in regard to contracts trading in general. After the unification of the Italian Civil Code and trade within the codification of 1942, it has been proposed the need to re-introduce the so-called business contracts, instead of the previous commercial contracts. This would be a category focused on the consideration of the existence of some contractual figures that are characterized not only by the participation in them of the entrepreneur, but also by the fact that, through these, expresses and realizes the specification and objectively qualifying business activity. These contracts would present common characteristics with respect to their peculiar grouping and relating to all contractual figures that it covers, justifying configuration needs discipline and common.

The formula business contracts is, however, a conventional category, of no use, and especially not supported by specific normative data. The common reference to the company, in addition, as part of the legal relationship, is too general and all-encompassing to found on it a unified conceptual category, which is insignificant in terms of the identity of hermeneutical principles behind the rules that it should refer to. The use of pre-established categories and abstract does not seem to be accepted. Each contract has functional and structural characteristics peculiar, distinct from those of the other contracts. Then, the need to establish, from time to time, the discipline most appropriate to be applied in respect of the individual case. Thus reasoning, it is possible to trace a plurality of norms, rules and principles within the complex sorting Italian-Community sources, in order to establish a connection between the individual disciplines and values contained in the Constitution.

As for the reflection on the determination of the price in the contract, reveals prominent delineate the exact boundaries within which it is located, as an essential element in the contracts of exchange for consideration. The price is lacking as to the exact location and a unified framework that establishes the legal consequences to be attached to a possible lack. Hence, the need to analyze what is the price, as part of the object of the contract, and the consequences of its failure determination.

The analysis of the mechanisms for determining the price of the contract in the discipline in general reveals that in case of non-determination expressed in the price, supplementary aid to those criteria, listed in Article 1474 Civil Code, the price normally obtained, the market price, the "right price". They deal with the requirement for a declaration of nullity of the contract for indeterminacy of the object and support the maintenance of the contractual agreement: even if there is no agreement between the parties and lack the criteria for subsequent determination is always possible to determine the extent of the consideration, through the reference to the "right price". The sanction of nullity for indeterminacy of object, sub specie price, is preferred evaluation of the contract in terms of incompleteness.

The technique of the contract "incomplete" is, in this sense, a flexible instrument for the parts, especially when they are formed by enterprises, able to preserve the stability of the ratio, leaving a subsequent determination of the future identification of other aspects of the content of the contract,

with a view to favor the preservation of the relationship. In such cases, the contract is not in training, but already concluded. Neither one could argue that it is invalid for lack of one of its structural elements. The contract is concluded, but incomplete, as it lacks an essential element - the price -, which will be specified below. The application of the principle of conservation of the contract is even more stringent in relation to the negotiation of enterprise: the only way to ensure the stability of the relationship is, in fact, not the initial estimate of a price that could be altered later in the same.