

Contracts I
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Sample Exam Question #11

CAVEATS: This question is an example only. It does not cover enough material to constitute an entire exam. The questions on the real exam are of varying degrees of difficulty, and the number of points assigned to each question varies correspondingly.

On March 1, Buyer, a commercial landscaper, called Seller and placed an order for 100 juniper saplings, with delivery to be made by Seller no later than June 15. Seller agreed to deliver 100 juniper saplings to Buyer no later than June 15th, with Buyer paying the reasonable costs of delivery. Neither party said anything about price. Shortly thereafter, Buyer, contracted with several clients who wanted juniper saplings included in their landscaping at prices ranging from \$10 to \$15 per tree. The prevailing market price for juniper saplings on March 1st was \$9.00 per sapling.

Bad weather struck leaving Seller unable to deliver 100 juniper saplings by June 15th. Realizing its predicament, Seller called Buyer on June 1st, explained the situation and offered to deliver 50 juniper saplings to Buyer no later than June 15th at a price of \$15.00 per sapling and another 50 saplings no later than August 1st. The prevailing market price for juniper saplings on June 1st was \$18.00 per sapling. Unaware of any substitute source on such short notice, and needing the saplings, Buyer orally agreed to Seller's new terms. Seller signed and faxed a letter to Buyer "confirming your agreement to a price of \$15.00 per sapling for those saplings to be delivered no later than June 15th and the then-prevailing market price for those additional saplings delivered no later than August 1st." Buyer did not respond to Seller's June 1st fax.

Seller delivered the first 50 saplings to Buyer on June 15th, along with an invoice in the amount of \$750.00 (\$15.00 x 50 saplings) plus \$50.00 delivery expenses. Buyer accepted the trees and wrote a check to Seller in the amount of \$800. On July 15th, Seller called Buyer to inform Buyer that Seller was ready to deliver the remaining 50 saplings. Buyer indicated he was ready to take delivery. Again, neither party discussed the price of the second batch of saplings. On July 16th, Seller delivered the remaining 50 saplings to Buyer, along with an invoice in the amount of \$900.00 (\$18.00 x 50 saplings) plus \$50.00 delivery expenses. The prevailing market price for juniper saplings on July 16th was \$20.00 per sapling. Buyer accepted the trees, crossed out the \$18.00 per unit language on the invoice and wrote in "\$15.00 per unit, per June 1st agreement," and wrote a check to Seller in the amount of \$800.

Seller requested that Buyer remit the additional \$100.00. Buyer refused. Seller then brought suit. In its Answer filed in response to Seller's suit, Buyer responded: "Buyer admits an agreement to buy 100 juniper saplings from Seller, but denies ever agreeing to pay more than \$15.00 per sapling, for a total contract price of \$1,500.00 or less."

Who should prevail in Seller's suit against Buyer and why?