

Contracts I
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Sample Exam Question #5

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 1st, Buyer called Seller and placed an order for 100 juniper saplings at a price of \$5 per sapling, with delivery to be made by Seller no later than June 15th. On March 15th, Seller sent Buyer a written "Confirmation" of Buyer's order, reciting that Seller would deliver to Buyer, no later than June 15th, 100 juniper saplings at a price of \$5 per sapling, "[s]ubject to the Terms and Conditions stated on the reverse side of this Confirmation." On the back side of the Confirmation, Seller set forth a series of standard terms and conditions including the following:

11. In the event that any of the products covered by the Confirmation fails to satisfy the Buyer identified herein, Buyer must notify Seller in writing not later than ten (10) days following receipt of said product, and briefly explain the nature of the defect or nonconformity of which Buyer complains. Failure to so notify Seller constitutes a waiver by Buyer of any claim related to said product except for claims for physical damage to the product negligently or intentionally caused by Seller or Seller's agent(s) or employee(s).

Seller delivered the trees to Buyer on June 15th. Buyer accepted the shipment and wrote Seller a check for \$500.

On June 25th, Buyer noticed that several of the saplings delivered by Seller have large brown splotches on them. After consulting a licensed horticulturist, Buyer concluded that these saplings were suffering from "Juniper Rot," a condition that, at best, would cause the saplings to grow into stunted, discolored adult Junipers and, at worst, would cause the saplings to die in a matter of weeks. The horticulturist further informed Buyer that Juniper Rot is genetic, and that the saplings must have had the condition before Seller delivered them to Buyer.

On June 26th, Buyer called Seller to complain that, all totaled, 9 of the 100 saplings are suffering from Juniper Rot. Buyer asked Seller to replace the diseased saplings at no extra charge; or, in the alternative, to refund Buyer \$45 of the purchase price, representing the portion of the total price Buyer paid for the 9 defective saplings. Seller refused. On June 30th, Buyer filed suit in small claims court seeking to recover the purchase price of the diseased saplings (\$45).

- A. On these facts, who should win and why?
- B. If Buyer and Seller are both merchants, what could Buyer have done differently in order to avoid the effect of Paragraph 11?
- C. Suppose that, instead of calling in its order, Buyer sent Seller a written purchase order for 100 juniper saplings at a price of \$5 per sapling, with delivery to be made by Seller no later than June 15th, and that the written purchase order did not contain any provision requiring Buyer to give Seller written notice of any defect in the goods. If all other facts remain the same and Buyer and Seller are both merchants, who should win and why?
- D. Same facts as “C,” except Buyer is not a merchant. Who should win and why?