

Advanced Contracts (Sales and Leases)
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Sample Exam Questions Set #3

CAVEATS: These questions are examples only. These questions assume familiarity with all of the assigned materials.

11. In *Caudle v. Sherrard Motor Co.*, 525 S.W.2d 238 (Tex. Civ. App. 1975), the following facts were undisputed:

On February 10, 1972, plaintiff Sherrard Motor Company and defendant John Caudle entered into a contract for the purchase of a house trailer. It provided for a cash down payment of \$2,685 and a balance of \$4,005 in the form of a note payable to Sherrard. This contract was assigned with recourse to the Citizens National Bank of Denison, Texas, by Sherrard on the date executed. While Sherrard was making the trailer ready for the defendant, Caudle received a telephone call from his business office advising that he should return immediately to Dallas. Since the trailer was not ready, Caudle told Sherrard that he would return later to Denison and take possession of the trailer. Before Caudle returned and sometime between February 12 and 14, 1972, the house trailer was stolen from plaintiff's place of business. Upon learning of the theft, Caudle stopped payment on the check he had given Sherrard as down payment for the trailer. Sherrard then sued Caudle on the contract of sale for the contract price.

In support of the trial court's j.n.o.v. in its favor, Sherrard argued "it was acting as a bailee while the trailer remained on its premises and that by executing the contract, it had acknowledged the [Caudle]'s right to possession of the trailer. Plaintiff further argue[d] that because it did not agree to deliver the trailer to Caudle in Dallas, the trailer was to be delivered to Caudle 'without being moved.'" Sherrard also directed the appellate court's attention to the following provision in its contract with Caudle: "No transfer, renewal, extension or assignment of this agreement or any interest hereunder, and no loss, damage or destruction of said motor vehicle shall release buyer from his obligation hereunder."

Provide your own answers to each of the following questions posed by the court of civil appeals. Assume that Texas's version of § 2-509 in effect at the time the case was decided were identical to those set forth in your statutory supplement. Explain your answers.

A. Did the risk of loss pass to Caudle before the trailer was stolen because the trailer was held by a bailee, Sherrard, to be delivered without being moved pursuant to § 2-509(2)?

- B. Did the contract provide that the risk of loss passed to Caudle when the contract was signed by the parties under § 2-509(4)?
- C. Did the risk of loss remain with Sherrard, a merchant-seller, because the trailer was stolen before Caudle had taken actual physical possession of the goods pursuant to § 2-509(3)?

12. 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. Seller, realizing its predicament, called Buyer on June 1st, explaining the situation and offering 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 for saplings 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 in writing 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 called Buyer requesting that Buyer remit the additional \$150.00. 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? To what remedy or remedies should the prevailing party be entitled? Please explain.