

Contracts
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Midyear Examination
December 16, 1998

1. This is an open-book examination.
2. You have two hours in which to write your answers.
3. The problem posed in this examination deals with two separate contracts. Please separate your discussion relating to each of the two contracts.
4. Should you find it necessary in answering a question to assume a fact not given in the problem as stated, you may do so; but you should clearly indicate that you are making an assumption, and should briefly explain why you consider it a reasonable assumption to make.
5. You should address all the issues fairly raised by the problem, even if you believe a particular issue to be dispositive.

Joanna Hacker ("Jo") was arrested and charged with fraud crimes, relating to a fictitious business she had set up on the Internet. The judge permitted Jo to go free before trial, but stipulated a "bail" of one million dollars (a sum that would be forfeited to the court if Jo fails to show up for trial). Jo, whose liquid assets were not sufficient to post bail herself, contacted Fred Bailor, owner of the "Bailor Bailor" bail bond agency, a private firm in the business of posting bail for defendants. The agency's profits came from the fee - a hefty one, usually -charged to the defendant. Jo, who was able to provide \$500,000 of her own funds, requested Fred to provide the additional \$500,000. Fred agreed, and the two parties entered a contract, which, among other provisions, set the agency's fee to be \$250,000. It also provided that if Jo skips town and does not appear for trial, the agency can use "bounty hunters" to track her down, and that the bounty hunters are authorized in the contract to use all reasonable means, including force, to apprehend their suspects. (Although bounty hunters perform some of the same functions as police officers, they are private citizens, not employees of the state. Their power to act arises not from statute, but from the contracts signed by criminal defendants who seek bail bonds.)

Joe violated the terms of her release and fled town before trial. As it became apparent that she would not return for trial and that the bond would be forfeited, Bailor Bailor contracted with the town's most ferocious bounty hunter, a private contractor named Nir De Roberto, who is known for his violent (and effective) tactics. Fred Bailor and De Roberto signed a written contract in which they agreed on a fee of \$20,000, to be paid if De Roberto brought Jo back to prison.

Although De Roberto was an experienced hunter, Jo turned out to be an elusive target. By the time De Roberto realized that the job was costlier than he expected he was already well invested in it. He kept believing that he was on the verge of apprehending Jo and continued the chase, yet each time Jo's luck (or superior intelligence) helped her elude him. At some point, De Roberto called Fred and asked for a raise. "I'll quit if you don't give me an extra \$10,000", he threatened. Fred grudgingly agreed: "OK, \$10,000 extra, but no more!", and De Roberto continued the hunt. Finally, he managed to successfully track Jo down, but by then he had already spent approximately \$50,000 of his own funds. To cut a long story short, De Roberto threw Jo into the trunk of his car, and drove for 48 straight hours back to town. (Needless to say, being angry as he was, during the entire bumpy ride he offered Jo no food and little water).

When De Roberto arrived in town, he showed up at Bailor Bailor's parking lot, and went in the office to call Fred. A few minutes later, with Fred at his side, De Roberto opened the trunk, only to discover that it was ... empty! Apparently, while he was in the office, complaining about his bad deal, Jo managed to escape from the trunk. "She must be in town", cried De Roberto with disgust. "You blew it", shouted Fred, "forget about the money. You are fired." Fred immediately called his local hunters and offered \$2000 to whoever found Jo in town. Before De Roberto could recover from his shock, the local hunters tracked Jo in another part of town, and brought her in to stand trial.

De Roberto filed a suit against Bailor Bailor. Your firm was hired to represent the defendant. In reading the contract that Fred and De Roberto signed, you came across the following provisions:

6. De Roberto shall commence his search immediately. If, at any time, he decides to quit his search, he must notify Bailor Bailor at once. No fee shall be earned if De Roberto quits before bringing the target to captivity.

19. No modification of this contract shall be binding unless made in writing.

As a summer associate, you were asked by the attorney handling the case to write a memo outlining the contract law issues arising in this case, discussing all the remedies that De Roberto might be seeking and the argument that can be brought in defense. In case of ambiguity concerning the applicable doctrine, you are specifically asked to highlight policy considerations and draw guidance from the Uniform Commercial Code.

Also, your firm was asked by Bailor Bailor to file a lawsuit against Jo, who is unwilling to fulfil her promise to pay the fee of \$250,000. In her defense, she claims that the contract she signed with Bailor Bailor is unenforceable. Specifically, her only claims are that the fee is excessive, and that she should be compensated by Bailor Bailor for the harm caused to her by being locked in De Roberto's trunk (she alleges a permanent damage to her neck). Assume, for the sake of this discussion, that the forceful actions which De Roberto had taken were specifically authorized in the contract between Jo and Bailor Bailor, and that Jo had carefully read the relevant provisions before signing that contract. You are asked write a one-page memo, discussing the basis and potential defense against Jo's claims.