



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

DROIT DES AFFAIRES SUPPLEMENTAL

MAY 29, 2000

- 1) The supplemental examination in the DROIT DES AFFAIRES section is intended to determine the extent to which you have met the ultimate goals set forth in the document entitled «Préambule Droit des affaires».
- 2) You have a maximum of four hours to complete the examination. You are entirely responsible for managing your time.
- 3) The examination contains questions relating to the following sections:
 - Droit des affaires
 - Le Barreau et la pratique professionnelle
- 4) The questions total 100 marks. You must obtain a mark of 60% or more in order to pass this examination.
- 5) You may use any written documentation which you deem to be useful.
- 6) For photocopying purposes, kindly use a **pen with black ink** to write your answers in your answer booklet.
- 7) **You must write legibly, otherwise your answers will not be graded.**
- 8) Please ensure that your examination booklet contains **14** pages (including this page) and that your answer booklet contains **6** pages.

N.B.: You may assume that the legislation currently in force, as explained in the documentation distributed to you, applies. Do not take into account the amendments announced by the Minister of Finance of Canada during the budget speech of February 28, 2000.

FILE 1 (45 MARKS)

The situation described is an evolving one: all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.

Richard Demers, the president of *Louvin Transport inc.*, consults you today in connection with the meeting of the board of directors which will be held this evening, May 29, 2000. He relates the following facts to you:

- *Louvin Transport inc.* is a company constituted pursuant to Part 1A of the *Companies Act*. Its articles of constitution are reproduced hereinbelow :



Gouvernement du Québec
L'inspecteur général
des institutions financières

A-110720-H9401

Form 1
ARTICLES OF INCORPORATION
The Companies Act, R.S.Q., c. C-38
Part 1A

1 Corporate name LOUVIN TRANSPORT INC.		
2 Quebec judicial district wherein company is setting up its head office Hull	3 Precise number or minimum and maximum number of directors MINIMUM: 1 MAXIMUM: 10	4 Effective date if after filing date N/A
5 Description of share capital An unlimited number of shares.		
6 Restrictions (if any) on transfer of shares N/A		
7 Limitations (if any) on company activity N/A		
8 Other provisions The company cannot make a distribution of securities to the public.		
9 Incorporators		
Name and surname	Address and postal code (if a corporation, give head office address and incorporation act)	Signature of each incorporator (if a corporation, signature of authorized person)
Richard Demers	125, Picard Street Gatineau Québec Canada G1G 6L6	<i>Richard Demers</i>

If space is insufficient, attach an appendix in two (2) copies

- Since the constitution of the company in 1992, Richard Demers, François Rivard and Sylvie Julien have been its only directors.
- Richard Demers, François Rivard, Sylvie Julien and Louise Simard are the only shareholders of the company. Each shareholder owns 2,500 shares which were issued at a price of \$10 per share. At the time of issuance, each shareholder paid \$25,000, except Louise Simard, who only paid \$5,000.
- There is no shareholders' agreement.
- The last annual meeting of shareholders was held on June 30, 1997; the current directors were then elected for a mandate of one year.
- On April 15, 1999, the board of directors of *Louvin Transport inc.* adopted a resolution requiring Louise Simard to pay, no later than May 29, 1999, the total unpaid balance on the shares for which she subscribed.
- On April 15, 1999, a copy of the said resolution was sent to Louise Simard. As of today, May 29, 2000, Louise Simard has still not paid the amount owing.

QUESTION 1 (4 marks)

- **Indicate the amount that *Louvin Transport inc.* is legally authorized to claim from Louise Simard as at today's date.**
- **Justify your answer by referring to one or more specific and relevant provisions of the *Companies Act*.**

SUPPLEMENTARY FACTS

The board of directors of *Louvin Transport inc.* has been reviewing the articles of constitution of the company for some time. The following report will be filed at the meeting of the board of directors to be held this evening, May 29, 2000 :

<p>« We have examined the existing articles of constitution of the company. In order for the company to benefit from the exemption available to closed companies under the <i>Securities Act</i>, we recommend that the following provision be added :</p>
--

<p><i>The number of shareholders of the company shall be limited to fifty (50), exclusive of present or former employees of the company or of a subsidiary .»</i></p>

QUESTION 2 (5 marks)

Will this recommendation have the desired result ? Explain your answer.

SUPPLEMENTARY FACTS

The report also states the following:

« You wish to replace the current share capital by a share capital which would be comprised of three new classes of shares with the following rights, privileges, conditions and restrictions :

- The class «A» shares confer the right to one vote per share as well as the right to receive any declared dividends and the right to share the residual assets upon the winding-up of the company.
- The class «B» shares do not confer any right to vote, but they confer the right to receive a fixed, preferred dividend equal to 6% per year calculated on the amount paid into the issued and paid up share capital account for the said class «B» shares, said dividend to be paid in preference to dividends on the other classes of shares; upon the winding-up of the company, they also confer the right to receive, in preference to the other classes of shares, the amount paid into the issued and paid up share capital account for the said class «B» shares. The shares are redeemable, at all times, at the option of the holder thereof.
- The class «C» shares do not confer any right to vote, but they confer the right to receive a fixed dividend equal to 7% per year calculated on the amount paid into the issued and paid up share capital account for the said class «C» shares, said dividend to be paid in preference to dividends on the class «A» shares; upon the winding-up of the company, they also confer the right to receive, in preference to the class «A» shares, the amount paid into the issued and paid up share capital account for the said class «C» shares. The shares are automatically redeemable by the company upon the death of the holder thereof. »

QUESTION 3 (4 marks)

Based only upon the rights, privileges, conditions and restrictions which will be attached to the shares in the new authorized share capital of *Louvin Transport inc.*, as described hereinabove, which class(es) of shares give(s) a right to a cumulative dividend ? Explain your answer.

SUPPLEMENTARY FACTS

The following is also an excerpt from the report :

«You have asked us to see to it that the shares which are currently issued become class «C» shares of the new share capital.

The following procedure must be followed in order to effect these proposed amendments to the authorized share capital and the issued share capital :

1. the board of directors must adopt a by-law;
2. it is sufficient if the by-law is ratified by 2/3 of the votes cast by the shareholders at a special general meeting called for that purpose;
3. at that time, all current shareholders will be entitled to vote;
4. articles of amendment will have to be filed in duplicate with the Inspector General of Financial Institutions. The company may, by means of a resolution adopted by the directors, authorize any solvent and capable person of the age of majority to sign the said articles on behalf of the company;
5. the articles will have to be accompanied by a cheque covering the prescribed fees;
6. an amending declaration will have to be filed in accordance with *An Act respecting the legal publicity of sole proprietorships, partnerships and legal persons.*»

QUESTION 4 (16 marks)

- **Indicate four errors contained in the above excerpt of the report.**
- **Justify your answer by referring to one or more specific and relevant legislative provisions.**

ONLY THE FIRST FOUR ERRORS WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

SUPPLEMENTARY FACTS

Louvin Transport inc. owns all the issued and outstanding shares of *Ludco Express inc.*, a corporation incorporated pursuant to the *Canada Business Corporations Act*. Richard Demers, François Rivard and Sylvie Julien are also the only directors of *Ludco Express inc.*

At the meeting of the board of directors of *Louvin Transport inc.* which will be held this evening, May 29, 2000, Richard Demers intends to present a major investment proposal. In order to implement this proposal, *Louvin Transport inc.* will need a 100,000 \$ guarantee from *Ludco Express inc.*

The balance sheet of *Ludco Express inc.* as at today's date is as follows :

LUDCO EXPRESS INC.			
Balance Sheet as at May 29, 2000			
ASSETS	\$500,000	LIABILITIES	\$325,000
		SHAREHOLDERS' EQUITY	
		Stated capital account	\$100,000
		Retained earnings	\$75,000
	\$500,000		\$500,000

The realizable value of the corporation's assets is \$500,000, and if the guarantee were to be enforced, it would not cause *Ludco Express inc.* to become insolvent.

QUESTION 5 (4 marks)

- **In virtue of the *Canada Business Corporations Act*, can *Ludco Express inc.* grant *Louvin Transport inc.* a guarantee of \$ 100,000 ?**
- **Justify your answer by referring to one or more specific and relevant provisions of the *Canada Business Corporations Act* .**

SUPPLEMENTARY FACTS

Richard Demers is concerned about the fact that *Louvin Transport inc.* has not held an annual general meeting of shareholders since June 30, 1997 and that the mandate of the current directors ended on June 30, 1998.

QUESTION 6 (4 marks)

- **Given this situation, can the directors of *Louvin Transport inc.* legally adopt one or more resolutions at the meeting of the board of directors which will be held this evening, May 29, 2000 ?**
- **Justify your answer by referring to one or more specific and relevant provisions of the *Companies Act* .**

SUPPLEMENTARY FACTS

Richard Demers is also a minority shareholder of *Location Beaurivage inc.*, a corporation incorporated pursuant to the *Canada Business Corporations Act*; however, he is not a directors of this corporation.

Richard owns 100 of the 1,000 issued and outstanding common shares of the share capital of *Location Beaurivage inc.*; the other 900 common shares are held equally among 6 other shareholders.

At a meeting of the board of directors of *Location Beaurivage inc.* held yesterday, May 28, 2000, at which all the directors were in attendance, the secretary of the corporation was given the mandate to call an annual meeting of shareholders on July 14, 2000. At this meeting of shareholders, the directors will propose to the shareholders that no auditor be appointed for the ensuing year.

QUESTION 7 (8 marks)

- (a) **Must the directors' proposal not to appoint an auditor for the ensuing year necessarily be stated in the notice of the annual meeting? Explain your answer.**
- (b) **Assuming that the notice of the annual meeting complies with the law, at the meeting can Richard Demers prevent the adoption of the directors' proposal not to appoint an auditor? Explain your answer.**

FILE 2 (20 MARKS)

The situation described is an evolving one: all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.

Danielle Beauregard, the vice-president of *Microprocesseurs DSP ltée*, consults you today and relates the following facts to you.

Today, May 29, 2000, the corporation will declare and pay a cash dividend of \$500,000.

Microprocesseurs DSP ltée has always seen to it that its liquidity ratio (“coefficient de liquidité”) is at least 1.25 and that its debt/equity ratio (“ratio dette/équité”) is no more than 150%.

Danielle Beauregard provides you with a pro forma balance sheet for *Microprocesseurs DSP ltée* as at May 29, 2000, before the declaration of the dividend.

MICROPROCESSEURS DSP LTÉE			
PRO FORMA BALANCE SHEET			
as at May 29, 2000			
(Year End on June 30, 2000)			
<u>ASSETS</u>		<u>LIABILITIES</u>	
Current Assets		Current Liabilities	
Cash and negotiable instruments	\$1,500,000	Bank loans	\$100,000
Accounts receivable	\$2,000,000	Accounts payable	\$1,500,000
Inventory	\$1,000,000	Instalment on long-term debt coming due this year	\$400,000
Fixed assets	\$5,950,000	Long-term liabilities	
Loan to shareholder	\$50,000	Notes payable to bank secured by hypothec	\$3,500,000
		Loan from shareholder	\$1,000,000
		Total liabilities	<u>\$6,500,000</u>
		<u>SHAREHOLDERS' EQUITY</u>	
		Share capital	
		Common shares	\$3,000,000
		Retained earnings	\$1,000,000
Total assets	<u>\$10,500,000</u>	Total liabilities and shareholders' equity	<u>\$10,500,000</u>

QUESTION 8 (10 marks)

By declaring and paying a cash dividend of \$500,000, will *Microprocesseurs DSP ltée* maintain:

- (a) **a liquidity ratio («coefficient de liquidité») of at least 1.25? Justify your answer by showing all your calculations.**
- (b) **a debt/equity ratio («ratio dette/équité») of no more than 150%? Justify your answer by showing all your calculations.**

SUPPLEMENTARY FACTS

Danielle Beauregard also consults you regarding tax matters. A review of the file reveals the following :

Microprocesseurs DSP ltée was incorporated in July of 1996 pursuant to the *Canada Business Corporations Act*. Its principal activity is the manufacture of microprocessors. Its registered office and principal place of business are located in Montreal.

Since its incorporation, *Microprocesseurs DSP ltée* 's taxation year has always ended on June 30th.

The share capital of *Microprocesseurs DSP ltée* is comprised of a single class of shares and is currently held as follows:

10%: Pierre Roy, an individual resident in Canada within the meaning of the *Income Tax Act*;

60%: *Technologie privée ltée*, a Canadian-controlled private corporation within the meaning of the *Income Tax Act*;

15%: *Technologie publique ltée*, a public corporation within the meaning of the *Income Tax Act*;

15%: *Technologie étrangère ltée*, a non-resident corporation for purposes of the *Income Tax Act*.

Microprocesseurs DSP ltée expects to have \$175,000 of refundable dividend tax on hand at the end of its taxation year ending June 30, 2000. You are told that the corporation had excess funds which were not being used to operate its microprocessor manufacturing business; therefore, the corporation invested these excess funds and, since then, has been receiving investment income therefrom.

Microprocesseurs DSP ltée has a capital dividend account of zero.

The \$500,000 dividend which *Microprocesseurs DSP ltée* will declare and pay today will be the only dividend declared and paid by *Microprocesseurs DSP ltée* during its taxation year ending June 30, 2000. Therefore, today, *Technologie privée ltée* will receive a dividend of \$300,000 to reflect its 60% interest in the share capital of *Microprocesseurs DSP ltée*.

QUESTION 9 (5 marks)

- **Assuming that *Microprocesseurs DSP ltée* will, in fact, have \$175,000 of refundable dividend tax on hand at the end of its taxation year ending on June 30, 2000, is *Technologie privée ltée* subject to Part IV tax under the *Income Tax Act* as regards the \$300,000 dividend?**
- **Justify your answer by referring to one or more specific and relevant provisions of the *Income Tax Act*.**

SUPPLEMENTARY FACTS

Danielle Beauregard also consults you regarding Pierre Roy, a shareholder of *Microprocesseurs DSP ltée* who is not an employee of the corporation.

One year ago, namely, on May 29, 1999, *Microprocesseurs DSP ltée* loaned \$50,000 to Pierre Roy. The loan does not bear interest and is repayable upon demand. Pierre Roy used the \$50,000 loan to purchase works of art for his family residence. This is the only loan made by *Microprocesseurs DSP ltée* to a shareholder since its incorporation. To date, no part of the loan has been repaid, as indicated in the pro forma balance sheet of *Microprocesseurs DSP ltée* as at May 29, 2000, which pro forma balance sheet is reproduced hereinabove.

QUESTION 10 (5 marks)

- **What is the latest date on which Pierre Roy must repay the \$50,000 loan made to him by *Microprocesseurs DSP ltée* in order to avoid having to include the said amount in the calculation of his income?**
- **Justify your answer by referring to one or more specific and relevant provisions of the *Income Tax Act*.**

FILE 3 (20 MARKS)

The situation described is an evolving one: all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.

On September 8, 1997, *Société du prêt Provident inc.* («*Provident*») grants Bruno Francoeur a line of credit of up to \$150,000 for the ongoing financing of the sporting goods store which he operates in Montreal as a sole proprietor.

The line of credit is secured by a first-ranking immovable hypothec for an amount of \$150,000 encumbering Bruno's residence located in Saint-Jean-sur-Richelieu. In addition, Laura Benoit, Bruno's spouse, is the surety for Bruno's obligations pursuant to the line of credit agreement. These are the only guarantees that have been granted to *Provident*.

On February 1, 2000, when the line of credit has been fully utilized and Bruno is insolvent, he defaults on his payments. *Provident* sends Bruno a demand for payment which remains unanswered.

Consequently, *Provident* intends to exercise its hypothecary recourses against Bruno's residence.

QUESTION 11 (5 marks)

Does *Provident* have the obligation to give an advance notice in accordance with the *Bankruptcy and Insolvency Act*? Explain your answer.

SUPPLEMENTARY FACTS

On February 29, 2000, *Provident* learns that over the last three months, Bruno transferred some of his property to family members and generally stopped paying his creditors.

Rather than exercise its hypothecary rights, *Provident* wants to file a bankruptcy petition for a receiving order against Bruno.

QUESTION 12 (5 marks)

- **Even if it is a hypothecary creditor, can *Provident* file a bankruptcy petition for a receiving order against Bruno Francoeur? If yes, under what condition? If not, explain your answer.**
- **Justify your answer by referring to one or more specific and relevant provisions of the *Bankruptcy and Insolvency Act*.**

SUPPLEMENTARY FACTS

Provident does not follow up on its intention and does not file a bankruptcy petition for a receiving order against Bruno. However, on April 7, 2000, Bruno makes an assignment of his property, and Martin Turcotte, a trustee, immediately takes possession of his assets.

The trustee then learns that Louis Frémont obtained a judgment against Bruno on December 15, 1999 for the balance owed under a loan. Louis Frémont subsequently had the sporting goods store inventory seized and sold by judicial sale.

The trustee also learns that the bailiff in charge of the sale is about to remit the proceeds of the sale to Louis. The trustee opposes such remittance and sends a written notice to the bailiff claiming the proceeds of the sale.

QUESTION 13 (5 marks)

- **Who is entitled to the proceeds of sale of the seized property?**
- **Justify your answer by referring to one or more specific and relevant provisions of the *Bankruptcy and Insolvency Act*.**

SUPPLEMENTARY FACTS

Upon reviewing the books for Bruno's business, the trustee notices that Paul Bienvenu, Bruno's brother-in-law, owes Bruno \$10,000.

When the trustee asks Paul to pay this amount, Paul invokes the right of set-off. Indeed, on April 12, 2000, Paul acquired a claim of \$12,000 against Bruno from *Transport Rapide inc.* Bruno owed this amount to *Transport Rapide inc.* for services rendered on his business premises in the month of May of 1999. All the formalities for setting up this assignment of claim against third parties were duly completed on April 12, 2000.

QUESTION 14 (5 marks)

Can Paul Bienvenu invoke the right of set-off against the trustee ? Explain your answer.

FILE 4 (15 MARKS)

First Problem:

M^c Charles Trépanier is an experienced administrative law lawyer. He is a sole practitioner in a storefront office. He receives a telephone call from Serge Robitaille, an old acquaintance who was a civil servant with the Commission de la santé et de la sécurité du travail; Serge Robitaille proposes that they enter into a collaborative arrangement.

Serge Robitaille informs M^c Charles Trépanier that he retired pursuant to the early retirement plan implemented by the government, and that, as permitted under section 429.17 of *An Act respecting industrial accidents and occupational diseases*, he represents employees who exercise recourses before the Commission des lésions professionnelles.

Serge Robitaille is willing to undertake to refer to M^c Trépanier all his clients whose files will require the filing of an application for judicial review before the Superior Court. He proposes to M^c Trépanier that they sign an agreement whereby M^c Trépanier agrees to pay Serge Robitaille 25% of the fees billed by M^c Trépanier.

M^c Trépanier believes this to be an excellent business opportunity which would ensure that his office earns a good profit. He is enthusiastic about the idea and consults you in order to obtain your opinion.

QUESTION 15 (5 marks)

- **Can M^c Trépanier enter into this agreement?**
- **Justify your answer by referring to one or more specific and relevant provisions of the *Code of Ethics of Advocates*.**

Second Problem:

Arthur Gendron meets with M^c Aline Sansregret to ask her to represent him in a criminal matter. M^c Sansregret indicates that her professional fees are \$150/hour and that she requires an initial payment of \$3,000 as a retainer for her services. Moreover, she emphasizes that this amount will belong to her, whether or not she provides him with professional services. Arthur Gendron accepts these terms and they are set forth in a duly signed written agreement. Arthur Gendron then provides M^c Sansregret with a \$3,000 cheque.

QUESTION 16 (5 marks)

- **Into which bank account must M^c Sansregret deposit this cheque?**
- **Justify your answer by referring to one or more specific and relevant provisions of the *By-law respecting accounting and trust accounts of advocates*.**

Third Problem:

M^e Michel Gervais represents Judith Durivage, an architect, in a \$57,000 action on account for unpaid fees. The trial is scheduled for June 5, 2000. The attorney for the opposing party, M^e Suzanne David, calls M^e Gervais today, May 29, 2000, in order to offer him \$7,500 as a full and final settlement. M^e David explains that her client is in a precarious financial situation and that this is the best possible offer in the circumstances. M^e Gervais considers the offer to be totally inadequate and insufficient, and he rejects it on the spot. He informs M^e David that he will see her in court on the morning of the trial.

QUESTION 17 (5 marks)

- **Did M^e Gervais commit a breach of the *Code of Ethics of Advocates* ?**
- **Justify your answer by referring to one or more specific and relevant provisions of the *Code of Ethics of Advocates*.**

CORRIGÉ
Examen de reprise - Droit des Affaires
Le 29 mai 2000

DOSSIER 1 (45 POINTS)

QUESTION 1 (4 points)

Indiquez le montant que *Louvin Transport inc.* est légalement autorisée à réclamer à Louise Simard, en date d'aujourd'hui.

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi sur les compagnies*.

21 200 \$, art. 67 *L.c.Q.*

1

20 000 + (20 000 X 6%)

QUESTION 2 (5 points)

Cette recommandation permet-elle d'obtenir le résultat recherché ? Dites pourquoi.

Non, parce qu'une restriction quant à la libre cession des actions doit aussi être ajoutée. (art. 5 *Loi sur les valeurs mobilières*)

2

QUESTION 3 (4 points)

Compte tenu des seuls droits, privilèges, conditions et restrictions qui seront attachés aux actions du nouveau capital-actions autorisé de *Louvin Transport inc.* et qui sont décrits ci-dessus, quelle(s) est (sont) la (les) catégorie(s) d'actions qui donne(nt) droit à un dividende cumulatif ? Dites pourquoi.

Les actions de catégories « B » parce qu'un dividende fixe est réputé cumulatif.

3

Les actions de catégories « C » parce qu'un dividende fixe est réputé cumulatif.

4

QUESTION 4 (16 points)

Indiquez quatre erreurs contenues dans cet extrait du rapport.

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

4 points par bulle 4/4

5

1. Seuls les administrateurs sont autorisés à signer les statuts, art. 123.103 *L.c.Q.* ou 123.104 *L.c.Q.*

1.

2. Le consentement de tous les détenteurs est requis, art. 48 (7) *L.c.Q.*
 OU
 Il faudra procéder par compromis, art. 48 (7) OU art. 49 *L.c.Q.*

2.

3. Louise Simard ne peut voter, art. 102 *L.c.Q.*

3.

4. Aucune déclaration modificative n'a à être déposée, art. 34 ou 39 *L.p.l.*

4.

QUESTION 5 (4 points)

Ludco Express inc. peut-elle, en vertu de la Loi canadienne sur les sociétés par actions, faire bénéficier Louvin Transport inc. d'un cautionnement de 100 000 \$?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la Loi canadienne sur les sociétés par actions.

Oui, art. 44 (2) c) L.c.s.a.

6

QUESTION 6 (4 points)

Compte tenu de cette situation, les administrateurs de Louvin Transport inc. peuvent-ils légalement adopter une ou des résolutions lors de la réunion du conseil d'administration qui aura lieu ce soir le 29 mai 2000 ?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la Loi sur les compagnies.

Oui, art. 123.76 L.c.Q.

7

QUESTION 7 (8 points)

a) La proposition des administrateurs de ne pas nommer de vérificateur pour la prochaine année doit-elle nécessairement être énoncée dans l'avis de convocation de l'assemblée annuelle ? Dites pourquoi.

Oui, car il s'agit d'une question spéciale (art. 135 (5) et 135 (6) a) L.c.s.a.)

8

b) En tenant pour acquis que l'avis de convocation de l'assemblée annuelle des actionnaires est conforme à la loi, Richard Demers peut-il, lors de cette assemblée, empêcher l'adoption de la proposition des administrateurs de ne pas nommer de vérificateur? Dites pourquoi.

Oui, car le consentement de tous les actionnaires est requis (art. 163 (3) L. c.s.a.)

9

DOSSIER 2 (20 points)

QUESTION 8 (10 points)

En déclarant et en payant un dividende en argent de 500 000 \$, *Microprocesseurs DSP ltée* conservera-t-elle :

- a) un coefficient de liquidité d'au moins 1,25? Appuyez votre réponse en faisant état de tous vos calculs.

Oui. À la suite du versement du dividende, le coefficient de liquidité sera de 1,5

10 (1)

$$\frac{\text{encaisse et titres négociables} - \text{dividende} + \text{débiteurs}}{\text{passif à court terme}} =$$

$$\frac{1\,500\,000\$ - 500\,000\$ + 2\,000\,000\$\text{ (11)}}{2\,000\,000\$\text{ (12)}} \quad \text{OU} \quad \frac{3\,000\,000\$}{2\,000\,000\$}$$

11 (2)
12 (2)

- b) un ratio dette/équité d'au plus 150%? Appuyez votre réponse en faisant état de tous vos calculs.

Oui, à la suite du versement du dividende, le ratio dette/équité sera de 122%

13 (1)

$$\frac{\text{passif} - \text{emprunt auprès d'un actionnaire}}{\text{avoir des actionnaires} + \text{emprunt auprès d'un actionnaire} - \text{dividende}} \times 100 =$$

$$\frac{6\,500\,000\$ - 1\,000\,000\$ \text{ OU } 5\,500\,000\$}{4\,000\,000\$ + 1\,000\,000\$ - 500\,000\$ \text{ OU } 4\,500\,000\$\text{ (15)}} \times 100\text{ (14)} =$$

14 (2)
15 (2)

QUESTION 9 (5 points)

En tenant pour acquis que *Microprocesseurs DSP ltée* aura effectivement un impôt en main remboursable au titre de dividendes de 175 000 \$ à la fin de son année d'imposition prenant fin le 30 juin 2000, *Technologie privée ltée* est-elle assujettie à l'impôt de la partie IV de la *Loi de l'impôt sur le revenu* à l'égard du dividende de 300 000 \$?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi de l'impôt sur le revenu*.

Oui, al. 186 (1)b) L.i.r.

16 (5)

QUESTION 10 (5 points)

- Quand, au plus tard, Pierre Roy doit-il rembourser le prêt de 50 000 \$ que *Microprocesseurs DSP ltée* lui a consenti, pour éviter d'avoir à inclure ce montant dans le calcul de son revenu ?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *loi de l'impôt sur le revenu*.

Au plus tard le 30 juin 2000, par. 15(2.6) L.i.r.

17 (5)

DOSSIER 3 (20 points)

QUESTION 11 (5 POINTS)

Provident a-t-elle l'obligation de donner un préavis en vertu de la Loi sur la faillite et l'insolvabilité? Dites pourquoi.

Non, parce que la garantie ne porte pas sur des biens acquis ou utilisés dans le cadre des affaires de la personne insolvable. (l'art. 244 *L.f.i.* ne s'applique pas)

18 (5)

QUESTION 12 (5 POINTS)

- **Même si elle est une créancière hypothécaire, Provident peut-elle présenter une requête pour la mise en faillite de Bruno Francoeur? Si oui, à quelle condition ? Si non, dites pourquoi.**
- **Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la Loi sur la faillite et l'insolvabilité.**

Oui, elle doit renoncer conditionnellement à sa garantie, art. 43(2) *L.f.i.*

OU

Oui, elle doit évaluer sa garantie et démontrer qu'elle est insuffisante pour acquitter entièrement sa créance, art. 43(2) *L.f.i.*

19 (5)

QUESTION 13 (5 POINTS)

- **Qui a droit au produit de la vente des biens saisis?**
- **Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la Loi sur la faillite et l'insolvabilité.**

Le syndic, art. 70 OU 73 (3) *L.f.i.* ,

20 (5)

(il a droit aux sommes d'argent car les procédures d'exécution n'ont pas été complètement réglées par paiement avant la date de la cession.)

QUESTION 14 (5 POINTS)

Paul Bienvenu peut-il opposer compensation au syndic? Dites pourquoi.

Non, il a acquis la créance après la faillite.

21 (5)

DOSSIER 4 (15 points)**QUESTION 15 (5 points)**

- M^e Trépanier peut-il conclure cette entente?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du *Code de déontologie des avocats*.

Non, art. 3.05.14 *Code de déontologie*, (l'avocat ne doit pas partager ses honoraires avec une personne qui n'est pas membre d'un barreau.)

22 (5)

OU

Non, art. 3.05.13 (2e phrase) OU 4.02.01 m) OU 4.02.01 n)

QUESTION 16 (5 points)

- Dans quel compte bancaire M^e Sansregret doit-elle déposer ce chèque ?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du *Règlement sur la comptabilité et les comptes en fidéicommis des avocats*.

Compte général, art. 3.05 c)

23 (5)

QUESTION 17 (5 points)

- M^e Gervais a-t-il commis une infraction en vertu du *Code de déontologie des avocats* ?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du *Code de déontologie des avocats*.

Oui, art. 3.02.10 *Code de déontologie* (l'avocat doit soumettre à son client toute offre de règlement).

24 (5)