



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

Civil I

November 11, 1999

- 1) The examination in the CIVIL I section is intended to determine the extent to which you have met the ultimate goals set forth in the document entitled “Préambule Civil I”.
- 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:
 - Civil I
 - Consultation et Recherche (théorie d’une cause)
- 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 **15** pages (including this page) and that your answer booklet contains **6** pages.

N.B.: You may assume that the Civil Code of Québec and Titles II and III of *An Act respecting the implementation of the reform of the Civil Code*, S.Q. 1992, c. 57 apply. Do not take the transitional provisions into account, except those relating to the publication of rights.

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.

On September 7, 1982, Martin Labrèque, a real estate agent, met Lucie Thiffault, a chemist working for a pharmaceutical company.

At the time he met Lucie, Martin owned an income-producing immovable located in Laval-des-Rapides, having a value of 190 000 \$ and encumbered with a hypothec of 60 000 \$.

On April 12, 1983, Martin and Lucie began living together.

On May 14, 1985, they purchased, as co-owners with equal shares, a house situated in Longueuil for a purchase price of \$95,000. In order to make the initial \$20,000 payment, Martin and Lucie each paid an amount of \$10,000 saved from their respective employment income. The balance of the purchase price was paid for with the proceeds of a \$75,000 loan secured by a hypothec. As of the purchase date, Martin and Lucie assumed equally the payment of all hypothecary loan instalments and all maintenance expenses.

On November 28, 1987, Lucie gave birth to Thomas, the couple's first child.

On July 12, 1988, Martin and Lucie were married, without entering into a marriage contract prior to their marriage.

On December 29, 1990, after having consulted their respective legal advisors, the spouses signed an agreement before M^e Charles Dupont, notary, which agreement reads as follows:

On the twenty-ninth day of December IN THE YEAR NINETEEN HUNDRED AND NINETY BEFORE M^e Charles Dupont, notary for the Province of Quebec, practising in the City of Longueuil,

APPEARED: MARTIN LABRÈQUE,
 and
 LUCIE THIFFAULT,

both domiciled in Longueuil, at 2222 Curé-Poirier Street, Province of Quebec, A1A 1A1.

WHO declared that they were married on July 12, 1988 under the regime of partnership of acquests and that, since their marriage, their civil status and matrimonial regime have not been changed and have not changed.

The persons appearing herein stated their intention not to be subject, in any manner whatsoever, to articles 462.1 to 462.13 of the Civil Code of Québec relating to the family patrimony of the spouses.

WHEREOF ACTE, in Longueuil, under number 1234 of the minutes of the undersigned notary.

AND AFTER DUE READING, the parties signed with and in the presence of the undersigned notary.

Martin Labrèque

Martin Labrèque

Lucie Thiffault

Lucie Thiffault

Charles Dupont

Charles Dupont, notary

On January 3, 1991, the agreement was registered in the central registry for matrimonial regimes, in accordance with the laws then in effect.

QUESTION 1 (5 marks)

- **Is the agreement signed by Martin Labrèque and Lucie Thiffault on December 29, 1990 valid?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.**

SUPPLEMENTARY FACTS

On March 19, 1991, Lucie gave birth to Olivia, the couple's second child.

Martin's career continued to advance. He soon became a prosperous businessman and was well-known within the Montreal real estate community.

On November 14, 1991, Martin and Lucie sold the Longueuil residence for an amount of \$120,000. Of this amount, \$40,000 was used to pay the balance of the hypothecary loan. On December 15, 1991, Martin purchased, as the sole owner, a new residence located at 36 Angers Street in Town of Mount Royal. This residence, having a value of \$450,000, was paid for as follows: \$80,000 obtained from the sale of the Longueuil residence and \$75,000 obtained from Martin's profits on his sales over the last few months; the balance of the purchase price, namely, \$295,000, was paid for from the proceeds of a loan secured by a hypothec. Martin, alone, using his employment income, assumed the payment of the hypothecary loan instalments and maintenance expenses.

As soon as the family moved to Town of Mount Royal, Lucie left her job in order to look after her children's education. She also devoted approximately 20 hours per week, without any pay, to managing the Laval-des-Rapides immovable, renting out the dwellings therein and collecting the rent therefor.

On October 18, 1994, following the death of her father, Lucie inherited a country house located in Maniwaki. On June 16, 1995, she sold the country house for an amount of \$65,000 which she invested entirely in the purchase of a triplex located in Montreal and having a value of \$150,000. The balance of the purchase price, namely, \$85,000, was paid for from the proceeds of a loan secured by a hypothec. Lucie was the sole owner of the triplex. The payment of the hypothecary loan instalments and maintenance costs were paid out of the rental income.

Over time, Lucie and Martin's relationship deteriorated. In December of 1998, Lucie found out that Martin was cheating on her.

On January 4, 1999, Lucie consults you and gives you the mandate to institute divorce proceedings against Martin.

On that date, Martin owns the following property:

- The family residence located in Town of Mount Royal, which is worth \$500,000 and is encumbered with a \$210,000 hypothec.
- A collection of antique objects, inherited from his grandfather, which is worth \$25,000. These objects are kept in a bookshelf in one of the rooms of the family residence to which Martin likes to retire in order to relax.
- All the furniture and movable property which furnishes the Town of Mount Royal family residence and is worth \$75,000, excluding the value of the collection of antique objects. All of this movable property was paid for by Martin out of his employment income earned during the marriage.
- A portfolio of shares worth \$130,000. Seventy-five percent (75%) of the shares of this portfolio was purchased with the savings accumulated by Martin before the marriage, while twenty-five percent (25%) was purchased with the dividends paid out to Martin on the said shares during the marriage.
- An amount of \$200,000 deposited in a registered retirement savings plan with the Royal Bank, to which Martin began to contribute in 1989 from his employment income.
- A Mercedes automobile, purchased in 1997 for a price of \$91,000, which automobile is used by the family. The automobile is now worth \$75,000 and has been paid for in full. All the sums used for the purchase of the Mercedes were taken from Martin's employment income during the marriage.
- The Laval-des-Rapides immovable, which is now worth 280 000 \$ and which is no longer encumbered with a hypothec

On the same date, Lucie owns the following property:

- The triplex located in Montreal, which is still worth \$150,000 and has a hypothecary loan balance of \$78,000.
- A diamond ring, a pearl necklace, an emerald-studded brooch and sapphire earrings, all of which she received as a gift from Martin and which are worth \$44,000.
- A Jeep Cherokee automobile, purchased in 1995 for a price of \$35,000 and paid for in full by Martin, which Jeep Cherokee is now worth \$23,000. This vehicle is also used by the family.

Moreover, each of them alleges that he or she is the owner of a painting by the artist Sophie Tremblay, which painting hangs in Martin's office located in a building in downtown Montreal. Martin has always claimed that he purchased it at an auction in 1989 and that he paid for it from his employment income. As for Lucie, she is convinced that it was a gift given to her by a now deceased former work colleague on the occasion of her daughter Olivia's birth. Neither of them can prove these allegations. Due to Sophie Tremblay's great success at a recent Paris exhibition, the painting is now worth \$6,000.

During your meeting on January 4, 1999, Lucie explains to you that she is worried because she found out that Martin wants to sell the Town of Mount Royal residence as soon as possible and that he has already contacted a real estate agent in order to give a mandate to the agent.

After this meeting, you go to the registry office for the registration division of Montreal in order to verify the index of immovables with respect to the immovable located at 36 Angers Street in Town of Mount Royal. You observe that the only entries appearing in the land register for the last ten years are those relating to the purchase of the immovable by Martin and the hypothec which he placed on the immovable in 1991.

QUESTION 2 (5 marks)

- **Before instituting any judicial proceedings, what can you do legally in order to protect Lucie Thiffault's rights in and to the Town of Mount Royal residence?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.**

SUPPLEMENTARY FACTS

In accordance with the mandate given to you by Lucie, you prepare divorce proceedings in which you ask for, among other things, custody of the children, an order for periodic payments of support for the children, an order for periodic payments of support for Lucie and the partition of the partnership of acquests.

QUESTION 3 (8 marks)

- a) **Indicate whether the following items of property belonging to Lucie Thiffault are private property or acquests.**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.**

- The triplex
- The jewelry

- b) **At the time of partition of the partnership of acquests, which portion, if any, of the value of the Sophie Tremblay painting (\$6,000) will legally form part of each of the masses (private property or acquests) of the property of the spouses?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.**

QUESTION 4 (5 marks)

Establish the value of the compensation due by the mass of Martin Labrèque's private property to the mass of his acquests with respect to the share portfolio worth \$130,000.

QUESTION 5 (3 marks)

- **If a final judgement granting the divorce were rendered without any mention regarding the partition of the earnings registered with the Régie des rentes du Québec, would Lucie Thiffault be entitled to the partition of Martin Labrèque's earnings?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.**

SUPPLEMENTARY FACTS

At the same time as the divorce proceedings, you prepare a motion for an interim order in which you ask, among other things, that custody of the children be entrusted to Lucie, that periodic payments of support for the children as well as period payments of support for Lucie be paid to her and that the use of the family residence and the movable property be awarded to her during the proceedings. Martin is still living in the family residence which he refuses to leave.

QUESTION 6 (3 marks)

- **Can Lucie Thiffault legally demand, during the proceedings, the exclusive use of the family residence?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.**

SUPPLEMENTARY FACTS

Following a failed mediation attempt, the motion for an interim order is heard on January 25, 1999 and a judgment is rendered on the same day. Among other things, the judgment awards Lucie periodic payments of support of \$4,000 per month for herself.

In addition, given that Martin's lawyer sent you his defence on May 12, 1999, you inscribe the case for proof and hearing and await a trial date.

On May 16, 1999, Lucie calls you. The previous day, she observed that the collection of antique objects had disappeared from the family residence. Lucie found out from Martin that he had entrusted these objects to his brother, Philippe.

QUESTION 7 (4 marks)

- **Was Martin Labrèque legally entitled to entrust the collection of antique objects to his brother Philippe?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.**

And

- **State a specific and relevant fact to justify your answer.**

ONLY THE FIRST FACT WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

SUPPLEMENTARY FACTS

Although Lucie is not worried that Martin will act so as to defraud her of her rights, she gives you the mandate to institute the necessary judicial proceedings in order to protect her right to collect all claims which may be awarded to her as a result of the divorce judgment.

You have Martin's Mercedes seized before judgment, without prior authorization of a judge.

QUESTION 8 (5 marks)

- **Is this seizure before judgment valid?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.**

SUPPLEMENTARY FACTS

On June 7, 1999, while the divorce proceedings are still pending, Martin goes to Colombia on vacation and is killed in an ambush laid by drug traffickers.

Lucie discovers a notarial will, dated December 10, 1998, in Martin's personal papers. In the will, Martin bequeaths all of his property to his children, Thomas and Olivia, and appoints his brother, Philippe, as the liquidator for his succession.

On November 10, 1999, Lucie contacts you and informs you of her wish to become the owner of the Town of Mount Royal residence in order to provide security for herself and stability for her children.

QUESTION 9 (7 marks)

- a) **What right can Lucie Thiffault enforce against Martin Labrèque's succession in order to become the owner of the Town of Mount Royal residence?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.**
- b) **In addition to her rights in and to the partnership of acquests, state two rights which Lucie Thiffault can enforce on her own behalf against Martin Labrèque's succession.**
- **For each of these rights, justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.**

ONLY THE FIRST TWO RIGHTS WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

FILE 2 (32 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.

Marc Péroquin, who is 25 years old, has a Diploma of Collegial Studies in tourism. He works as a travel agent for the agency *Les voyages Lily inc.* whose offices are located in the basement of 1009 Parc Avenue in Sherbrooke.

During his lunch break on December 15, 1997, Marc goes to get some french fries at the restaurant located in the lobby of the building in which he works. He enters the restaurant and starts to chat with Mimi Labarre, a waitress. The restaurant's owner, Serge Tremblay, is absent.

Suddenly, there is a very strong odour of gas. At the same time, there is a violent explosion which sets off a fire. Marc's clothing catches on fire. At the same time, Michel Goyette, a regular customer, vainly attempts to use the restaurant's fire extinguisher in order to help Marc. However, to top it all off, the extinguisher doesn't work. Another customer, Paul Gingras, takes Marc outside of the restaurant and manages to extinguish the flames by using some snow.

The firefighters quickly get the fire under control. Marc is brought to the burn unit of the Hôpital Ste-Catherine where a doctor diagnoses severe burns, particularly on his abdomen. However, the doctor does not think Marc's life is in danger.

The smoke and water cause significant damage to the restaurant and the travel agency. The agency's computer system is a total loss.

On December 17, 1997, Geneviève Caron, a fire department inspector, goes to the site of the fire, where she meets with Mimi Labarre and Josée Giguère who is also a waitress at the restaurant. She obtains two written and signed statements from them.

In her statement, Mimi Labarre states that on December 15, 1997, at noon, she smelled a strong odour of gas and saw some flames under the deep fat fryer and, at the same time, the explosion occurred.

As for Josée Giguère, she states that she had noted on several occasions in the weeks preceding the fire that there were small explosions under the deep fat fryer. She did not think it necessary to notify her boss, Serge Tremblay.

In her report, Geneviève Caron states the following:

- The deep fat fryer was manufactured by *B.C. Manufacturing Co.*, a Belgian firm which has a place of business in Drummondville. The deep fat fryer was purchased on January 10, 1996 from *Les Équipements de restaurants Laurence ltée* in Montreal. The inspection and maintenance of the deep fat fryer were carried out every three months by *Fritobec inc.*, a firm specializing in this field.
- The extinguisher was purchased on January 22, 1996 directly from the manufacturer, *Alerte au feu inc.*, which is located in Magog. The fire extinguisher was maintained by Gilbert Gladu, who is not related in any way to *Alerte au feu inc.* The maintenance contract entered into between Serge Tremblay and Gilbert Gladu stipulates that Gilbert Gladu must check the fire extinguisher every six months. However, Gilbert Gladu stated that he had not checked the fire extinguisher for over a year, due to a lack of time.

Sylvie Bigras, an engineer mandated by the fire department, carries out an expert examination of the deep fat fryer and the fire extinguisher.

On January 15, 1998, Sylvie Bigras provides her report, which contains the following elements, among others:

- The deep fat fryer is a commonly used model, known to be very safe and reliable. The only cause of the explosion is the fact that the deep fat fryer's gas supply pipe was blocked, thereby resulting in an accumulation of gas which provoked the explosion. The gas supply pipe had been cleaned improperly.
- The deep fat fryer user's guide contains standard recommendations regarding the maintenance of the deep fat fryer and its gas supply pipe.
- The fire extinguisher's trigger, which was poorly designed, prevented the contents of the fire extinguisher from coming out. A regular inspection of the fire extinguisher would certainly have disclosed this problem. Moreover, this type of fire extinguisher would have been totally useless for extinguishing the fire in the deep fat fryer. However, Marc Pélouquin's burns might have been avoided if the fire extinguisher had functioned.

On February 3, 1998, Marc consults Pascal Marnier, a dermatologist, in order to obtain an expert's report which costs Marc \$1,000.

The expert's report states that Marc has had to remain inactive since December 15, 1997 and will have to do so until May 18, 1998, namely, for a total of 22 weeks. He will be left with an anatomicophysiological deficit of 9%. This permanent partial disability will not result in any future loss of income. However, his condition may eventually require surgical procedures. Moreover, Marc will have an aesthetic damage evaluated at 12%.

At the time of the accident, Marc was earning \$600 gross per week. He had been working for five years, although he had been unemployed for a few months during that time. During his period of disability, Marc receives 80% of his salary through his disability insurance.

However, the disability insurance payments do not allow him to meet all his needs. Therefore, Marc is obliged to borrow \$1,300 from his parents. Of this amount, he uses \$500 in order to pay for the painkillers he has to take. He uses the remaining \$800 in order to pay part of his rent. Marc has agreed to repay the \$1,300 as well as a lump sum interest amount of \$70, namely, a total of \$1,370. He will also have to replace his burnt clothing which was worth \$200.

Finally, Marc expects to have to pay \$5,000 in extrajudicial fees to his lawyer, M^e Marie-Claire Guay, in order for her to complete the handling of his file.

Assume that none of the parties likely to be sued is insured.

QUESTION 10 (8 marks)

- In addition to Serge Tremblay, determine four other defendants against whom Marc Péroquin could legally institute an action for damages as a result of his injuries.
- **For each defendant**, justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.

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

QUESTION 11 (5 marks)

- Can Marc Péroquin legally obtain exemplary damages from Serge Tremblay?
- Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.

SUPPLEMENTARY FACTS

On May 11, 1998, Marc's lawyer, M^e Marie-Claire Guay, institutes an action for damages in compensation for the prejudice suffered, in accordance with the simplified procedure.

QUESTION 12 (10 marks)

State five specific and relevant facts that M^e Marie-Claire Guay has an interest in putting into evidence in order to establish the pecuniary losses suffered by Marc Péroquin and which he is legally entitled to claim.

ONLY THE FIRST FIVE FACTS WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

SUPPLEMENTARY FACTS

On September 23, 1999, due to complications resulting from his burns, Marc meets with Dr. Martin Allonzo who tells him that he will require surgery under general anaesthetic. He adds that this is a serious operation, but that he performs it on a regular basis. In response to Marc's question, Dr. Allonzo informs him that he will be in convalescence for ten days following the operation.

On October 27, 1999, Marc is admitted to the Ste-Luce Teaching Hospital in order to undergo the surgery that same day. The only information provided to Marc by Dr. Allonzo is that the operation will last four hours.

Once Marc is under anaesthetic, the surgery begins. After a few minutes, Dr. Allonzo asks the resident assisting him, Dr. Maria Garcia, to continue the operation. Dr. Garcia is known to be a very competent resident. She completes the surgery under Dr. Allonzo's supervision.

On October 30, 1999, Marc's health deteriorates, because he develops an infection in his abdomen. While still in the hospital, Dr. Allonzo examines him and informs him that this is a complication which occurs in less than 1% of cases. Dr. Allonzo prescribes antibiotics which Marc will have to take for a period of two months. In addition, Dr. Allonzo explains to him that Dr. Garcia performed the surgery in accordance with established medical practices. Unfortunately, as a result of the infection, Marc will have permanent after-effects which will prevent him from participating in certain athletic activities.

On November 4, 1999, Marc meets with his lawyer, M^e Marie-Claire Guay, in order to inform her of his latest misfortunes.

On November 10, 1999, Marc gives M^e Marie-Claire Guay the mandate to analyze his chances of success against Dr. Martin Allonzo in an action for damages in compensation for the prejudice suffered.

QUESTION 13 (9 marks)

Within the framework of developing the basis of the case (“théorie de la cause”), anticipate the argument of fact or of law that Dr. Martin Allonzo's lawyer could legally raise against each of the following allegations:

- 1. Dr. Martin Allonzo did not inform Marc Péroquin of the possible complications which might result from the surgery performed on October 27, 1999.**
- 2. Dr. Martin Allonzo did not inform Marc Péroquin that part of the surgery would be performed by Dr. Maria Garcia.**

FILE 3 (23 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.

Sébastien Richard was born on February 10, 1987. He is the younger of Jean-Marie Richard and Sophie Létourneau's two children.

On May 2, 1999, Sophie comes across Sébastien's diary. Curious as to what she might find in the diary, she cannot resist the temptation to read it. She observes a great deal of depression in Sébastien's thoughts and is afraid that her son might be contemplating suicide.

Consequently, on May 3, 1999, Sophie brings Sébastien to the emergency ward at Le Soleil hospital. The doctor on call recommends to Sophie that Sébastien be seen by a psychiatrist, and Sophie immediately accepts. That same day, Pierre Granger, a psychiatrist, carries out a psychiatric examination of Sébastien. He concludes as follows: "Sébastien is suffering from severe depression; he has suicidal thoughts and, therefore, he constitutes a danger to himself. This danger is not severe or immediate, and Sébastien is clearly not ready to attempt suicide. However, in my opinion, Sébastien should be confined to a health institution for a period of three weeks."

Dr. Pierre Granger prescribes medication for Sébastien in order to stabilize his depressive condition, and he confirms that Sébastien understands the nature of his illness and the purpose of the medication he prescribed for him. Arrangements are made so that the next day, May 4th, Sébastien can meet with a second psychiatrist.

Once back at home, Sébastien locks himself in his room and refuses to take the medication which was prescribed for him by Dr. Granger and which his parents are pleading with him to take.

On May 4, 1999, Sébastien still refuses to come out of his room. Consequently, Jean-Marie forces his son to accompany him to the hospital. They arrive at the hospital at 10:00 a.m., at which time Jean-Marie and Sophie sign the medical care consent form. They also inform the resident on call that Sébastien did not take the medication prescribed for him the previous day. Noting that Sébastien is agitated, the resident administers a tranquillizer to him by force.

QUESTION 14 (4 marks)

- **Was a court authorization required in order to administer the tranquillizer to Sébastien Richard upon his arrival at the hospital on May 4, 1999?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.**

SUPPLEMENTARY FACTS

On May 4, 1999, at 3:00 p.m., Dr. Brigitte Paré, a psychiatrist, calls Sébastien in for his examination. Sébastien refuses to meet with her but, despite his resistance, his parents bring him into the examination room. Notwithstanding Sébastien's lack of cooperation, Dr. Paré, who is accustomed to this type of behaviour, carries out the examination, confirms all of the points mentioned in Dr. Granger's opinion and recommends that Sébastien be confined to a health institution for a period of three weeks.

Sébastien is immediately admitted to a health institution for a period of three weeks, with the consent of his parents, without any other formalities and despite his categorical refusal.

QUESTION 15 (5 marks)

- **Was a court authorization required in order to confine Sébastien Richard to a health institution following Dr. Paré's examination?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.**

SUPPLEMENTARY FACTS

Olivier Richard, Sébastien's older brother, who is 23 years old, suffers from manic depression, but controls its effects properly through the use of lithium.

Since July 1, 1997, he has been living in *de facto* union with Nathalie Bouvier. On September 15, 1998, their son, Félix Richard, is born.

Olivier works as a manager in a financial institution. Olivier and Nathalie decide that Nathalie will stay at home in order to take care of Félix.

On September 30, 1998, Nathalie makes out her will in the presence of witnesses. In her will, she names Félix as her only heir. Moreover, she appoints her sister, M^e Carmen Bouvier, a lawyer, as the liquidator, and her mother, Mélanie Bouvier, as tutor to her son Félix.

On October 15, 1998, Nathalie dies in a road accident. Unable to deal with the situation, Olivier entrusts his son to his mother-in-law, Mélanie Bouvier. At that time, he provides her with a letter in which he declares that he delegates his parental authority to her and appoints her as tutor to his son Félix. He sends a copy of this letter to the Public Curator.

On December 15, 1998, Mélanie Bouvier obtains a judgment from the Superior Court, which judgment contains only the following conclusion:

“Awards custody of Félix Richard to Mélanie Bouvier.”

On January 8, 1999, M^c Carmen Bouvier obtains a judgment allowing a motion for probate of Nathalie's will dated September 30, 1998.

After having made an inventory of the property in the succession, M^c Bouvier observes that her sister did not own much. The succession has \$28,000 of assets, while it has \$35,000 of liabilities.

QUESTION 16 (4 marks)

- **In the event it becomes appropriate to renounce the succession, name the person who will legally have to do so on behalf of Félix Richard.**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.**

SUPPLEMENTARY FACTS

In the months following Nathalie's death, Olivier falls apart. He talks incessantly about dying in order to rejoin the love of his life. For Valentine's Day, his parents, Jean-Marie and Sophie, organize a family supper attended by Mélanie, Carmen, Félix and Olivier.

During the supper, Olivier asks them to ensure that, if he dies, he is buried next to Nathalie. He tells them that he does not want to be cremated and that he opposes the donation of his organs after his death.

On March 1, 1999, Olivier falls on the stairs outside his home. A passer-by finds him unconscious.

Olivier is rushed to the hospital and is admitted to intensive care, where he is kept alive with a respirator.

Upon Olivier's arrival at the hospital, the doctor in charge of intensive care, Dr. Hélène Hughes, observes that Olivier is brain dead. He will stop breathing if he is unplugged.

Dr. Hélène Hughes knows, through Transplant Québec, that a compatible recipient is waiting for a heart and that the recipient has only a few hours left to live. Dr. Hélène Hughes attempts in vain to reach Olivier's family. The cardiac surgeons, Dr. Marie Toupin and Dr. Martin Gratton, who have been informed of Dr. Hughes' unsuccessful attempts, attest in writing to the impossibility of obtaining a consent in due time, the urgency of the operation and the serious hope of saving a human life.

Sophie and Jean-Marie arrive at the hospital and Dr. Hughes informs them of the situation. They read the attestation signed by Dr. Toupin and Dr. Gratton. Sophie and Jean-Marie inform Dr. Hughes that, when Olivier was alive, he told them that he opposed the donation of his organs after his death. Nonetheless, given the explanations provided by Dr. Hughes and touched by the hope of saving a human life, they consent to the donation of Olivier's heart.

Dr. Yves Deschamps and Dr. Rachel Tétrault attest the death of Olivier.

QUESTION 17 (5 marks)

- **Can Dr. Marie Toupin and Dr. Martin Gratton legally remove Olivier's heart?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.**

And

- **State a specific and relevant fact to justify your answer.**

ONLY THE FIRST FACT WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

SUPPLEMENTARY FACTS

On May 1, 1999, Jean-Marie suffers a stroke. He falls into a coma and his physician fears that he might remain in this condition for a long time. Even if he regains consciousness, Jean-Maire will not be able to care for himself or his property.

Jean-Marie owns some major investments which have always been managed by *Le Trust Confiance*. Given the extent of Jean-Marie's assets, it is important to obtain the homologation of the mandate in the event of incapacity signed by Jean-Marie on December 14, 1997 before M^e Marc Augé, notary. This mandate appointed Sophie as the mandatary responsible for taking care of Jean-Marie and *Le Trust Confiance* as the mandatary responsible for administering Jean-Marie's property. The mandate did not provide any replacement mandatary or any means of replacing the mandataries.

On June 29, 1999, the Superior Court homologates Jean-Marie's mandate in the event of incapacity in accordance with the terms of the mandate.

On October 30, 1999, the board of directors of *Le Trust Confiance* decides to cease all management of the property of incapable persons. *Le Trust Confiance* notifies Sophie of this decision.

Neither *Le Trust Confiance* nor Sophie has made any application to a court.

QUESTION 18 (5 marks)

- **Did the notification given to Sophie Létourneau legally terminate the mandate of *Le Trust Confiance*?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.**

And

- **State two specific and relevant facts to justify your answer.**

ONLY THE FIRST TWO FACTS WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

CORRIGE
Examen régulier - Civil I
Le 11 novembre 1999

DOSSIER 1

QUESTION 1 (5 points)

- La convention signée par Martin Labrègue et Lucie Thiffault le 29 décembre 1990 est-elle valide?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.

Oui, art. 42 (al. 1) de la *Loi modifiant le Code civil du Québec* et d'autres dispositions législatives afin de favoriser l'égalité économique des époux (*Loi sur le patrimoine familial*) 1 (5)

QUESTION 2 (5 points)

- Avant d'intenter toute procédure judiciaire, que pouvez-vous légalement faire pour protéger les droits de Lucie Thiffault dans la résidence de Ville Mont-Royal?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.

Inscrire une déclaration de résidence familiale contre la résidence de Ville Mont-Royal, art. 404 C.c.Q. 2 (5)
 OU art. 407 C.c.Q. OU art. 2995 C.c.Q. OU art. 3022 C.c.Q.

QUESTION 3 (8 points)

- a) Indiquez si les biens suivants de Lucie Thiffault sont des propres ou des acquêts.
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.

Le triplex: Acquêt (à charge de récompense), art. 451 C.c.Q. 3 (2)

Les bijoux: Propres, art. 450, 2° C.c.Q.

OU compte tenu que la trame factuelle n'indique pas à quel moment Lucie a reçu les bijoux en cadeau 4 (2)

Les bijoux: Propres, art. 450, 1° C.c.Q.

- b) Au moment du partage de la société d'acquêts, quelle portion de la valeur du tableau de Sophie Tremblay (6 000 \$) fera légalement partie, le cas échéant, de chacune des masses (propres ou acquêts) des biens des époux?

- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.

Masse des acquêts de Lucie : 50% OU la moitié OU 3 000 \$

Masse des propres de Lucie : 0 \$

Masse des acquêts de Martin : 50% OU la moitié OU 3 000 \$ 5 (4)

Masse des propres de Martin : 0 \$

Art. 460 C.c.Q. OU art. 459 C.c.Q.

QUESTION 4 (5 points)

Établissez la valeur de la récompense due par la masse des propres de Martin Labrègue à la masse de ses acquêts relativement au portefeuille d'actions d'une valeur de 130 000 \$.

32 500 \$ OU 25% de 130 000 \$ OU 1/4 de 130 000 \$ 6 (5)

QUESTION 5 (3 points)

- Si un jugement final de divorce était prononcé sans aucune mention relative au partage des gains inscrits auprès de la Régie des rentes du Québec, Lucie Thiffault aurait-elle droit au partage des gains de Martin Labrègue?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.

Oui, art. 42 (al. 4) *Loi modifiant le Code civil du Québec* et d'autres dispositions législatives afin de favoriser l'égalité économique des époux (*Loi sur le patrimoine familial*) 7 (3)

QUESTION 6 (3 points)

- Lucie Thiffault peut-elle légalement demander, pendant l'instance, l'usage exclusif de la résidence familiale?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.

Oui, art. 500 C.c.Q. (et 517 C.c.Q.)

OU

art. 813.8 ou 10 ou 11 ou 12 ou 13 C.p.c.

8 (3)

QUESTION 7 (4 points)

- Martin Labrègue pouvait-il légalement confier la collection d'objets anciens à son frère Philippe?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.

et

- Énoncez un fait précis et pertinent à l'appui de votre réponse.

SEUL LE PREMIER FAIT INSCRIT AU CAHIER DE RÉPONSES SERA CORRIGÉ.

Oui, art. 401 C.c.Q.⁽⁹⁾ puisqu'il s'agit d'une collection. ⁽¹⁰⁾

9 (3)

10 (1)

QUESTION 8 (5 points)

- Cette saisie avant jugement est-elle valide?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.

Non, art. 734.0.1 C.p.c.

11 (5)

QUESTION 9 (7 points)

- a) Quel droit Lucie Thiffault peut-elle faire valoir à l'encontre de la succession de Martin Labrègue afin de devenir propriétaire de la résidence de Ville Mont-Royal?

- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.

Elle peut exiger qu'on lui donne en paiement (de sa part de la société d'acquêts) la résidence familiale, art. 482 C.c.Q.

OU

Elle peut demander une prestation compensatoire, art. 429 C.c.Q.

12 (3)

- b) Outre ses droits relatifs à la société d'acquêts, indiquez deux droits que Lucie Thiffault peut faire valoir pour elle-même à l'encontre de la succession de Martin Labrègue.

- Pour chacun des droits, Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.

SEULS LES DEUX PREMIERS DROITS INSCRITS AU CAHIER DE RÉPONSES SERONT CORRIGÉS.

2/3

2 points par bulle

13 (4)

1. Le droit à une prestation compensatoire, art. 427 C.c.Q. OU art. 809 C.c.Q.

1.

2. Le droit à l'usage ou à la propriété des meubles art. 410 C.c.Q.

OU

Le droit à l'usage de la résidence familiale, art. 410 C.c.Q.

2.

3. Le droit à une contribution financière à titre d'aliments, art. 684 C.c.Q.

OU 688 (al.1) C.c.Q

3.

DOSSIER 2

QUESTION 10 (8 points)

- Outre Serge Tremblay, déterminez quatre autres défendeurs contre qui Marc Péloquin pourrait légalement intenter une action en dommages-intérêts à la suite de ses blessures.
- Pour chacun des défendeurs, appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.

SEULS LES QUATRE PREMIERS DÉFENDEURS INSCRITS AU CAHIER DE RÉPONSES SERONT CORRIGÉS.

(Pour la friteuse)

- Josée Giguère : art. 1457 C.c.Q.
- *Fritobec inc.* : art. 1457 C.c.Q. OU 1463 C.c.Q.

14
15

(Pour l'extincteur)

- *Alerte au feu inc.* : art. 1457 C.c.Q. OU 1468 C.c.Q. OU 1469 C.c.Q.
- Gilbert Gladu : art. 1457 C.c.Q.

16
17

QUESTION 11 (5 points)

- Marc Péloquin peut-il légalement obtenir des dommages exemplaires de Serge Tremblay?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.

Non, art. 49 al. 2 de la *Charte des droits et libertés de la personne*.

OU

Non, art. 1621 C.c.Q.

OU compte tenu de la documentation

Non, art. 1607 C.c.Q.

18

QUESTION 12 (10 points)

Énoncez cinq faits précis et pertinents que M^e Marie-Claire Guay a intérêt à mettre en preuve pour établir les pertes pécuniaires subies par Marc Péloquin et qu'il peut légalement réclamer.

SEULS LES CINQ PREMIERS FAITS INSCRITS AU CAHIER DE RÉPONSES SERONT CORRIGÉS.

5/8
2 points par bulle

19

1. Marc Péloquin travaille (comme conseiller en voyages) pour l'agence *Les voyages Lily inc.*
2. (Au moment de l'accident,) Marc gagnait 600 \$ bruts par semaine.
3. Marc est contraint à l'inactivité pour une période de 22 semaines OU du 15 déc. au 18 mai
4. Il doit prendre des médicaments (contre la douleur).
5. Marc a utilisé 500 \$ pour payer ses médicaments
6. Les vêtements ont brûlé.
7. Les vêtements de Marc valaient 200 \$.
8. Le rapport d'expertise a coûté 1 000 \$.

QUESTION 13 (9 points)

Dans le cadre de l'élaboration de la théorie de la cause, anticipez l'argument de fait ou de droit que le procureur du Dr Martin Allonzo pourrait légalement faire valoir à l'encontre de chacune des prétentions suivantes :

Le D^r Martin Allonzo n'a pas informé Marc Péroquin des complications possibles pouvant résulter de l'intervention chirurgicale du 27 octobre 1999. 20 **4**

- Le risque de complication était inférieur à 1%, (D^r Allonzo n'avait pas à l'en informer.)

OU

- Le risque d'infection n'était pas suffisamment important (pour ce qui est de la gravité et de la fréquence) pour qu'il soit nécessaire de le divulguer.

OU

- D^r Allonzo n'avait pas à informer Marc Péroquin de ce risque puisqu'il s'agit d'un simple risque possible.

OU

- D^r Allonzo n'avait pas à informer Marc Péroquin de ce risque puisqu'il ne s'agit pas d'un risque normalement prévisible.

OU

- D^r Allonzo a agi comme un médecin normalement prudent et diligent en respectant les règles de l'art (quant à son devoir d'information).

OU

- D^r Allonzo n'a pas commis de faute (quant à son devoir d'information).

Le D^r Martin Allonzo n'a pas informé Marc Péroquin qu'une partie de l'intervention chirurgicale serait pratiquée par la Dre Maria Garcia. 21 **5**

- Comme il s'agit d'un hôpital universitaire (et que le D^r Allonzo a toujours été présent et a supervisé l'exécution de l'ensemble de l'intervention, il n'avait pas à informer Marc Péroquin que le D^{re} Maria Garcia participerait à l'intervention chirurgicale).

OU

- D^r Allonzo a agi comme un médecin normalement prudent et diligent en respectant les règles de l'art (quant à son devoir d'information).

OU

- D^r Allonzo n'a pas commis de faute (quant à son devoir d'information)

DOSSIER 3

QUESTION 14 (4 points)

- L'autorisation du tribunal était-elle requise pour l'administration du calmant à Sébastien Richard lors de son arrivée à l'hôpital le 4 mai 1999?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.

Non, art. 14 (1) C.c.Q.

22 (4)

QUESTION 15 (5 points)

- L'autorisation du tribunal était-elle requise pour la garde en établissement de santé de Sébastien Richard à la suite de l'examen du Dre Paré?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.

Oui, art. 26 C.c.Q. OU art. 27 C.c.Q. OU art. 30 C.c.Q.

23 (5)

QUESTION 16 (4 points)

- Dans l'éventualité où il y aurait lieu de renoncer à la succession, nommez la personne qui devra légalement le faire au nom de Félix Richard.
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.

Olivier Richard, art. 638 C.c.Q. OU art. 193 C.c.Q. OU art. 192 C.c.Q. OU 195 C.c.Q. OU art. 201 C.c.Q.

24 (4)

QUESTION 17 (5 points)

- Dre Marie Toupin et Dr Martin Gratton peuvent-ils légalement procéder au prélèvement du cœur d'Olivier?
 - Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.
- et
- Énoncez un fait précis et pertinent à l'appui de votre réponse.
- SEUL LE PREMIER FAIT INSCRIT AU CAHIER DE RÉPONSES SERA CORRIGÉ.

Non, art. 44 C.c.Q. OU 43 C.c.Q. ⁽²⁶⁾ puisqu'Olivier s'était opposé au don de ses organes. ⁽²⁷⁾

25 (4)
26 (1)

QUESTION 18 (5 points)

- La notification faite à Sophie Létourneau a-t-elle mis fin légalement au mandat de Le Trust Confiance?
 - Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.
- et
- Énoncez deux faits précis et pertinents à l'appui de votre réponse.
- SEULS LES DEUX PREMIERS FAITS INSCRITS AU CAHIER DE RÉPONSES SERONT CORRIGÉS.

Non art. 2174 C.c.Q.

27 (3)

Le mandat ne prévoyait aucun remplaçant ni mode de remplacement des mandataires.

28 (1)

Aucune demande au tribunal n'a été faite par *Le Trust Confiance* ou par Sophie (demande d'ouverture d'un régime de protection).

29 (1)