



# FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

## EXAMINATION BOOKLET

### CIVIL I SUPPLEMENTAL EXAMINATION May 17, 2000

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- 1) The supplemental 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 12 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.

<b>FILE 1 (43 MARKS)</b>
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**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 January 9, 1977, Judy Henshaw, a lawyer, marries Robert Lussier, a tax specialist. The couple do not sign a marriage contract prior to the marriage.

On January 15, 1977, Judy receives a \$60,000 wedding gift from her father. The gift is evidenced in a notarial act in which Judy's father stipulates that the gift is made for the exclusive benefit of his daughter.

On January 27, 1977, Judy and Robert purchase, as co-owners with equal shares, a house situated in Laval for a purchase price of \$175,000. Judy pays with the \$60,000 received from her father, while Robert pays an amount of \$28,000 obtained from savings earned prior to the marriage. The balance of the purchase price is paid for with the proceeds of an \$87,000 loan secured by a hypothec. Judy and Robert use the Laval house as their principal residence.

In July of 1980, Judy, who is pregnant, temporarily stops working with Robert's full blessing to do so.

On September 8, 1980, Jean-René, the couple's first child, is born.

On January 6, 1981, after her maternity leave, Judy starts working again on a part-time basis, two days a week. Her work consists primarily of drafting appeal factums.

On October 3, 1983, Sophie, their second child, is born, and on May 5, 1986 Louis-Charles is born.

On September 7, 1984, Robert purchases an immovable held in divided co-ownership and located in Mont Saint-Anne. The purchase price is \$70,000, including the furniture; Robert makes a down payment of \$10,000 which he obtained by cashing in a \$5,000 certificate of deposit on September 4, 1984; he had acquired the certificate of deposit on September 4, 1974. The balance of the purchase price is paid for with the proceeds of a \$60,000 loan secured by a hypothec. All hypothecary loan instalments are paid for by Robert from his employment income. The family goes to Mont Saint-Anne one to two weekends a month and spends a month skiing there in the winter.

On May 7, 1995, Robert buys a parcel of land, located in La Macaza, from his father, Joseph Lussier. The deed of sale signed before a notary indicates a purchase price of \$20,000. Robert makes a down payment of \$5,000 which he obtained from his employment income earned during the marriage; he undertakes to pay the balance no later than May 7, 2005. Robert and Judy intend to build a country house on the parcel of land.

On January 8, 1997, Robert receives a \$2,000 gift from his father. He invests this amount in an RRSP with BCX, a securities broker. The RRSP is comprised of units in a mutual fund and it is in addition to an RRSP which Robert already has with the Caisse populaire St-Fabien, to which he contributed \$5,000 on February 8, 1996, an amount he obtained from his employment income.

On March 20, 1999, Robert signs a lease with option to purchase for a Buick automobile. The contract is for a term of 36 months and for an amount of \$26,000. The vehicle is used by the family.

On June 4, 1999, Robert sells the Mont Sainte-Anne immovable to his brother, Jérôme Lussier. The purchase price is \$80,000, including the furniture. From the proceeds of the sale, Robert pays the balance of the hypothecary loan, namely, \$30,000, and uses \$50,000 to purchase high-risk mining shares, hoping to make a significant profit. Unfortunately, barely four months later the price of the shares plummets and Robert sells his shares at a loss for an amount of \$6,000 which he uses to pay for a trip to Italy which he had been dreaming of for many years.

In January of 2000, Judy learns that Robert has been having an affair with a co-worker since January of 1998.

On January 17, 2000, Judy consults you for the purpose of instituting divorce proceedings.

At the time of the consultation, the property owned or used by the parties is as follows :

- The Laval house. The balance of the hypothecary loan was paid for in full by Robert from his employment income earned during the marriage. This residence has a market value of \$300,000.
- The furniture, belonging to Robert, which furnishes the Laval residence and has a market value of \$22,000. The furniture was purchased by Robert on February 8, 1977 with his employment income.
- The La Macaza parcel of land, which is still worth \$20,000. Robert did not make any repayments to his father; no country house was built and the family has never used the parcel of land.
- A certificate of deposit of \$35,000, in Robert's name, which he obtained with monies saved from his employment income earned during the marriage.
- The Buick automobile.
- The RRSP in Robert's name which is held with BCX and is still worth \$2,000, given that it has not generated any interest or dividends.
- The RRSP in Robert's name which is held with the Caisse populaire Saint-Fabien and is now worth \$8,000 due to the accrued interest.
- An RRSP in Judy's name which has a value of \$27,000 and is held with La Capitale. The RRSP was established by Robert using the savings obtained from his employment income earned during the marriage.
- An amount of \$34,000 placed in a bank account in Judy's name, which amount was obtained through lottery winnings. The winning ticket was purchased on December 12, 1999 for \$10, and it was purchased using Judy's employment income.

**QUESTION 1 (16 marks)**

- (a) What is the net value of the property in the family patrimony of which Judy Henshaw is the owner?
- (b) What is the net value of the property in the family patrimony of which Robert Lussier is the owner?
- (c) Is Judy Henshaw entitled to one or more deductions pursuant to the establishment of the net value of the family patrimony?
- If applicable, identify the item(s) of property to which the deduction(s) relate(s) and indicate the total amount of such deduction(s).
- (d) Is Robert Lussier entitled to one or more deductions pursuant to the establishment of the net value of the family patrimony?
- If applicable, identify the item(s) of property to which the deduction(s) relate(s) and indicate the total amount of such deduction(s).

**QUESTION 2 (8 marks)**

- (a) Determine Judy Henshaw's private property and acquests.
- (b) Determine Robert Lussier's private property and acquests.

**SUPPLEMENTARY FACTS**

On January 27, 2000, Judy contacts you and tells you that she and Robert do not want the ministère du Revenu du Québec to collect the support payments to be established with respect to the children; instead, they want the payments to be paid directly to Judy. Moreover, Robert does not have sufficient liquid funds to establish a trust.

**QUESTION 3 (4 marks)**

- Can Robert Lussier pay the support for the children directly to Judy Henshaw? If yes, state on what condition(s). If not, explain your answer.
- Justify your answer by referring to one or more specific and relevant provisions of any legislation.

**SUPPLEMENTARY FACTS**

On February 2, 2000, you file divorce proceedings and a motion for provisional measures, and you have these documents served upon Robert. The parties participate in mediation sessions which are unsuccessful. The mediator sends a letter to the parties setting forth the discussions between the parties and the issues upon which the parties are still in disagreement.

On March 6, 2000, Robert's lawyer communicates to you, in accordance with the rules of the Code of Civil Procedure relating to the communication of exhibits, the mediator's letter which he intends to file at the hearing on the provisional measures.

**QUESTION 4 (3 marks)**

- **At the hearing on the motion for provisional measures, will you be able to raise an objection to the filing of the mediator's letter?**
- **Justify your answer by referring to one or more specific and relevant provisions of the Code of Civil Procedure.**

**SUPPLEMENTARY FACTS**

Judy asks you whether it would be appropriate to establish shared custody as regards Sophie and Louis-Charles. Robert has requested shared custody and this seems to be what both children want. However, given Robert's very demanding work schedule, Judy has doubts that shared custody would be in the best interests of the children, particularly with respect to Louis-Charles who requires more supervision as regards his schooling. Louis-Charles, who has discussed his family situation with some of his friends who are experiencing shared custody, has informed his parents that he has retained the services of his own attorney, despite his parents' opposition because they fear this will unnecessarily complicate matters.

**QUESTION 5 (4 marks)**

**What application must Louis-Charles' lawyer present to the court in order to represent his client properly?**

**SUPPLEMENTARY FACTS**

On March 10, 2000, Judy consults you again and confirms to you that at the time of the sale of the Mont Saint-Anne immovable, namely, June 4, 1999, the immovable actually had a market value of \$80,000, including the furniture.

**QUESTION 6 (3 marks)**

- **In virtue of the rules regarding the family patrimony, does Judy Henshaw have a right she can raise against Robert Lussier with respect to the sale of the Mont Sainte-Anne immovable?**
- **Justify your answer by referring to one or more specific and relevant provisions of the Civil Code of Québec.**

**SUPPLEMENTARY FACTS**

On April 21, 2000, a judgment is rendered on the motion for provisional measures following a hearing held that same day. At the hearing, Robert's attorney promised to send you a declaration for inscription on the roll no later than May 10, 2000.

On May 3, 2000, Robert dies in a car accident. Robert died without having left a will.

**QUESTION 7 (5 marks)**

- **Name Robert Lussier's successors and determine the share to which each is entitled.**
- **Justify your answer by referring to one or more specific and relevant provisions of the Civil Code of Québec.**

<b>FILE 2 (32 MARKS)</b>
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**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.**

*Imprimerie M.R. inc.* is a small firm specialized in printing advertising brochures. It has five employees, namely, two offset pressers, one person in charge of maintenance, one salesperson and a secretary. The firm is owned by Maurice Roy who is the sole shareholder. *Imprimerie M.R. inc.* occupies commercial premises located in the basement of a building situated at 1029 Steiner Street in Trois-Rivières. The building is owned by Luc Paquette.

On October 12, 1999, *Imprimerie M.R. inc.* obtains a contract to print one million advertising brochures for a chain of department stores.

On October 18, 1999, Maurice contacts *Agence de Placement Plus ltée* (hereinafter referred to as the « *Agence* ») in order to obtain temporary personnel.

On October 22, 1999, Jacinthe Floral from the *Agence* contacts Maurice in order to inform him that she has selected the required candidates, namely, offset pressers Jocelyne Houde and Lee Chu.

On October 26, 1999, *Imprimerie M.R. inc.* and the *Agence* sign a contract pursuant to which the *Agence* undertakes to provide two offset pressers for a period of six months. For its part, *Imprimerie M.R. inc.* agrees to pay the *Agence* the amount of the agreed upon salaries as well as a commission representing 22% of the salaries paid. The employees will be paid directly by the *Agence*.

On November 8, 1999, Jocelyne and Lee begin working at *Imprimerie M.R. inc.* Maurice assigns the work to be performed and supervises the production and the personnel.

Jocelyne has 15 years of experience as an offset presser and has a reputation as a competent person. Indeed, Maurice is very satisfied with her work.

Jocelyne is the mother of Martin Côté, born on February 10, 1983. Martin's father, François Côté, has not taken any interest in the education or care of his son since 1984, the date on which he divorced Jocelyne. In 1985, he was deprived of his parental authority as regards Martin for grave reasons.

Martin is a student at the Cegep de Trois-Rivières. As part of his scholastic activities, Martin and his classmates are staging Molière's play « *Le Malade imaginaire* ». The first performance is scheduled for February 22, 2000. Martin asks his mother to print the programme for the play free of charge. Martin offers to help her; in fact, he has a certain amount of experience, having worked with her in a printing shop the previous summer.

On January 7, 2000, after the regular work-day is over, Martin goes to meet his mother and they begin printing the programme using the materials and equipment belonging to *Imprimerie M.R. inc.*

At 11:15 p.m., Jocelyne finally completes the printing of the programme. Her son notices that his mother is exhausted and, given the lateness of the hour, he convinces her to go home while he proceeds with the binding of the programmes. After giving him the keys to the printing shop, his mother leaves the premises.

After completing the binding, Martin cleans up the premises and empties out the ashtray containing his cigarette butts into the garbage can. Once the cleanup is complete, he locks the door and leaves the printing shop at approximately midnight.

A fire breaks out in the printing shop during the night of January 7 to January 8, 2000, at approximately 3:30 a.m. In one of the apartments located above the printing shop, the firemen discover the body of Marcel Garant, a lessee.

On January 18, 2000, Jacques Cioran, a fire department inspector, provides his investigation report which includes the following comments, among others:

- The fire started in a garbage can. The fire was lit by a cigarette butt that was poorly put out.
- The garbage can was near an inside wall of the printing shop in which electrical work had been carried out during the day on January 7, 2000. Gilles Ouimet, an electrician employed by *Hugo Électrique Ltée*, installed a 550 volt electrical outlet on this wall. Unfortunately, the electrician forgot to install the cover on the panel containing the electrical wiring. Therefore, the fire spread throughout the entire building through the electrical system.

[...]

- Maurice Roy declared that he did not know that Jocelyne Houde and her son had printed the programme on his business premises. Moreover, Maurice Roy was furious about this situation.
- Maurice Roy indicated that *Imprimerie M.R. inc.* did not receive any compensation for the use of the materials and equipment.

On February 15, 2000, Doctor Jacques Grandmaison performs an autopsy on the body of Marcel Garant and provides his report which includes the following comments, among others:

- Marcel Garant died as a result of toxic smoke inhalation.
- At the time of the fire, Marcel Garant was asleep and was never conscious of what was happening to him.

Marcel, who was 24 years old, was the ninth child in a family of twelve. His father, Richard Garant, who is 59 years old, is a wealthy construction contractor in the Trois-Rivières region. His mother, Gisèle Gamache, died of cancer in 1997, when Marcel was 22 years old.

Marcel was an anthropology student at the Université du Québec à Trois-Rivières. He had been living alone in an apartment for the last two years. His relationship with his father was nonexistent due to an argument which occurred at the time of his mother's death.

After some searching, Richard finds the will made by his son, Marcel, which will is dated October 19, 1995. It seems that Marcel had forgotten about the will which was drafted at a time when father and son were getting along very well. Marcel did not prepare another will. Pursuant to the will, Richard inherits all the property in the estate having a value of \$20,000.

Marcel's funeral takes place, and on January 31, 2000 Richard pays the funeral expenses amounting to \$4,000.

On February 17, 2000, Richard gives a mandate to Claude Caron, an insurance adjuster, to inquire into the matter.

On March 22, 2000, Claude Caron provides his report which includes the following comments, among others:

- The central alarm system in the building did not work on the morning of the fire because it had been out of order for several weeks. Indeed, after an inspection, the fire department had notified Luc Paquette, the building's owner, that he had to correct the problem, but this was not done.
- The material property which furnished Marcel Garant's dwelling, having a value of \$5,000, are a total loss.
- Even if the alarm system had worked properly, the material property would nevertheless have been damaged, but less severely. However, Marcel would have had the time to leave the building and save his life.
- The electrician, Gilles Ouimet, has no assets and he is insolvent. On March 6, 2000, he made an assignment of his property for the benefit of his creditors.

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

#### **QUESTION 8 (9 marks)**

**(a) Name one defendant against whom Richard Garant, in his personal capacity, could legally institute an action for damages.**

- **Justify your answer by referring to one or more specific and relevant provisions of the Civil Code of Québec.**

**ONLY THE FIRST DEFENDANT WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.**

**(b) In addition to *Imprimerie M.R. inc.*, determine three defendants against whom Richard Garant, in his capacity as an heir, could legally institute an action for damages based upon a provision other than article 1457 C.C.Q.**

- **For each defendant, justify your answer by referring to one or more specific and relevant provisions of the Civil Code of Québec, excluding article 1457 C.C.Q.**

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

<b>SUPPLEMENTARY FACTS</b>
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On April 6, 2000, Richard Garant institutes an action in damages for injury against *Imprimerie M.R. inc.* based solely upon article 1463 C.C.Q.

**QUESTION 9 (10 marks)**

**State five arguments of fact or of law that *Imprimerie M.R. inc.* legally has an interest in putting into evidence as a defence to the action, excluding the arguments relating to damage and causation.**

**ONLY THE FIRST FIVE ARGUMENTS OF FACT OR OF LAW WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.**

<b>SUPPLEMENTARY FACTS</b>
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In his action, Richard Garant claims, in his capacity as heir, compensation for the following heads of damage:

1. Marcel's premature death.
2. Marcel's pain and suffering.

Moreover, Richard Garant claims, in his personal capacity, compensation for the following heads of damage:

3. Loss of a future income earner.
4. Funeral expenses.

**QUESTION 10 (8 marks)**

**State one argument of fact or of law that *Imprimerie M.R. inc.* can legally raise against each of the four following heads of damage, excluding the arguments relating to damage and causation.**

1. Marcel's premature death.
2. Marcel's pain and suffering.
3. Loss of a future income earner.
4. Funeral expenses.

**ONLY THE FIRST ARGUMENT RELATING TO EACH HEAD OF DAMAGE WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.**

<b>SUPPLEMENTARY FACTS</b>
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On May 3, 2000, Richard Garant amends his action, after having obtained the court's permission, in order to add a head of damage claiming, in his personal capacity, \$300,000 in order to compensate him for the loss of moral support resulting from his son's death.

**QUESTION 11 (5 marks)**

**State five arguments of fact or of law that *Imprimerie M.R. inc.* can legally raise solely in order to show that the \$300,000 claim is exaggerated.**

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

**FILE 3 (25 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.**

André Leduc and Gisèle Latour are the parents of two girls, Louise, who was born on March 8, 1983, and Nicole, who was born on April 5, 1980. On October 8, 1998, Louise informs her parents that she is three months' pregnant. She informs them that she intends to keep the child she is carrying. When questioned about the identity of the child's father, Louise categorically refuses to reveal his name.

On April 6, 1999, Louise gives birth to a boy she calls Jeannot. Only Gisèle, Louise's mother, is present at the birth. The declaration of birth filled out by Louise at the hospital does not mention the father's name. The act of birth issued by the registrar of civil status states « not declared » under the heading reserved for the father's name.

After leaving the hospital, Louise goes back home to live with her parents who have set up a room for Jeannot in the basement of the family residence.

On May 8, 1999, Jacques Lemoyne, who is 18 years old and is one of Louise's childhood friends, informs her parents that he is Jeannot's father. When questioned about this, Louise admits that in July of 1998 she had sexual relations with Jacques Lemoyne and that these continued regularly until September of 1998. She tells her parents that, at that time, she and Jacques parted on bad terms after she refused to go live with him.

On January 5, 2000, Jacques consults you in order to know whether he can legally have himself recognized as Jeannot's father.

**QUESTION 12 (11 marks)**

**(a) What recourse must you institute in order to have Jacques Lemoyne legally recognized as Jeannot's father?**

- **Justify your answer by referring to one or more specific and relevant provisions of the Civil Code of Québec.**

**(b) Determine the procedural means you will use to pursue this recourse.**

- **Justify your answer by referring to one or more specific and relevant provisions of the Code of Civil Procedure.**

**(c) Does Louise Leduc have the status of tutor to Jeannot as of right? Explain your answer.**

- **Justify your answer by referring to one or more specific and relevant provisions of the Civil Code of Québec.**

<b>SUPPLEMENTARY FACTS</b>
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In February 2000, with the consent of Louise's parents, Jacques and Louise decide to live together.

On March 8, 2000, Louise and Jacques have an argument. Louise, who has joined the sect of the Disciples of the Eternal Love, does not want Jeannot to be baptized in accordance with the rites of the Catholic church, while Jacques wants this at all costs.

**QUESTION 13 (6 marks)**

**(a) What judicial recourse is available to Louise Leduc in order to obtain a ruling on the dispute between her and Jacques Lemoyne?**

- **Justify your answer by referring to one or more specific and relevant provisions of the Civil Code of Québec.**

**(b) Does Louise Leduc need the court's authorization in order to institute this recourse on her own?**

- **Justify your answer by referring to one or more specific and relevant provisions of the Civil Code of Québec.**

<b>SUPPLEMENTARY FACTS</b>
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On March 19, 2000, André Leduc, who has only recently become widowed, gives his grandson Jeannot a gift in the amount of \$20,000. He gives Jacques Lemoyne a \$20,000 certified cheque payable to the order of Jeannot Leduc Lemoyne. Jacques deposits the amount in a savings account which he opens in Jeannot's name at a branch of the Laurentian Bank.

**QUESTION 14 (3 marks)**

- **What must André Leduc do legally in order to oblige Jacques Leduc to render an annual account of management with respect to the \$20,000?**
- **Justify your answer by referring to one or more specific and relevant provisions of the Civil Code of Québec.**

<b>SUPPLEMENTARY FACTS</b>
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On April 20, 2000, André Leduc makes out a will in the presence of witnesses. The will, which complies in all respects with the requirements of the Civil Code of Québec, only contains the following two provisions :

- (1) A joint legacy to his daughter, Nicole Leduc, and his grandson, Jeannot, of his immovable located on Plessis Street, in Montreal. The immovable has a net value of \$100,000.
- (2) A legacy of all his other property, having a value of \$300,000, to the Fondation de l'Oratoire Saint-Joseph, at which André worked for more than 20 years.

On April, 27, 2000, during a family gathering, a fire breaks out in André's home. Nicole dies of asphyxiation during the fire and André dies two days later as a result of the burns suffered by him. Nicole leaves behind her only daughter, Sylvie Gamache.

**QUESTION 15 (5 marks)**

**Name André Leduc's successors and state the value of the legacy each will receive.**

**DO NOT TAKE INTO ACCOUNT ANY TAX CONSEQUENCES OR ANY FRUITS AND REVENUES OF THE LEGACY.**



**QUESTION 3 (4 points)**

**Robert Lussier peut-il payer directement à Judy Henshaw la pension alimentaire pour les enfants? Si oui, dites à quelle(s) condition(s), si non, dites pourquoi. Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.**

Oui, art. 3 de la *Loi facilitant le paiement des pensions alimentaires* et ce, aux conditions suivantes :

7

1. Robert et Judy doivent en faire conjointement la demande

8

2. Le tribunal doit être convaincu que le consentement de Robert et de Judy est libre et éclairé

9

3. Robert doit fournir une sûreté suffisante pour garantir le paiement de la pension pendant un mois.

10

**QUESTION 4 (3 points)**

**Lors de l'audition sur la requête pour mesures provisoires, pourrez-vous formuler une objection à la production de la lettre du médiateur?**

**Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code de procédure civile.**

Oui, art. 815.3 C.p.c.

11

**QUESTION 5 (4 points)**

**Quelle demande le procureur de Louis-Charles doit-il présenter au tribunal afin de représenter adéquatement son client ?**

Une demande en intervention.

12

**QUESTION 6 (3 points)**

**Judy Henshaw a-t-elle un droit à faire valoir contre Robert Lussier eu égard à la vente de l'immeuble du Mont Sainte-Anne en vertu des règles du patrimoine familial ?**

**Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code civil du Québec.**

Oui, le droit à un paiement compensatoire, en vertu de l'article 421, al. 1 C.c.Q.

13

**QUESTION 7 ( 5 points)**

**Nommez les successibles de Robert Lussier et déterminez la part à laquelle chacun a droit.**

**Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code civil du Québec.**

Judy (tiers de la succession);

Jean-René, Sophie et Louis-Charles (les deux tiers de la succession)

**OU**

Judy (tiers de la succession);

Jean-René (le tiers des deux tiers de la succession, **OU** deux-neuvième) ;

Sophie (le tiers des deux tiers de la succession, **OU** deux-neuvième) ;

Louis-Charles (le tiers des deux tiers de la succession, **OU** deux-neuvième) ;

14

Art. 666 C.c.Q.

15

## DOSSIER 2 (32 POINTS)

## QUESTION 8 (9 points)

a) Nommez un défendeur contre qui Richard Garant pourrait légalement intenter, à titre personnel, une action en dommages et intérêts.

- Appuyez votre réponse en faisant référence, à la ou aux dispositions précises et pertinentes du *Code civil du Québec*.

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

Luc Paquette, art. 1457 C.c.Q.

16 (3)

b) Outre *Imprimerie M.R. inc.*, déterminez trois défendeurs contre qui Richard Garant pourrait légalement intenter, à titre d'héritier, une action en dommages et intérêts en se fondant sur une disposition autre que l'article 1457 C.c.Q.

- Pour chacun des défendeurs, appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du *Code civil du Québec*, à l'exclusion de l'article 1457 C.c.Q.

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

- Jocelyne Houde, art. 1459 C.c.Q.
- *Hugo Électrique ltée*, art. 1463 C.c.Q.
- Luc Paquette, art. 1458 C.c.Q.

17 (2)

18 (2)

19 (2)

## QUESTION 9 (10 points)

Énoncez cinq arguments de faits ou de droit qu'*Imprimerie M.R. inc.* a légalement intérêt à mettre en preuve en défense à l'action à l'exclusion des arguments qui portent sur le préjudice et le lien de causalité.

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

2 points par bulle 5/6

20 (10)

- Martin n'est pas le préposé de *Imprimerie M.R. inc.*  
ou  
Martin n'est pas l'employé de *Imprimerie M.R. inc.* 1.
- Jocelyne n'a pas commis de faute 2.
- Jocelyne n'était pas dans l'exécution de ses fonctions 3.
- Jocelyne a procédé à l'impression après les heures régulières de travail. 4.
- Maurice Roy ne savait pas que Jocelyne avait imprimé le programme souvenir dans son commerce.  
ou  
Jocelyne n'a pas avisé Maurice Roy qu'elle allait imprimer un programme-souvenir 5.
- Imprimerie M.R. inc.* n'a reçu aucune compensation. 6.

## QUESTION 10 (8 points)

Énoncez un argument de faits ou de droit qu'*Imprimerie M.R. inc.* peut légalement faire valoir à l'encontre de chacun des quatre chefs de dommages suivants à l'exclusion des arguments relatifs à la faute et au lien de causalité.

SEULLE PREMIER ARGUMENT AU REGARD DE CHACUN DES CHEFS DE DOMMAGES INSCRIT AU CAHIER DE RÉPONSES SERA CORRIGÉ.

- Le décès prématuré de Marcel.** 21 (2)  
L'abrègement de la vie ne constitue pas en soi un dommage qui puisse être compensé.  
OU  
L'abrègement de la vie ne constitue pas un préjudice objectif  
OU  
Marcel Garant n'a pas eu conscience ou connaissance de ce qui lui arrivait  
OU  
Le droit à la vie n'est pas transmissible  
OU  
Ce chef de dommage n'est pas indemnisable, *Driver c. Coca Cola* [1961] R.C.S. 201; ou *Augustus c. Gosset* [1996] R.C.S. 268

**2. Les souffrances et douleurs endurées par Marcel.**

Marcel Garant n'a pas eu conscience ou connaissance de ce qui lui arrivait

OU

Marcel Garant n'a pas souffert.

22 **3. La perte de soutien économique futur.**

Richard Garant est un riche entrepreneur en construction,

OU

Richard Garant étant riche, n'aurait probablement pas eu besoin du soutien économique futur de son fils.

OU

Il n'est pas certain que Marcel aurait été en mesure de lui apporter un soutien économique futur compte tenu de sa situation économique actuelle.

OU

Il s'agit d'un chef de dommages incertain ou aléatoire.

23 **4. Les frais funéraires.**

La succession était solvable

OU

Il s'agit d'une dépense inévitable, (puisque la mort est inéluctable)

OU

Ce n'est pas un dommage direct.

24 **QUESTION 11 (5 points)**

Énoncez cinq arguments de fait ou de droit qu'*Imprimerie M.R. inc.* peut légalement faire valoir pour démontrer uniquement que cette réclamation de 300 000 \$ est exagérée.

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

1 point par bulle 5/6

25 

1. Relations inexistantes entre Marcel et son père

OU

La nature et la qualité de la relation entre la victime et le parent.

1. 

2. Âge de Marcel OU Marcel a 24 ans OU Marcel est né le 1<sup>er</sup> août 1975

2. 

3. Âge de son père OU Richard a 59 ans

3. 

4. Le fait qu'il était un des douze enfants

OU

La présence d'autres enfants.

4. 

5. Les sommes généralement accordées par la jurisprudence sont nettement inférieures au montant réclamé.

OU

Dans l'arrêt *Augustus c. Gosset* [1996] R.C.S. 268 on a suggéré 25 000 \$

OU

Puisque le plafond établi par la Cour suprême pour les atteintes personnelles (dommages non-pécuniaires) est de 280 000 \$, cette réclamation pour perte de soutien moral est exagérée.

5. 

6. Puisque Marcel n'a pas souffert, les circonstances du décès sont moins traumatisantes. 6.

**DOSSIER 3 ( 25 points)**

**QUESTION 12 (11 points)**

- a) **Quel recours devez-vous entreprendre afin que Jacques Lemoyne soit légalement reconnu comme le père de l'enfant Jeannot ?**
- **Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code civil du Québec.**

Une action ou un recours en reconnaissance ou en réclamation de paternité **OU** en réclamation d'état, art. 532 al. 1 C.c.Q. 26 ( 4 )

- b) **Déterminez le véhicule procédural par lequel vous ferez valoir ce recours.**
- **Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code de procédure civile.**

Au moyen d'une déclaration, art. 813.3 C.p.c. 27 ( 3 )

- c) **Louise Leduc est-elle de plein droit tutrice de Jeannot ? Dites pourquoi.**
- **Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code civil du Québec.**

Non, parce qu'elle est mineure, art. 192 C.c.Q 28 ( 4 )

**QUESTION 13 (6 points)**

- a) **De quel recours judiciaire dispose Louise Leduc pour faire trancher la question qui l'oppose à Jacques Lemoyne ?**
- **Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code civil du Québec.**

Louise peut saisir le tribunal du différend qui l'oppose à Jacques, art. 604 C.c.Q.  
**OU**  
 Recours **OU** requête **OU** demande en vertu de l'art. 604 C.c.Q. 29 ( 3 )

- b) **Louise Leduc doit-elle obtenir l'autorisation du tribunal pour intenter seule ce recours?**
- **Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code civil du Québec.**

Oui, art. 159 C.c.Q. 30 ( 3 )

**QUESTION 14 (3 points)**

- **Que doit légalement faire André Leduc pour obliger Jacques Lemoyne à rendre un compte de gestion annuel à l'égard de la somme de 20 000 \$ ?**
- **Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code civil du Québec.**

Il doit demander une ordonnance au tribunal, art. 209 C.c.Q. 31 ( 3 )

**QUESTION 15 (5 points)**

**Nommez les successibles d'André Leduc et précisez la valeur des legs que chacun d'eux recevra. NE TENEZ COMPTE NI DES INCIDENCES FISCALES NI DES FRUITS ET REVENUS DES LEGS LE CAS ÉCHÉANT.**

Fondation de l'Oratoire Saint-Joseph : 300 000 \$ 32 ( 2 )

Jeannot Leduc Lemoyne : 100 000 \$ 33 ( 3 )