



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

CIVIL I

SUPPLEMENTAL EXAMINATION

May 21, 2002

- 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 section :
 - Civil I
- 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 **11** pages (including this page) and that your answer booklet contains **5** 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)

Situation 1

Situation 1 described in File 1 is an evolving situation : all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.

In 1975, Catherine Labonté inherits an amount of \$320,000 from her parents. At that time, she uses her inheritance to buy two contiguous immovables in Saint-Clet, namely lot A-1, having a value of \$105,000 and comprised of agricultural land, and lot A-2, having a value of \$45,000 and comprised of a small parcel of land on which a residence is erected.

In 1979, Catherine meets Antoine Lamoureux, a wildlife painter. They are married on April 1, 1980 without a marriage contract and move into the residence located on lot A-2. At the time of the marriage, Antoine does not own any property; at that time, lot A-1 is worth \$115,000 and lot A-2 is worth \$55,000.

Three children are born of the marriage : Stéphane, Johanne and Laurence. Their ages today are, respectively, 20 years, 16 years and 14 years, and all three are students.

In June 1980, Catherine, who is a veterinarian, decides to open her own clinic. To this end, she purchases lot A-3, a parcel of land adjacent to lot A-1, for a price of \$50,000 which she pays using her inheritance. Furthermore, she borrows an amount of \$100,000 from *Banque Agricole* to construct the building which will house her veterinary clinic. Once the construction has been completed, *Banque Agricole* evaluates the parcel of land and the building at \$200,000.

In 1986, Catherine decides to turn lot A-1, which then has a value of \$128,000, into an orchard. Therefore, she invests \$10,000 obtained from the income from her clinic in order to purchase apple tree saplings. This investment increases the value of lot A-1 by \$15,000.

In 1990, Catherine obtains an acquittance from *Banque Agricole* for the loan which she has repaid in full using the income from her clinic.

In 1998, Antoine buys a Ford truck for \$30,000 which he purchases using the income from the sale of his paintings. This vehicle is used both for the operation of the orchard and for family travel.

In July 2000, Catherine withdraws \$25,000 from her registered retirement savings plan and uses this amount as follows : she spends \$5,000 on a cruise with her sister and the balance, namely \$20,000, is used to purchase a Suzuki automobile which is used for her professional travelling needs as well as for the family's travelling needs.

In October 2000, Catherine is exhausted and is hospitalized for a nervous breakdown.

Upon returning home, she learns that Antoine has fallen in love with a neighbour. The couple splits up; Antoine settles in an apartment in Montreal and Stéphane chooses to go live with his father in order to be closer to his university. On March 26, 2001, Antoine institutes proceedings for separation from bed and board which are served upon Catherine on April 4, 2001.

An evaluation of Catherine's property as at March 26, 2001 indicates the following :

- lot A-1, namely the agricultural land, is worth \$350,000; this amount includes the increase in value of \$57,000 resulting from the orchard;
- lot A-2, namely the small parcel of land and the residence, is worth \$100,000;
- lot A-3, namely the parcel of land adjacent to lot A-1 and the building housing the clinic, is worth \$250,000.

Catherine's other property is as follows :

- a registered retirement savings plan, acquired from her professional income, having a value of \$48,000;
- stock exchange investments having a value of \$25,000 and originating from her inheritance;
- the furniture, having a value \$20,000 and inherited from her parents, which furnishes the residence located on lot A-2;
- the Suzuki automobile which is currently worth \$18,000.

As for Antoine, at the time the proceedings are filed, his property is as follows :

- a bank account with a balance of \$5,000 originating from the sale of his paintings;
- the Ford truck which is currently worth \$22,000;
- a painting done by him which has a value of \$1,000 and decorates the residence located on lot A-2.

The couple's only indebtedness is an amount of \$28,000 due on a line of credit established in the name of both spouses. This indebtedness represents family expenses incurred since October of 2000.

QUESTION 1 (5 marks)

Can Antoine Lamoureux file a motion in order to obtain support from Catherine Labonté for their child Stéphane while the proceedings are ongoing? Explain your answer.

QUESTION 2 (5 marks)

What is the net value of the property in the family patrimony of which Antoine Lamoureux is the owner?

QUESTION 3 (5 marks)

According to the rules applicable to the family patrimony, does Antoine Lamoureux have a right he can assert against Catherine Labonté regarding Catherine's withdrawal of part of her RRSP? If so, indicate the amount he may claim.

Justify your answer by referring to one or more specific and relevant provisions of any legislation.

QUESTION 4 (5 marks)

What is the value of Catherine Labonté's private property before calculating any compensation?

Select the correct answer from among the answers written hereinbelow and write it in the answer booklet.

a) \$495,000

b) \$375,000

c) \$395,000

d) \$645,000

e) None of the above

QUESTION 5 (5 marks)

Establish the amount of the total compensation owed by the mass of Catherine Labonté's private property to the mass of her acquests.

Select the correct answer from among the answers written hereinbelow and write it in the answer booklet.

- a) \$15,000
- b) \$23,333.33
- c) \$62,500
- d) \$57,000
- e) None of the above

QUESTION 6 (5 marks)

In addition to the compensation, is there a sum or sums to be deducted in order to establish the mass of Catherine Labonté's acquests which may be partitioned? If so, indicate the amount. If not, explain your answer.

SUPPLEMENTARY FACTS

In May of 2001, Catherine learns that during her hospitalization Antoine had contacted Jean Lessard, an employee who had already expressed an interest in purchasing the clinic, in order to try to sell it to him. She also learns that, at that time, Antoine sold to Jean, for an amount of \$6,000, the collection of animal figurines which decorated the waiting room of the clinic and which Catherine had purchased using her professional income. Antoine used this amount to print a catalogue of his works of art.

Notwithstanding all that has happened, Catherine decides to renounce her share of Antoine's acquests. However, she claims that Antoine's behaviour deprives him of the right to his share of her acquests.

QUESTION 7 (5 marks)

Is Antoine Lamoureux entitled to his share of Catherine Labonté's acquests?

Justify your answer by referring to one or more specific and relevant provisions of any legislation.

SUPPLEMENTARY FACTS

A judgment of separation from bed and board between Catherine and Antoine is rendered on July 27, 2001 and the parties partition all their property, including the family patrimony, in accordance with the agreement on accessory measures confirmed by this judgement. On August 8, 2001, Catherine sells all her lots. A few days later, namely on August 15, 2001, Catherine and Antoine reconcile and resume living together. On September 3, 2001, Catherine purchases a house in Montreal for which she pays \$300,000 in cash using the proceeds of sale of lot A-1.

The family moves into this house and during the month of October of 2001, Catherine uses her savings to have a painting workshop built next to the house.

On April 1, 2002, the parties separate again; Antoine leaves their residence and institutes divorce proceedings. The house in Montreal is worth \$330,000 at that time as a result of the addition of the workshop.

QUESTION 8 (5 marks)

Does Antoine Lamoureux have a pecuniary right to assert against the residence in Montreal?

Justify your answer by referring to one or more specific and relevant provisions of any legislation.

Situation 2

Today, May 21, 2002, Josette Lévesque consults you and relates the following facts to you.

She and Henri Trudel, never had any children together, are divorced pursuant to a judgment rendered on June 30, 2000. Among other things, the judgment grants Josette support of \$2,000 per month and settles all pecuniary matters between the parties, including partition of the family patrimony and the matrimonial regime. Support is paid regularly.

On August 21, 2001, Henri, who is very ill, sells his flower shop to Andrée Sénécal, his new companion.

On September 27, 2001, Henri makes out a will and appoints Andrée as his universal legatee. Henri dies on October 10, 2001. The net value of his succession is \$500,000, including the proceeds of the sale of his business.

QUESTION 9 (5 marks)

Does Josette Lévesque have a right she can assert against Henri Trudel's succession in order to receive support? If yes, state which right. If not, explain your answer.

FILE 2 (26 MARKS)

Situation 1

Louis Robichaud, born on July 4, 1984, is now 17 years old. On October 15, 2001, Gilles Robichaud, his father, files a declaration of emancipation with the Public Curator of Quebec after having been requested to do so by Louis and after having obtained the agreement of the tutorship council. Since November 1, 2001, Louis has been living with his girlfriend, H el ene Chass e, who is 19 years old, in an apartment with a rent of \$600 per month. Louis and H el ene have agreed to share the rent equally.

On November 30, 2001, H el ene tells Louis that she expects to have difficulty paying her share of the rent. In order to compensate for her share of the rent until June 30, 2002, she offers to assign to him her 1990 Honda Civic car which she claims has a value of \$3,000.

Louis accepts and the transfer of the car's registration takes place on December 5, 2001.

That same day, Louis and H el ene sign an agreement in which Louis acknowledges having received from H el ene her share of the rent until June 30, 2002.

In February of 2002, Louis has the automobile evaluated and learns that on November 30, 2001 it was only worth \$1,000.

QUESTION 10 (5 marks)

Can Louis Robichaud act on his own behalf to institute proceedings for cancellation of the agreement entered into with H el ene Chasse on December 5, 2001?

Justify your answer by referring to one or more specific and relevant provisions of any legislation.

Situation 2

Jean-Luc Boisvert, who is 15 years old, is the son of Louise Boisvert and L eopold Leroux-Fiset.

At the time of Jean-Luc's birth, his parents were not married and they both agreed that their son would bear the surname of his mother, although L eopold was mentioned as the father in the act of birth. Since then, Louise and L eopold have married and L eopold wishes his son to be able to add L eopold's surname to his own name. He intends to file an application for a change of name to that effect. Jean-Luc wants this change, while Louise is against it because she believes her son's surname will be too long.

QUESTION 11 (8 marks)

- a) List the surname or surnames that Jean-Luc Boisvert could have after the addition of his father's surname to his own name.**
- b) Could Louise Boisvert oppose the application for a change of name filed by L eopold Leroux-Fiset?**

Justify your answer by referring to one or more specific and relevant provisions of any legislation.

Situation 3

On September 2, 1988, Hugo Pratte and Caroline Vallin are married under the regime of separation as to property. On November 20, 1990, the spouses sign an agreement before Notary Luc Guay to exempt themselves from the application of articles 462.1 to 462.13 of the *Civil Code of Québec* relating to the family patrimony. This agreement is registered in the appropriate register within the stipulated time limits.

On June 1, 2001, Caroline gives birth to their son Guillaume.

On February 14, 2002, Hugo and Caroline both die in a snowmobile accident. It is impossible to establish who died first.

Among Caroline's papers, a will is discovered in which she names Hugo as her universal legatee and appoints Josée Vallin, her sister, as liquidator. Caroline has no relatives other than her son Guillaume. As for Hugo, he dies without having left a will and he is survived by his son Guillaume, his parents, and Éric, his 8-year-old son whose existence was unknown to Caroline.

The succession of each of them is comprised of the following property :

Hugo Pratte :	
• Undivided half of the family residence :	\$60,000
• Automobile :	\$20,000

Caroline Vallin :	
• Undivided half of the family residence :	\$60,000
• Furniture :	\$25,000

QUESTION 12 (8 marks)

- a) **What amount will Guillaume receive from the succession of his mother, Caroline Vallin?**
- b) **What amount will Guillaume receive from the succession of his father, Hugo Pratte?**

Situation 4

Lucie Angers, the liquidator of the succession of her father, Jean Angers, consults you today and relates the following facts to you.

On April 2, 2000, Jean signed a mandate in anticipation of his incapacity; the only clause thereof reads as follows :

<p><i>I, the undersigned, Jean Angers, in the event of my incapacity, entrust my wife, Johanne Dufour, to take care of my mental and physical well-being and to make all decisions regarding the care required by my state of health.</i></p>

On April 14, 2001, following an automobile accident, Jean falls into a coma from which he will not emerge.

On June 15, 2001, the court homologates Jean's mandate in anticipation of his incapacity.

On November 21, 2001, the court, having been seized of a motion for the institution of protective supervision, appoints Roger Angers, Jean's son, as tutor to his father's property.

On March 21, 2002, Jean dies, leaving a will in which he appoints his daughter Lucie as liquidator of his succession.

Lucie, who is wondering about how Roger, her brother, administrated her father's property, asks you the following question.

QUESTION 13 (5 marks)

To whom must Roger Angers account for his administration of Jean Angers' property?

Justify your answer by referring to one or more specific and relevant provisions of any legislation.

FILE 3 (29 MARKS)

Situation 1

Situation 1 described in File 3 is an evolving situation : all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.

Jacinthe Dumais, born on July 25, 1984, got married at the age of 16 to Mathieu Roy, the father of the child she was carrying. Following a miscarriage, Jacinthe left Mathieu and went back to live with her father, Jean Dumais.

Jean is also the father of Annie, born on February 25, 1987. Jean's wife died in 1990 and since 1991 he has been living with Pauline Lesage who has always actively participated in the children's education.

On January 30, 2002, Jean and Pauline leave to go to Florida and entrust custody of Annie to Jacinthe.

Every Thursday evening, Jean's neighbours, Sylvie Dufort and Georges Lebeau, have their daughter Charlotte, who is 4 years old, babysat by Jacinthe who they know is often accompanied by Annie. The agreed upon remuneration is \$5 per hour and Charlotte's parents provide very detailed instructions regarding the care of their child.

On Thursday, January 31, 2002, Jacinthe goes with Annie to Sylvie and Georges's house to babysit Charlotte.

At approximately 11:30 p.m., Jacinthe puts a pot of milk to heat on the stove in order to make a hot chocolate for Charlotte who has woken up crying. Carrying the child in her arms, Jacinthe goes back to Annie who has fallen asleep in front of the television in the living room. Soon, Jacinthe and Charlotte also fall asleep.

A fire breaks out in the kitchen as a result of the pot forgotten on the lit stove. Smoke quickly fills the house. Jacinthe calls the fire department in a panic. Upon their arrival, they find Jacinthe, Annie and Charlotte unconscious.

The victims are brought to the hospital where the emergency doctor attests to the death of Charlotte. As for Annie, tests reveal that she will have permanent neurological impairment. Jacinthe is entirely unharmed.

QUESTION 14 (11 marks)

- a) **Determine the defendant or defendants against whom Sylvie Dufort and Georges Lebeau can, in their personal capacity, institute an action for damages following the death of Charlotte.**

For each defendant which you have determined, justify your answer by referring to one or more specific and relevant provisions of any legislation.

- b) **Determine the defendant or defendants against whom Annie Dumais' tutor can institute an action for damages for the harm suffered by Annie.**

For each defendant which you have determined, justify your answer by referring to one or more specific and relevant provisions of any legislation.

Situation 2

On August 15, 2001, Louis Lemire borrows a chainsaw from his neighbour Yves Faucher in order to cut down a tree. Louis is the first person to use the chainsaw. The previous day, Yves had bought the chainsaw, manufactured by the company *Chainsee*, from his neighbour, Michel Carrier, who had never used it. Michel Carrier had himself acquired the chainsaw from *Quincaillerie Demers*.

Louis starts-up the chainsaw and, as he is preparing to cut the first branch, the rotating chain breaks and injures his face.

An expert appraisal reveals that the rotating chain broke due to a weakness in one of its links.

QUESTION 15 (8 marks)

Determine the defendant or defendants against whom Louis Lemire can institute an action for damages based upon a provision other than article 1457 of the *Civil Code of Québec*.

For each defendant which you have determined, justify your answer by referring to one or more specific and relevant provisions of any legislation.

QUESTION 16 (5 marks)

Can Yves Faucher institute an action against the company *Chainsee* for the failure of his chainsaw?

Justify your answer by referring to one or more specific and relevant provisions of any legislation.

Situation 3

Mireille Tanguay consults you today and relates the following facts to you.

On February 1, 2002, her husband, Michel Tanguay, died as a result of an armed attack perpetrated by an unidentified criminal.

Mireille, who wishes to be indemnified for the harm she has suffered as a result of her husband's death, asks you the following question.

QUESTION 17 (5 marks)

To whom can she turn in order to obtain redress for the harm caused to her by her husband's death?

Justify your answer by referring to one or more specific and relevant provisions of any legislation.

CORRIGÉ

CIVIL I - EXAMEN DE REPRISE

21 mai 2002

DOSSIER 1 (45 POINTS)

QUESTION 1 (5 points)

Antoine Lamoureux peut-il présenter une requête afin d'obtenir de Catherine Labonté, durant l'instance, une pension alimentaire pour l'enfant Stéphane? Dites pourquoi.

Non, parce que Stéphane est majeur et il s'agit d'une séparation de corps.

1.

QUESTION 2 (5 points)

Quelle est la valeur nette des biens du patrimoine familial dont Antoine Lamoureux est propriétaire?

23 000 \$ (le camion + les tableaux exécutés par Antoine)

2.

QUESTION 3 (5 points)

En vertu des règles du patrimoine familial, Antoine Lamoureux a-t-il un droit à faire valoir contre Catherine Labonté eu égard au retrait par Catherine d'une partie de son REER? Le cas échéant, indiquez le montant auquel il peut prétendre.

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

Oui, 2 500 \$, art. 421 al. 1 *C.c.Q.*

3.

QUESTION 4 (5 points)

Quelle est la valeur des propres de Catherine Labonté avant tout calcul de récompenses?

Choisissez la bonne réponse parmi celles inscrites ci-dessous et écrivez-la dans votre cahier de réponses.

- a) 495 000 \$
- b) 375 000 \$
- c) 395 000 \$
- d) 645 000 \$
- e) Aucune de ces réponses

Réponse : c)

4.

QUESTION 5 (5 points)

Établissez le montant total des récompenses dues par la masse des propres de Catherine Labonté à la masse de ses acquêts.

Choisissez la bonne réponse parmi celles inscrites ci-dessous et écrivez-la dans votre cahier de réponses.

- a) 15 000 \$
- b) 23 333,33 \$
- c) 62 500 \$
- d) 57 000 \$
- e) Aucune de ces réponses

Réponse : d)

5.

QUESTION 6 (5 points)

Outre les récompenses, y a-t-il une ou des sommes à déduire pour établir la masse partageable des acquêts de Catherine Labonté? Si oui, indiquez-en le montant. Si non, dites pourquoi.

Oui, 14 000 \$ (la moitié de la marge de crédit).

6.

QUESTION 7 (5 points)

Antoine Lamoureux a-t-il droit à sa part dans les acquêts de Catherine Labonté?

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

Non, art. 471 *C.c.Q.*

7.

QUESTION 8 (5 points)

Antoine Lamoureux a-t-il un droit de nature pécuniaire à faire valoir sur la résidence de Montréal?

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

1. Oui, art. 416 al. 2 *C.c.Q.*

OU

2. Oui, art. 414 ou art. 415 *C.c.Q.*

1. 5 points

OU

2. 3 points

8.

QUESTION 9 (5 points)

Josette Lévesque a-t-elle un droit à faire valoir à l'encontre de la succession de Henri Trudel pour recevoir des aliments? Si oui, dites lequel. Si non, dites pourquoi.

Non, parce que le recours pour contribution alimentaire en vertu de la survie de la pension alimentaire est prescrit (art. 684 *C.c.Q.*).

9.

DOSSIER 2 (26 POINTS)

QUESTION 10 (5 points)

Louis Robichaud peut-il intenter lui-même un recours en annulation de l'entente intervenue avec Hélène Chassé le 5 décembre 2001?

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

Oui, art. 170 *C.c.Q.*

10.

QUESTION 11 (8 points)

a) Énumérez le ou les noms de famille que pourrait porter Jean-Luc Boisvert à la suite de l'ajout du nom de famille de son père à son nom.

Boisvert-Leroux

11.

Boisvert-Fiset

12.

Leroux-Boisvert

13.

Fiset-Boisvert

14.

(art. 51 *C.c.Q.*)

Aucun autre nom de famille mentionné.

15.

b) Louise Boisvert pourrait-elle s'opposer à la demande de changement de nom présentée par Léopold Leroux-Fiset?

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

Non, art. 62, al. 2 *C.c.Q.*

16.

QUESTION 12 (8 points)

a) Quelle somme Guillaume recevra-t-il de la succession de sa mère Caroline Vallin?

85 000 \$ (succession testamentaire)

17.

b) Quelle somme Guillaume recevra-t-il de la succession de son père Hugo Pratte?

40 000 \$ (succession *ab intestat*)

18.

QUESTION 13 (5 points)

À qui Roger Angers doit-il rendre compte de son administration des biens de Jean Angers?

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

À Lucie **ou** la liquidatrice

19.

art. 247 **OU** 1363 *C.c.Q.*

20.

DOSSIER 3 (29 POINTS)

QUESTION 14 (11 points)

- a) Déterminez le ou les défendeurs contre qui Sylvie Dufort et Georges Lebeau peuvent intenter, à titre personnel, une action en dommages et intérêts à la suite du décès de Charlotte.

Pour chaque défendeur que vous avez déterminé, appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Jacinthe Dumais, art. 1458 *C.c.Q.* 21.

Aucun autre défendeur mentionné. 22.

- b) Déterminez le ou les défendeurs contre qui le tuteur d'Annie Dumais peut intenter une action en dommages et intérêts pour le préjudice subi par Annie.

Pour chaque défendeur que vous avez déterminé, appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Jacinthe Dumais, art. 1457 *C.c.Q.* 23.

Sylvie Dufort et Georges Lebeau, art. 1463 *C.c.Q.* 24.

Aucun autre défendeur mentionné. 25.

QUESTION 15 (8 points)

- Déterminez le ou les défendeurs contre qui Louis Lemire peut intenter une action en dommages et intérêts fondée sur une disposition autre que l'article 1457 du *Code civil du Québec*.

Pour chaque défendeur que vous avez déterminé, appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Quincaillerie Demers, art. 1468 al. 2 *C.c.Q.* 26.

Compagnie *Chainsee*, art. 1468 al. 1 *C.c.Q.* 27.

Aucun autre défendeur mentionné. 28.

QUESTION 16 (5 points)

- Yves Faucher peut-il intenter une action pour le bris de sa tronçonneuse contre la compagnie *Chainsee*?

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

1. Oui, art. 53 al. 4 **ou** 54 al. 2 *L.p.c.* **ou** art. 1730 (et 1726 al. 1) *C.c.Q.* 1. 5 points
OU 29.
 2. Oui, art. (1726 al. 1 et) 1442 *C.c.Q.* 2. 3 points

QUESTION 17 (5 points)

- À qui peut-elle s'adresser pour obtenir réparation du préjudice qui lui a été causé par suite du décès de son époux?

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

Commission de la santé et de la sécurité du travail 30.
 art. 1 a) **OU** art. 2 *Loi sur l'indemnisation des victimes d'actes criminels.* 31.