



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

DROIT PÉNAL

April 8, 2003

- (1) The examination in the DROIT PÉNAL section is intended to determine the extent to which you have met the ultimate goals set forth in the document entitled “Préambule Droit Pénal”.
- (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:
 - Droit pénal
- (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 **7** pages.

FILE 1 (67 MARKS)

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

Rose Denis and her *de facto* spouse, Charles Petit, have been accused, in separate cases, of manslaughter in the death of their child Sébastien Petit, who was 18 months old. During their respective trials held before a judge and jury, Rose is represented by M^e Jacques Pointu, while Charles is represented by M^e Guy Péroquin. Charles has also been charged with transmitting child pornography.

At the outset of the proceedings, the following evidence is communicated by M^e Élise Dumont, the Crown prosecutor, to the lawyers for the two accused persons:

- On September 5, 2002, at 6:00 p.m., Rose arrives in tears at the emergency department of the Hôpital St-Luc in Montreal with her young child, Sébastien. Doctor Pierre Lacoste notes that the child is unconscious and is breathing with great difficulty.
- During his medical examination, Doctor Lacoste notes that the child has a large number of suspicious contusions on his head and body and he contacts the City of Montreal police department. Police Officers Léger and Roy immediately go to the hospital and speak with Doctor Lacoste who informs them that Rose brought in her unconscious baby who was covered with contusions. Doctor Lacoste confirms that, among other things, the child has a skull fracture resulting from repeated shaking. He tells them that in his opinion, these injuries are the result of abuse suffered by the child.
- In the presence of Doctor Lacoste, the police officers ask Rose to explain the origin of the injuries suffered by her child. She tells them that she accidentally dropped her child. Doctor Lacoste immediately tells the police officers that Rose's explanation is improbable.
- Police Officer Léger orders Rose to follow him for private questioning in a room adjacent to the emergency room. He contacts Investigator Labonté who arrives immediately to question Rose.
- During that time, Police Officer Roy learns from Doctor Lacoste that the child did not survive his injuries. Investigator Labonté, who has been informed of this fact, questions Rose without telling her about the death of her child.
- Rose is plied with questions by the investigator who tells her that he doubts her version of the facts and promises that he will see it to that she will not go to jail if she tells him the truth. Rose reluctantly admits that she left the child in the custody of her *de facto* spouse, Charles, on the morning of September 5th when she left for work. When she returned, at approximately 5:30 p.m., her spouse was sitting in the living room, drunk, with a bottle of beer in his hands, and was repeating over and over again: "What have I done?". Rose was in a panic and rushed to the hospital with her child.
- She adds that since the birth of her child 18 months ago, she has been depressed and unable to control her baby who cries all day long. However, she specifies that she often asked her spouse Charles not to shake her child when the child cried. Her spouse was verbally abusive towards her when she tried to intervene.

- All the statements made by Rose are immediately written down word for word in Investigator Labonté's occurrence report.
- Investigator Labonté arrests Rose for manslaughter. He informs her of all her constitutional rights and allows her to speak confidentially with a legal aid duty counsel.
- After having spoken with the duty counsel, Rose states that she is ready to testify against Charles if necessary. Investigator Labonté releases her from custody and tells her that she will receive a summons to appear.
- With this information in hand, the investigator asks two law enforcement officers to go to Rose's home at 2344 René Street in Montreal and to arrest Charles for manslaughter.
- Police Officers Legault and Duclos go to that address and knock on the door several times. The police officers are convinced that Charles is in the apartment and when their knocks are not answered, they break down the door of the dwelling and arrest Charles.
- Before transporting Charles, the police officers inform him of his constitutional rights and quickly search his apartment. In the drawer of a dresser in the bedroom, they discover a small box containing photographs of young children participating in sexual activities with adults.
- After securing the premises, the police officers go to the courthouse to obtain a search warrant so that they can search the apartment further and seize what they believe to be child pornography. The following are the only grounds submitted in support of the application for the issuance of the search warrant: the police officers had to enter the apartment by force in order to arrest the suspect who was trying to flee out the back and in the apartment they found photographs of child pornography in plain view, on a bedroom dresser. The police officers do not tell the justice of the peace that the photographs were found in a drawer of the dresser.
- With the search warrant in hand, the police officers seize a Toshiba notebook computer from inside Charles and Rose's apartment. They also seize the photographs found in one of the dresser drawers as well as a small child's blanket stained with blood that they see on the floor next to the dresser. Finally, they seize a lease for the premises searched, which lease is in the name of Charles and Rose, as well as the contract for the purchase of the Toshiba computer, which contract is in the name of Charles.
- An examination of the seized computer's hard drive by a computer expert subsequently reveals that photographs of naked children participating in sexual activities had been downloaded onto the hard drive on several occasions and forwarded by e-mail to many Internet users.

M^e Dumont, the Crown prosecutor, decides not to charge Rose and Charles jointly, although part of the Crown's evidence is the same and the wrongdoing is the product of a common conduct.

QUESTION 1 (5 marks)

In addition to the interests of justice, state one ground of law that justifies the decision of M^e Élise Dumont not to lay joint charges against Rose Denis and Charles Petit.

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

SUPPLEMENTARY FACTS

During his appearance before a justice of the peace, Charles elects to be tried by a court composed of a judge and jury and he waives his preliminary inquiry. Charles is therefore committed to stand trial on the charge of manslaughter and the charge of having transmitted child pornography. Before the pre-trial conference held a few weeks before the trial begins, M^e Péloquin, the attorney for the defence, meets with M^e Dumont, the Crown prosecutor, and asks her not to include the count of having transmitted child pornography in the indictment.

QUESTION 2 (8 marks)

(a) Assuming that M^e Élise Dumont refuses the request, what recourse is available to M^e Guy Péloquin in order to avoid any prejudice to his client Charles Petit?

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

(b) State the procedural formalities that M^e Guy Péloquin must fulfill in order to take this recourse.

SUPPLEMENTARY FACTS

At Charles's trial before a judge and jury, M^e Dumont files an indictment against him that contains the following single count:

“On or about September 5, 2002, in Montreal, district of Montreal, having unlawfully caused the death of Sébastien Petit, thereby committing the indictable offence provided for in sections 234 and 236 of the *Criminal Code*.”

The presiding judge, Lise Gendron, tells the lawyers for both parties that she will make an order for an alternate juror. Furthermore, before jury selection, she states that the prosecution and the defence will each have 20 peremptory challenges because of the objective seriousness of the alleged crime.

QUESTION 3 (6 marks)

Is the court's declaration that it will grant 20 peremptory challenges to each of the parties well founded?

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

SUPPLEMENTARY FACTS

The prosecution's evidence begins with the testimony of Rose who identifies her *de facto* spouse, Charles, and declares before the jury that the child was home alone when she found him unconscious in his crib.

Furthermore, Rose describes Charles as a good father who was never violent with Sébastien. M^e Dumont, the Crown prosecutor, is convinced that Rose is refusing to tell the truth and she asks the court for permission to cross-examine her witness on the statement she made to Investigator Labonté on September 5, 2002.

M^e Péloquin, the attorney for the defence, objects, stating that the prosecution cannot cross-examine its own witness on her prior verbal statement.

QUESTION 4 (5 marks)

Is M^e Guy Péloquin's objection well founded? Explain your answer.

FAITS COMPLÉMENTAIRES

Judge Gendron overrules the objection. She asks the jury to leave the room. M^e Dumont then sets out the details of Rose's statement. Judge Gendron reads the investigator's report in which Rose's prior statement of September 5, 2002 is recorded word for word and, having noted inconsistencies between the content of her statement and her testimony, she allows M^e Dumont, without any further formality, to cross-examine Rose on her prior statement.

QUESTION 5 (4 marks)

State two reasons why the court's decision to allow M^e Élise Dumont, without any further formality, to cross-examine Rose Denis on her prior statement is not well founded.

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

SUPPLEMENTARY FACTS

Rose finally agrees to testify in accordance with her prior statement of September 5, 2002. M^e Péloquin, the attorney for the defence, tries under cross-examination to have her admit that his client has no reason to blame himself and that she was the one who hit and violently shook her constantly crying child. Notwithstanding the cross-examination, Rose continues to testify in accordance with her prior statement of September 5, 2002. She also maintains that Charles had a major alcohol problem and that he was always drunk when he manhandled Sébastien.

During the voir-dire to determine whether the blood-splattered blanket should be admitted into evidence, the prosecution calls as a witness Police Officer Legault who testifies that he participated in the search and seizure at the domicile of Charles and his spouse. He recounts the circumstances in which the police officers entered the accused's domicile and he acknowledges that, in the information, he gave incorrect facts to the justice of the peace who issued the search warrant.

When presenting her arguments, M^e Dumont submits, among other things, that this evidence is admissible on the basis of the plain view (*objets bien en vue*) doctrine.

QUESTION 6 (5 marks)

Is M^e Élise Dumont correct in claiming that the evidence is admissible on the basis of the plain view (*objets bien en vue*) doctrine? Explain your answer.

SUPPLEMENTARY FACTS

After the testimony of Doctor Lacoste and the filing of the autopsy report establishing that Sébastien's death is attributable to repeated violent shaking resulting in the serious bodily injuries which caused his death, the prosecution declares that it has finished presenting its evidence.

M^e Péloquin, the attorney for the defence, calls the accused as a witness and the accused denies having been violent with his child whom he cherished more than anything in the world. Charles states that on September 5th 2002, he left the apartment at 9:30 a.m., a few minutes before Rose's departure, and that he only returned to the apartment at 6:00 p.m., before the police officers entered by force.

Before coming home, he spent some time at the tavern talking with his friends. Upon his return, when he noticed that the apartment was empty, he thought Rose had left him and taken her baby. According to him, the marks on the child resulted from abuse inflicted by Rose on her baby, because, due to depression, she was unable to control her aggressiveness when her child cried.

The attorney for the defence declares that he has finished presenting his evidence. The judge suspends the hearing before listening to the pleadings.

Pierre Montpetit, who is not known to the police, has heard Charles's testimony. During the recess, he meets with M^e Dumont and tells her that on September 5, 2002, he saw Charles get home at 3:00 p.m. M^e Dumont provides this information to M^e Péloquin.

QUESTION 7 (5 marks)

What application can M^e Élise Dumont make to the court following her meeting with Pierre Montpetit? Explain your answer.

SUPPLEMENTARY FACTS

After the two lawyers have made their closing arguments, the court instructs the jury. On February 5, 2003, Charles is found guilty of the charge brought against him, namely: “On or about September 5, 2002, in Montreal, district of Montreal, having unlawfully caused the death of Sébastien Petit, thereby committing the indictable offence provided for in sections 234 and 236 of the *Criminal Code*.”

On March 14, 2003, the court hears the representations of the parties regarding sentencing and sentences Charles to serve a term of four years in a penitentiary, given that this is his first conviction, and it makes the following orders against him:

- (a) A prohibition against possessing any firearm, cross-bow, restricted weapon, ammunition and explosive substance during the period that begins on the day on which the order is made and ends not earlier than ten years after his release from imprisonment.
- (b) A prohibition against possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.
- (c) A prohibition against using a computer system within the meaning of subsection 342.1(2) of the *Criminal Code* for the purpose of communicating with a person under the age of fourteen years for a period of ten years.
- (d) An authorization for the taking, for the purpose of forensic DNA analysis, of any number of samples of one or more bodily substances of the accused that is reasonably required for that purpose.
- (e) The obligation to comply, for a period of three years after his release from imprisonment, with the following conditions of a probation order:
 - (1) keep the peace and maintain a good conduct;
 - (2) abstain from consuming alcohol or using drugs, except as prescribed by a doctor;
 - (3) refrain from being alone in the presence of persons under the age of fourteen years.

QUESTION 8 (15 marks)

For each order, state whether or not the court was legally entitled to make the order.

For each order, justify your answer by referring to one or more specific and relevant provisions of the *Criminal Code*.

SUPPLEMENTARY FACTS

On March 14, 2003, Charles gives M^e Péloquin the mandate to appeal the guilty verdict. That same day, M^e Péloquin serves upon M^e Dumont and files with the Court of Appeal a motion for leave to appeal against a conviction. The motion is presentable on March 21, 2003.

QUESTION 9 (5 marks)

Can M^e Élise Dumont ask that the motion be dismissed when it is presented?

Justify your answer by referring to one or more specific and relevant provisions of the *Criminal Code* or the rules of practice.

SUPPLEMENTARY FACTS

Rose's trial begins a few weeks after Charles's conviction. M^e Dumont, the Crown prosecutor, holds a voir-dire in order to determine the admissibility into evidence of the statement made by Rose to Investigator Labonté on September 5, 2002. She calls Investigator Labonté as a witness, the testimony of the other police officers having been admitted by the defence.

He recounts the circumstances described in the file given to the lawyers for the defence by the prosecution at the outset of the proceedings. At the end of the voir-dire evidence, Rose's lawyer, M^e Pointu, asks the court to declare that Rose's statement is inadmissible because it was obtained in flagrant violation of the accused's rights.

After having heard the representations of both parties, the court rules that the statement made by Rose to the investigator on September 5, 2002 is inadmissible on the ground that it was obtained in violation of Rose's rights and that its use is likely to bring the administration of justice into disrepute.

QUESTION 10 (9 marks)

State three grounds of law that justify the court's decision to refuse to admit Rose Denis' statement into evidence.

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

FILE 2 (33 MARKS)

The situation described in File 2 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 October 10, 2002, at 10:00 a.m., following a long investigation carried out in cooperation with Canada Customs officers, RCMP officers seize 80 packages containing a kilo of cocaine each from a container at the Halifax airport in Nova Scotia.

Wiretapping revealed that Michel Lynch, Jean Robidoux, Jude Meunier and Cesario Romero had had frequent telephone conversations in order to set up this importation of cocaine from Colombia and organize its distribution across a network of Montreal “bikers”. Having been followed on four occasions by RCMP officers while he was on trips to Halifax, Jude was seen in the company of Michel at the restaurant at the Halifax airport.

The police investigation also reveals that on August 27, 2002, Officer Éric Thibault went to the *La Rive* restaurant located in Old Montreal and saw Jean sitting at a table with Cesario and Jude. Seated at a nearby table, he heard Jean say to Cesario: “If you want me to go to Halifax to get the package, you’ll have to pay me before I go”.

On October 10, 2002, at 3:00 p.m., Michel is arrested in Halifax where he lives and works.

On October 11, 2002, Jean is arrested at his home on Mentana Street in Montreal. Jude is arrested on Saint-Denis Street in Montreal while negotiating with a double agent for the sale of a kilo of hashish (cannabis resin). An arrest warrant is issued for Cesario, who is of Canadian nationality, but has a residence in Colombia. The police believe he is out of the country.

M^c Claude Potvin, a Crown prosecutor with the federal Department of Justice, reviews the file in order to draft the informations. He jointly charges Michel, Jude, Jean and Cesario with having conspired to import cocaine and having imported cocaine. In a separate case, he also charges Jude with having trafficked a kilo of hashish. The accused persons appear before the Court of Québec in Montreal and M^c Judith Malo, who represents Michel, presents a motion declining the jurisdiction of the judge. She claims that, according to the evidence submitted by the prosecution, the conspiracy and importation took place in Halifax, her client works there and lives there with his family, and, therefore, it is there that he should be charged.

QUESTION 11 (5 marks)

State the argument of law that M^c Claude Potvin, the Crown prosecutor, must submit in order to convince the Montreal judge that he has jurisdiction.

SUPPLEMENTARY FACTS

Jude meets with his lawyer, M^e Robert Murphy, before the appearance and gives him the mandate to elect a trial before judge and jury as regards the charge of trafficking in hashish.

QUESTION 12 (5 marks)

Can M^e Robert Murphy legally comply with his client's request?

Justify your answer by referring to one or more specific and relevant provisions of the *Criminal Code* or the related legislation.

SUPPLEMENTARY FACTS

Jude, Michel and Jean elect a trial before judge and jury as regards the charges of conspiracy to import cocaine and the importation of 80 kg of cocaine.

The hearing on the release from custody of Jude, Michel and Jean takes place before Judge Léo Lavergne. The prosecution examines the police officer in charge of the case and wants to have him file the summary of the recorded wiretapped conversations. M^e Potvin has already given the lawyers for the defence a copy of all lawfully issued judicial authorizations, as well as the transcripts of each conversation. M^e Malo, acting on behalf of her client Michel, objects to the production of the transcripts on the ground that they cannot be admitted into evidence because she never received a prior notice of the prosecution's intention to produce these transcripts.

QUESTION 13 (5 marks)

Is M^e Judith Malo's objection well founded?

Justify your answer by referring to one or more specific and relevant provisions of the *Criminal Code* or the related legislation.

SUPPLEMENTARY FACTS

On January 8, 2003, Jude, Michel and Jean have their preliminary inquiry. The judge commits them to stand trial on the charges of conspiracy to import cocaine and the importation of 80 kg of cocaine. On January 30, 2003, Jude, Michel and Jean notify their lawyers that they no longer wish to have a trial before judge and jury. They give them the mandate to proceed with a trial before a judge without a jury.

QUESTION 14 (8 marks)

State the conditions that the lawyers for Jude Meunier, Michel Lynch and Jean Robidoux must fulfill so that their clients can have a trial before a judge without a jury.

SUPPLEMENTARY FACTS

The trial before a judge without a jury begins on April 8, 2003. It is presided over by Judge Maurice Riendeau of the Court of Québec.

QUESTION 15 (5 marks)

Does Judge Maurice Riendeau have jurisdiction to hear this trial?

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

SUPPLEMENTARY FACTS

At the trial, the prosecution calls Officer Thibault of the RCMP as a witness so that he can recount the conversation he heard on August 27, 2002 at the *La Rive* restaurant located in Old Montreal.

M^e Malo objects. She argues that this is hearsay with respect to her client Michel on the charge of importation.

QUESTION 16 (5 marks)

Is this objection by M^e Judith Malo well founded? Explain your answer.

CORRIGÉ
DROIT PÉNAL - EXAMEN RÉGULIER
 8 avril 2003

DOSSIER 1 (67 POINTS)

QUESTION 1 (5 points)

Outre l'intérêt de la justice, énoncez un motif de droit qui justifie la décision de M^e Élise Dumont de ne pas porter des accusations conjointes contre Rose Denis et Charles Petit.

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

1. Rose Denis est alors contraignable pour la poursuite pour témoigner contre son conjoint de fait. 5 pts
 OU 1. 5
2. La poursuite pourra faire témoigner Rose contre Charles 3 pts

QUESTION 2 (8 points)

a) Dans l'hypothèse où M^e Élise Dumont refuserait d'acquiescer à la demande, de quel recours dispose M^e Guy Péloquin afin d'éviter tout préjudice à son client Charles Petit?

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

Une requête pour procès distincts (quant à l'accusation de distribution de pornographie juvénile), art. 591 (3) a) C.cr. 2. 5

b) Énoncez les formalités procédurales que M^e Guy Péloquin doit accomplir afin de présenter ce recours.

- 1 pt / bulle**
3 / 4
1. Annoncer lors de la conférence préparatoire qu'il présentera une requête pour procès distincts 1.
2. Une requête présentée par écrit 2. 3. 3
3. Signification doit être faite à la partie adverse 3.
4. Un avis de présentation d'au moins un jour juridique franc 4.

QUESTION 3 (6 points)

La déclaration du tribunal d'accorder 20 récusations péremptoires à chacune des parties est-elle bien fondée?

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

Non, art. 634 (2) (b) C.cr. 4. 3

art. 634 (2.1) C.cr. 5. 3

QUESTION 4 (5 points)

L'objection de M^e Guy Péloquin est-elle bien fondée? Dites pourquoi.

Non, les notes de l'enquêteur (qui rapportent fidèlement les propos du témoin) constituent une déclaration prise par écrit (au sens de l'art. 9 (2) de la Loi sur la preuve.) 6. 5

QUESTION 5 (4 points)

Énoncez deux motifs pour lesquels la décision du tribunal de permettre, sans autre formalité, à M^e Élise Dumont de contre-interroger Rose Denis sur sa déclaration antérieure n'est pas bien fondée.

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

1. La preuve de l'existence de la déclaration n'a pas encore été faite par la poursuite. 7.
2. Le tribunal n'a pas offert au procureur de la défense d'établir les circonstances de la déclaration. 8.

QUESTION 6 (5 points)

M^e Élise Dumont a-t-elle raison de prétendre que la preuve est admissible sur la base de la théorie des objets bien en vue (*plain view*)? Dites pourquoi.

Non, les policiers ne se trouvaient pas légalement sur les lieux.

OU

Non, le mandat n'était pas valide.

9.

QUESTION 7 (5 points)

Quelle demande M^e Élise Dumont peut-elle présenter au tribunal à la suite de sa rencontre avec Pierre Montpetit? Dites pourquoi.

OU

Demander au tribunal l'autorisation de présenter une contre-preuve parce qu'il s'agit d'un fait nouveau qui se rapporte à une question essentielle qui peut être déterminante pour trancher l'affaire en litige.	10. <input type="text" value="3"/> 11. <input type="text" value="1"/> 12. <input type="text" value="1"/>	Demander au tribunal l'autorisation de présenter une contre-preuve pour contrer une défense d'alibi.
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QUESTION 8 (15 points)

Dites, pour chacune de ces ordonnances, si le tribunal pouvait légalement la rendre.

Pour chacune des ordonnances, appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du *Code criminel*.

ORDONNANCES	OUI / NON avec disposition	
a) Interdiction d'avoir en sa possession des armes à feu, arbalètes, armes à autorisation restreinte, munitions et substances explosives pour une période commençant à la date de l'ordonnance et se terminant au plus tôt dix ans après sa libération.	Oui, art. 109 (2) a) <i>C.cr.</i> OU Oui, art. 109 (1) a) <i>C.cr.</i>	13. <input type="text" value="3"/>
b) Interdiction d'avoir en sa possession des armes à feu prohibées, armes à feu à autorisation restreinte, armes prohibées, dispositifs prohibés et munitions prohibées à perpétuité.	Oui, art. 109 (2) b) <i>C.cr.</i> OU Oui, art. 109 (1) a) <i>C.cr.</i>	14. <input type="text" value="3"/>
c) Interdiction d'utiliser un ordinateur au sens de l'article 342.1 (2) du <i>Code criminel</i> dans le but de communiquer avec une personne âgée de moins de quatorze ans pour une période de dix ans.	Non, art. 161 (1) c) <i>C.cr.</i>	15. <input type="text" value="3"/>
d) Autorisation de prélever, pour analyse génétique, le nombre d'échantillons de substances corporelles de l'accusé jugé nécessaire à cette fin.	Oui, art. 487.051 (1) a) <i>C.cr.</i> OU Oui, art. 487.04 a) viii) <i>C.cr.</i>	16. <input type="text" value="3"/>
e) Obligation de se conformer pendant trois ans, à compter de sa libération, aux conditions suivantes d'une ordonnance de probation : 1) garder la paix et conserver une bonne conduite; 2) s'abstenir de consommer de l'alcool ou des drogues sauf sur prescription médicale; 3) ne pas se trouver seul en présence de personnes âgées de moins de quatorze ans.	Non, art. 731 (1) b) <i>C.cr.</i>	17. <input type="text" value="3"/>

QUESTION 9 (5 points)

M^e Élise Dumont peut-elle demander le rejet de cette requête lors de sa présentation?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du *Code criminel* ou des règles de pratique.

Oui, règle 12 *RPCA en matière criminelle*

OU

Oui, art. 678 (2) *C.cr.*

OU

Oui, règle 56 *RPCA en matière criminelle*

18.

5

QUESTION 10 (9 points)

Énoncez trois motifs de droit qui justifient la décision du tribunal de refuser d'admettre en preuve la déclaration de Rose Denis.

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

**3 pts / bulle
3 / 6**

- | | | | |
|---|--------------------------|--|---|
| 1. (Rose Denis étant détenue,) les policiers devaient l'informer de son droit à l'avocat (art. 10 b) <i>CCDL</i> | 1. <input type="radio"/> | | |
| 2. (Rose Denis étant détenue,) les policiers devaient l'informer des motifs de sa détention (art. 10 a) <i>CCDL</i> | 2. <input type="radio"/> | | |
| 3. La déclaration de Rose Denis n'était pas libre et volontaire (parce que l'enquêteur Labonté lui a fait une promesse pour l'obtenir). | 3. <input type="radio"/> | 19. <table border="1" style="display: inline-table; vertical-align: middle;"><tr><td style="text-align: center;">9</td></tr></table> | 9 |
| 9 | | | |
| 4. Le droit au silence de Rose a été violé OU Il y a eu absence de mise en garde. | 4. <input type="radio"/> | | |
| 5. Les policiers n'ont pas avisé Rose du décès de l'enfant. | 5. <input type="radio"/> | | |
| 6. L'utilisation de cette déclaration aurait un effet négatif sur l'équité du procès. | 6. <input type="radio"/> | | |

Bulle 3

L'étudiant qui fait uniquement référence à la promesse sans mentionner que la déclaration est libre et volontaire perd un point.

DOSSIER 2 (33 POINTS)

QUESTION 11 (5 points)

Énoncez l'argument de droit que doit soumettre M^e Claude Potvin, procureur de la poursuite, pour convaincre le juge de Montréal qu'il a juridiction.

Un acte manifeste a eu lieu à Montréal.

OU

Une partie du complot a eu lieu à Montréal.

OU

Toute infraction à la présente loi ou à ses règlements peut être poursuivie au lieu de sa perpétation, au lieu où a pris naissance l'objet de la poursuite, au lieu où l'accusé est appréhendé ou en tout lieu où il se trouve (art. 47 *Loi relative aux drogues et autres substances*).

OU

La personne a commis, en quelque lieu que ce soit, un acte criminel qui peut être jugé dans la province où réside le juge de paix et que la personne se trouve dans le ressort du juge de paix (art. 504 *C.cr.*)

20.

OU compte tenu de la documentation, les réponses suivantes ont aussi été acceptées :

L'infraction se déroule dans plusieurs juridictions territoriales, elle est donc réputée avoir été commise dans chacune de ces juridictions (art. 476 a) *C.cr.*)

OU

L'infraction est commise sur la limite de deux ou plusieurs circonscriptions territoriales, elle est donc censée avoir été commise en n'importe laquelle des circonscriptions territoriales (art. 476 b) *C.cr.*)

QUESTION 12 (5 points)

M^e Robert Murphy peut-il légalement acquiescer à la demande de son client?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du *Code criminel* ou des lois connexes.

Non, art. 553 (c) (xi) *C.cr.*

21.

QUESTION 13 (5 points)

L'objection de M^e Judith Malo est-elle bien fondée?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du *Code criminel* ou des lois connexes.

Non, art. 518 (1) d.1) *C.cr.*

22.

QUESTION 14 (8 points)

Énoncez les conditions que les avocats de Jude Meunier, de Michel Lynch et de Jean Robidoux doivent respecter afin que leurs clients aient un procès devant juge sans jury.

1. Donner à un juge de la Cour supérieure ou au greffier de cette cour ⁽²³⁾ un avis écrit de leur intention de réopter pour juge sans jury ⁽²⁴⁾.

23.

24.

2. Accompanyer cet avis du consentement écrit du poursuivant.

25.

(art. 561 (1) c) et 561 (5) *C.cr.*)

QUESTION 15 (5 points)

Le juge Maurice Riendeau a-t-il juridiction pour entendre ce procès?

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

Oui, art. 552 b) *C.cr.*

OU

Oui, art. 469 *C.cr.* **ET** art. 2 *C. cr.*

26.

QUESTION 16 (5 points)

Cette objection de M^e Judith Malo est-elle bien fondée? Dites pourquoi.

1. Non, (c'est une exception à la règle du oui-dire) car il s'agit d'un acte manifeste
ou
Non, car il s'agit de la notion de théorie du mandat
ou
Non, *Koufis*
ou
Oui ou non, *Khan*
ou
Oui ou non, critères de nécessité et fiabilité

1. 5 points

27.

OU

2. Non, c'est une exception à la règle du oui-dire

OU

2. 3 points