



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

DROIT PÉNAL

April 14, 2004

- (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 **10** pages (including this page) and that your answer booklet contains **5** pages.

FILE 1 (42 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.

Fernand Roy, Denis Houle and Pierrette Gagné are jointly accused of having conspired to import and having imported three kilos of cocaine into Canada.

According to the information contained in the report of investigator Maurice Duclos, the investigation having led to the charges brought against the three accused persons began on October 10, 2003 in Montreal, when the investigator received a call from an anonymous informant who claimed to have heard about a trip to Colombia organized by Denis Houle for the purpose of importing several kilos of cocaine. According to the informant, a young woman was to go to Colombia and bring back the cocaine concealed in the false bottom of her suitcase.

Happy to have information allowing him to collar Denis, whom he has been trying to incriminate for several years, investigator Duclos finds Denis' telephone number and residential address. On October 21, 2003, investigator Duclos observes Denis' comings and goings and sees him give a suitcase to a young woman.

Investigator Duclos prepares an affidavit setting out the details obtained on October 10, 2003 as well as the observation of October 21, 2003.

On October 28, 2003, a judge of the Court of Québec, convinced that the conditions provided for in the *Criminal Code* have been satisfied, authorizes the recording of Denis' telephone conversations on his residential telephone line. On November 3, 2003, during the wiretapping, investigator Duclos records a telephone conversation in which Denis offers an all-expenses paid trip to his girlfriend, Pierrette Gagné, on the occasion of her twenty-second birthday. Denis asks Pierrette to go to Colombia to meet with a certain Felicia between December 1 and December 15, 2003, and to bring back the "Christmas gifts" she will give her.

In order to bolster his evidence, investigator Duclos has Pierrette followed by a surveillance squad. Through this physical surveillance, investigator Serge Tifin of the surveillance squad witnesses a meeting between Denis and Pierrette in a restaurant on November 4, 2003. Seated at a neighbouring table, investigator Tifin hears Denis tell Pierrette: "All you have to do is go on vacation, and when you get back, give your suitcase to Fernand who will be waiting for you at the airport in a white van."

On December 15, 2003, the customs agents at the *Pierre-E.-Trudeau* airport in Montreal discover three kilos of cocaine concealed in the false bottom of Pierrette's suitcase when she returns from Colombia. Pierrette is arrested by an RCMP police woman who brings her to the Montreal headquarters after having searched her and having read her her constitutional rights.

That same day, investigator Duclos arrests Fernand Roy who is waiting at the wheel of a white van in front of the Air Canada arrivals door at *Pierre-E.-Trudeau* airport. Recognizing investigator Duclos who had arrested him a few years earlier, Fernand tells him: “OK, this time you’ve got me for good, but leave the girl alone.”

In the evening, investigator Duclos questions Pierrette after she waives the right to consult a lawyer. Faced with the insistence of the investigator who tells her that she should tell him the whole story and assuage her conscience, she states that her boyfriend Denis had paid for her to take a trip to Colombia. She specifies that she did not know what was in the suitcase that Denis had asked her to give to a certain person by the name of Fernand, the driver of a white van who was to be waiting for her when she came out of the airport.

On December 16, 2003, at approximately 3:00 a.m., Denis is intercepted while at the wheel of a car parked in a residential sector of Montreal. Police woman Manon Dubois, who is patrolling the area due to a large number of break-ins reported during the previous weeks, thinks he has a suspect appearance and asks him to explain his presence there. Denis refuses to answer the question. She then arrests him for obstructing a peace officer in the execution of her duties. She searches him and, in one of his pockets, finds a letter originating from Colombia. After reading the letter, police officer Dubois suspects that Denis is involved in a drug venture. She drives him to the police station and notifies the Narcotics Division where investigator Duclos familiarizes himself with the contents of the letter. In doing so, investigator Duclos learns that a certain Felicia had written to Denis on September 30, 2003 to remind him that she would be “giving Pierrette her Christmas gifts when Pierrette came to Colombia.” Investigator Duclos, who had already been searching for Denis, arrests him for conspiracy and importing cocaine.

On December 17, 2003, Fernand, Denis and Pierrette appear before a justice of the peace of the Court of Québec in Montreal. They are jointly accused of conspiracy to import and importing cocaine. They elect to be tried by a court composed of a judge and jury.

QUESTION 1 (5 marks)

Assuming that Fernand Roy were, instead, to decide to plead guilty as of his appearance, could he do so? Explain your answer.

SUPPLEMENTARY FACTS

The case is postponed to December 19, 2003 for the inquiry on the interim release. On that date, the three accused persons are released after having signed a recognizance and having deposited an amount of \$10,000.

Their case is postponed *pro forma* until February 2, 2004 in order to allow them to review the evidence communicated by the prosecution.

On February 16, 2004, the three accused persons are committed to stand trial before a judge and jury and their joint trial is postponed to the next session of the criminal assizes court. On April 5, 2004, the trial of the three accused persons begins. At the trial, the Crown prosecutor, M^e Lise Gendron, wants to submit into evidence Pierrette's verbal statement which had been written down word for word by investigator Duclos on the evening of December 15, 2003. After holding a *voir-dire* in order to determine its admissibility, the court concludes that Pierrette's statement is admissible as evidence because it was obtained freely and voluntarily, in compliance with her constitutional rights.

QUESTION 2 (9 marks)

Will it be possible to use Pierrette Gagné's statement made to investigator Maurice Duclos on the evening of her arrest as proof of its content with respect to the counts brought against:

- (a) Pierrette Gagné ?
- (b) Denis Houle ?
- (c) Fernand Roy ?

For each of the aforementioned persons, explain your answer.

SUPPLEMENTARY FACTS

The Crown prosecutor, M^e Gendron, calls investigator Duclos as a witness and asks him to describe the steps taken by him in order to obtain the authorization of the judge of the Court of Québec in order to record the telephone conversations on Denis' residential telephone line. Denis' lawyer, M^e Peter Flinn, files a motion to exclude the evidence of the recording of his client's telephone conversations, on the basis of subsection 24 (2) of the *Canadian Charter of Rights and Freedoms*. In his motion, he alleges that the authorization to intercept these telephone conversations was obtained in violation of section 8 of the *Canadian Charter of Rights and Freedoms* on the ground that there were no reasonable grounds to believe that an offence of conspiracy to import several kilos of cocaine had been or would be committed.

QUESTION 3 (5 marks)

What argument of law must M^e Peter Flinn assert in order to support his allegation that there was a violation of section 8 of the *Canadian Charter of Rights and Freedoms*?

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

SUPPLEMENTARY FACTS

The Crown prosecutor, M^e Gendron, wants to introduce into evidence the letter seized when Denis was arrested on December 16, 2003. The defence attorney, M^e Flinn, files a motion to exclude this evidence on the ground that Denis was arrested arbitrarily.

QUESTION 4 (5 marks)

What argument of law must M^e Peter Flinn assert in order to support his allegation that Denis Houle was arrested arbitrarily?

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

SUPPLEMENTARY FACTS

Investigator Duclos testifies as to the circumstances surrounding the arrest of Fernand at the *Pierre-E.-Trudeau* airport on December 15, 2003. The Crown prosecutor, M^c Gendron, limits herself to having him describe the events which led to Fernand's interception a few minutes after Pierrette's arrival in Canada. Investigator Duclos explains that he observed the arrival of a white van which parked at the Air Canada arrivals door. After having confirmed that Pierrette had been arrested at customs, he approached the van and arrested the driver, Fernand, whom he identifies in the courtroom. He also states, without being questioned on this matter, that when he approached Fernand, Fernand recognized him and said: "OK, this time you've got me for good, but leave the girl alone."

Upon hearing this statement, Fernand's lawyer, M^c Gilles Ruel, objects on the ground that this evidence is illegal. He explains that the prosecution has presented evidence of a statement made by an accused to a person in a position of authority, without requesting that the court first hold a *voir-dire* in the absence of the jury in order to determine whether the statement was free and voluntary.

M^c Ruel therefore asks the judge to tell the jury to disregard the words recounted by the witness. The court disallows the objection presented by Fernand's lawyer on the ground that this was a spontaneous statement admissible as such without the need for a *voir-dire*, and it admits the statement into evidence.

QUESTION 5 (5 marks)

Is the court's reason for not holding a *voir-dire* well founded? Explain your answer.

SUPPLEMENTARY FACTS

The Crown prosecutor, M^c Gendron, put into evidence the conversation heard by officer Tifin at the restaurant on November 4, 2003 namely: "All you have to do is go on vacation, and when you get back, give your suitcase to Fernand who will be waiting for you at the airport in a white van."

The prosecution finishes presenting its evidence.

Fernand's lawyer, M^c Ruel, files a motion on behalf of his client seeking a directed verdict of acquittal on the count of conspiracy. He argues that the evidence against Fernand regarding his participation in the conspiracy is too weak to let the jury decide on that count.

QUESTION 6 (5 marks)

Does the motion filed by Fernand Roy's lawyer have a chance of succeeding? Explain your answer.

SUPPLEMENTARY FACTS

The lawyers for the three accused persons then declare that they do not have any witnesses to call.

At the end of the trial, Fernand is acquitted of conspiracy and convicted of importing three kilos of cocaine. Denis and Pierrette are found guilty of conspiracy and importing three kilos of cocaine.

At the presentencing hearing, the Crown prosecutor asks for a sentence of six years of imprisonment for the three accused persons. Fernand's lawyer, M^e Ruel, asks the court to show clemency towards his client. Indeed, Fernand has no prior criminal record and has a serious drug abuse problem. M^e Ruel submits four arguments in order to convince the court to impose a sentence of 26 months of imprisonment on Fernand.

QUESTION 7 (8 marks)

Indicate, with a true or false, whether the following arguments are well founded.

- (a) The offence of importing cocaine of which he was convicted does not include a minimum punishment and is punishable by a maximum sentence of ten years of imprisonment.**
- (b) The fundamental purpose of any sentence for an offence under the *Controlled Drugs and Substances Act* is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation and treatment of offenders in appropriate circumstances.**
- (c) Given that the degree of participation of his client in the offence with which he was charged was less than that of the other persons involved, the court should impose a lesser sentence on him than the sentence which should be imposed on his accomplices who were also convicted of conspiracy and importing cocaine.**
- (d) Rather than impose a heavy sentence of imprisonment on his client who has no prior criminal record and has a serious drug abuse problem, the court should impose a sentence of 26 months upon him, together with a three-year probation order pursuant to which his client would agree to complete a disintoxication program, something which would be much more beneficial to society.**

FILE 2 (58 MARKS)

Paul Giroux consults M^c Julien Ledoux as regards two cases.

Situation 1

On January 12, 2004, Paul informs M^c Ledoux that following a police raid on his cabaret, the *Clair de Lune*, he was arrested and accused of keeping a common bawdy-house. He must appear on April 14, 2004 at the Québec City Courthouse and he gives the summons to M^c Ledoux. He explains to M^c Ledoux that, inside the cabaret, there is a dance floor on which nude dancers perform continuously. In consideration for a payment of \$10, a client may caress the breasts, buttocks and thighs of a dancer for the entire duration of her dance.

Paul gives M^c Ledoux the mandate to represent him and tells him that he wants a trial before a judge and jury.

QUESTION 8 (5 marks)

Can M^c Julien Ledoux comply with his client's request?

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

Situation 2

Situation 2 described in File 2 is an evolving situation: all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.

On February 25, 2004, Paul informs M^c Ledoux that he owns an electronics store.

During the night of January 20, 2004, he was the victim of a break-in and theft of electronic appliances in his store. Televisions, stereo systems and cameras, totalling \$30,000, were stolen. A window in the store was smashed. The police officers found blood on the floor, a technician collected samples of the blood and a DNA profile was obtained. Paul suspected that one of his employees, Jérôme Lemieux, had committed the theft.

On January 26, 2004, Paul complained to Jérôme about his irregular attendance and poor performance at work. They had a heated exchange and Jérôme, with a sarcastic laugh, told him that he was very happy that Paul had suffered a break-in and that he should not expect to see the stolen items again.

Paul lost his self-control. He started to punch and kick Jérôme violently while asking him where he had hidden the stolen items. Jérôme kept repeating that he had not done anything. Paul continued to strike Jérôme and Jérôme finally admitted that it was his cousin, Louis Venne, who had committed the theft. Jérôme then ran out of the store. One hour later, Paul was arrested by the police and was accused of aggravated assault under section 268 of the *Criminal Code*.

M^e Ledoux explains to Paul that he will present a defence of provocation because Jérôme provoked him through his arrogant attitude and caused him to lose his composure. According to M^e Ledoux, it is obvious that in the same circumstances, any reasonable person would also have lost his composure.

QUESTION 9 (5 marks)

Is the defence mentioned by M^e Julien Ledoux admissible? Explain your answer.

SUPPLEMENTARY FACTS

Upon the communication of the evidence, M^e Ledoux learns that as a result of the blows received, Jérôme had a broken tooth, several bruises as well as a cut near his right eye. He considers that these injuries do not constitute aggravated assault.

QUESTION 10 (5 marks)

Can M^e Julien Ledoux expect a full acquittal of his client? Explain your answer.

SUPPLEMENTARY FACTS

On January 26, 2004, following Paul's arrest, Jérôme makes a statement to the police officers in which he reiterates that his cousin, Louis Venne, had admitted to him that he had committed the theft. Louis even mentioned to him that he had cut his hand when he broke a window to get into the store. Jérôme also tells the police officers that Louis fractured a leg and is now at home. The police officers go to Louis' home, enter without his consent, arrest him and inform him of his constitutional rights.

QUESTION 11 (6 marks)

Assuming that Louis Venne's arrest is legal, state two conditions that the police officers had to respect before entering his home.

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

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

QUESTION 12 (5 marks)

Will the police officers be able to collect a sample of Louis Venne's bodily substances in order to compare them to the samples collected at the scene?

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

SUPPLEMENTARY FACTS

When arresting Louis in his apartment, police officer Savoie sees a digital camera on a table. Without handling it, he notices that it has a tag from Paul's store. He seizes the camera and asks his colleague, police officer Jean Renaud, to search Louis' apartment from top to bottom. In a closet, police officer Renaud finds two portable television sets with tags from Paul's store. He seizes the two televisions.

Louis is accused of breaking and entering into a store and having stolen various items evaluated at \$30,000 as well as being in possession of the said items.

Louis elects a trial before a judge and jury which is scheduled for March 22, 2004. On March 1, 2004, during the pre-hearing conference, the attorney for the defence, M^e François Trempe, announces that his client will present an alibi defence. The alibi will establish that Louis was in a bar with Marc Fiset at the time the theft was committed. M^e Trempe also files a motion in virtue of sections 8 and 24 (2) of the *Canadian Charter of Rights and Freedoms* to contest the seizures carried out in Louis' home.

On March 22, 2004, the trial begins and, before the jury is selected, Mr. Justice Pierre Breton hears M^e Trempe's motion. The evidence presented in support of the motion establishes that the arrest was legal, but that the search and seizures took place without a search warrant.

The Crown prosecutor argues that the motion should be disallowed, because the applicant did not show that the search of the home and the seizure of the televisions were carried out in violation of section 8 of the *Canadian Charter of Rights and Freedoms*.

QUESTION 13 (10 marks)

(a) Is the Crown prosecutor's allegation well founded? Explain your answer.

(b) Was the seizure of the camera carried out in accordance with section 8 of the *Canadian Charter of Rights and Freedoms*? Explain your answer.

SUPPLEMENTARY FACTS

The jury is selected and the trial begins. After the prosecution has finished presenting its evidence, M^e Trempe, Louis' lawyer, calls Marc Fiset as a witness. Marc testifies that on the night of January 20, 2004, he went to the *Le Baladin* bar with Louis. They left at approximately 2:00 a.m. and Louis, who was drunk, went to sleep at Marc's place. Louis left Marc the following day at 10:00 a.m. The Crown prosecutor, M^e Yves Côté, cross-examines Marc. He asks him whether he has a criminal record. Marc answers no. M^e Côté, who wants to impugn Marc's credibility, asks him whether it isn't true that he is a Hells Angels prospect and has previously committed crimes of which he was not accused. Marc answers no. M^e Côté completes his cross-examination and M^e Trempe declares that he has finished presenting his evidence.

The jury leaves and M^c Côté asks the judge to call police officer Joey Savaria as a witness since he can establish, as a result of surveillance which was carried out, that Marc is a Hells Angels prospect and that he committed crimes of which he was not accused. M^c Trempe objects to this request.

QUESTION 14 (5 marks)

Is the objection well founded? Explain your answer.

SUPPLEMENTARY FACTS

The trial continues, the lawyers present their closing arguments and the judge instructs the jury.

QUESTION 15 (12 marks)

Indicate, with a true or false, whether the following instructions are well founded.

- (a) You may draw an unfavourable conclusion in assessing the credibility of the accused's alibi given the lack of details in announcing the alibi.**
- (b) If you do not believe the accused's alibi, you can therefore infer evidence of guilt.**
- (c) The burden of proof is still on the prosecution, but the accused must establish his alibi defence on the balance of probabilities.**
- (d) If you believe the alibi defence, you must acquit the accused of the charge of breaking and entering into a store and having committed a theft therein.**
- (e) In assessing the credibility of the witnesses, you must analyze the testimony of the prosecution's witnesses before those of the defence.**
- (f) You may draw an unfavourable conclusion regarding the credibility of the accused's alibi given the fact that the accused did not testify.**

SUPPLEMENTARY FACTS

Louis Venne is convicted. When making representations regarding sentencing, the Crown prosecutor argues that the judge has the obligation to order compensation as regards the economic losses caused to Paul's business.

QUESTION 16 (5 marks)

Is the Crown prosecutor's allegation well founded? Explain your answer.

CORRIGÉ
DROIT PÉNAL - EXAMEN RÉGULIER
14 avril 2004

DOSSIER 1 (42 POINTS)

QUESTION 1 (5 points)

Dans l'hypothèse où Fernand Roy déciderait plutôt de plaider coupable dès la comparution, pourrait-il le faire ? Dites pourquoi.

Oui, à la condition que Fernand Roy opte d'être jugé par un juge de la cour provinciale.

OU

1. 5

Non, parce qu'à l'étape de la comparution, il n'y a pas d'acte d'accusation ou de document qui en tient lieu. (art. 536 par. 3 b) *C.cr.*)

QUESTION 2 (9 points)

La déclaration faite par Pierrette Gagné à l'enquêteur Maurice Duclos, le soir de son arrestation, pourra-t-elle faire preuve de son contenu quant aux chefs d'accusation portés contre :

- a) **Pierrette Gagné ?**
- b) **Denis Houle ?**
- c) **Fernand Roy ?**

Pour chacune des personnes ci-dessus mentionnées, dites pourquoi.

- a) **Pierrette Gagné**

Oui, la déclaration de Pierrette Gagné est admissible contre elle parce qu'elle en est l'auteure.

2. 3

- b) **Denis Houle**

Non, la déclaration de Pierrette Gagné constitue du *oui-dire* quant à Denis Houle **OU** puisqu'elle a été faite en son absence, et qu'elle n'a pas été faite pour faire avancer le complot.

3. 3

- c) **Fernand Roy**

Non, la déclaration de Pierrette Gagné constitue du *oui-dire* quant à Fernand Roy **OU** puisqu'elle a été faite en son absence, et qu'elle n'a pas été faite pour faire avancer le complot.

4. 3

QUESTION 3 (5 points)

Quel argument de droit M^e Peter Flinn doit-il faire valoir pour appuyer son affirmation selon laquelle il y a eu violation de l'article 8 de la *Charte canadienne des droits et libertés*?

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

L'autorisation d'écoute électronique a été obtenue illégalement puisque la dénonciation se fondait sur des informations non fiables.

OU

5. 5

Le policier n'a pas épuisé les autres méthodes d'enquête (art. 186 (1) b ou 185 (1) h *C.cr.*)

QUESTION 4 (5 points)

Quel argument de droit M^e Peter Flinn doit-il faire valoir pour appuyer son affirmation selon laquelle Denis Houle a été arrêté arbitrairement?

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

Il n'y a aucun motif raisonnable de croire que Denis a commis un acte criminel, art. 495 (1) a) *C.cr.*

OU

6.

L'accusé n'a pas commis d'entrave à un agent de la paix dans l'exécution de ses fonctions, art. 129 *C.cr.*

QUESTION 5 (5 points)

Le motif invoqué par le tribunal pour ne pas tenir de *voir-dire* est-il bien fondé? Dites pourquoi.

Non, (bien que les paroles prononcées par Fernand Roy constituent une déclaration spontanée), le tribunal aurait dû tenir un *voir-dire* puisqu'il s'agit d'une déclaration (incriminante) faite à une personne en autorité que la poursuite veut mettre en preuve.

7.

QUESTION 6 (5 points)

La requête présentée par l'avocat de Fernand Roy a-t-elle des chances de succès? Dites pourquoi.

Non, le juge du procès n'a pas pour fonction d'évaluer la preuve en vérifiant sa force probante lorsqu'on a décidé qu'elle était admissible.

OU

8.

Non, compte tenu qu'il y a des actes manifestes opposables à Fernand, il y a donc suffisance de preuve.

QUESTION 7 (8 points)

Indiquez par vrai ou faux, si les arguments suivants sont bien fondés.

a) **L'infraction d'importation de cocaïne dont il a été reconnu coupable ne comporte aucune peine minimale et est passible d'une peine maximale de dix ans d'emprisonnement.**

FAUX 9.

b) **Le prononcé des peines prévues à la *Loi réglementant certaines drogues et autres substances* a pour objet essentiel de contribuer au respect de la loi et au maintien d'une société juste, paisible et sûre tout en favorisant la réinsertion sociale des délinquants et, dans les cas indiqués, leur traitement.**

VRAI 10.

c) **Le degré de participation de son client à l'infraction reprochée étant moindre que celui des autres personnes impliquées, le tribunal devrait lui imposer une peine moins lourde que la peine devant être imposée à ses complices qui ont également été reconnus coupables de complot et d'importation de cocaïne.**

VRAI 11.

d) **Plutôt que d'imposer une lourde peine d'emprisonnement à son client qui n'a pas d'antécédent judiciaire et qui a un sérieux problème d'usage de drogues, le tribunal devrait lui imposer une peine de 26 mois, et y ajouter une ordonnance de probation de trois ans dans laquelle il s'engagerait à suivre une cure de désintoxication, ce qui serait beaucoup plus bénéfique pour la société.**

FAUX 12.

DOSSIER 2 (58 POINTS)

QUESTION 8 (5 points)

M^e Julien Ledoux peut-il donner suite à la demande de son client?

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

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

OU

Non, art. 536 (1) OU (2) *C.cr.*

13.

(L'accusation de tenir une maison de débauche est de juridiction absolue du juge de la cour provinciale.)

QUESTION 9 (5 points)

La défense annoncée par M^e Julien Ledoux est-elle recevable? Dites pourquoi.

Non, la défense de provocation n'est pas recevable à l'encontre d'une accusation de voies de fait.

OU

Non, la défense de provocation (selon l'art. 232 *C.cr.*) n'est applicable que lors d'une accusation de meurtre.

14.

QUESTION 10 (5 points)

M^e Julien Ledoux peut-il espérer un acquittement total pour son client? Dites pourquoi.

Non, il peut être reconnu coupable de l'accusation de voies de fait causant des lésions corporelles (art. 267 b *C.cr.*) qui est une infraction incluse.

OU

Non, parce que le chef d'accusation est divisible et lorsque l'accomplissement de l'infraction, imputée telle qu'elle est décrite dans la disposition qui la crée, comprend la perpétration d'une autre infraction, l'accusé peut être reconnu coupable. (art. 662 (1) a) *C.cr.*)

15.

OU

Non, la preuve de la prévisibilité objective de lésions corporelles sera suffisante au chapitre de l'intention de l'accusé.

QUESTION 11 (6 points)

En tenant pour acquis que l'arrestation de Louis Venne est légale, énoncez deux conditions que les policiers ont eu à respecter avant de pénétrer à l'intérieur de son domicile.

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

SEULES LES DEUX PREMIÈRES CONDITIONS INSCRITES AU CAHIER DE RÉPONSES SERONT CORRIGÉES.

3 pts / bulle

2 / 3

1. Obtenir un mandat qui autorise les policiers à pénétrer dans le domicile, art. 529.1 *C.cr.*

OU

Obtenir un mandat d'arrestation qui comprend une autorisation de pénétrer dans une maison d'habitation, art. 529 (1) *C.cr.*

OU

Obtenir un télémandat, art. 529.5 *C.cr.*

16.

2. L'agent de la paix, au moment de pénétrer dans le domicile, doit avoir des motifs raisonnables de croire que la personne à arrêter s'y trouve, art. 529 (2) *C.cr.*

3. L'agent de la paix doit annoncer sa présence, art. 529.4 *C.cr.*

QUESTION 12 (5 points)

Les policiers pourront-ils obtenir un prélèvement de substance corporelle de Louis Venne pour les comparer aux échantillons prélevés sur les lieux?

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

Oui, art. 487.05 *C.cr.* (s'ils obtiennent un mandat).

OU

17.

Non, art. 487.05 *C.cr.* (car ils n'ont pas obtenu un mandat).

QUESTION 13 (10 points)

a) La prétention du procureur de la poursuite est-elle bien fondée? Dites pourquoi.

Non, en l'absence d'un mandat de perquisition, la poursuite a le fardeau de démontrer que la fouille n'est pas abusive.

OU

18.

Non, car une fouille sans mandat est *prima facie* abusive et contraire à l'article 8 de la *Charte canadienne des droits et libertés*.

b) La saisie de la caméra a-t-elle été faite conformément à l'article 8 de la *Charte canadienne des droits et libertés*? Dites pourquoi.

Oui, il n'y a pas de violation car les policiers étaient légalement sur les lieux et la provenance illégale de la caméra était en vue; le policier pouvait saisir sans mandat.

OU

19.

Oui, parce qu'il s'agit d'une fouille incidente à l'arrestation.

QUESTION 14 (5 points)

L'objection est-elle bien fondée? Dites pourquoi.

Oui, la poursuite ne peut faire de contre-preuve, car elle est liée par les réponses d'un témoin sur des faits incidents ou qui ne sont pas pertinentes au litige.

20.

QUESTION 15 (12 points)

Indiquez par vrai ou faux si les directives suivantes sont bien fondées.

- | | | |
|---|------|------------------------------------|
| a) Vous pouvez tirer une conclusion défavorable dans l'appréciation de la crédibilité de l'alibi de l'accusé vu le manque de détails dans l'annonce de l'alibi. | VRAI | 21. <input type="text" value="2"/> |
| b) Si vous ne croyez pas l'alibi de l'accusé, vous pouvez en inférer une preuve de culpabilité. | FAUX | 22. <input type="text" value="2"/> |
| c) Le fardeau de la preuve demeure sur la poursuite, mais l'accusé doit établir de façon prépondérante sa défense d'alibi. | FAUX | 23. <input type="text" value="2"/> |
| d) Si vous croyez la défense d'alibi, vous devez acquitter l'accusé de l'accusation de s'être introduit par effraction dans un commerce et d'y avoir commis un vol. | VRAI | 24. <input type="text" value="2"/> |
| e) Vous devez, dans l'appréciation de la crédibilité des témoins, analyser les témoignages de la poursuite avant ceux de la défense. | FAUX | 25. <input type="text" value="2"/> |
| f) Vous pouvez tirer une conclusion défavorable quant à la crédibilité de l'alibi du fait que l'accusé n'a pas témoigné. | VRAI | 26. <input type="text" value="2"/> |

QUESTION 16 (5 points)

La prétention du procureur de la poursuite est-elle bien fondée? Dites pourquoi.

Non, le juge a un pouvoir discrétionnaire. (art. 738 (1) a) *C.cr.*)

27.