



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

PREUVE ET PROCÉDURE

December 10, 2002

- 1) The examination in the PREUVE ET PROCÉDURE section is intended to determine the extent to which you have met the ultimate goals set forth in the document entitled « Préambule Preuve et Procédure ».
- 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 :
 - Preuve et procédure
 - Rédaction
 - L'éthique, la déontologie et la pratique professionnelle
- 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 **14** pages (including this page) and that your answer booklet contains **9** pages.

N.B. : You may assume that the provisions of *An Act to reform the Code of Civil Procedure* which are not yet in force (which provisions will come into force on January 1, 2003 under section 181 of the Act) do not apply to this examination.

FILE 1 (45 MARKS)

Your articling supervisor, M^e Manon Taillefer of the firm *Taillefer, Houle*, provides you with the notes she took during a meeting held on December 4, 2002 with Jean Boutin, her client.

NOTES FROM THE MEETING OF DECEMBER 4, 2002 WITH JEAN BOUTIN

- Jean Boutin (« J.B. ») : farmer and milk producer in Oka. J.B. cultivates his land, raises cows and runs an orchard.
- 14 March 02 : signature by J.B. of a new account form with *Agricoserbec inc.* (« *Agri* »), supplier of agricultural products.
- Form provides for a period 30 days from the date of delivery for the payment of the products; after that time limit, the amounts owing bear interest at a rate of 24 % per year.
- Beginning of June 02 : receipt by J.B. of *Agri*'s statement of account for the month of May 02, on which there is an amount of \$9,526 for invoice no. 33456 dated 3 May 02.
- J.B. did not purchase anything for that amount on that date and calls *Agri* to obtain details.
- *Agri*'s bookkeeper states that this relates to fertilizer delivered on that date. J.B. informs her that he never bought or received the fertilizer; she answers that she will forward the matter to her boss.
- Beginning of July 02 : receipt by J.B. of *Agri*'s statement of account for the month of June 02 : invoice no. 33456 stills appears as unpaid, plus added interest at a rate of 24 % per year.
- J.B. calls bookkeeper again and she answers that she has not yet received instructions from her boss on this matter but will speak to him about it again.
- 2 July 02 : J.B. asks *Agri*'s salesman, John Reed, for a liquid insecticide to treat the apples in his orchard.
- John Reed recommends that he use the AG-408 insecticide specially manufactured by *Agri*.
- That same day, J.B. orders 10 containers of the AG-408 insecticide.
- 15 July 02 : delivery by *Agri* of the AG-408 insecticide to J.B.'s orchard and spraying of the insecticide by J.B. on all the apple trees (see invoice for purchase of the insecticide no. 38226 for an amount of \$5,420.60, including taxes).
- Beginning of August 02 : J.B. notices that most of the apples in his orchard are beginning to rot and he asks Louis Potvin, an agronomist, to examine his orchard.
- J.B., who questions the quality of the AG-408 insecticide, does not pay invoice no. 38226.

- 16 August 02 : visit of the orchard by Louis Potvin who takes a few apples with him to examine them as well as a container of the AG-408 insecticide containing the remainder of the insecticide.
- 23 August 02 : phone call from Potvin to J.B. informing him that he has concluded that the apples are rotting because of the AG-408 insecticide which contains too strong a concentration of a product that is toxic to apples.
- Potvin informs J.B. that he will lose all of the apples in his orchard because of this insecticide.
- 23 August 02 : J.B. sends letter by telecopier to *Agri* to inform it of the situation; Reed immediately goes to the orchard to see its deplorable condition; Reed states that it is impossible that the AG-408 insecticide caused the loss of the apples, but he will discuss it with his boss.
- 12 Sep. 02 : visit of the orchard by Serge Lampron, agronomist, an expert mandated by *Agri* to examine the orchard.
- Lampron informs J.B. that he will submit his conclusions to *Agri* within 1 month.
- 11 Oct. 02 : receipt by J.B. of a letter from George Polinski, *Agri*'s manager, denying any liability as regards the loss of the apples which, according to Lampron, was caused by poor climatic conditions and the application of the insecticide by J.B. in a manner inconsistent with the instructions provided by *Agri*.
- 15 Oct. 02 : phone call from J.B. to Potvin to inform him of *Agri*'s letter; Potvin categorically rejects this explanation, maintains his opinion and states that he will send J.B. a written report confirming his opinion and containing an evaluation of the damages suffered by J.B. as a result of the loss of all the apples in the orchard.
- 4 Nov. 02 : receipt by J.B. of a report from Potvin dated 1 Nov. 02 which confirms in writing, in the same terms, his opinion as to the cause of the loss and establishes the amount of J.B.'s damages at \$67,000.
- 5 Nov. 02 : letter from J.B. to *Agri* informing it that he will not pay the invoice for the useless and worthless insecticide; the same letter puts *Agri* in default to pay \$67,000 no later than 15 Nov. 02. Copy of Potvin's report annexed to the letter.
- 18 Nov. 02 : receipt by J.B. of a demand letter from M^e Paul Quintal, *Agri*'s lawyer, dated 14 Nov. 02, demanding the payment of the balance of the account (invoices no. 33456 and no. 38226).
- 2 Dec. 02 : service upon J.B. of *Agri*'s action (**declaration reproduced on page 5**) and exhibits (**not reproduced**).

- At that time, J.B. reads invoice no. 33456 for the first time and notices that it was mistakenly charged to his account, given that the items were ordered by his cousin, Jean-René Boutin, a farmer in the same municipality who is also a customer of *Agri*. Jean-René Boutin signed the acknowledgement of receipt on the invoice.
- J.B. then calls his cousin Jean-René Boutin who confirms that he did indeed order and receive the products mentioned on invoice no. 33456.
- During their conversation, Jean-René Boutin informs J.B. that he declared bankruptcy in Nov. 02.
- Mandate from client : represent him in the defence to this action and claim damages of \$67,000.

Your articling supervisor filed an appearance on December 6, 2002. She instructs you to prepare a defence and cross-demand for her client.

Documents provided by the client :

- Declaration in case number 700-22-008924-029 with the copies of the exhibits attached thereto;
- Invoice number 38226 dated July 15, 2002 (Jean Boutin's copy);
- Letter from Jean Boutin to *Agricoserbec inc.*, dated August 23, 2002;
- Letter from George Polinski, manager of *Agricoserbec inc.*, to Jean Boutin, dated October 9, 2002;
- Statement of account from *Agricoserbec inc.* dated June 30, 2002, addressed to Jean Boutin;
- Copy of the letter from Jean Boutin to *Agricoserbec inc.*, dated November 5, 2002;
- Louis Potvin's report, dated November 1, 2002.

Addresses :

- Jean Boutin : 4456 Rang de la Rivière, Oka, province of Quebec, district of Terrebonne, J0Y 1H0 (domicile and residence);
- *Agricoserbec inc.* : 3279 Labelle Blvd., Saint-Jérôme, province of Quebec, district of Terrebonne, J7Y 5V2 (head office and principal place of business);
- John Reed : 3375 Vinet Street, Saint-Jérôme, province of Quebec, district of Terrebonne, J7Y 1M4 (domicile and residence);
- Louis Potvin : 1253 Saint-Marie Street, Saint-Eustache, province of Quebec, district of Terrebonne, J7R 3L3 (domicile, residence and sole place of business);
- Jean-René Boutin : 3456 Rang de la Rivière, Oka, province of Quebec, district of Terrebonne, J0Y 1H0 (domicile and residence).

CANADA
 PROVINCE OF QUEBEC
 DISTRICT OF TERREBONNE

Simplified Procedure
 COURT OF QUÉBEC
 (Civil Division)

NO. : 700-22-008924-029

AGRICOSERBEC INC., a duly constituted legal person, having its head office at 3279 Labelle Boulevard, Saint-Jérôme, province of Quebec, district of Terrebonne, J7Y 5V2

Plaintiff

v.

JEAN BOUTIN, residing at 4456 Rang de la Rivière, Oka, province of Quebec, district of Terrebonne, J0Y 1H0

Defendant

DECLARATION

IN SUPPORT OF ITS ACTION, THE PLAINTIFF STATES AS FOLLOWS :

1. On March 14, 2002, the Defendant agreed to pay the Plaintiff for the items bought within a period of 30 days, after which the balance owing would bear interest at a rate of 24 % per year, as appears from the new account form, Exhibit P-1;
2. On May 3, 2002, the Plaintiff sold and delivered goods to the Defendant for an amount of \$9,526, as appears from invoice number 33456, Exhibit P-2;
3. On July 15, 2002, the Plaintiff sold and delivered goods to the Defendant for an amount of \$5,420.60, as appears from invoice number 38226, Exhibit P-3;
4. As at October 31, 2002, the unpaid balance was \$16,211.38, representing the principal amount and interest owing on that date, as appears from the statement of account, Exhibit P-4;
5. The Defendant has refused to pay the said balance, despite the fact that the Defendant was required to do so by means of a demand letter dated November 14, 2002 sent by the undersigned attorney, Exhibit P-5.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO :

ORDER the Defendant to pay to the Plaintiff the amount of \$9,526 with interest at a rate of 24 % per year and the additional indemnity provided for by law as of June 3, 2002 and the amount of \$5,420.60 with interest at a rate of 24 % per year and the additional indemnity provided for by law as of August 15, 2002;

THE WHOLE with costs.

SAINT-JÉROME, November 29, 2002
 (s) PAUL QUINTAL

 Attorney for the Plaintiff

True copy
Paul Quintal
 Attorney for the Plaintiff

QUESTION 1 (45 marks)

Legal content : 30 marks

Drafting techniques : 15 marks

Draft, in full, the appropriate written proceeding (heading, title, address, allegations and conclusions). Do not draft the affidavit or the notice of presentation, if any. In order to protect your anonymity, do not sign the written proceeding.

FILE 2 (43 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 June 30, 1978, your client, Pierre Lafleur, purchases from *Immeubles St-Maurice ltée* a residential immovable bearing civic number 4150 Latour Street, in Trois-Rivières.

On April 2, 2001, Pierre decides to sell the immovable and asks a real estate broker to find a purchaser.

On June 1, 2001, Ginette Petit visits the immovable with the real estate broker and she signs, in Trois-Rivières, an offer to purchase which is accepted that same day in Montreal by Pierre.

On July 3, 2001, Pierre and Ginette meet for the first time in the waiting room at the office of Notary Julien Legendre in Montreal. Pierre talks to Ginette about by-law 952 of the City of Trois-Rivières. No one is a witness to this discussion which lasts only a few minutes. Thereafter, they sign the deed of sale on that same day in the presence of the notary.

On September 4, 2001, the City of Trois-Rivières makes a written request to Ginette to make the immovable conform to the requirements of by-law 952 which it adopted in 1975 because :

- the metal fence along the street is too high;
- the windows of the dwelling located in the basement are too small.

On September 6, 2001, Ginette writes to Pierre to inform him of the situation and notify him that she is claiming compensation of \$26,700 from him due to the work which will have to be carried out in order to comply with the requirements of the City of Trois-Rivières. Pierre receives this demand letter the following day.

Pierre is already aware of the situation about which Ginette is complaining. Indeed, the sales representative of *Immeubles St-Maurice ltée* had informed him about these two irregularities before he purchased the immovable in 1978, but he had told him that this was not important because the immovable had been built before the adoption of by-law 952 and was therefore covered by acquired rights.

On September 15, 2001, Pierre sends the following letter to *Immeubles St-Maurice ltée* :

September 15, 2001

[...]

Hello,

I recently sold the immovable located at 4150 Latour Street which you sold to me in 1978. The person who bought the immovable is complaining that it is in violation of by-law 952 of the City of Trois-Rivières.

The by-law was adopted in 1975 and I remember that you had told me, at the time of the sale, that the immovable benefited from acquired rights. Unfortunately, I have no document with which I can accurately establish the year in which it was built.

Given that the sale took place in 1978, I am well aware that I cannot claim anything from you and that you do not have any obligation towards me but, if possible, I would greatly appreciate it if you could send me a copy of any document, plan or photograph which would allow me to prove the construction date and the acquired rights benefiting the immovable.

I thank you in advance.

Pierre Lafleur

Pierre Lafleur
1212 Saint-André
Montreal, Quebec
H3C 2Z4

Immeubles St-Maurice ltée never answers this letter.

On Saturday, December 1, 2001, Pierre is served with the following documents : a declaration signed by M^e Alain Morin, Ginette's lawyer (**reproduced hereinbelow**), a notice to defendant (**not reproduced**) and a copy of exhibits P-1 to P-3 (**not reproduced**).

CANADA

PROVINCE OF QUEBEC
DISTRICT OF TROIS-RIVIÈRES

SIMPLIFIED PROCEDURE
COURT OF QUÉBEC
(Civil Division)

NO. : 700-22-002429-019

GINETTE PETIT, domiciled and residing
at 150 Latour Street, apartment 2,
Trois Rivières, district of Trois-Rivières,
G9A 3A8

Plaintiff

v.

PIERRE LAFLEUR, domiciled and residing
at 1212 Saint-André Street, Montreal, District
of Montreal, H3C 2Z4

Defendant

DECLARATION

IN SUPPORT OF HER ACTION, THE PLAINTIFF STATES AS FOLLOWS :

1. On July 3, 2001, she purchased from the Defendant an immovable located at 4150 Latour Street, in Trois-Rivières, for an amount of \$210,000, as appears from an authentic copy of the deed of sale signed before Notary Julien Legendre, Exhibit P-1;

2. On July 3, 2001, before the signing of the deed of sale, Exhibit P-1, the Defendant stated to the Plaintiff that the immovable did not violate by-law 952 of the City of Trois-Rivières which was adopted in 1975, because it had been built before that date and benefited from acquired rights;
3. In a letter dated September 4, 2001, Exhibit P-2, the City of Trois-Rivières asked the Plaintiff to make the immovable conform to the requirements of by-law 952, because :
 - (a) the metal fence along the street is too high;
 - (b) the windows of the dwelling located in the basement are too small;
4. The immovable does not benefit from acquired rights, because it was built after 1975;
5. Furthermore, by-law 952 of the City of Trois-Rivières establishes safety and sanitation standards, as appears from an authentic copy of the by-law, Exhibit P-3;
6. In order to make the immovable conform to by-law 952 of the City of Trois-Rivières, the Plaintiff will have to have work carried out at a cost of \$26,700 apportioned as follows :
 - (a) \$1,700 to lower the fence;
 - (b) \$25,000 to enlarge the windows of the dwelling located in the basement.
7. Therefore, the Plaintiff is claiming an amount of \$26,700 from the Defendant as damages due to his misrepresentations regarding the date of construction of the immovable and regarding the acquired rights;
8. The Defendant has refused or neglected to pay, despite the fact that the Defendant was duly required to do so by means of a demand letter dated September 6, 2001, Exhibit P-4.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO :

ORDER the Defendant to pay to the Plaintiff the amount of \$26,700 with interest at the legal rate and the additional indemnity provided for by law as of September 21, 2001.

The whole with costs

TROIS-RIVIÈRES, November 29, 2001
(S) ALAIN MORIN

Attorney for the Plaintiff

True copy

Alain Morin

Attorney for the Plaintiff

Section 8 of the deed of sale, Exhibit P-1 (**not reproduced**), reads as follows : « The purchaser acknowledges that the vendor has not made any representation or warranty to the purchaser regarding the conformity of the immovable with the municipal by-laws. »

On Wednesday, December 5, 2001, you file an appearance on behalf of your client and on Tuesday, December 18, 2001, you review the file in greater detail.

QUESTION 2 (5 marks)

As at December 18, 2001, can you apply to have the case transferred to the district of Montreal?

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

- a) Yes, because the defendant is domiciled in Montreal and the deed of sale was entered into in Montreal.**
- b) Yes, because several causes of action are joined in the suit and at least one of them can be instituted in the district of Montreal.**
- c) No, because the immovable is located in Trois-Rivières and this is a real action or a mixed action.**
- d) No, because the statutory period for filing this application has expired.**

SUPPLEMENTARY FACTS

You served M^e Morin with a defence on behalf of the defendant Pierre Lafleur and filed the defence in the court record.

On January 14, 2002, you serve an action in warranty upon *Immeubles St-Maurice ltée* (**not reproduced**) in which you ask the court to order *Immeubles St-Maurice ltée* to indemnify your client for any order rendered against him in the principal action.

On February 11, 2002, the defendant in warranty, represented by M^e Diane Provencher, who has filed an appearance, serves its defence upon you. The defence includes the following paragraphs, among others :

[...]

10. At the time of the sale in 1978, the immovable benefited from acquired rights;

11. Pierre Lafleur recognized that he did not have a recourse against *Immeubles St-Maurice ltée* in a letter dated September 15, 2001, as appears from this letter, Exhibit DG-1.

[...]

On March 18, 2002, M^e Provencher serves M^e Morin and you, by telecopier, with a notice that on March 28, 2002 she will proceed with the examination on discovery after the filing of the defence of Ginette. On March 18, 2002, a bailiff serves Ginette with a writ of subpoena for March 28, 2002. The travelling expenses required by law are attached to the writ of subpoena.

QUESTION 3 (5 marks)

Can you oppose the holding of this examination on discovery?

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

- a) No, because the witness was duly summoned and all the lawyers in the case were duly notified about the examination.**
- b) No, because the time limit in article 481.8 of the *Code of Civil Procedure* has not expired.**
- c) Yes, because the examination must be authorized by the court.**
- d) Yes, because an examination on discovery after the filing of the defence must be held within the statutory period for filing the answer.**

SUPPLEMENTARY FACTS

On April 1, 2002, M^e Morin serves upon you a notice under article 402.1 of the *Code of Civil Procedure* to which the following documents are annexed :

- short letter signed by architect Claude Langlois which reads as follows : « At your request, on March 27, 2002, I visited Ginette Petit's immovable located at 4150 Latour Street in Trois-Rivières. Given the construction methods and the materials used, as well as the general condition of the immovable, there is no doubt that it was built after 1975 »;
- legal opinion dated March 27, 2002 and signed by M^e Paul Gilbert, an academic, author and recognized expert in municipal law, which states the following, among other things : « Given that we are dealing with standards of safety and sanitation, the jurisprudence and doctrine have unanimously concluded that the defence of acquired rights is inapplicable. Consequently, Ginette Petit's immovable must conform to the requirements of by-law 952, regardless of its year of construction. »

The plaintiff communicates exhibits P-1 to P-4. The defendant does not communicate any exhibits. The defendant in warranty duly communicates the letter dated September 15, 2001, exhibit DG-1 (**reproduced on page 7**). No notice under article 403 of the *Code of Civil Procedure* is sent and on May 24, 2002, the case is inscribed for proof and hearing.

The trial takes place today, December 10, 2002.

At the beginning of the trial, M^e Morin asks the court to allow the production of the report of architect Claude Langlois who died accidentally on September 1, 2002. M^e Morin informed you several months ago that this request would be made at the beginning of the trial and he served a written motion under article 2870 of the *Civil Code of Québec*.

In connection with the presentation of this motion, you object to the production of the report on the ground that the reliability of the statement is not sufficiently guaranteed by the circumstances in which it was made.

QUESTION 4 (5 marks)

In connection with the presentation of this motion, state another ground that you can raise against the production of the report.

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

SUPPLEMENTARY FACTS

The trial continues and M^e Morin calls Ginette as a witness. She produces exhibits P-1 to P-4 and none of the lawyers objects to the production thereof.

Then, Ginette gives the following answer to a question from her lawyer : « When we met in the waiting room at the notary's office, before meeting with the notary, Pierre Lafleur told me that the immovable did violate by-law 952 of the City of Trois-Rivières, but that this was not serious because it was covered by acquired rights. »

QUESTION 5 (4 marks)

Can you object to this answer on the ground that no motion for improbation was made with respect to clause 8 (reproduced on page 8) of the notarial act, Exhibit P-1? Explain your answer.

SUPPLEMENTARY FACTS

The examination of Ginette continues and M^e Morin examines her to establish the cost of the work which will have to be carried out in order to lower the fence. Ginette answers as follows : « The work has not yet been done. However, I signed a contract two weeks ago with *Clôture Ornementale ltée* for a total of \$1,700, but I did not bring my copy with me. »

You object to Ginette's answer on the ground that she cannot establish the cost of the work agreed to in the contract through her testimony.

QUESTION 6 (4 marks)

Is your objection well founded? Explain your answer.

SUPPLEMENTARY FACTS

M^c Morin then calls M^c Paul Gilbert as a witness. After questioning him on his qualifications, M^c Morin refers to the legal opinion dated March 27, 2002 which was previously communicated to you and he asks M^c Gilbert to explain to the court the effects of safety and sanitation standards on acquired rights as set forth in the jurisprudence and doctrine.

QUESTION 7 (5 marks)

Can you object to this last question? Explain your answer.

SUPPLEMENTARY FACTS

During the testimony of the defendant in warranty's representative, the letter from Pierre sent to *Immeubles St-Maurice ltée*, Exhibit DG-1 (**reproduced on page 7**), is produced and none of the lawyers objects to the production thereof.

No motion to amend is presented during the trial and after having called their witnesses, all the lawyers declare that they have finished presenting their evidence.

In concluding his pleadings, M^c Morin, the lawyer for the plaintiff in the principal action, states that it would be appropriate to order the provisional execution of the judgment to be rendered because the evidence establishes that his client is in a precarious financial situation and that the city is pressuring her to have the work carried out rapidly.

QUESTION 8 (5 marks)

Assuming that the action is allowed, can the court order the provisional execution of the judgment if it is of the opinion that the plaintiff's precarious financial situation and the pressure being applied by the city have been proved and that these are sufficient reasons? Explain your answer.

SUPPLEMENTARY FACTS

In her pleadings, M^c Provencher, the lawyer for *Immeubles St-Maurice ltée*, submits that the letter, Exhibit DG-1 (**reproduced on page 7**), constitutes an extrajudicial admission by Pierre. According to this admission, her client does not have any liability towards him and he has no recourse against it.

QUESTION 9 (5 marks)

Is this argument well founded? Explain your answer.

SUPPLEMENTARY FACTS

The case is taken under advisement and on December 20, 2002 the judge renders a judgment ordering Pierre to pay Ginette \$26,700 with interest, the additional indemnity and costs. The action in warranty instituted by Pierre against *Immeubles St-Maurice ltée* is dismissed with costs.

Your client is unable to pay the amount of the judgment. On January 31, 2003, he produces in the office of the Court of Québec a declaration in accordance with the requirements of article 653 of the *Code of Civil Procedure*. The clerk informs Ginette of the production of this declaration and each week Pierre deposits the seizable portion of his salary, namely \$300.

On April 30, 2003, Ginette has Pierre's residence, located at 1212 Saint-André Street in Montreal, seized without any authorization or prior notice.

QUESTION 10 (5 marks)

Can you oppose this seizure on the sole ground that on January 31, 2003, Pierre Lafleur produced in the office of the Court of Québec a declaration in accordance with the requirements of article 653 of the *Code of Civil Procedure*? Explain your answer.

FILE 3 (12 MARKS)

You represent Robert Blais. You have instituted an action on his behalf claiming an amount of \$11,000 from Philippe Leduc, following the sale by your client of a right to cut timber.

Philippe has filed a defence to the action and has included therein a cross-demand for an amount of \$28,000.

No putting in default preceded the service of the action or the defence and cross-demand.

There was an examination on discovery of the plaintiff before the filing of the defence and an examination on discovery of the defendant after the filing of the defence, both of which were attended by the lawyer for each party.

The proof and hearing lasted two days. Mr. Justice Benoît Johnson allowed the principal action for an amount of \$8,000 and dismissed the cross-demand, with costs.

QUESTION 11 (12 marks)

What are the only taxable judicial fees to which you are entitled?

For each fee, indicate the specific and relevant section or sections of the *Tariff of judicial fees of advocates* as well as the amount.

CORRIGÉ
PREUVE ET PROCÉDURE - EXAMEN RÉGULIER
 10 décembre 2002

DOSSIER 1 (45 POINTS)

QUESTION 1 (45 points)

Contenu juridique : 30 points

Techniques de rédaction : 15 points

Rédigez en entier l'acte de procédure approprié (en-tête, titre, adresse, allégations et conclusions). Ne rédigez ni l'affidavit, ni l'avis de présentation, le cas échéant. Ne signez pas l'acte de procédure pour assurer votre anonymat.

CANADA

PROVINCE DE QUÉBEC
 DISTRICT DE TERREBONNE

Procédure allégée
C O U R D U Q U É B E C
 (Chambre civile)

1. 1

NO 700-22-008924-029

AGRICOSERBEC INC.

demanderesse

c.

2. 1

JEAN BOUTIN

défendeur

Absence de description complète des parties

3. 1

Aucune autre partie ajoutée

4. 1

DÉFENSE ET DEMANDE RECONVENTIONNELLE

5. 1

EN DÉFENSE À L'ACTION DE LA DEMANDERESSE, J'ALLÈGUE :

6. 1

1. Quant au paragraphe 1 de la déclaration, je m'en remets au formulaire d'ouverture de compte, pièce P-1 et je nie tout ce qui n'y est pas conforme;

7. 1

2. Je nie le paragraphe 2 de la déclaration;

8. 1

3. J'admets avoir acheté et reçu les marchandises mentionnées au paragraphe 3 de la déclaration, mais je nie devoir la somme réclamée;

9. 1

4. Je nie le paragraphe 4 de la déclaration;

10. 1

5. Quant au paragraphe 5 de la déclaration, j'admets avoir reçu la lettre de mise en demeure, pièce P-5, mais je nie devoir quoi que ce soit à la demanderesse;

11. 1

(ET RÉTABLISSANT LES FAITS, J'AJOUTE :)

6. Je ne dois pas le montant réclamé pour les marchandises mentionnées à la facture numéro 33456, pièce P-2 parce que je ne les ai jamais commandées ni reçues;

12. 1

(7. Les marchandises mentionnées à cette facture, pièce P-2, ont été commandées par Jean-René Boutin et ont été livrées chez ce dernier au 3456, rang de la Rivière, à Oka;)

8. Je ne dois pas le montant réclamé pour les marchandises mentionnées à la facture numéro 38226, pièce P-3, pour les motifs énoncés à la demande reconventionnelle;

13. 1

(ET EN DEMANDE RECONVENTIONNELLE, LE DÉFENDEUR AJOUTE :)

- (9. Le défendeur est agriculteur et il exploite un verger;)
10. Le représentant de la demanderesse a recommandé au défendeur d'utiliser, pour traiter les pommes de son verger, l'insecticide AG-408 fabriqué et vendu par la demanderesse; 14. 1
11. Le 15 juillet 2002, la demanderesse a livré au défendeur l'insecticide commandé par ce dernier, tel qu'il appert de la facture numéro 38226, pièce D-1 **ou** pièce P-3; 15. 1
12. Le même jour, le défendeur a vaporisé cet insecticide sur tous les pommiers de son verger; 16. 1
13. Au début d'août 2002, le défendeur a constaté que les pommes commençaient à pourrir; 17. 1
14. La perte des pommes du verger du défendeur est due à l'insecticide AG-408 qui contient une trop forte concentration d'un produit toxique pour celles-ci; 18. 1
- (15. En raison de la toxicité et de l'inefficacité du produit pour traiter les pommes, c'est à bon droit que le défendeur refuse de payer les sommes réclamées à la facture numéro 38226, pièce P-3;)
16. Le défendeur a perdu la totalité des pommes de son verger et ses dommages s'élèvent à la somme de 67 000 \$; 19. 1
- (17. Le 23 août 2002, le défendeur a avisé par écrit la demanderesse de cette situation, tel qu'il appert de la lettre, pièce D-2;)
18. Bien que requise de payer la somme de 67 000 \$, au plus tard le 15 novembre 2002, par lettre de mise en demeure datée du 5 novembre 2002, pièce D-3, la demanderesse refuse de payer cette somme au défendeur. 20. 1
21. 1

POUR CES MOTIFS, PLAISE AU TRIBUNAL :

- REJETER l'action de la demanderesse; 22. 3
- CONDAMNER la demanderesse à payer au défendeur 23. 2
la somme de 67 000 \$ avec intérêts au taux légal ainsi que l'indemnité additionnelle prévue par la loi 24. 1
à compter du 16 novembre 2002; 25. 1
- LE TOUT avec dépens.

Défense rédigée à la 1^{re} personne.

26. 2

DOSSIER 2 (43 POINTS)

QUESTION 2 (5 points)

En date du 18 décembre 2001, pouvez-vous demander que le dossier soit transféré dans le district de Montréal?

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

- a) Oui, parce que le défendeur est domicilié à Montréal et que l'acte de vente a été conclu à Montréal.
- b) Oui, parce que la demande réunit plusieurs causes d'action et qu'au moins l'une d'elles peut être intentée dans le district de Montréal.
- c) Non, parce que l'immeuble est situé à Trois-Rivières et qu'il s'agit d'une action réelle ou d'une action mixte.
- d) Non, parce que le délai légal pour présenter cette demande est expiré.

Réponse: a) Oui, parce que le défendeur est domicilié à Montréal et que l'acte de vente a été conclu à Montréal. 34. 5

QUESTION 3 (5 points)

Pouvez-vous vous opposer à la tenue de cet interrogatoire?

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

- a) Non, parce que le témoin a été régulièrement assigné et que tous les procureurs au dossier ont été dûment avisés de cet interrogatoire.
- b) Non, parce que le délai de l'article 481.8 du *Code de procédure civile* n'est pas expiré.
- c) Oui, parce que l'interrogatoire doit être autorisé par le tribunal.
- d) Oui, parce que l'interrogatoire après défense doit avoir lieu dans le délai légal de production de la réponse.

Réponse : c) Oui, parce que l'interrogatoire doit être autorisé par le tribunal. 35. 5

QUESTION 4 (5 points)

Dans le cadre de la présentation de cette requête, énoncez un autre motif que vous pouvez invoquer à l'encontre du dépôt du rapport.

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

La déclaration écrite énonce une opinion, alors que seules les déclarations énonçant des faits peuvent être admises en preuve (art. 2870 *C.c.Q.*) 36. 5

QUESTION 5 (4 points)

Pouvez-vous formuler une objection à cette réponse au motif qu'aucune procédure d'inscription de faux n'a été présentée à l'encontre de la clause 8 (reproduite à la page 8) contenue à l'acte notarié, pièce P-1? Dites pourquoi.

Non, parce qu'il ne s'agit pas d'un fait que le notaire avait pour mission de constater. 37. 4

QUESTION 6 (4 points)

Votre objection est-elle bien fondée? Dites pourquoi.

Oui, car en vertu de la règle de la meilleure preuve, le contrat écrit doit être produit.

38.

QUESTION 7 (5 points)

Pouvez-vous formuler une objection à cette dernière question? Dites pourquoi.

Oui, l'expertise doit porter sur un domaine dans lequel le juge n'a pas les connaissances requises pour rendre une décision et non pas sur le droit.

39.

QUESTION 8 (5 points)

Dans l'hypothèse où l'action serait accueillie, le tribunal pourra-t-il ordonner l'exécution provisoire du jugement s'il est d'avis que la situation financière précaire de la demanderesse et les pressions de la ville ont été prouvées et qu'il s'agit de raisons suffisantes? Dites pourquoi.

Non, parce qu'il n'y a aucune conclusion à cet effet dans la déclaration.

40.

QUESTION 9 (5 points)

Cet argument est-il bien fondé? Dites pourquoi.

Non, il ne s'agit pas d'un aveu puisqu'un aveu doit porter sur des faits et qu'il s'agit ici d'une admission portant sur le droit.

41.

QUESTION 10 (5 points)

Pouvez-vous vous opposer à cette saisie pour le seul motif que le 31 janvier 2003, Pierre Lafleur a produit au greffe de la Cour du Québec une déclaration conforme aux prescriptions de l'article 653 du Code de procédure civile? Dites pourquoi.

Non, le dépôt volontaire n'empêche pas la saisie d'un immeuble.

42.

DOSSIER 3 (12 POINTS)

QUESTION 11 (12 points)

Quels sont les seuls honoraires judiciaires taxables auxquels vous avez droit?

Pour chacun des honoraires, indiquez le ou les articles précis et pertinents du *Tarif des honoraires judiciaires des avocats* ainsi que le montant.

HONORAIRES	ARTICLES du <i>Tarif des honoraires judiciaires des avocats</i>	MONTANTS
Jugement au mérite 43. <input type="text" value="1"/>	(art. 19 et) 25 44. <input type="text" value="1"/>	800 \$ 45. <input type="text" value="1"/>
Interrogatoire avant et après défense 46. <input type="text" value="1"/>	art. 27 47. <input type="text" value="1"/>	60 \$ 48. <input type="text" value="1"/>
Demi-journées additionnelles 49. <input type="text" value="1"/>	art. 33 50. <input type="text" value="1"/>	100 \$ 51. <input type="text" value="1"/>

Aucuns autres honoraires mentionnés

52.