



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

PREUVE ET PROCÉDURE

SUPPLEMENTAL EXAMINATION

May 13, 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 **15** pages (including this page) and that your answer booklet contains **8** pages.

N.B.: You may assume that the Civil Code of Québec and Titles II and III of *An Act respecting the implementation of the reform of the Civil Code*, S.Q. 1992, c. 57 apply. Do not take the transitional provisions into account, except those relating to the publication of rights.

FILE 1 (45 MARKS)

You are the articling student for M^c André Martin. He provides you with the file for his client, Patrick Gendron, which includes the interview notes and the documents mentioned hereinbelow.

NOTES TAKEN AT THE MEETING HELD MAY 10, 2002 WITH PATRICK GENDRON

- Client, Patrick Gendron, chartered accountant.
- Gendron consults regarding seizure carried out on 9 May 02 at 3:00 p.m.
- Gendron practises his profession alone, without employees, in premises specifically set up as an office, in the basement of his home. Office occupies 40% of the basement, remainder used by family.
- Residence owned by his *de facto* spouse, Annie Vermette.
- Seizure effected pursuant to judgment rendered 14 Feb. 02 in favour of *Caisse de crédit Laurentienne* (« *Caisse* »).
- Judgment orders client to pay *Caisse* sum of \$16,482.67 with interest at a rate of 9% per year and the additional indemnity as of 12 Dec. 00 with costs.
- Judgment rendered by Judge Gérald Thibault of the Court of Québec for the district of Terrebonne in court record no. 700-22-004571-012 (simplified procedure).
- Gendron represented himself and contested the action.
- *Caisse* had sued Gendron to claim balance owed under a loan contracted on 18 March 99.
- Loan contracted by Gendron to invest in purchase of a fast food franchise.
- Gendron had to shut down restaurant after 6 months of operation because business was highly unprofitable.
- In his defence, Gendron argued that *Caisse* had advised him improperly and was in a situation of conflict of interests because it was also financing the franchisor's operations.
- Judge Thibault dismissed Gendron's defence and ordered him to pay all sums claimed.
- 21 Feb. 02 : Gendron receives copy of judgment.
- 27 March 02 : Gendron is served with bill of costs which is subsequently duly taxed for an amount of \$1,436.
- 4 Apr. 02 : Gendron receives letter from M^c Charles Blanchard, lawyer for *Caisse*, requesting payment of the sums owed under the judgment.

- 5 Apr. 02 : Gendron sends letter to M^e Blanchard and informs him that he totally disagrees with the judge's conclusions and categorically refuses to pay any amount whatsoever.
- 9 May 02, at 3:00 p.m. : bailiff Gustave Larue seizes the following items from Gendron's place (as described in minutes of seizure) and Gendron is appointed guardian :
 - a 1998 Honda Civic DX automobile, registered in Quebec under ABC 123;
 - a model 1225 Compaq computer, with monitor and accessories;
 - a model 5632 LaserJet HP printer;
 - a black filing cabinet, four drawers;
 - a black melamine desk;
 - three green cloth chairs on casters;
 - one blue and black golf bag and a set of 14 clubs, all Callaway brand;
 - one Inglis washer and dryer;
 - one mahogany colour antique violin.
- Gendron confirms that the automobile belongs to him, is fully paid and is used only for his personal needs.
- Computer, printer, filing cabinet, desk and chairs used exclusively for the practise of his profession as a chartered accountant (only source of income).
- Golf bag and clubs : gift from his father, Hubert Gendron.
- Washer and dryer, located in the laundry room, in basement of house, owned by Gendron and used by him and his spouse. This is the only furniture in the residence which belongs to Gendron, all other furniture belonging to Annie Vermette.
- Violin : family heirloom inherited from his grandmother Léona Gendron who died on 14 August 95; notarial will of Léona Gendron, dated 2 Nov. 94 contains a clause of unseizability as regards the bequeathed violin, which clause, however, was never published in the appropriate register.
- Gendron is unable to pay the amounts claimed or make any offer of settlement whatsoever and categorically refuses to avail himself of the provisions of the *Bankruptcy and Insolvency Act*.
- Gendron believes that the bailiff did not have the right or could not validly seize all of this property.
- Consequently, he mandates us to assert his rights to contest the seizure carried out on 9 May 02.

After having read all of M^e André Martin's file, you note the following information :

Addresses :

- Patrick Gendron : 874 de la Bastille Street, Boisbriand, District of Terrebonne, J6C 3Z4 (domicile, residence and place of business).
- *Caisse de crédit Laurentienne* : 12 457 Labelle Blvd., Saint-Jérôme, District of Terrebonne, J7V 1K7 (head office and sole place of business).
- Hubert Gendron : 475 du Soleil-Levant Street, Lafontaine, District of Terrebonne, J7Y 5K7 (domicile and residence).
- Gustave Larue, bailiff : 34 de Martigny Street West, Saint-Jérôme, District of Terrebonne, J7Z 7G7 (place of business).

Documents received from the client :

- Judgment dated February 14, 2002 rendered by Judge Gérald Thibault.
- Commercial loan agreement dated March 18, 1999.
- Copies of the declaration and defence in court record no. 700-22-004571-012.
- Photocopy of the certificate of registration for the Honda automobile.
- Writ of seizure of movable property in execution dated May 7, 2002.
- Minutes of seizure of Gustave Larue dated May 9, 2002.
- Letter from M^c Charles Blanchard dated April 4, 2002.
- Copy of the letter from Patrick Gendron to M^c Charles Blanchard dated April 5, 2002.
- Authentic copy of the notarial will of Léona Gendron signed before M^c Sylvie Corbeil on November 2, 1994.
- Invoice from *Galerie du Meuble Lelièvre* in the name of Patrick Gendron for the purchase of the Inglis washer and dryer, dated September 24, 1996, in the amount of \$1,153.23.
- Invoice from *Informatique Binaire enr.* in the name of Patrick Gendron for the purchase of the computer and printer, dated January 12, 2000, in the amount of \$2,517.24.
- Invoice from *Ameublement de bureau Saint-Jérôme inc.* in the name of Patrick Gendron for the purchase of the filing cabinet, desk and three chairs, in the amount of \$982.92.

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 (40 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.

Marc Robert is a professional model. He usually deals with Pierre Pilon, a photographer who operates an advertising agency.

On February 1, 1999, Marc accepts an offer from Pierre to participate in a photo shoot for the promotion of sporting goods in an advertising brochure for *Sport Plus inc.*

On February 25, 1999, before beginning the photo shoot, Marc signs the following contract :

<p>February 25, 1999</p> <p>In consideration for the amount of \$5,000, I consent to the use, as agreed upon, of photographs of me taken today by Pierre Pilon.</p> <p style="text-align: center;"><u>Marc Robert</u> Marc Robert</p>

The photo shoot takes place as anticipated and, indeed, one of Marc's photographs appears in an advertising brochure for *Sport Plus inc.*

On May 3, 1999, Pierre meets with Marc and informs him that potential purchasers are interested in certain photographs taken on February 25, 1999. They agree that Marc will receive \$1,000 for each sale completed with one of these purchasers. After the meeting on May 3, 1999, Marc hears nothing more about the sale of the photographs taken on February 25, 1999.

Two years later, on May 10, 2001, Simon Gagné and Gabriella Monticelli, respectively chief executive officer and assistant to the chief executive officer of *Santé de Fer inc.*, a firm specializing in energy products, meet with Pierre in order to purchase a photograph. Simon explains that the photograph will appear on *Santé de Fer inc.*'s products label and will also be used to promote those products. After looking through Pierre's portfolio, Simon selects one of the photographs of Marc taken during the photo shoot on February 25, 1999.

At that same meeting on May 10, 2001, Pierre tells Simon that he holds all the rights to the photographs in his portfolio. At the end of the meeting, Simon writes the following note in his records :

« Pilon has rights to photograph – contract to follow. »
--

On May 15, 2001, Simon receives the following document :

May 14, 2001

In consideration for the amount of \$3,000, I, Pierre Pilon, assign to *Santé de Fer inc.* all my rights to the photograph of Marc Robert taken on February 25, 1999. This assignment shall be valid only for the promotion of energy products in magazines.

Pierre Pilon

Pierre Pilon

To this document is attached the following letter :

May 14, 2001

Simon Gagné
Santé de Fer inc.
3376 Cavendish Blvd.
Ville Saint-Laurent, Quebec
H4M 2X9

Dear Simon :

Enclosed herewith is the selected photograph as well as an assignment of rights authorizing you to use it for the purposes you mentioned to me during our meeting on May 10, 2001, namely, for printing on the label of *Santé de Fer inc.*'s products and for the promotion thereof.

Pierre Pilon

Pierre Pilon

Santé de Fer inc. uses the photograph of Marc on the label for its energy products as well as in advertisements published in magazines.

A few months later, on September 18, 2001, Marc goes to the supermarket in his neighbourhood and sees his photograph on the label of *Santé de Fer inc.*'s products. The supermarket manager, Antoine Deschênes, tells him that the sale of *Santé de Fer inc.*'s products has tripled since his photograph has appeared on the label.

Surprised, he calls *Santé de Fer inc.*'s place of business to complain about the fact that the company is using his photograph without his authorization. He then learns that Pierre assigned all his rights to the photograph to *Santé de Fer inc.*

Marc believes the use of this photograph gives him the right to claim damages. He therefore retains the services of M^e Line Vachon who has the following motion duly served on November 6, 2001:

CANADA

SUPERIOR COURT

PROVINCE OF QUEBEC

DISTRICT OF MONTREAL

NO.: 500-05-022413-019

MARC ROBERT, domiciled and residing at 2010 Saint-Germain Street, Montreal, District of Montreal, H2W 5H4

Applicant

v.

PIERRE PILON, residing at 5498 King-Edward Street, Montreal, District of Montreal, H7G 4A1

Respondent

and

SANTÉ DE FER INC., a lawfully constituted legal person having its head office at 3376 Cavendish Boulevard, Ville Saint-Laurent, District of Montreal, H4M 2X9

Respondent

MOTION RELATING TO THE RESPECT OF PRIVACY
(Art. 762, para. 2 (b) C.C.P.)

TO ONE OF THE JUDGES OF THE SUPERIOR COURT OF THE DISTRICT OF MONTREAL, SITTING IN THE PRACTICE DIVISION, THE APPLICANT DECLARES :

1. On February 1, 1999, the Applicant agreed to participate in a photo shoot held by Respondent Pierre Pilon for the promotion of sporting goods in an advertising brochure for Sport Plus inc.;
2. On February 25, 1999, before the start of the photo shoot, the Applicant signed the contract prepared by Respondent Pierre Pilon, as appears from the contract, Exhibit A-1;
3. The photographs were exclusively intended for the advertising brochure of Sport Plus inc., as appears from Exhibit A-1;
4. Respondent Santé de Fer inc. is using one of the photographs taken on February 25, 1999 for commercial purposes other than those agreed upon, as appears from the label and advertisements, filed together as Exhibit A-2;

5. Respondent Santé de Fer inc. failed to verify whether Respondent Pierre Pilon could validly authorize the use of the photograph;
6. Respondent Santé de Fer inc. is using the photograph without right, thereby substantially increasing its sales, without paying anything whatsoever to the Applicant;
7. Respondent Pierre Pilon authorized Santé de Fer inc., without the right to do so, to use the Applicant's photograph for other commercial purposes;
8. The Respondents are responsible for the damage suffered by the Applicant, which damage is evaluated at an amount of \$75,000;
9. The Respondents have refused or neglected to pay the said amount, despite the fact that the Respondents were duly required to do so by means of a demand letter dated October 1, 2001, Exhibit A-3;

FOR THESE REASONS, MAY IT PLEASE THE COURT TO :

ORDER the Respondents solidarily to pay to the Applicant the amount of \$75,000 with interest at the legal rate and the additional indemnity provided for by law as of October 12, 2001.

The whole with costs.

MONTREAL, November 5, 2001.

Line Vachon

Line Vachon

Attorney for the Applicant

The motion is served with the following documents :

- Contract dated February 25, 1999 Exhibit A-1 : **reproduced on page 5**
- Label and advertisements Exhibit A-2 : **not reproduced**
- Demand letter Exhibit A-3 : **not reproduced**
- Affidavit of the applicant and notice
of presentation for November 30, 2001 **not reproduced**

On November 9, 2001, Simon gives you the mandate to represent *Santé de Fer inc.*

He tells you that *Santé de Fer inc.* acquired from Pierre all the rights to the photograph in dispute. However, he is very concerned because he cannot find his copy of the assignment of rights dated May 14, 2001 or the letter sent with it, notwithstanding a detailed search of his records. He fears that the documents were destroyed as a result of water damage which occurred a few months ago. He contacted Pierre in order to obtain a copy thereof and Pierre told him that he no longer has those documents.

QUESTION 2 (5 marks)

Under these circumstances, at the trial will *Santé de Fer inc.* be able to prove the assignment of rights dated May 14, 2001 through the testimony of Simon Gagné?

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

SUPPLEMENTARY FACTS

On November 30, 2001, during the presentation of the motion, you verbally indicate your intention to present an application for particulars regarding paragraph 8 of the motion. M^e Vachon, the lawyer for the applicant, argues that the motion for particulars is inadmissible because it is too late.

QUESTION 3 (5 marks)

Is M^e Line Vachon's argument well founded?

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

SUPPLEMENTARY FACTS

On November 30, 2001, the court authorizes the respondents to make a written contestation.

On December 12, 2001, Simon finds the letter as well as the assignment of rights dated May 14, 2001 signed by Pierre and he provides you with these documents (**reproduced on page 6**).

On January 15, 2002, you file the contestation for your client *Santé de Fer inc.*, which contestation is reproduced hereinbelow.

CANADA	<u>SUPERIOR COURT</u>
PROVINCE OF QUEBEC	
DISTRICT OF MONTREAL	
NO.: 500-05-022413-019	MARC ROBERT
	Applicant
	v.
	PIERRE PILON
	Respondent
	and
	SANTÉ DE FER INC.
	Respondent

	<u>CONTESTATION</u>
IN SUPPORT OF ITS CONTESTATION, RESPONDENT SANTÉ DE FER INC. STATES THE FOLLOWING :	
1. It has no knowledge of paragraphs 1, 2 and 3 of the motion;	
2. It denies paragraphs 4, 5, 6, 7 and 8 of the motion;	

3. As for paragraph 9 of the motion, it admits having received the demand letter, Exhibit A-3, but adds that it is with good reason that it is refusing to act upon it;

AND IN ORDER TO RE-ESTABLISH THE FACTS, IT ADDS THE FOLLOWING :

4. In 1999, the Applicant assigned to Respondent Pierre Pilon all of his rights to the photograph in dispute;
5. On May 10, 2001, Simon Gagné, chief executive officer of Respondent Santé de Fer inc., met with Respondent Pierre Pilon and told him that he wished to purchase all the rights to a photograph of the Applicant in order to publish it in advertisements and place it on its product label;
6. During this meeting, Respondent Pierre Pilon stated that he held all the rights to the photograph in dispute, a fact which Simon Gagné noted in his records, as appears from an extract of these records, Exhibit C-1;
7. On May 14, 2001, Respondent Pierre Pilon assigned to Respondent Santé de Fer inc. the right to use the photograph in dispute, as appears from the assignment of rights, Exhibit C-2, and the letter attached thereto, Exhibit C-3;
8. The damages claimed are not owed or, at the very least, are exaggerated.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO :

DISMISS the Applicant's motion;

The whole with costs.

MONTREAL, January 14, 2002.



Attorney for Respondent Santé de Fer inc.

The following exhibits are duly communicated upon service of the contestation :

- Extract of the records of Simon Gagné Exhibit C-1 : **reproduced on page 5**
- Assignment of rights dated May 14, 2001 Exhibit C-2 : **reproduced on page 6**
- Letter dated May 14, 2001 Exhibit C-3 : **reproduced on page 6**

The contestation is also served with the following affidavit of Gabriella Monticelli :

AFFIDAVIT

I, the undersigned, Gabriella Monticelli, assistant to the chief executive officer, domiciled and residing at 7530 Langelier Boulevard, Montreal, province of Quebec, solemnly affirm as follows :

1. I am the assistant of Simon Gagné, chief executive officer of Santé de Fer inc.;
2. I attended the meeting on May 10, 2001 between Pierre Pilon and Simon Gagné;
3. During the meeting, Simon Gagné explained to Pierre Pilon that he wished to acquire the rights to a photograph of Marc Robert which would appear on Santé de Fer inc.'s products label and would be used to promote the said products;
4. Simon Gagné selected a photograph of Marc Robert from Pierre Pilon's portfolio;
5. Pierre Pilon stated that he held all the rights to the photograph of Marc Robert.

In virtue whereof, I have signed on January 14, 2002

Gabriella Monticelli
Gabriella Monticelli

Sworn to before me in Montreal,
on January 14, 2002

Luce Dion

Luce Dion

Commissioner of Oaths (63,213)

In his written contestation (not reproduced), Pierre alleges the following :

- Marc Robert assigned to him the unlimited right to use the photographs taken during the photo shoot on February 25, 1999 and, therefore, Pierre Pilon could validly assign the photograph in dispute to *Santé de Fer inc.*;
- Subsidiarily, he cannot be held responsible for the fact that the photograph appears on *Santé de Fer inc.*'s products label given that Exhibit C-2 expressly provides as follows : « This assignment shall be valid only for the promotion of energy products in magazines. »

No other written proceeding is filed and no other document or exhibit is communicated.

The hearing takes place today, May 13, 2002. At the outset, M^c Vachon states that Gabriella Monticelli's affidavit is inadmissible as evidence for the following reasons : nothing indicates that it is impossible or unreasonable to cause Gabriella Monticelli to appear as a witness and the content of the affidavit is not reliable. Consequently, she asks the court to order that the affidavit be withdrawn from the court record.

QUESTION 4 (5 marks)

Is M^e Line Vachon's request well founded?

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

SUPPLEMENTARY FACTS

M^e Vachon calls the applicant, Marc Robert, as her first witness and asks him the following question :

Q.

At the time the contract, Exhibit A-1, was signed, for what purpose were the photographs taken on February 25, 1999 to be used?

A.

They were to be used solely to promote sporting goods in an advertising brochure for *Sport Plus inc.*

QUESTION 5 (5 marks)

Can you object to this answer on the ground that the witness is contradicting or varying the terms of the contract, Exhibit A-1?

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

SUPPLEMENTARY FACTS

As her second witness, M^e Vachon calls Félix Gauthier, a university professor specializing in fashion marketing, for the purpose of proving the amount of damage suffered. She asks him this first question :

Q.

According to you, what amount can a professional model expect to receive in exchange for the use of his photograph on a commercial product for advertising purposes?

QUESTION 6 (5 marks)

Can you object to this question? If so, state the ground for the objection. If not, explain your answer.

SUPPLEMENTARY FACTS

M^e Line Vachon declares that she has finished presenting her evidence. You call Pierre as your first witness and ask him the following question :

Q.

Had you agreed with Marc Robert that his photographs could be used by third parties?

A.

I met with Marc Robert on May 3, 1999 and we agreed that I would pay him \$1,000 if, some day, I sold one of his photographs to a third party.

M^e Line Vachon :

I object to this answer on the ground that the witness is varying the terms of the contract, Exhibit A-1, because he is adding a condition not contained in the contract, namely, the sale to potential purchasers in return for remuneration.

QUESTION 7 (5 marks)

Is M^e Line Vachon's objection well founded? Explain your answer.

SUPPLEMENTARY FACTS

As your second witness, you call Simon, the representative of your client, *Santé de Fer inc.*, and you ask him the following questions :

Q.

What did Pierre Pilon state to you during the meeting on May 10, 2001 as regards the photograph in dispute?

A.

I remember that he told me he held all the rights to the photograph and, in fact, I noted this in my records that same day.

Q.

Can you produce the relevant extract from your records as Exhibit C-1?

M^e Line Vachon :

I object to this production on the ground that the document is inadmissible as evidence.

QUESTION 8 (5 marks)

Is M^e Line Vachon's objection well founded? Explain your answer.

SUPPLEMENTARY FACTS

The examination of Simon continues and you ask him the following questions :

Q.

I am showing you the assignment of rights dated May 14, 2001 and the letter accompanying it which have already been communicated as Exhibits C-2 and C-3. Can you produce these two exhibits?

A.

Yes.

Q.

What did you agree upon with Pierre Pilon on May 10, 2001 as regards the use of the photograph of Marc Robert?

A.

It was expressly agreed that *Santé de Fer inc.* would purchase all the rights to a photograph which would appear on its products label and would also be used to promote them.

Pierre Pilon's lawyer :

I object to this answer because the witness is contradicting the terms of Exhibit C-2 which expressly states that : « This assignment shall be valid only for the promotion of energy products in magazines ».

QUESTION 9 (5 marks)

Is this objection by Pierre Pilon's lawyer well founded? If yes, explain your answer. If not, formulate your reply to the objection.

FILE 3 (15 MARKS)

You are the articling student for M^e Guy Brulotte who represents Suzanne Latour. After having sent a demand letter which has not been answered, M^e Brulotte, acting on behalf of his client, serves an action for professional liability against Dr. Marcel Dubois on the basis of an extracontractual fault.

M^e Brulotte is present at the examination on discovery before the filing of the defence of his client. He also carries out an examination of Dr. Dubois after the filing of the defence.

After three days of proof and hearing, the judge authorizes the parties to file written pleadings on the issue of professional liability.

Judgment is rendered on April 10, 2002. The judgment orders Dr. Dubois to pay Suzanne Latour the amount of \$425,000 with interest at the legal rate and the additional indemnity provided for by law as well as the costs. The amount of \$425,000 includes the cost of the expert reports of Dr. Plouffe and Dr. Doré, each for \$2,500, which were respectively prepared on September 18, 2000 and October 13, 2000.

M^e Brulotte asks you to prepare the bill of costs.

QUESTION 10 (15 marks)

What are the only taxable judicial fees that M^e Guy Brulotte can include on his bill of costs following this judgment? For each of them, indicate the relevant section or sections of the *Tariff of judicial fees of advocates* as well as the amount.

CORRIGÉ
PREUVE ET PROCÉDURE - EXAMEN DE REPRISE
 13 mai 2002

DOSSIER 1 (45 POINTS)

QUESTION 1 (45 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

PROCÉDURE ALLÉGÉE

PROVINCE DE QUÉBEC
 DISTRICT DE TERREBONNE

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

1.

NO : 700-22-004571-012

CAISSE DE CRÉDIT LAURENTIENNE

demanderesse

c.

PATRICK GENDRON

2.

défendeur

Absence de description complète des parties

3.

Aucune autre partie ajoutée

4.

REQUÊTE DU DÉFENDEUR EN OPPOSITION
 À LA SAISIE-EXÉCUTION MOBILIÈRE
 (art. 596 (2) C.p.c.)

5.

À L'UN DES JUGES DE LA COUR DU QUÉBEC, SIÉGEANT EN CHAMBRE DE PRATIQUE
 POUR LE DISTRICT DE TERREBONNE, LE DÉFENDEUR EXPOSE :

6.

1. Le 9 mai 2002, les biens suivants ont été saisis, parmi d'autres, tel qu'il appert du procès-verbal dressé par l'officier saisissant, Gustave Larue, huissier, pièce R-1 :

7.

- a) un ordinateur de marque Compaq, modèle 1225, avec moniteur et accessoires;
- b) une imprimante de marque LaserJet HP, modèle 5632;
- c) un classeur noir, quatre tiroirs;
- d) un bureau en mélamine noir;
- e) trois chaises en tissu vert avec roulettes;
- f) une laveuse et une sécheuse de marque Inglis.

2. La saisie de ces biens pratiquée en cette cause est nulle pour les motifs ci-après exposés;

8.

3. L'huissier a saisi l'ordinateur, l'imprimante, le classeur, le bureau et les chaises⁽⁹⁾, alors qu'ils sont des instruments de travail nécessaires à l'exercice personnel des activités professionnelles de comptable agréé du défendeur⁽¹⁰⁾;

9.

10.

4. L'huissier a saisi la laveuse et la sécheuse⁽¹¹⁾, alors que celles-ci garnissent la résidence principale, servent à l'usage du ménage et sont nécessaires à la vie du défendeur⁽¹²⁾;

11.

12.

5. La laveuse et la sécheuse sont les seuls meubles de la résidence qui appartiennent au défendeur⁽¹³⁾ 13.
et leur valeur est inférieure à 6 000 \$⁽¹⁴⁾ (tel qu'il appert de la facture datée du 24 septembre 1996, 14.
pièce R-2);

POUR CES MOTIFS, PLAISE AU TRIBUNAL :

- ANNULER la saisie-exécution mobilière pratiquée le 9 mai 2002, quant aux biens suivants : 15.
- a) un ordinateur de marque Compaq, modèle 1225, avec moniteur et accessoires; 16.
 - b) une imprimante de marque LaserJet HP, modèle 5632; 17.
 - c) un classeur noir, quatre tiroirs; 18.
 - d) un bureau en mélamine noir; 19.
 - e) trois chaises en tissu vert avec roulettes; 20.
 - f) une laveuse et une sécheuse de marque Inglis. 21.
- Aucun autre bien ajouté* 22.

Le tout avec dépens.

DOSSIER 2 (40 POINTS)

QUESTION 2 (5 points)

Dans ces circonstances, *Santé de Fer inc.* pourra-t-elle, lors du procès, prouver la cession de droits du 14 mai 2001 par le témoignage de Simon Gagné?

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

Oui, art. 2860 al. 2 *C.c.Q.*

30.

QUESTION 3 (5 points)

L'argument de M^e Line Vachon est-il bien fondé?

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

Non, art. 764 al. 2 *C.p.c.*

31.

QUESTION 4 (5 points)

La demande de M^e Line Vachon est-elle bien fondée?

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

Non, art. 771 *C.p.c.*

32.

QUESTION 5 (5 points)

Pouvez-vous formuler une objection à cette réponse au motif que le témoin contredit ou change les termes du contrat, pièce R-1?

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

Non, art. 2864 *C.c.Q.*

En effet, la réponse de Marc Robert ne change pas les termes du contrat, mais vise à interpréter ou à compléter les mots « utilisation convenue ».

33.

QUESTION 6 (5 points)

Pouvez-vous formuler une objection à cette question? Si oui, énoncez le motif de l'objection. Si non, dites pourquoi.

Oui, il s'agit d'un témoignage d'opinion qui n'est pas recevable en l'absence d'un rapport d'expertise. (art. 402.1 *C.p.c.*)

OU

Oui, le témoin n'a pas établi sa qualité d'expert.

OU

Oui, un témoin ordinaire ne peut donner son opinion.

34.

QUESTION 7 (5 points)

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

Non, parce que la réponse du témoin tend à prouver une entente subséquente dont la preuve testimoniale est permise puisque sa valeur n'excède pas 1 500 \$ (art. 2862 *C.c.Q.*). 35.

QUESTION 8 (5 points)

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

Oui, il s'agit d'un simple écrit (art. 2832 *C.c.Q.*) qui n'est recevable en preuve que contre son auteur vu la prohibition de la preuve par oui-dire
OU
Oui, un écrit d'une partie ne peut pas servir à corroborer son témoignage. 36.

QUESTION 9 (5 points)

Cette objection du procureur de Pierre Pilon est-elle bien fondée? Si oui, dites pourquoi. Si non, formulez votre réplique à l'encontre de cette objection.

Non, les termes du contrat, pièce C-2, peuvent être contredits par témoignage puisque la lettre de Pierre Pilon, pièce C-3, constitue un commencement de preuve rendant vraisemblable l'autorisation d'utiliser la photographie sur l'étiquette (art. 2863 et 2865 *C.c.Q.*). 37.

DOSSIER 3 (15 POINTS)

QUESTION 10 (15 points)

Quels sont les seuls honoraires judiciaires taxables que M^e Guy Brulotte peut inclure dans son mémoire de frais à la suite de ce jugement? Pour chacun d'eux, indiquez le ou les articles pertinents du *Tarif des honoraires judiciaires des avocats* ainsi que le montant.

HONORAIRES JUDICIAIRES TAXABLES	ARTICLES DU <i>Tarif des honoraires judiciaires des avocats</i>	MONTANT	
Mise en demeure (non requise par la loi)	art. 21.2)	20 \$	38. <input type="text" value="2"/>
Interrogatoire de Suzanne Latour	art. 27	30 \$	39. <input type="text" value="2"/>
Interrogatoire de D ^r Marcel Dubois	art. 27	30 \$	40. <input type="text" value="2"/>
Autorisation de plaider par écrit	art. 28	100 \$	41. <input type="text" value="2"/>
Quatre demi journées additionnelles	art. 33.1)	200 \$	42. <input type="text" value="2"/>
Jugement au fond	art. 25	1000 \$	43. <input type="text" value="2"/>
Honoraire additionnel	art. 42	3 250 \$	44. <input type="text" value="2"/>

Aucuns autres honoraires mentionnés 45.