



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

DROIT DES AFFAIRES

MARCH 9, 2000

- 1) The examination in the Droit des affaires section is intended to determine the extent to which you have met the ultimate goals set forth in the document entitled « Préambule Droit des affaires ».
- 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:
 - Droit des affaires
 - Le Barreau 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 **12** pages (including this page) and that your answer booklet contains **5** pages.

N.B. : You may assume that the legislation currently in effect, as explained in the documentation distributed to you, applies. Do not take into account the amendments announced by the Minister of Finance of Canada in the budget speech of February 28, 2000.

FILE 1 (43 MARKS)

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

Géotech ltée was incorporated pursuant to the *Canada Business Corporations Act*. Its articles of incorporation stipulate a minimum of one director and a maximum of ten directors. They also stipulate a share capital consisting of an unlimited number of class « A », class « B » and class « C » shares. Moreover, any transfer of shares requires the consent of a majority of the directors.

The following rights and privileges are attached to the class « A » shares:

- the right to one vote per share;
- the right to receive all dividends which are declared;
- the right to share in the remaining property of the corporation upon its dissolution.

The following rights, privileges, conditions and restrictions are attached to the class « B » shares :

- upon the dissolution of the corporation, the right to receive, in preference to the class « A » shares and the class « C » shares, the amount paid into the stated capital account for the said class « A » shares, together with accrued and unpaid dividends ;
- the right to receive an annual, fixed, cumulative, preferred dividend equal to 8% of the amount paid into the stated capital account for the said class « B » shares, said dividend to be paid in preference to dividends on the other classes of shares; the dividend begins to accrue as of the date of issuance of the shares ;
- these shares do not confer the right to vote, and they are redeemable on a given date, set at July 31, 2002, at a price equal to the amount paid into the stated capital account for the said shares, together with accrued and unpaid dividends ;
- these shares do not otherwise share in the profits or surplus assets of the corporation .

The following rights, privileges, conditions and restrictions are attached to the class « C » shares :

- upon the dissolution of the corporation, the right to receive, in preference to the class « A » shares, the amount paid into the stated capital account for the said class « C » shares, together with declared and unpaid dividends;
- the right to receive a non-cumulative preferred dividend equal to 10% per annum of the amount paid into the stated capital account for the said class « C » shares, said dividend to be paid in preference to dividends on the class « A » shares;
- these shares do not confer the right to vote, and they are redeemable at the option of the holders thereof;
- these shares do not otherwise share in the profits or surplus assets of the corporation.

On May 31, 1998, Luc Bolduc and Julie Lépine, a married couple, are the directors of the corporation. They each hold 400 class « A » shares issued at a price of \$10 each and 450 class « C » shares issued at a price of \$100 each. There are 700 class « B » shares issued, which shares are owned by *Gestion Monique Landreville inc.*, a company incorporated pursuant to Part IA of the *Companies Act*; the said class « B » shares were issued in consideration for an amount of \$70,000.

On June 1, 1998, Luc Bolduc and Julie Lépine offer Marie Larouche, a key employee, the opportunity to subscribe for 200 class « A » shares in the share capital of *Géotech ltée*, for a consideration of \$12,000 to be paid in cash. Marie Larouche places two conditions on her acceptance of the offer: she wants to be a director of the corporation at all times and wants to have the exclusive right, for her sole benefit, to object to anyone other than Luc Bolduc, Julie Lépine and herself holding class « A » shares in the share capital of *Géotech ltée*.

Luc Bolduc and Julie Lépine accept these conditions. The parties agree that they will have to enter into a shareholders' agreement. On June 15, 1998, Luc Bolduc and Julie Lépine provide Marie Larouche with a draft agreement which contains the following provisions, among others :

Shareholders' Agreement

Between: Luc Bolduc, a businessman, domiciled and residing in Sherbrooke, at civic address 138 King Street West, J1K 2Z8;
and
 Jule Lépine, a businesswoman, domiciled and residing in Sherbrooke, at civic address 138 King Street West, J1K 2Z8;
and
 Marie Larouche, an engineer, domiciled and residing in Fleurimont, at civic address 440 Chemin du Golf, J1J 3C9.
 (Hereinafter collectively referred to as the « Shareholders »)

The Shareholders declare as follows :

The Shareholders own all of the class « A » shares of *Géotech ltée* (hereinafter referred to as the « Corporation »).

The Shareholders wish to govern certain elements of the management of the Corporation, as permitted by the *Canada Business Corporations Act*.

Now, therefore, the Shareholders agree as follows:

1. The Shareholders shall exercise the voting rights attached to their class « A » shares so as to ensure that they are, at all times, elected and re-elected as the only directors of the Corporation ;
2. In order to be valid, a resolution of the directors of the Corporation whose direct or indirect purpose or effect is the issuance of shares of the Corporation shall require the unanimous vote of the directors ;

[...]

On June 20, 1998, Marie Larouche meets with Luc Bolduc and Julie Lépine and makes the following two comments to them :

1st comment: It is necessary for *Gestion Monique Landreville inc.* to be a party to the agreement to be entered into in order to ensure the legality of sections 1 and 2 of the draft agreement .

2nd comment: As drafted, section 2 of the draft agreement does not fulfil her request, namely, that she have the exclusive right, for her sole benefit, to object to anyone other than Luc Bolduc, Julie Lépine and herself holding class « A » shares.

QUESTION 1 (16 marks)

(a) As regards each of sections 1 and 2, is it necessary for *Gestion Monique Landreville inc.* to be a party to the shareholders' agreement in order to ensure its legality ?

- **Justify your answer by referring to one or more specific and relevant provisions of the *Canada Business Corporations Act* .**

(b) Marie Larouche's second comment is well founded on two grounds. Indicate these grounds .

ONLY THE FIRST TWO GROUNDS IN THE ANSWER BOOKLET WILL BE CORRECTED .

SUPPLEMENTARY FACTS

On July 2, 1998, a shareholders' agreement complying with Marie Larouche's requests is duly signed. On July 15, 1998, at a meeting of the shareholders, Marie Larouche, Luc Bolduc and Julie Lépine are elected as directors of the corporation.

QUESTION 2 (8 marks)

- **Other than preparing minutes of the meeting or a resolution in lieu of the meeting, indicate two formalities required at law which *Géotech ltée* must fulfil in order to give effect to the election of the directors .**
- **Justify your answer by referring to one or more specific and relevant legislative provisions.**

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

SUPPLEMENTARY FACTS

On November 22, 1999, *Géotech ltée* decides to amalgamate with *Invesplus inc.*, one of its main competitors, a corporation which is also governed by the *Canada Business Corporations Act*.

The amalgamation agreement provides that the class « B » shares of *Géotech ltée* will be converted into class « D » shares of the share capital of the amalgamated corporation. These class « D » shares will confer a right to a dividend of 2% per annum and will no longer have any preferred rights with respect to the other classes of shares.

Luc Bolduc and Julie Lépine are in favour of the amalgamation, while Marie Larouche and *Gestion Monique Landreville inc.* oppose it.

Marie Larouche indicates her intention to leave the corporation before the amalgamation and, in this regard, she asks Luc Bolduc and Julie Lépine to see to it that the value of her class « A » shares is paid to her.

On December 15, 1999, Marie Larouche, Luc Bolduc and Julie Lépine agree that *Géotech ltée* will purchase and immediately pay for the class « A » shares held by Marie Larouche.

The balance sheet of *Géotech ltée* as at December 15, 1999 is as follows :

GÉOTECH LTÉE			
BALANCE SHEET			
as at December 15, 1999			
ASSETS		LIABILITIES	
Current Assets	\$ 500,000	Current Liabilities	\$ 200,000
Fixed Assets	\$ 200,000	Long-term debt	\$ 250,000
		<u>SHAREHOLDERS' EQUITY</u>	
		Share capital:	
		1,000 class « A » shares:	\$ 20,000
		700 class « B » shares:	\$ 70,000
		900 class « C » shares:	\$ 90,000
		Retained earnings:	\$ 70,000
	<u>\$ 700,000</u>		<u>\$ 700,000</u>

The realizable value of the corporation's assets is \$650,000. At this time, no dividends are accrued or unpaid and the corporation is able to pay its liabilities as they come due.

QUESTION 3 (4 marks)

Indicate the maximum amount that *Géotech ltée* can pay immediately to legally acquire Marie Larouche's class « A » shares.

SUPPLEMENTARY FACTS

Géotech ltée legally acquires Marie Larouche's 200 class « A » shares; Marie Larouche resigns as a director. Once this obstacle has been overcome, Luc Bolduc and Julie Lépine continue their efforts to amalgamate with *Invesplus inc.*

The following document has been prepared at the request of *Géotech ltée*, in contemplation of proposed amalgamation.

[...]

In connection with this amalgamation, one vote will be held for all the shareholders of *Géotech ltée*. On this, all shareholders will be entitled to vote. The amalgamation will have to be accepted by a resolution adopted by a majority of the votes cast .

If all of the shareholders exercise their right to vote, the resolution should be adopted without any problems. Luc Bolduc and Julie Lépine will hold 1,900 votes, namely, the 1,700 votes attaching to the class « A » shares and class « C » shares held by them and the 200 votes attaching to the class « A » shares acquired by the corporation from Marie Larouche, which latter votes they will be entitled to exercise on behalf of the corporation in their capacity as directors. *Gestion Monique Landreville inc.* will only have 700 votes.

In any event, *Géotech ltée* need not worry that holders of class « B » shares will immediately withdraw their investment, given that the current articles stipulate that these shares are redeemable only on July 31, 2002.

[...]

QUESTION 4 (15 marks)

- **Indicate five errors contained in this document.**
- **For each error, justify your answer by referring to one or more specific and relevant provisions of the *Canada Business Corporations Act*.**

ONLY THE FIRST FIVE ERRORS WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

FILE 2 (20 MARKS)

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

Charles Duc consults you today and relates the following facts to you.

Gestion Orléans inc. (hereinafter referred to as « *Gestion* ») is a holding company incorporated pursuant to the *Canada Business Corporations Act* whose share capital is comprised of only one class of common shares. There are 100 common shares issued and outstanding, with a total stated capital of \$100; these shares belong to Charles Duc, a Canadian resident.

Gestion owns 1,000,000 common shares in the share capital of *Boulangerie du bon pain inc.* (hereinafter referred to as « *Boulangerie* »), a Canadian-controlled private corporation incorporated pursuant to the *Canada Business Corporations Act*. *Boulangerie* makes bread which it sells and distributes directly to food chains and grocers, but it does not operate any retail outlets.

Through the block of common shares it holds in *Boulangerie*, *Gestion* controls 20% of all the 5,000,000 issued and outstanding common shares of the only class of shares of the share capital of *Boulangerie*.

In 1989, when *Boulangerie* was having financial difficulties, *Gestion* acquired its 1,000,000 common shares of *Boulangerie* from Jean Nolet for an amount of \$200,000. Jean Nolet, like the other shareholders of *Boulangerie*, had subscribed for his common shares directly from the share capital of *Boulangerie* for an amount of \$1 per share. *Boulangerie*'s stated capital is \$5,000,000.

The other shareholders of *Boulangerie*, who are not related to *Gestion*, intend to buy out *Gestion*. They have agreed to enter into an agreement pursuant where to *Boulangerie* will purchase *Gestion*'s block of shares on June 30, 2000 and pay *Gestion* an amount of \$1,200,000. *Gestion* has agreed to this purchase in favour of *Boulangerie*.

Charles Duc also indicates to you that *Gestion* and *Boulangerie* each have fiscal years ending on December 31st of each year. As at December 31, 2000, *Boulangerie* will not have any refundable dividend tax on hand. Charles Duc expects that *Gestion* will not have any income or losses in the year 2000, except the income received or earned pursuant to the purchase of its block of shares of *Boulangerie*, if applicable.

QUESTION 5 (5 marks)

What is the amount of the deemed dividend which *Gestion* will realize upon the sale of its block of shares to *Boulangerie*?

QUESTION 6 (5 marks)

FROM AMONG THE FOLLOWING STATEMENTS, SELECT THE CORRECT ONE AND WRITE IT IN YOUR ANSWER BOOKLET :

In addition to this deemed dividend, pursuant to the sale of its block of shares to *Boulangerie*, *Gestion* will realize :

- a taxable capital gain of \$600,000
- a taxable capital gain of \$750,000
- a taxable capital gain of \$800,000
- a taxable capital gain of \$1,000,000
- business income of \$1,000,000
- none of the above.

SUPPLEMENTARY FACTS

Before the purchase of the shares held by *Gestion*, the balance sheet of *Boulangerie* as at June 30, 2000 is as follows:

BOULANGERIE DU BON PAIN INC.			
BALANCE SHEET			
as at June 30, 2000			
ASSETS		LIABILITIES	
Current Assets		Current Liabilities	
Cash on hand	1,500,000	Bank loan	480,000
Accounts receivable	1,326,000	Accounts payable	2,700,000
Inventory	4,050,000	Instalment on long-term debt	180,000
		Long-term liabilities	2,909,000
		Total liabilities	<u>6,269,000</u>
Machinery and equipment	1,464,000		
Fixed assets	3,129,000		
		SHAREHOLDERS' EQUITY	
		Share capital	5,000,000
		Retained earnings	200,000
		Total shareholders' equity	<u>5,200,000</u>
Total assets	<u>11,469,000</u>	Total liabilities and shareholders' equity	<u>11,469,000</u>

On June 30, 2000, *Boulangerie* pays \$1,200,000 to *Gestion*. The loan agreement entered into in 1998 between *Boulangerie* and the financial institution with which it deals requires *Boulangerie* to maintain, at all times, a working capital ratio ("coefficient de fonds de roulement") of 1.8 and a debt/equity ratio ("ratio dette/équité") which does not exceed 160%. The failure to fulfil these conditions entitles the financial institution to require repayment of the loan.

QUESTION 7 (10 marks)

By paying 1 200 000 \$ to *Gestion*, did *Boulangerie* fulfil the conditions set forth in the loan agreement as regards:

(a) the working capital ratio (« coefficient de fonds de roulement ») ? Justify your answer by showing all relevant calculations and your result.

(b) the debt/equity ratio (« ratio dette/équité ») ? Justify your answer by showing all relevant calculations and your result.

FILE 3 (22 MARKS)

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

Jean-Luc St-Onge, a trustee in bankruptcy, consults you today and relates the following facts to you.

The company *Chaussures Berthiaume inc.* has been having financial difficulties for some time. Jacques Trudeau is the company's president and majority shareholder.

On December 15, 1999, *Chaussures Berthiaume inc.* files a notice of intention in accordance with the *Bankruptcy and Insolvency Act*.

On January 12, 2000, the company obtains a court order extending the deadline for filing its proposal to no later than February 15, 2000. Having failed to file its proposal within the prescribed deadline, it is declared bankrupt pursuant to the *Bankruptcy and Insolvency Act*.

Jean-Luc St-Onge is appointed as the trustee.

On March 2, 2000, Jean-Luc St-Onge receives a proof of claim from Jeanne Mercier, as an unsecured creditor of *Chaussures Berthiaume inc.*, for an amount of 120 000 \$. The claim is based upon a loan agreement entered into on September 6, 1997 pursuant whereunto Jeanne Mercier lent 100 000 \$ to *Chaussures Berthiaume inc.* The agreement stipulates that, in consideration for the loan, Jeanne Mercier is entitled to receive each year, for a period of 10 years, 20% of the company's net profits as payment for the interest on the amount loaned. In addition to the principal amount of the loan owed, Jeanne Mercier's claim represents her share of the profits for the years 1997 to 1999.

QUESTION 8 (5 marks)

- **Is the trustee required to accept Jeanne Mercier's claim as an unsecured creditor?**
- **Justify your answer by referring to one or more specific and relevant provisions of the *Bankruptcy and Insolvency Act*.**

SUPPLEMENTARY FACTS

On March 3, 2000, the trustee receives a proof of claim from Michel L'Espérance for an amount of 10 000 \$. This claim is based upon services rendered to *Chaussures Berthiaume inc.* from December 16, 1999 to February 14, 2000. The trustee considers that this claim is not well founded, because the services were rendered after the notice of intention was filed.

QUESTION 9 (4 marks)

- **Is the trustee correct ? Explain your answer.**
- **Justify your answer by referring to one or more specific and relevant provisions of the *Bankruptcy and Insolvency Act*.**

SUPPLEMENTARY FACTS

On February 28, 2000, the trustee, Jean-Luc St-Onge, receives from the company *Aux bons pieds ltée* a demand for repossession of 100 pairs of shoes, identified under the *Confort ABP* brand. These shoes were sold and delivered to *Chaussures Berthiaume inc.* on December 10, 1999. The purchase price was 2 000 \$ and was payable on February 1, 2000.

At the time the trustee receives the demand of *Aux bons pieds ltée*, he only has 40 pairs of shoes in his possession, the other 60 pairs having already been sold by *Chaussures Berthiaume inc.* to consumers prior to February 15, 2000.

QUESTION 10 (7 marks)

(a) Must the trustee comply with the demand made by *Aux bons pieds ltée* and return to it the 40 pairs of shoes he still has in his possession?

- **Justify your answer by referring to one or more specific and relevant provisions of the *Bankruptcy and Insolvency Act*.**

(b) By what means can *Aux bons pieds ltée* claim the amount of \$1,200 owed for the other 60 pairs of shoes which have already been sold ?

- **Justify your answer by referring to one or more specific and relevant provisions of the *Bankruptcy and Insolvency Act*.**

SUPPLEMENTARY FACTS

The trustee's inquiry also reveals the following facts.

On June 7, 1999, Jacques Trudeau granted *Gestion industrielle inc.* an option to purchase, prior to June 7, 2000, all the shares held by him in the share capital of *Chaussures Berthiaume inc.*

On August 18, 1999, for good and valid consideration, *Chaussures Berthiaume inc.* granted *Gestion industrielle inc.* an immovable hypothec duly published on August 20, 1999. At that time, *Chaussures Berthiaume inc.* was insolvent, but *Gestion industrielle inc.* was totally unaware of its financial difficulties.

QUESTION 11 (6 marks)

- **Pursuant only to the provisions of the *Bankruptcy and Insolvency Act*, can the trustee contest the validity of the hypothec granted to *Gestion industrielle inc.*? Explain your answer.**
- **Justify your answer by referring to one or more specific and relevant provisions of the *Bankruptcy and Insolvency Act*.**

FILE 4 (15 MARKS)

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

M^c Gaston Taillon, a partner in your law firm, consults you today and relates the following facts to you.

In March of 1998, M^c Taillon decided to build a luxurious cottage along the shore of Lake Memphremagog. He wanted to include an indoor pool covered by a glass dome. In order to realize this dream, he retained the services of Jean Lafleur, an architect, to prepare the plans. He asked Yves Leclair, an engineer, to do a soil survey in order to ensure that the land could support such a structure. Yves Leclair's report concluded that the construction was feasible.

On April 10, 1998, M^c Taillon entered into an agreement with *Constructions Pierre Séguin inc.*, which was represented by its president, Pierre Séguin; the agreement, for an amount of 375 000 \$, was for the construction of his cottage with the indoor pool. At the same time, M^c Taillon provided Pierre Séguin with the plans prepared by the architect Jean Lafleur who was to supervise the construction.

The construction of the cottage was completed on July 15, 1999 and M^c Taillon paid the entire 375 000 \$.

On January 14, 2000, while M^c Taillon was in his cottage, the exterior wall of the building housing the pool cracked and the glass dome caved in, causing considerable damage.

M^c Taillon asks you to represent him in proceedings instituted against *Construction Pierre Séguin inc.* for the damage caused to his cottage.

During the month of March 2000, you obtain the following expert reports :

- report of Louis Boivin, an engineer, stating that there is a significant underground water source under the pool which endangers any construction on this part of the land;
- report of Jacques Tremblay, an architect, stating that the plans to install the glass dome do not meet professional standards and that the exterior wall was not built in accordance with the plans.

You send a letter of putting in default to the architect Jean Lafleur, the engineer Yves Leclair and the contractor, *Constructions Pierre Séguin inc.*, in accordance with the requirements of the Civil Code. The letter is not answered. Thereafter, you institute an action against these persons for an amount of 185 000 \$.

After having appeared, each of the defendants files a separate defence. The action is inscribed and, after the issuance of a certificate of readiness, you are invited to a pre-trial conference at which the judge fixes a trial date.

The proof and hearing last five days and your experts, Louis Boivin and Jacques Tremblay, are heard by the court, each of their reports having been communicated in accordance with article 402.1 C.C.P. and having been filed at the hearing.

The judgment rendered by Justice Marie Montgrain reads as follows:

ORDERS the defendants, Jean Lafleur, Yves Leclair and Constructions Pierre Séguin inc., solidarily, to pay to the plaintiff an amount of \$122,800 with interest at the legal rate from the date of service and the additional indemnity provided for at law.

The whole with costs.

QUESTION 12 (10 marks)

State all the taxable fees which you can claim as the attorney for the plaintiff pursuant to this judgment and, for each of these fees, indicate the amount thereof and one or more relevant sections of the *Tariff of judicial fees of advocates*.

SUPPLEMENTARY FACTS

You provide your partner, M^e Gaston Taillon, with your invoice for your fees in this file, less the amount of the fees which have already been taxed, as agreed in the contract signed by your client. This invoice, for an amount of 17 817 \$, has not yet been paid.

Today, you receive a cheque from the attorneys for the defendants for an amount equal to the total of the fees taxed in your favour. The cheque is payable to the order of your firm, without any particular mention thereon.

QUESTION 13 (5 marks)

- **Into which bank account must you deposit this cheque?**
- **Justify your answer by referring to one or more specific and relevant provisions of the *Bar Act* or the regulations thereunder .**

CORRIGÉ
Examen régulier - Droit des Affaires
Le 9 mars 2000

DOSSIER 1 (43 POINTS)

QUESTION 1 (16 points)

a) À l'égard de chacune des clauses 1 et 2, est-il nécessaire que *Gestion Monique Landreville inc.* soit partie à la convention entre actionnaires pour en assurer la légalité?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi sur les sociétés canadiennes par actions*.

- **Clause 1 :** 1
 Non, art. 146 (1) L.c.s.a.
- **Clause 2 :** 2
 Oui, art. 146 (2) L.c.s.a. OU art. 6 (3) L.c.s.a.

b) Le deuxième commentaire de Marie Larouche est bien fondé pour deux motifs. Indiquez ces deux motifs.

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

2 points par bulle 2/3 3

1. Cette clause confère un droit de veto (de s'opposer) aux deux autres administrateurs. 1.
2. Cette clause ne traite pas du transfert des actions. 2.
3. Cette clause ne vise pas spécifiquement les actions de catégorie «A» 3.

QUESTION 2 (8 points)

Indiquez deux formalités requises par la loi, autres que la rédaction d'un procès-verbal ou d'une résolution tenant lieu d'assemblée, que doit exécuter *Géotech ltée* pour donner suite à l'élection des administrateurs.

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

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

4 points par bulle 2/3 4

1. Envoyer un avis de changement d'administrateurs (dans les 15 jours suivants), 1.
 art. 113 L.c.s.a.
2. Porter aux livres de procès-verbaux un exemplaire de l'avis (exigé à l'article 113 L.c.s.a.) 2.
 art. 20 (1) L.c.s.a.
3. Déposer une déclaration modificative, art. 34 L.p.l.e. 3.

QUESTION 3 (4 points)

Indiquez le montant maximal que *Géotech ltée* peut immédiatement payer pour acquérir légalement les actions de catégorie «A» de Marie Larouche.

$$650\,000 \$ - X = 450\,000 + (20\,000 \$ - 4\,000 \$) + 90\,000 \$ + 70\,000 \$$$

24 000 \$ OU 120 \$ par action (art. 34 L.c.s.a.) 5

QUESTION 4 (15 points)

Indiquez cinq erreurs contenues dans ce document.

Pour chacune des erreurs, appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi canadienne sur les sociétés par actions*.

SEULES LES CINQ PREMIÈRES ERREURS INSCRITES AU CAHIER DE RÉPONSES SERONT CORRIGÉES.

Sont aussi acceptées les réponses suivantes où l'erreur est identifiée dans la mesure où est aussi indiquée la disposition précise et pertinente.

OU

<p>1. Un vote distinct ou un vote par catégorie doit être tenu, art. 183 (1) ou (4) ou (5) <i>L.c.s.a</i></p>	<p>6 (3)</p>	<p>1. «Un seul vote sera tenu pour tous les actionnaires» art. 183 (1) ou (4) ou (5) <i>L.c.s.a</i>.</p>
<p>2. Une résolution spéciale ou au 2/3 des voix est requise dans tous les cas, art. 183 (5) <i>L.c.s.a</i>. (et art. 2(1), définition «résolution spéciale»)</p>	<p>7 (4)</p>	<p>2. «Résolution à la majorité des voix» art. 183 (5) <i>L.c.s.a</i>.</p>
<p>3. <i>Gestion Monique Landreville inc.</i> peut empêcher la fusion (par le vote séparé accordé aux actionnaires de catégorie «B»), art. 183 (1) ou (4) ou (5) <i>L.c.s.a</i>.</p>	<p>8 (2)</p>	<p>3. «Cette résolution devrait être adoptée sans problème. <i>Gestion Monique Landreville inc.</i> ne disposera que de 700 votes» art. 183 (1) ou (4) ou (5) <i>L.c.s.a</i>.</p>
<p>4. Les actions de Marie Larouche ne confèrent pas le droit de vote puisque'elles ont été annulées, art. 30 OU 39 <i>L.c.s.a</i>.</p>	<p>9 (2)</p>	<p>4. «Les 200 votes attachés aux actions de la catégorie «A» acquises de Marie Larouche...» art. 30 OU 39 <i>L.c.s.a</i>.</p>
<p>OU Les actions de Marie Larouche ne confèrent pas le droit de vote puisque la société ne peut détenir ses propres actions, art. 30 OU 39 <i>L.c.s.a</i>.</p>	<p>10 (4)</p>	<p>5. «<i>Géotech ltée</i> n'a pas à s'inquiéter du fait que les actionnaires de catégorie «B» retirent immédiatement leur investissement» art. 190 OU 183 (2) <i>L.c.s.a</i>.</p>

DOSSIER 2 (20 points)

QUESTION 5 (5 points)

Quel est le montant du dividende réputé qui sera réalisé par *Gestion* lors de la vente de son bloc d'actions à *Boulangerie* ?

200 000 \$

11 **5**

(soit la différence entre le prix d'achat de 1 200 000 \$, et le capital versé de 1 000 000 \$ attribuable à ces actions).

QUESTION 6 (5 points)

Parmi les énoncés suivants, choisissez le bon et inscrivez-le dans votre cahier de réponses. En plus de ce dividende réputé, *Gestion* réalise, à la suite de la vente de son bloc d'actions à *Boulangerie* :

- un gain en capital imposable de 600 000 \$
- un gain en capital imposable de 750 000 \$
- un gain en capital imposable de 800 000 \$
- un gain en capital imposable de 1 000 000 \$
- un revenu d'entreprise de 1 000 000 \$
- aucun de ces énoncés

Un gain en capital imposable de 600 000 \$

12 **5**

QUESTION 7 (10 points)

En payant 1 200 000 \$ à *Gestion*, *Boulangerie* a-t-elle respecté les conditions de l'acte de prêt relatives au :

a) coefficient de fonds de roulement ? Appuyez votre réponse en faisant état de tous vos calculs et du résultat.

Non, (à la suite du versement du montant, *Boulangerie* n'a pas respecté cette condition de l'acte de prêt car) le coefficient du fonds de roulement est égal à 1,6 OU 1,68 OU 1,689 OU 1,69 OU 1,7⁽¹³⁾

13 **3**
14 **1**
15 **2**

$$\frac{\text{Actif à court terme}}{\text{Passif à court terme}} = \frac{6\,876\,000 \$ - 1\,200\,000 \$^{(14)}}{3\,360\,000 \$^{(15)}}$$

b) ratio dette/équité? Appuyez votre réponse en faisant état de tous vos calculs et du résultat.

Oui, (à la suite du versement du montant, *Boulangerie* a respecté cette condition de l'acte de prêt car) le coefficient dette/équité est égal à 157 %⁽¹⁶⁾

16 **2**
17 **1**
18 **1**

$$\frac{\text{passif}}{\text{valeur nette}} = \frac{6\,269\,000 \$^{(17)}}{5\,200\,000 \$ - 1\,200\,000 \$^{(18)}} \times 100$$

DOSSIER 3 (22 points)

QUESTION 8 (5 points)

Le syndic doit-il accepter la réclamation de Jeanne Mercier à titre de créancier ordinaire?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi sur la faillite et l'insolvabilité*.

Non, Jeanne Mercier a une réclamation prouvable dans la faillite (art. 121 ou 124 *L.f.i.*)

19 (3)

à titre de créancier différé, art. 139 *L.f.i.*

20 (2)

QUESTION 9 (4 points)

Le syndic a-t-il raison ? Dites pourquoi.

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi sur la faillite et l'insolvabilité*.

Non, art. 50.4 (8) a) *L.f.i.* OU art. 121 (1) *L.f.i.*

21 (2)

La faillite est survenue le 15 février 2000

OU

La réclamation (de Michel L'Espérance) est pour des services rendus avant la faillite

22 (2)

QUESTION 10 (7 points)

a) Le syndic doit-il donner suite à la demande de *Aux bons pieds ltée* et lui remettre les 40 paires de souliers qu'il a toujours en sa possession ?

• Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi sur la faillite et l'insolvabilité*.

Oui, art. 81.1 *L.f.i.*

(Cette demande est exercée dans le délai de 30 jours car les jours écoulés pendant les procédures concordataires ne sont pas pris en compte.)

23 (3)

b) De quelle façon *Aux bons pieds ltée* peut-elle réclamer la somme de 1 200 \$ due pour les 60 autres paires de souliers déjà vendues?

• Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi sur la faillite et l'insolvabilité*.

Produire une preuve de réclamation, art. 121 *L.f.i.* OU 124 *L.f.i.*

24 (4)

QUESTION 11 (6 points)

Le syndic peut-il, en vertu des seules dispositions de la *Loi sur la faillite et l'insolvabilité*, contester la validité de l'hypothèque consentie à *Gestion industrielle inc.* ? Dites pourquoi.

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi sur la faillite et l'insolvabilité*.

La réponse suivante est acceptée dans le cas où l'étudiant tient pour acquis que la considération et l'hypothèque sont concomitantes .

OU

La réponse suivante est aussi acceptée dans le cas où l'étudiant tient pour acquis que la considération et l'hypothèque ne sont pas concomitantes .

Non, les conditions de l'art. 95 *L.f.i.* ne sont pas remplies.

OU

Non, il n'a pas de recours en vertu de la *L.f.i.*

25 (6)

Oui, il s'agit d'une préférence frauduleuse, en faveur d'une personne liée dans les 12 mois de l'ouverture de la faillite, art. 95 *L.f.i.* ou 96 *L.f.i.* ou 4 *L.f.i.*

DOSSIER 4 (15 points)

QUESTION 12 (10 points)

Énoncez tous les honoraires taxables que vous pouvez réclamer à titre de procureur du demandeur à la suite de ce jugement, en indiquant, pour chacun d'eux, le montant et le ou les articles pertinents du *Tarif des honoraires judiciaires des avocats*.

Honoraires	Montant	Article	
Mise en demeure :	25,00 \$	article 21 (1) du <i>Tarif des honoraires judiciaires des avocats</i> .	26 (2)
Jugement au fond :	1 000 \$	article 25 du <i>Tarif des honoraires judiciaires des avocats</i> .	27 (2)
	1 000 \$	article 13 du <i>Tarif des honoraires judiciaires des avocats</i> .	28 (1)
Jours additionnels :	400 \$	article 33 (1) du <i>Tarif des honoraires judiciaires des avocats</i> .	29 (2)
Conférence préparatoire :	30 \$	articles 27 ou 34 du <i>Tarif des honoraires judiciaires des avocats</i> .	30 (2)
Honoraire additionnel :	228 \$	article 42 du <i>Tarif des honoraires judiciaires des avocats</i> . (1 % x 22 800 \$)	31 (1)

QUESTION 13 (5 points)

Dans quel compte bancaire devez-vous déposer ce chèque ?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi sur le Barreau* ou de ses règlements.

Dans le compte général

32 (3)

article 3.05 a) du *Règlement sur la comptabilité et les comptes en fidéicommiss des avocats*.

33 (2)