



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

DROIT DES AFFAIRES

February 26, 2003

- 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
 - 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 **12** pages (including this page) and that your answer booklet contains **8** pages.

FILE 1 (24 MARKS)

Karim Nesradine, of *Importation BTR ltée*, consults you today and relates the following facts to you.

Importation BTR ltée was incorporated on June 15, 1998 under the *Canada Business Corporations Act*. Its articles indicate the following:

- its registered office is located in Montreal;
- its share capital is comprised of two classes of shares: the class “A” shares, which are common shares, and the class “B” shares, which are non-voting shares conferring the right to a fixed, preferred and non-cumulative dividend of 8% per year;
- its board of directors is comprised of a minimum of one and a maximum of ten directors. The general by-laws of the corporation fix the quorum of directors for meetings of the board of directors at two directors in attendance at the meeting;
- *Importation BTR ltée* is a closed company within the meaning of the *Securities Act*. In this regard, the articles contain the full text of the provisions of section 5 of the said Act which deal with closed companies. Indeed, *Importation BTR ltée* has never distributed its securities to the public.

On June 15, 1998, at the organizational meeting of the corporation, Charles Benoît, Line Thibodeau and Jean-Yves Roy were elected directors. On the same day, the corporation filed the declaration of registration required under the *Act respecting the legal publicity of sole proprietorships, partnerships and legal persons*. Since then, the annual meetings of shareholders have been held in accordance with the law. Furthermore, as at December 16, 2002, all required reports and declarations have been filed.

Since its incorporation, the corporation has had 53 shareholders, namely 8 shareholders holding class “A” shares and 45 shareholders holding class “B” shares. The holders of the class “B” shares are all employees of the corporation who subscribed for shares pursuant to an employee profit sharing plan; however, the holders of the class “A” shares are not employees of the corporation.

On December 23, 2002, Charles Benoît resigns his position as a director of the corporation. That same day, Line Thibodeau and Jean-Yves Roy hold a meeting of the board of directors and, in a resolution validly adopted, the board of directors appoints Karim Nesradine as a director to replace Charles Benoît. At that meeting, the board of directors validly adopts the following two other resolutions:

1. move the registered office from 1450 Saint-Paul Street in Montreal to 1470 on the same street; and
2. reduce the dividend rate on the class “B” shares from 8% to 6%, effective immediately.

QUESTION 1 (5 marks)

Given the number of shareholders it has, is *Importation BTR ltée* in actual fact a closed company within the meaning of the *Securities Act*? Explain your answer.

QUESTION 2 (19 marks)

a) Is an ordinary resolution of the board of directors sufficient in order for the following measures to come into effect immediately:

1. the appointment of Karim Nesradine as director of the corporation?
2. the move of the registered office of the corporation?
3. the reduction of the dividend rate on the class “B” shares from 8% to 6%?

For each measure, justify your answer by referring to one or more specific and relevant provisions of the *Canada Business Corporations Act*.

For question 2(b), you may assume that the decisions mentioned in question 2(a) relating to the appointment of Karim Nesradine as director of the corporation, the move of the registered office of the corporation and the reduction of the dividend rate on the class “B” shares from 8% to 6% were validly adopted by *Importation BTR ltée*.

b) Indicate the formalities required at law, other than the drafting of minutes, the drafting of a resolution in lieu of a meeting or the payment of a prescribed fee, that *Importation BTR ltée* must fulfill in order to follow up on each of these decisions.

For each formality, justify your answer by referring to one or more specific and relevant provisions of any legislation.

FILE 2 (24 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.

Gilles Laverdure and Louise Laverdure consult you today and relate the following facts to you.

Pharmatonik inc. is a company governed by Part IA of the *Companies Act* which was constituted in 1993. Its articles of incorporation stipulate that the authorized share capital is comprised of the following classes of shares:

- An unlimited number of class “A” shares having a par value of \$10 per share and conferring the right to vote at all meetings of shareholders as well as the right to receive all declared dividends and to share the remaining property of the company upon its winding-up.
- An unlimited number of class “B” shares without par value. These shares are non-voting. They confer the right, as of their date of issuance, to receive a fixed, cumulative and preferred dividend equal to 4% per annum of the amount paid into the issued and paid-up share capital account for the said shares, said dividend to be paid in preference to dividends on the class “A” shares and class “C” shares. Upon the winding-up of the company they also confer the right, in preference to the class “A” shares and class “C” shares, to receive the amount paid into the issued and paid-up share capital account for the said shares together with any accrued and unpaid dividends. Finally, they may be redeemed unilaterally by the company for the amount paid into the issued and paid-up share capital account for the said shares plus any accrued and unpaid dividends.
- An unlimited number of class “C” shares without par value. These shares are non-voting. They confer the right to receive a fixed, non-cumulative and preferred dividend equal to 6% per annum of the amount paid into the issued and paid-up share capital account for the said shares, said dividend to be paid in preference to dividends on the class “A” shares. Upon the winding-up of the company they also confer the right, in preference to the class “A” shares, to receive the amount paid into the issued and paid-up share capital account for the said shares together with any declared and unpaid dividends. Finally, they may be redeemed upon request of the holder thereof for the amount paid into the issued and paid-up share capital account for the said shares plus any declared and unpaid dividends.

Gilles and Louise are the only directors of the company. At the time the company was organized, each of them subscribed for 100 class “A” shares for a consideration of \$100 per share paid in cash.

Furthermore, on February 26, 2000, Gilles subscribed for 2,500 class “B” shares, for a consideration of \$20 per share, whereas Louise subscribed for 1,000 class “C” shares, also for a consideration of \$20 per share. All of these shares are fully paid.

The company has not declared any dividends since its incorporation.

As at today's date, the balance sheet of *Pharmatonik inc.* is as follows.

PHARMATONIK INC.			
Balance Sheet			
At February 26, 2003			
<u>ASSETS</u>		<u>LIABILITIES</u>	
	\$800,000		\$690,000
		<u>SHAREHOLDERS' EQUITY</u>	
		Issued and paid up share capital:	
		Class "A" shares:	\$2,000
		Class "B" shares:	\$50,000
		Class "C" shares:	\$20,000
		Contributed surplus ("surplus d'apport")	\$18,000
		Retained earnings	\$20,000
TOTAL ASSETS	\$800,000	TOTAL LIABILITIES AND	
		SHAREHOLDERS' EQUITY	\$800,000

The realizable value of the assets is equal to the book value and the company is able to pay its liabilities as they become due.

QUESTION 3 (5 marks)

What does the item "contributed surplus" ("surplus d'apport") on the balance sheet of *Pharmatonik inc.* represent?

QUESTION 4 (5 marks)

What maximum amount can the board of directors of *Pharmatonik inc.* legally declare today as cash dividends to its shareholders? Show all your calculations.

SUPPLEMENTARY FACTS

Today, the board of directors of *Pharmatonik inc.* decides to declare and pay a dividend of \$20,000.

You may assume that *Pharmatonik inc.* can legally declare and pay this dividend.

QUESTION 5 (6 marks)

Indicate the class(es) of shares entitled to receive dividends as well as the amount to which it (they) is (are) entitled.

SUPPLEMENTARY FACTS

Capital RCR inc., a venture capital company, wishes to invest \$500,000 in the share capital of *Pharmatonik inc.*, namely \$1,000 for 100 class “A” shares, \$250,000 for class “B” shares and \$249,000 for class “D” shares, a new class to be created. However, *Capital RCR inc.* has imposed certain preconditions, including that all of the 2,500 class “B” shares currently issued be converted into 2,500 class “C” shares.

For the next questions, you may assume that the conversion of the 2,500 class “B” shares into 2,500 class “C” shares and the issuance of the class “A” shares, class “B” shares and class “D” shares to *Capital RCR inc.* have validly taken place.

QUESTION 6 (5 marks)

As a result of these transactions, what will the amount of the issued and paid-up share capital account of *Pharmatonik inc.* be for the class “B” shares and the “C” shares? Show all your calculations.

SUPPLEMENTARY FACTS

As a result of these changes, the articles contain the following clause regarding the right of the class “D” shares to dividends; this is the only clause that deals with this right.

RIGHT TO DIVIDENDS

<p> Holders of class “D” shares shall have the right to receive, in preference to holders of class “A” shares, class “B” shares and class “C” shares, an annual, fixed, preferred dividend established at a rate of 10% per annum, paid from the profits or funds available for dividends and calculated on the amount paid into the issued and paid-up share capital account for the class “D” shares. This dividend shall be payable at the time and in accordance with the terms and conditions determined by the directors at their discretion.</p>

QUESTION 7 (3 marks)

Is the dividend on the class “D” shares cumulative or non-cumulative? Explain your answer.

FILE 3 (20 MARKS)

The situation described in File 3 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 Langlois, president of *Bétons PBS ltée*, consults you today regarding financial matters.

He tells you that the corporation manufactures products made from concrete and that it recently disbursed significant amounts to develop a new product. Unfortunately, manufacturing of the product had to be interrupted hastily, due to insufficient sales.

As a result of this business setback, the bank asked management to increase the corporation's solvency and modify its financial structure.

From now on, the liquidity ratio ("coefficient de liquidité") will have to be at least 1.25 and the ratio of total liabilities to net worth ("coefficient du passif total sur la valeur nette") will have to be no more than 100%.

Jean Langlois provides you with a *pro forma* balance sheet for the corporation as at February 26, 2003.

BÉTONS PBS LTÉE			
<i>Pro forma</i> Balance Sheet			
February 26, 2003			
ASSETS		LIABILITIES	
CURRENT ASSETS		CURRENT LIABILITIES	
Cash	\$1,000,000	Bank loan	\$750,000
Receivables	1,860,000	Accounts payable	1,450,000
Inventory	2,000,000	Portion of long-term debt coming due during the current year	<u>400,000</u>
Prepaid expenses	<u>140,000</u>		2,600,000
	5,000,000		
FIXED ASSETS		LONG-TERM LIABILITIES	
Buildings	2,000,000	Bank loan secured by a hypothec	2,900,000
Machinery and equipment	<u>3,000,000</u>	Loan from shareholder	<u>1,000,000</u>
	5,000,000		3,900,000
		SHAREHOLDERS' EQUITY	
		Share capital	3,000,000
		Retained earnings	<u>500,000</u>
			3,500,000
TOTAL ASSETS	<u>\$10,000,000</u>	TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	<u>\$10,000,000</u>

QUESTION 8 (5 marks)

What is the liquidity ratio (“coefficient de liquidité”) of *Bétons PBS ltée*? Show all your calculations.

QUESTION 9 (5 marks)

What additional amount will the shareholders have to invest in *Bétons PBS ltée* in order for the ratio of total liabilities to net worth (“coefficient du passif total sur la valeur nette”) to be 100%? Show all your calculations.

SUPPLEMENTARY FACTS

Jean Langlois also consults you regarding tax matters.

He explains to you that *Bétons PBS ltée* is a Canadian-controlled private corporation and will maintain this status throughout its taxation year ending December 31, 2003. For the 2003 taxation year, the corporation’s profits from its concrete products manufacturing and processing activities will be \$175,000.

In its income tax return for the year 2003, the corporation will avail itself of the small business deduction and, in accordance with an agreement between associated corporations, it will claim the total business limit of \$175,000.

QUESTION 10 (5 marks)

Will *Bétons PBS ltée* also be able to obtain the deduction under section 125.1 of the *Income Tax Act* for the manufacturing and processing profit of \$175,000? Explain your answer.

SUPPLEMENTARY FACTS

Finally, Jean Langlois tells you that he is a Canadian resident within the meaning of the *Income Tax Act*, that he holds all the voting shares of *Placements Langlois ltée* and that this management corporation holds 75% of the voting shares of *Bétons PBS ltée*.

Placements Langlois ltée operates, in Montreal, a specified investment business, the principal purpose of which is to derive income from property, including rents, interest and dividends. Its taxation year ends on December 31st.

Yesterday, namely February 25, 2003, *Bétons PBS ltée* paid *Placements Langlois ltée* a dividend of \$20,000. *Bétons PBS ltée* did not make the election provided for in subsection 83(2) of the *Income Tax Act* because its capital dividend account is at zero.

Jean Langlois tells you that at the end of the taxation year ending December 31, 2003, *Bétons PBS ltée* will have no refundable dividend tax on hand.

QUESTION 11 (5 marks)

Will *Placements Langlois ltée* be required to pay the tax under Part IV of the *Income Tax Act* in respect of the dividend of \$20,000 received from *Bétons PBS ltée*?

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

- a) **Yes, because under section 112 of the *Income Tax Act* this dividend may be deducted for the purpose of computing the taxable income of *Placements Langlois ltée*.**
- b) **No, because the dividend comes from a payer corporation which is connected with *Placements Langlois ltée* and which does not obtain any dividend refund for the taxation year in which it paid the dividend.**
- c) **Yes, because this dividend is excluded from the “aggregate investment income” of *Placements Langlois ltée* for purposes of the refundable dividend tax on hand.**
- d) **No, because only a capital dividend is an “assessable dividend” subject to Part IV tax.**
- e) **No, because dividends from a Canadian-controlled private corporation are not subject to Part IV tax.**

FILE 4 (20 MARKS)

The situation described in File 4 is an evolving one: all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.

Les Locations immobilières Latulipe inc. (hereinafter referred to as “*LLIL*”) acts as a leasing agent over the Internet for the lease of immovable property located in the Laurentians. Its only director, Bernard Latulipe, holds all of the 50,000 issued and outstanding shares of its share capital.

For the past year, *LLIL* has been short of cash. In March of 2002, Bernard meets with an old acquaintance, François Dumais, for the purpose of borrowing \$40,000 from him. Given that François is somewhat reluctant, Bernard has someone prepare financial statements which falsely indicate that *LLIL* is a solvent and profitable firm and that its shares have a book value of \$4 each. Based on these financial statements, Bernard offers to give to his lender, as security, 10,000 shares of the share capital of *LLIL* held by him. François is reassured by this security and on April 3, 2002 he grants Bernard a loan of \$40,000. Bernard invests the amount in question in *LLIL*. Notwithstanding this financial contribution, *LLIL* does not manage to overcome its financial difficulties and it makes an assignment of its property on January 6, 2003.

Thereafter, Bernard becomes personally insolvent. As at January 17, 2003, Bernard’s debts total \$200,000; they include, among other debts, the amount of \$40,000 still owing to François and a hypothecary debt of \$140,000 owed to *AF Crédit inc.* This hypothec is charged against the immovable which serves as the family residence for Bernard and his wife. The immovable, which belongs to Bernard, has a value of \$160,000.

On January 17, 2003, Bernard, who is unable to meet his obligations, files a consumer proposal under Division II of Part III of the *Bankruptcy and Insolvency Act*. In accordance with the terms of his proposal, Bernard undertakes to pay 60% of his debts over a period of three years.

On January 25, 2003, François receives a copy of the consumer proposal.

QUESTION 12 (5 marks)

Can François Dumais oppose the proposal on the ground that Bernard’s aggregate debts of \$200,000 prevent him from filing such a proposal? Explain your answer.

QUESTION 13 (5 marks)

Failing payment of its hypothecary claim in accordance with the terms and conditions of the deed of hypothec, can *AF Crédit inc.* exercise its hypothecary recourses without concern for the consumer proposal filed by Bernard Latulipe?

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

SUPPLEMENTARY FACTS

On February 12, 2003, Bernard, who realizes he is unable to fulfill the terms of his proposal, files an assignment of property even before his proposal has been approved or deemed to be approved by the court. Jean Mercier is appointed as trustee. Jean Mercier receives a duly completed proof of claim from Virginie Lefrançois, Bernard's sister-in-law, for an amount of \$4,000 representing a loan granted to him on February 3, 2003.

QUESTION 14 (5 marks)

Does Virginie Lefrançois have a provable claim in the bankruptcy of Bernard Latulipe? Explain your answer.

QUESTION 15 (5 marks)

Assuming that the bankrupt Bernard Latulipe were to obtain a discharge of his debts, would François Dumais nevertheless be entitled to sue him to obtain payment of the amount still owing to him? Explain your answer.

FILE 5 (12 MARKS)

Situation 1

M^e Pierre Gratton has been practising as an advocate for ten years and, since the beginning of his career, he has represented lessees before the Régie du logement on a regular basis.

On January 28, 2003, M^e Gratton meets with Claire Lalonde who has received, from the owner of the building, an application for the resiliation of a lease, which application was issued by the Régie du logement. The owner of the building in which Claire lives, Luc Larivière, alleges in his application that his lessee, Claire Lalonde, has not paid the rent for December of 2002 and January of 2003.

Claire explains to M^e Gratton that she did not pay the rent because she did not have the peaceful enjoyment of her dwelling.

She also explains to M^e Gratton that she lives alone with her 8-year-old daughter and that she wants to keep her dwelling. Claire's only income is employment insurance of \$160 per week.

M^e Gratton considers the grounds for non-payment to be well founded and agrees to represent Claire. He does not have her sign a fee and professional mandate agreement. He asks her for an amount of \$150 as an advance which he deposits in his general bank account. He explains to his client that, in light of her financial situation, he will only bill her \$100 per hour and that she need not worry.

After Claire leaves, M^e Gratton prepares the appearance which he sends to the Régie du logement and to Luc Larivière.

QUESTION 16 (8 marks)

State two breaches of ethics committed by M^e Pierre Gratton.

For each breach, justify your answer by referring to one or more specific and relevant provisions of *An Act respecting the Barreau du Québec* or the regulations adopted thereunder.

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

Situation 2

The constant increase in the operating costs of your firm leads you to streamline your expenses. You notice, among other things, that you need more room to store your files, thereby resulting in additional expenses. You decide that in the future you will retain files only for three years after the date on which the files are closed and that you will destroy all files which you have kept to date and which were closed more than three years ago.

QUESTION 17 (4 marks)

Does this decision comply with the standards of professional practice?

Justify your answer by referring to one or more specific and relevant provisions of *An Act respecting the Barreau du Québec* or the regulations adopted thereunder.

CORRIGÉ
DROIT DES AFFAIRES - EXAMEN RÉGULIER
 26 février 2003

DOSSIER 1 (24 POINTS)

QUESTION 1 (5 points)

Compte tenu du nombre de ses actionnaires, *Importation BTR ltée* est-elle, dans les faits, une société fermée au sens de la *Loi sur les valeurs mobilières* ? Dites pourquoi.

Oui, la limite de 50 actionnaires (prévue à l'article 5 de la *Loi sur les valeurs mobilières*) est respectée car les salariés de la société sont exclus du calcul. 1. 5

QUESTION 2 (19 points)

a) Une simple résolution du conseil d'administration est-elle suffisante pour qu'entrent immédiatement en vigueur les mesures suivantes :

1. la nomination de Karim Nesradine à titre d'administrateur de la société ?
2. le déménagement du siège social de la société ?
3. la réduction de 8 % à 6 % du taux du dividende afférent aux actions de catégorie « B » ?

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

MESURES	RÉPONSES	
1. Nomination de Karim Nesradine à titre d'administrateur de la société	Oui, art. 111 (1) <i>L.c.s.a.</i>	2. 1
2. Déménagement du siège social de la société	Oui, art. 19 (3) <i>L.c.s.a.</i>	3. 1
3. Réduction de 8 % à 6 % du taux du dividende afférent aux actions de catégorie « B »	Non, art. 173 (1) g) <i>L.c.s.a.</i> OU Non, art. 176 (1) c) <i>L.c.s.a.</i>	4. 1

b) Indiquez les formalités requises par la loi, autres que la rédaction d'un procès-verbal, la rédaction d'une résolution tenant lieu d'assemblée ou le paiement d'un droit prescrit, que doit exécuter *Importation BTR ltée* pour donner suite à chacune de ces décisions.

Pour chacune des formalités, appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

DÉCISIONS	FORMALITÉS	ARTICLES
Nomination de Karim Nesradine à titre d'administrateur de la société	Dépôt (au directeur) d'un avis de changement d'administrateur (formule 6). 5. 1	art. 113 (1) <i>L.c.s.a.</i> 12. 1
	Dépôt d'une déclaration modificative. 6. 1	art. 34 al. 6 <i>L.p.l.</i> 13. 1
	Mise à jour des registres corporatifs. 7. 1	art. 20 (1) <i>L.c.s.a.</i> 14. 1
Déménagement du siège social de la société	Dépôt (au directeur) d'un avis de changement d'adresse du siège social (formule 3). 8. 1	art. 19 (4) <i>L.c.s.a.</i> 15. 1
	Dépôt d'une déclaration modificative. 9. 1	art. 34 al. 4 <i>L.p.l.</i> 16. 1
Réduction de 8 % à 6 % du taux du dividende afférent aux actions de catégorie « B »	Envoi de clauses modificatrices (formule 4). 10. 1	art. 177 (1) <i>L.c.s.a.</i> 17. 1
	Mise à jour des registres corporatifs. 11. 1	art. 20 (1) <i>L.c.s.a.</i> 18. 1

Aucune autre formalité 19. 2

DOSSIER 2 (24 POINTS)

QUESTION 3 (5 points)

Que représente le poste « surplus d'apport » inscrit au bilan de *Pharmatonik inc.* ?

1. L'excédent du prix d'émission des actions de catégorie « A » sur leur valeur nominale (art. 123.48 *L.c.Q.*) 5 pts
 OU 20.
2. L'excédent du prix d'émission des actions sur leur valeur nominale (art. 123.48 *L.c.Q.*) 3 pts

L'étudiant qui emploie le mot « vente » plutôt que le mot « émission » perd un point.

QUESTION 4 (5 points)

Quel montant maximum le conseil d'administration de *Pharmatonik inc.* peut-il légalement déclarer aujourd'hui à ses actionnaires sous forme de dividendes en argent ? Faites état de tous vos calculs.

Valeur comptable de l'actif – dividende \geq Passif + compte de capital-actions émis et payé

$$800\,000 \$ - x \geq 690\,000 \$ + 72\,000 \$ = 38\,000 \$ \quad 21. \quad \boxed{5}$$

(art. 123.70 et 123.167 *L.c.Q.*)

QUESTION 5 (6 points)

Indiquez la (les) catégorie(s) d'actions qui a (ont) droit de recevoir des dividendes ainsi que le montant auquel elle(s) a (ont) droit.

Actions de catégorie « B » :
 6 000 \$ (4 % de 50 000 \$, soit 2 000 \$ pour l'année en cours + 4 000 \$ d'arrérages, soit 2 000 \$ x 2 ans) 22.

Actions de catégorie « C » :
 1 200 \$ (6% de 20 000 \$) 23.

Actions de catégorie « A » :
 12 800 \$ ou le solde 24.

QUESTION 6 (5 points)

Quel sera, à la suite de ces transactions, le montant du compte de capital-actions émis et payé de *Pharmatonik inc.* pour les actions de catégories « B » et « C » ? Faites état de tous vos calculs.

Catégorie « B » :
 50 000 \$ au départ - 50 000 \$ conversion + 250 000 \$ nouvelle émission = 250 000 \$ 25.
 (art. 48(6) et 123.48 *L.c.Q.*)

Catégorie « C » :
 20 000 \$ au départ + 50 000 \$ conversion = 70 000 \$ 26.
 (art. 48(6) *L.c.Q.*)

QUESTION 7 (3 points)

Le dividende afférent aux actions de catégorie « D » est-il cumulatif ou non cumulatif? Dites pourquoi.

Le dividende est cumulatif puisqu'un dividende fixe est réputé cumulatif. 27.

DOSSIER 3 (20 POINTS)

QUESTION 8 (5 points)

Quel est le coefficient de liquidité de *Bétons PBS ltée*? Faites état de tous vos calculs.

$$\frac{\text{Encaisse + débiteurs}}{\text{Total du passif à court terme}}$$

$$\frac{1\,000\,000\$ + 1\,860\,000}{2\,600\,000\$} = 1,1$$

28. 5

QUESTION 9 (5 points)

Quel montant additionnel les actionnaires devront-ils investir dans *Bétons PBS ltée* pour que le coefficient du passif total sur la valeur nette soit de 100%? Faites état de tous vos calculs.

$$\frac{\text{Passif court terme + passif long terme} - \text{prêt par actionnaires} \times 100\%}{\text{Valeur nette actuelle (capitaux propres + prêt par actionnaire) + investissement additionnel}} = 100\%$$

$$\frac{2\,600\,000\$ + 3\,900\,000\$ - 1\,000\,000\$ \times 100\%}{3\,500\,000\$ + 1\,000\,000\$ + 1\,000\,000\$} = 100\%$$

$$\frac{5\,500\,000\$ \times 100\%}{5\,500\,000\$} = 100\%$$

Réponse : Un montant additionnel de 1 000 000 \$.

 29. 5

QUESTION 10 (5 points)

Bétons PBS ltée pourra-t-elle obtenir aussi le crédit d'impôt de l'article 125.1 de la *Loi de l'impôt sur le revenu* à l'égard des bénéfices de fabrication et de transformation de 175 000 \$? Dites pourquoi.

Non, le crédit d'impôt de l'article 125.1 *L.i.r.* ne peut être obtenu à l'égard d'un revenu admissible à la déduction aux petites entreprises. 30. 5

QUESTION 11 (5 points)

Placements Langlois ltée sera-t-elle tenue de payer l'impôt de la Partie IV de la *Loi de l'impôt sur le revenu* à l'égard du dividende de 20 000 \$ reçu de *Bétons PBS ltée*?

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

- a) Oui, parce que ce dividende est déductible en application de l'article 112 de la *Loi de l'impôt sur le revenu* dans le calcul du revenu imposable de *Placements Langlois ltée*.
- b) Non, parce que le dividende provient d'une société payante qui est rattachée à *Placements Langlois ltée* et qui n'obtient aucun remboursement au titre de dividendes pour l'année d'imposition au cours de laquelle elle a versé ce dividende.
- c) Oui, parce que ce dividende est exclu du « revenu de placement total » de *Placements Langlois ltée* aux fins de l'impôt en main remboursable au titre de dividendes.
- d) Non, parce que seul un dividende en capital est un « dividende déterminé » sujet à l'impôt de la Partie IV.
- e) Non, parce que les dividendes provenant d'une société privée sous contrôle canadien ne sont pas sujets à l'impôt de la Partie IV.

Réponse : b) Non, parce que le dividende provient d'une société payante qui est rattachée à *Placements Langlois ltée* et qui n'obtient aucun remboursement au titre de dividendes pour l'année d'imposition au cours de laquelle elle a versé ce dividende. 31. 5

DOSSIER 4 (20 POINTS)

QUESTION 12 (5 points)

François Dumais peut-il s'opposer à cette proposition au motif que l'endettement total de 200 000 \$ de Bernard l'empêche de déposer une telle proposition? Dites pourquoi.

Non, car on ne tient pas compte de la dette hypothécaire sur la résidence principale (pour établir s'il s'agit d'un débiteur consommateur, art. 66.11 *L.f.i.*). 32.

QUESTION 13 (5 points)

À défaut de paiement de sa créance hypothécaire selon les termes de l'acte d'hypothèque, *AF Crédit inc.* peut-elle exercer ses recours hypothécaires sans se préoccuper de la proposition de consommateur déposée par Bernard Latulipe ?

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. 69.2 (4) *L.f.i.* 33.

QUESTION 14 (5 points)

Virginie Lefrançois a-t-elle une réclamation prouvable dans la faillite de Bernard Latulipe ? Dites pourquoi.

Non, cette dette est née postérieurement à la faillite (qui rétroagit à la date du dépôt de la proposition de consommateur, art. 66.33 et 121 *L.f.i.*). 34.

QUESTION 15 (5 points)

Dans l'hypothèse où le failli Bernard Latulipe obtiendrait sa libération de dettes, François Dumais pourrait-il néanmoins le poursuivre pour obtenir le paiement de la somme qui lui reste due ? Dites pourquoi.

Oui, c'est une dette contractée sous de fausses représentations (art. 178 (1) e) *L.f.i.*. 35.

DOSSIER 5 (12 POINTS)

QUESTION 16 (8 points)

Énoncez deux manquements déontologiques commis par M^e Pierre Gratton.

Pour chaque manquement, appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi sur le Barreau* ou de ses règlements.

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

2 / 3
2 pts / bulle

2 / 3
2 pts / bulle

MANQUEMENTS	36. <input type="text" value="4"/>	DISPOSITIONS	37. <input type="text" value="4"/>
1. M ^e Pierre Gratton n'a pas avisé sa cliente du coût approximatif de ses services.	1. <input type="radio"/>	Art. 3.08.04 <i>Code de déontologie</i>	4. <input type="radio"/>
2. M ^e Pierre Gratton n'a pas informé sa cliente qu'elle peut être admissible à l'aide juridique.	2. <input type="radio"/>	Art. 3.01.05 <i>Code de déontologie</i>	5. <input type="radio"/>
3. M ^e Pierre Gratton n'a pas déposé l'argent reçu en avance d'honoraires dans son compte en fidéicommiss.	3. <input type="radio"/>	Art. 3.01 OU 1.01 d) <i>Règlement sur la comptabilité et les comptes en fidéicommiss des avocats</i>	6. <input type="radio"/>

QUESTION 17 (4 points)

Cette décision respecte-elle les normes de la pratique professionnelle?

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

Non, art. 8 *Règlement sur les normes de tenue des dossiers et de domicile professionnel des avocats.*

38.