



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

DROIT DES AFFAIRES

February 25, 2004

- (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 section:
 - Droit des affaires
- (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 **6** pages.

FILE 1 (32 MARKS)

The situation described in File 1 is an evolving one: all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.

On January 12, 2004, you meet with Chantal Mirza and Luc Nguyen, shareholders of *Ateliers Poupart inc.*, a corporation constituted under the *Canada Business Corporations Act*. They relate the following facts to you:

- the share capital of *Ateliers Poupart inc.* is comprised of an unlimited number of class “A” voting shares and an unlimited number class “B” non-voting shares;
- 100 class “A” voting shares and 800 class “B” non-voting shares are issued and outstanding;
- these shares are held by the following persons:

SHAREHOLDERS	NUMBER AND CLASS OF SHARES
Gérard Poupart	51 class “A” shares 200 class “B” shares
Mireille Poupart	30 class “A” shares 200 class “B” shares
Chantal Mirza	10 class “A” shares 200 class “B” shares
Luc Nguyen	9 class “A” shares 200 class “B” shares

- *Ateliers Poupart inc.* is a closed company within the meaning of the *Securities Act*;
- the registered head office of *Ateliers Poupart inc.* is located in Laval;
- *Ateliers Poupart inc.* has not held an annual meeting since the annual meeting on July 30, 2000. At that meeting, Gérard Poupart and Mireille Poupart were duly appointed directors of the corporation for a term of one year.

Chantal and Luc disagree significantly with Gérard and Mireille as regards the management of the corporation. They feel it is important that a meeting of the shareholders be held as soon as possible and they are convinced that Gérard and Mireille will not cooperate in that regard.

Chantal and Luc also inform you that, on December 15, 2003, the board of directors of *Ateliers Poupart inc.* passed a resolution granting each director an increase in remuneration in the amount of \$10,000. Chantal and Luc claim that this decision was made without right and they base their claim on the two following arguments:

1. Gérard Poupart and Mireille Poupart were not entitled to act because their term of office as directors of *Ateliers Poupart inc.* had ended on July 30, 2001;
2. Gérard Poupart and Mireille Poupart were not entitled to vote on the resolution granting them an increase of their remuneration. Consequently, the increase in their remuneration should have been decided by the other shareholders.

After checking, you note that no provision of the articles, the general by-laws or a unanimous shareholders' agreement deals with the remuneration of the directors.

QUESTION 1 (8 marks)

Indicate two grounds or recourses, under the *Canada Business Corporations Act*, that can be used, separately or jointly, by Chantal Mirza and Luc Nguyen in order to force a meeting of shareholders to be called and held.

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

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

QUESTION 2 (8 marks)

Indicate whether each of the arguments raised by Chantal Mirza and Luc Nguyen to challenge the resolution increasing the remuneration of Gérard Poupart and Mireille Poupart is well founded.

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

1. Gérard Poupart and Mireille Poupart were not entitled to act because their term of office as directors of *Ateliers Poupart inc.* had ended on July 30, 2001;
2. Gérard Poupart and Mireille Poupart were not entitled to vote on the resolution granting them an increase of their remuneration. Consequently, the increase in their remuneration should have been decided by the other shareholders.

SUPPLEMENTARY FACTS

Bowing to the pressure of the shareholders, Gérard and Mireille decide to call a meeting of shareholders. On February 2, 2004, Mireille, the secretary of *Ateliers Poupart inc.*, sends a notice calling an annual meeting of shareholders of *Ateliers Poupart inc.* to be held today, February 25, 2004. The notice of meeting reads as follows:

Laval, February 2, 2004

TO: Gérard Poupart, Mireille Poupart, Chantal Mirza and Luc Nguyen.

Dear Sir or Madam:

You are hereby called to an annual meeting of the shareholders of *Ateliers Poupart inc.* to be held at the corporation's head office in Laval on February 25, 2004 at 1:00 p.m.

In addition to the presentation of the financial statements for the fiscal year ended June 30, 2003, a copy whereof is annexed hereto (**not reproduced**), you will be called upon to vote on the following matters by ordinary resolution:

1. The election of the directors of the corporation for a term of one year.
2. Confirmation of all the general by-laws adopted by the directors since the most recent meeting of shareholders.
3. A change of the corporation's name to *Les Entreprises G. et M. Poupart inc.*

The text of the resolutions to be adopted on these matters is annexed hereto (**not reproduced**).

Please note that only proxies received before 5:00 p.m. on February 20, 2004 will be accepted.

Mireille Poupart

Mireille Poupart, Secretary

QUESTION 3 (16 marks)

State four irregularities or illegalities with respect to the calling of the meeting of shareholders of *Ateliers Poupart inc.* or with respect to the content of the notice of meeting.

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

ONLY THE FIRST FOUR IRREGULARITIES OR ILLEGALITIES WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

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.

Louise Lebeau, a shareholder and director of *Nutrilogik inc.*, consults you today and relates the following facts to you:

- *Nutrilogik inc.*, a closed company within the meaning of the *Securities Act*, was constituted under Part 1A of the *Companies Act*;
- the company's principal activity is the distribution of natural products;
- the authorized share capital of the company is comprised of three classes of shares with only the following rights, privileges, restrictions and conditions:
 - an unlimited number of class "A" shares conferring upon the holders thereof the three rights set forth in section 123.40 of the *Companies Act*;
 - 100,000 class "B" non-voting shares, conferring the right to dividends and, upon the winding-up of the company, conferring upon the holders thereof the right, in preference to the class "A" shares, to receive the amount paid for these class "B" shares at the time of their issuance;
 - an unlimited number of class "C" shares having a par value of \$10 per share, conferring upon the holders thereof the right to receive, in preference to the other classes of shares, a fixed dividend equal to 5% per annum of the redemption value of the class "C" shares, as well as the right to receive, in preference to the other classes of shares, the redemption value of their shares upon the winding-up of the company. The class "C" shares are redeemable upon request of the holders thereof for a redemption price equal to the amount paid for these class "C" shares at the time of their issuance plus a \$10 premium per share;
- the issued and outstanding shares of *Nutrilogik inc.* are fully paid. They are held by the following persons who have paid the amount indicated hereinbelow to the company:

SHAREHOLDERS	NUMBER AND CLASS OF ISSUED AND OUTSTANDING SHARES	AMOUNT PAID
Louise Lebeau	5,000 class "A" shares	\$5,000
Victor Blois	5,000 class "A" shares	\$5,000
<i>9090-9090 Québec inc.</i>	5,000 class "B" shares	\$25,000
<i>Placements Michel Lalonde inc.</i>	10,000 class "C" shares	\$150,000

- in addition to Louise Lebeau, the directors of *Nutrilogik inc.* are Francine Labelle, Victor Blois and Michel Lalonde, the latter also being the sole shareholder and director of *Placements Michel Lalonde inc.*;
- no dividend has been paid since February 25, 2002.

Today, the board of directors will meet to consider the following matters:

1. the declaration of a \$100,000 dividend payable immediately;
2. a request for the redemption of 1,000 class “C” shares for an amount of \$30,000 made by *Placements Michel Lalonde inc.*;
3. the conversion of all issued and outstanding class “B” shares into class “D” shares, a class to be created, the shares of which will include, in addition to the rights, privileges, restrictions and conditions already attaching to the class “B” shares, the right for *Nutrilogik inc.* to redeem such shares unilaterally.

QUESTION 4 (7 marks)

Assuming that the declaration and payment of the \$100,000 dividend have been carried out legally, indicate what amount of the dividend will be allocated to the class “A” shares, the class “B” shares and the class “C” shares. Show all your calculations.

SUPPLEMENTARY FACTS

Following the payment of the dividend, the balance sheet of *Nutrilogik inc.* will be as follows:

NUTRILOGIK INC. BALANCE SHEET AS AT FEBRUARY 25, 2004			
ASSETS		LIABILITIES	
Current assets	\$445,000	Liabilities	\$360,000
		SHAREHOLDERS' EQUITY	
		Issued and paid up share capital	
		Class “A” shares:	\$10,000
		Class “B” shares:	\$25,000
		Class “C” shares	\$100,000
Investments	\$50,000	Contributed surplus (surplus d'apport)	\$50,000
		Retained earnings	\$100,000
Fixed assets	\$150,000		
TOTAL ASSETS	\$645,000	TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	\$645,000

QUESTION 5 (5 marks)

Following the redemption request made by *Placements Michel Lalonde inc.*, does *Nutrilogik inc.* have the obligation to pay it the amount of \$30,000 requested?

You may assume that following such a payment, *Nutrilogik inc.* would be able to pay its liabilities as they become due. Explain your answer and, if applicable, show all your calculations.

QUESTION 6 (12 marks)

From among the following formalities, select four required by the *Companies Act* in order to carry out the conversion of the class “B” shares into class “D” shares.

In your answer booklet, circle the four selected formalities.

ONLY THE FIRST FOUR FORMALITIES SELECTED WILL BE CORRECTED.

- (a) resolution of the board of directors authorizing the conversion of the class “B” shares into class “D” shares.
- (b) resolution of the board of directors adopting the by-law authorizing the conversion of the class “B” shares into class “D” shares.
- (c) resolution of the board of directors increasing the share capital of the company through the creation of a new class of shares, namely the class “D” shares.
- (d) resolution of the board of directors adopting the by-law authorizing the creation of a new class of shares, namely the class “D” shares.
- (e) resolution of only the holders of class “A” shares, adopted by a majority of $\frac{2}{3}$ of the votes cast, ratifying the by-law converting the class “B” shares into class “D” shares.
- (f) resolution of all the shareholders of the company, adopted by a majority of $\frac{2}{3}$ of the votes cast, ratifying the by-law converting the class “B” shares into class “D” shares.
- (g) resolution of only the holders of class “A” shares and the holders of class “C” shares, adopted by a majority of $\frac{2}{3}$ of the votes cast, ratifying the by-law converting the class “B” shares into class “D” shares.
- (h) consent of all the shareholders of the company to the conversion of the class “B” shares into class “D” shares.
- (i) consent of all the holders of class “B” shares to the conversion of the class “B” shares into class “D” shares.
- (j) consent of all the holders of class “C” shares to the conversion of the class “B” shares into class “D” shares.
- (k) resolution of only the holders of class “A” shares, adopted by a majority of $\frac{2}{3}$ of the votes cast, ratifying the by-law authorizing the creation of a new class of shares, namely the class “D” shares.
- (l) resolution of all the shareholders of the company, adopted by a majority of $\frac{2}{3}$ of the votes cast, ratifying the by-law authorizing the creation of a new class of shares, namely the class “D” shares.
- (m) resolution of only the holders of class “A” shares and the holders of class “C” shares, adopted by a majority of $\frac{2}{3}$ of the votes cast, ratifying the by-law authorizing the creation of a new class of shares, namely the class “D” shares.

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.

Claude Landry, president of *Remorques TransAmérique ltée*, consults you today regarding financial matters. He tells you that the corporation manufactures, in Québec, trailers for commercial use and house trailers. These products are sold primarily in the United States.

In 2003, the corporation's exports to the United States decreased considerably, due primarily to the rise in the Canadian dollar as compared to the American dollar. In order to satisfy the corporation's urgent need for funds, the shareholders granted it short-term loans.

The annual meeting of shareholders will be held soon and Claude Landry anticipates numerous questions regarding, among other things, the profitability of the corporation and its management.

He provides you with a copy of the corporation's financial statements as at December 31, 2003. He explains to you that these financial statements are presented in a comparative manner, that is, they also set out the corresponding figures for the previous fiscal year which ended on December 31, 2002.

REMORQUES TRANSAMÉRIQUE LTÉE		
BALANCE SHEET		
AS AT DECEMBER 31, 2003		
	<u>2003</u>	<u>2002</u>
ASSETS		
CURRENT ASSETS		
Cash	\$575,000	\$900,000
Accounts receivable	2,500,000	3,300,000
Inventory	5,000,000	3,500,000
FIXED ASSETS	6,700,000	7,000,000
OTHER ASSETS	<u>300,000</u>	<u>300,000</u>
TOTAL ASSETS	<u>\$15,075,000</u>	<u>\$15,000,000</u>
LIABILITIES		
CURRENT LIABILITIES		
Accounts payable	\$1,000,000	\$3,500,000
Bank loan	2,075,000	1,000,000
Shareholder loans	4,600,000	100,000
Portion of long-term bank indebtedness coming due during the next fiscal year	500,000	500,000
LONG-TERM BANK INDEBTEDNESS	<u>5,000,000</u>	<u>5,500,000</u>
TOTAL LIABILITIES	<u>13,175,000</u>	<u>10,600,000</u>
SHAREHOLDERS' EQUITY		
Share capital	1,000,000	1,000,000
Retained earnings	<u>900,000</u>	<u>3,400,000</u>
	<u>1,900,000</u>	<u>4,400,000</u>
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	<u>\$15,075,000</u>	<u>\$15,000,000</u>

REMORQUES TRANSAMÉRIQUE LTÉE		
INCOME		
FISCAL YEAR ENDED DECEMBER 31, 2003		
	<u>2003</u>	<u>2002</u>
SALES	\$24,706,000	\$31,607,000
COST PRICE OF GOODS SOLD	<u>15,606,000</u>	<u>21,420,000</u>
GROSS PROFIT	<u>9,100,000</u>	<u>10,187,000</u>
OPERATING EXPENSES		
Selling expenses	4,000,000	4,037,000
Administrative expenses	3,500,000	3,504,000
Financial expenses	<u>700,000</u>	<u>600,000</u>
PROFIT BEFORE TAXES	<u>900,000</u>	<u>2,046,000</u>
INCOME TAX	<u>270,000</u>	<u>615,000</u>
NET PROFIT AFTER TAXES	<u><u>630,000</u></u>	<u><u>1,431,000</u></u>

QUESTION 7 (5 marks)

What was the return on net worth (rendement sur valeur nette) of *Remorques TransAmérique ltée* for its 2003 fiscal year? Show all your calculations.

QUESTION 8 (4 marks)

What inventory level would have allowed *Remorques TransAmérique ltée* to maintain the same inventory turnover rate (coefficient de rotation des stocks) for its 2003 fiscal year as that obtained for its 2002 fiscal year which was 6.12?

You may assume that the ratio of 6.12 was determined by using the most meaningful method.

Answer, using the same method, and show all your calculations.

SUPPLEMENTARY FACTS

Claude Landry also consults you regarding tax matters.

He tells you that *Remorques TransAmérique ltée* is a corporation incorporated in Canada in 1998 under the *Canada Business Corporations Act*. The registered head office and principal place of business of the corporation are located in Chambly, on the outskirts of Montreal. The corporation is not listed on a stock exchange.

Your review of the file reveals that the corporation's stated capital consist of 10,000 class "A" voting shares. These shares are allotted as follows:

- *Gestion Landry ltée*, a corporation which is controlled by Claude Landry and is a private corporation for purposes of the *Income Tax Act*: 4,500 shares;
- *BTX ltée*, a public corporation for purposes of the *Income Tax Act*: 3,500 shares;
- *All American Trailers inc.*, a non-resident corporation for purposes of the *Income Tax Act*: 2,000 shares.

QUESTION 9 (5 marks)

What is the status of *Remorques TransAmérique ltée* for purposes of the *Income Tax Act*?

Select the correct answer from among the answers written hereinbelow and circle the corresponding letter in the answer booklet.

- (a) a private corporation**
- (b) a Canadian-controlled private corporation**
- (c) a public corporation**
- (d) another type of corporation**

SUPPLEMENTARY FACTS

Claude Landry informs you that *Remorques TransAmérique ltée* holds 3,000 shares of the share capital of *ABC ltée*, a private corporation for purposes of the *Income Tax Act* with which *Remorques TransAmérique ltée* would have liked to have entered into a distribution agreement. Unfortunately, the discussions were unsuccessful.

Following the failed discussions, *ABC ltée* informed *Remorques TransAmérique ltée* of its desire to purchase these 3,000 shares for a total price of \$500,000. *Remorques TransAmérique ltée* is willing to accept this price and sell the shares. The paid-up capital for the 3,000 shares and their adjusted cost base for *Remorques TransAmérique ltée* are both \$300,000.

QUESTION 10 (6 marks)

Would the taxable income of *Remorques TransAmérique ltée* be increased as a result of such a purchase of shares by *ABC ltée*? If so, say by how much and if applicable, show all your calculations? If not, explain your answer.

FILE 4 (24 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.

Bernard Lacombe consults you today regarding a petition in bankruptcy he intends to file on March 3, 2004 against Marcel Brisebois.

Marcel has been operating a vegetable growing business on a part-time basis for several years.

Marcel earns annual net income of \$12,000 from this business. Given that this amount is insufficient, Marcel has also been working for several years as a full-time salaried trucker for the company *Les Transports AFG inc.* He earns annual net income of \$38,000 from this employment.

On January 10, 2002, Bernard loaned Marcel an amount of \$40,000. As security for the repayment of the loan, Bernard obtained a first-ranking hypothec on land belonging to Marcel which is situated in Saint-Hyacinthe and has a value of \$10,000. In April of 2002, as security for the repayment of the loan, Bernard also obtained a first-ranking hypothec on an immovable having a value of \$60,000 and owned by Françoise Bérubé. Françoise Bérubé married Marcel in February of 2003.

Bernard, also informs you of the following facts:

- Marcel has been insolvent since May of 2002;
- on July 27, 2003, Marcel sold to his son, Jean Brisebois, one of his agricultural parcels of land located in Acton Vale for an amount of \$10,000 paid in cash. At the time of the sale, the land had a market value of at least \$25,000;
- to date, Marcel still owes Bernard \$40,000.

QUESTION 11 (15 marks)

Assuming that Bernard Lacombe were to file a petition in bankruptcy against Marcel Brisebois on March 3, 2004:

- (a) In his petition, would Bernard Lacombe be required to renounce the security he holds on the immovable owned by Françoise Bérubé or to evaluate such security? Explain your answer.**
- (b) Could the sale to Jean Brisebois on July 27, 2003 be raised as an act of bankruptcy in support of the petition? Explain your answer.**
- (c) Could the debtor Marcel Brisebois argue that he is a farmer in order to have the petition in bankruptcy dismissed? Explain your answer.**

SUPPLEMENTARY FACTS

On March 17, 2004, a receiving order is issued against Marcel as a result of the petition in bankruptcy filed by Bernard on March 3, 2004. Jean Desmarchais is appointed as trustee.

The investigation carried out by trustee Desmarchais reveals that, on November 17, 2003, Marcel paid \$22,000 to Louise Lafontaine, whose claim resulted from a demand loan granted in April of 2001. At the time of the loan, Louise had been living with Marcel for a few years. However, their *de facto* union ended definitively in September of 2001. According to your client, at the time of the payment, Louise was well aware of Marcel's financial difficulties.

QUESTION 12 (4 marks)

Could trustee Desmarchais challenge this payment based on sections 95 and 96 of the *Bankruptcy and Insolvency Act*? Explain your answer.

SUPPLEMENTARY FACTS

Trustee Desmarchais receives a proof of claim from *J. G. Production et Équipements inc.* demanding the return of a truck sold to Marcel in January of 2004 by way of instalment sale for which the reservation of ownership contained in the deed of sale was not published. Trustee Desmarchais intends to reject this claim.

QUESTION 13 (5 marks)

Is trustee Desmarchais entitled to reject this claim? Explain your answer.

CORRIGÉ
DROIT DES AFFAIRES - EXAMEN RÉGULIER
25 février 2004

DOSSIER 1 (32 POINTS)

QUESTION 1 (8 points)

Indiquez deux moyens ou recours, en vertu de la *Loi canadienne sur les sociétés par actions*, que peuvent utiliser, séparément ou ensemble, Chantal Mirza et Luc Nguyen pour forcer la convocation et la tenue d'une assemblée des actionnaires.

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

SEULS LES DEUX PREMIERS MOYENS OU RECOURS INSCRITS AU CAHIER DE RÉPONSES SERONT CORRIGÉS.

2 / 3

1. Demande de convocation d'une assemblée des actionnaires, art. 143 *L.c.s.a.* 1. 4 pts
(Chantal et Luc détiennent chacun plus de 5 % des actions ayant le droit de vote)
2. Recours en conformité, art. 247 *L.c.s.a.* 2. 4 pts 1. 8
(Chantal et Luc sont tous deux des actionnaires, donc des plaignants, et la société a manqué à l'obligation prévue à l'art. 133 (1) b) *L.c.s.a.*)
3. Demande de convocation par le tribunal, art. 144 *L.c.s.a.* 3. 2 pts

QUESTION 2 (8 points)

Indiquez si chacun des arguments invoqués par Chantal Mirza et Luc Nguyen pour contester la résolution qui augmente la rémunération de Gérard Poupart et de Mireille Poupart est bien fondé.

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

1. Gérard Poupart et Mireille Poupart ne pouvaient agir car leurs mandats d'administrateurs de *Ateliers Poupart inc.* avaient pris fin le 30 juillet 2001 ;
Non, art. 106 (6) *L.c.s.a.* 2. 4
(Application de la règle du *holding-over*).
2. Gérard Poupart et Mireille Poupart ne pouvaient voter sur la résolution qui leur octroyait une augmentation de rémunération. En conséquence, l'augmentation de leur rémunération aurait dû être décidée par les autres actionnaires.
Non, art. 120 (5) a) *L.c.s.a.* 3. 4
OU
Non, art. 125 *L.c.s.a.*

QUESTION 3 (16 points)

Énoncez quatre irrégularités ou illégalités relativement à la convocation à l'assemblée des actionnaires de *Ateliers Poupart inc.* ou au contenu de l'avis de convocation.

Pour chaque irrégularité ou illégalité, 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 QUATRE PREMIÈRES IRRÉGULARITÉS OU ILLÉGALITÉS INSCRITES AU CAHIER DE RÉPONSES SERONT CORRIGÉES.

4/6
4 pts / bulle

IRRÉGULARITÉS OU ILLÉGALITÉS	DISPOSITIONS	4. 16
1. L'assemblée est convoquée plus de 6 mois après la fin de l'exercice financier précédent.	art. 133 (1) b) <i>L.c.s.a.</i>	1. <input type="radio"/>
2. L'avis n'a pas été envoyé au vérificateur.	art. 168 (1) <i>L.c.s.a.</i> OU art. 135 (1) c) <i>L.c.s.a.</i>	2. <input type="radio"/>
3. Le contenu de l'avis concernant les règlements administratifs n'est pas suffisamment détaillé.	art. 135 (5) <i>L.c.s.a.</i> OU art. 135 (6) a) <i>L.c.s.a.</i>	3. <input type="radio"/>
4. La date limite d'acceptation des procurations ne doit pas être antérieure de 48 heures à la date d'ouverture de l'assemblée.	art. 148 (5) <i>L.c.s.a.</i>	4. <input type="radio"/>
5. Les états financiers sont présentés plus de 6 mois après la fin de l'exercice financier.	art. 155 (1) a) (i) <i>L.c.s.a.</i>	5. <input type="radio"/>
6. La modification de la dénomination sociale devait être approuvée par résolution spéciale.	art. 173 (1) a) <i>L.c.s.a.</i>	6. <input type="radio"/>

DOSSIER 2 (24 POINTS)

QUESTION 4 (7 points)

En tenant pour acquis que la déclaration et le paiement du dividende de 100 000 \$ ont été légalement effectués, indiquez quel montant de dividende sera attribué aux actions de catégorie « A », « B » et « C ». Faites état de tous vos calculs.

Actions de catégorie « C »

5 % de la valeur de rachat des actions de catégorie « C » pour deux années (année courante et année précédente)

$$5 \% \times 250\,000 \$ = 12\,500 \$ \times 2 \text{ années} = \boxed{25\,000 \$} \quad 5. \quad \boxed{3}$$

Actions de catégorie « B »

$$\frac{1}{3} \text{ du solde de } 75\,000 \$ = \boxed{25\,000 \$} \quad 6. \quad \boxed{2}$$

Actions de catégorie « A »

$$\frac{2}{3} \text{ du solde de } 75\,000 \$ = \boxed{50\,000 \$} \quad 7. \quad \boxed{2}$$

QUESTION 5 (5 points)

À la suite de la demande de rachat de *Placements Michel Lalonde inc.*, *Nutrilogik inc.* a-t-elle l'obligation de lui payer la somme de 30 000 \$ demandée?

Tenez pour acquis qu'à la suite de ce paiement, *Nutrilogik inc.* serait capable d'acquitter son passif à échéance. Dites pourquoi et, le cas échéant, faites état de tous vos calculs.

Non, car ce n'est pas le prix déterminé dans les statuts qui est de 25 000 \$. 8.

(art. 123.54 *L.c.Q.*)

QUESTION 6 (12 points)

Parmi les formalités suivantes, sélectionnez-en quatre requises par la *Loi sur les compagnies* pour effectuer la conversion des actions de catégorie « B » en actions de catégorie « D ».

Encerchez, dans votre cahier de réponses, les quatre formalités sélectionnées.

SEULES LES QUATRE PREMIÈRES FORMALITÉS SÉLECTIONNÉES SERONT CORRIGÉES.

a) résolution du conseil d'administration qui autorise la conversion des actions de catégorie « B » en actions de catégorie « D ».

b) résolution du conseil d'administration qui adopte le règlement qui autorise la conversion des actions de catégorie « B » en actions de catégorie « D ». 9. 3

c) résolution du conseil d'administration qui augmente le capital-actions de la compagnie par la création d'une nouvelle catégorie d'actions, soit les actions de catégorie « D ».

d) résolution du conseil d'administration qui adopte le règlement qui autorise la création d'une nouvelle catégorie d'actions, soit les actions de catégorie « D ». 10. 3

e) résolution des seuls actionnaires de catégorie « A », adoptée aux $\frac{2}{3}$ des voix exprimées, qui ratifie le règlement de conversion des actions de catégorie « B » en actions de catégorie « D ».

f) résolution de tous les actionnaires de la compagnie, adoptée aux $\frac{2}{3}$ des voix exprimées, qui ratifie le règlement de conversion des actions de catégorie « B » en actions de catégorie « D ».

g) résolution des seuls actionnaires des catégories « A » et « C », adoptée aux $\frac{2}{3}$ des voix exprimées, qui ratifie le règlement de conversion des actions de catégorie « B » en actions de catégorie « D ».

h) consentement de tous les actionnaires de la compagnie à la conversion des actions de catégorie « B » en actions de catégorie « D ».

i) consentement de tous les actionnaires de la catégorie « B » à la conversion des actions de catégorie « B » en actions de catégorie « D ». 11. 3

j) consentement de tous les actionnaires de la catégorie « C » à la conversion des actions de catégorie « B » en actions de catégorie « D ».

k) résolution des seuls actionnaires de catégorie « A », adoptée aux $\frac{2}{3}$ des voix exprimées, qui ratifie le règlement autorisant la création d'une nouvelle catégorie d'actions, soit les actions de catégorie « D ».

l) résolution de tous les actionnaires de la compagnie, adoptée aux $\frac{2}{3}$ des voix exprimées, qui ratifie le règlement autorisant la création d'une nouvelle catégorie d'actions, soit les actions de catégorie « D ».

m) résolution des seuls actionnaires des catégories « A » et « C », adoptée aux $\frac{2}{3}$ des voix exprimées, qui ratifie le règlement autorisant la création d'une nouvelle catégorie d'actions, soit les actions de catégorie « D ». 12. 3

DOSSIER 3 (20 POINTS)

QUESTION 7 (5 points)

Quel a été le rendement sur valeur nette de *Remorques TransAmérique ltée* pour son exercice financier 2003? Faites état de tous vos calculs.

$$\frac{\text{Bénéfice net après impôts}}{\text{Capitaux propres + sommes prêtées par les actionnaires}} = \text{rendement sur valeur nette}$$

$$\frac{630\,000\$}{6\,500\,000\$ (1\,900\,000\$ + 4\,600\,000\$)} = 9,69\%$$

Un rendement sur valeur nette de 13.

QUESTION 8 (4 points)

Quel niveau de stocks aurait permis à *Remorques TransAmérique ltée* de conserver, pour son exercice financier 2003, le même coefficient de rotation des stocks que celui obtenu pour son exercice financier 2002, lequel était de 6,12?

Tenez pour acquis que ce coefficient de 6,12 a été établi en utilisant la méthode de détermination la plus significative.

Répondez en utilisant cette même méthode et faites état de tous vos calculs.

$$\frac{\text{Prix coûtant des marchandises vendues}}{6,12} = \frac{15\,606\,000\$}{6,12} = 2\,550\,000\$$$

Un niveau de stocks de 14.

QUESTION 9 (5 points)

Quel est le statut de *Remorques TransAmérique ltée* aux fins de la *Loi de l'impôt sur le revenu*?

Choisissez la bonne réponse parmi celles mentionnées ci-dessous et encerclez la lettre correspondante dans le cahier de réponses.

- a) une société privée
- b) une société privée sous contrôle canadien
- c) une société publique
- d) une société autre

Réponse : a) 15.

QUESTION 10 (6 points)

Le revenu imposable de *Remorques TransAmérique ltée* serait-il augmenté à la suite de cet achat d'actions par *ABC ltée*? Si oui, de quel montant? Le cas échéant, faites état de tous vos calculs. Si non, dites pourquoi.

Non.

1. L'achat des actions donne lieu à un dividende réputé de 200 000 \$, à inclure dans le calcul du revenu. 16.

(Ce dividende correspond à l'excédent de la somme payée par *ABC ltée* (500 000 \$) sur le capital versé des actions achetées (300 000\$), al. 12 (1) j), par. 82(1)a) et par. 84(3) *L.i.r.*)

2. Ce dividende est déductible dans le calcul du revenu imposable (par. 112(1) *L.i.r.*) 17.

DOSSIER 4 (24 POINTS)

QUESTION 11 (15 points)

Dans l'hypothèse où Bernard Lacombe déposerait, le 3 mars 2004, une requête de faillite contre Marcel Brisebois :

a) Bernard Lacombe serait-il tenu, dans sa requête, de renoncer à la garantie qu'il détient sur l'immeuble de Françoise Bérubé ou de l'évaluer? Dites pourquoi.

Non, il n'est pas un créancier garanti.

18.

(La garantie porte sur les biens d'un tiers, art. 2 *L.f.i.* « créancier garanti »)

b) La vente du 27 juillet 2003 consentie à Jean Brisebois pourrait-elle être invoquée comme acte de faillite à l'appui de la requête ? Dites pourquoi.

Non, l'acte a eu lieu plus de 6 mois avant le dépôt de la requête (art. 42 et 43(1) b) *L.f.i.*).

19.

c) Le débiteur Marcel Brisebois pourrait-il invoquer le statut d'agriculteur pour faire rejeter la requête de faillite? Dites pourquoi.

Non, l'agriculture n'est pas sa principale source de revenu (art. 48 *L.f.i.*)

20.

QUESTION 12 (4 points)

Le syndic Desmarchais pourrait-il attaquer ce paiement en vertu des articles 95 et 96 de la *Loi sur la faillite et l'insolvabilité*? Dites pourquoi.

Non, ce paiement a été fait (à un créancier non lié) plus de 3 mois avant le dépôt de la requête de faillite. 21.

QUESTION 13 (5 points)

Le syndic Desmarchais est-il en droit de rejeter cette réclamation ? Dites pourquoi.

Oui, car la réserve de propriété n'a pas été publiée (avant la date de la faillite et n'est donc pas opposable au syndic). 22.

(art. 1745 et 1749 *C.c.Q.* et jurisprudence)