



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

DROIT DES AFFAIRES SUPPLEMENTAL EXAMINATION

June 2, 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 **13** pages (including this page) and that your answer booklet contains **6** pages.

FILE 1 (25 MARKS)

Viateur Ducharme and Lise Houle, the directors of *Visex inc.*, consult you today and relate the following facts to you.

Visex inc. is a corporation incorporated under the *Canada Business Corporations Act*. It is also a closed company within the meaning of the *Securities Act*.

Its share capital is comprised of an unlimited number of class “A” common shares and class “B” preferred shares. According to the articles, the class “B” preferred shares do not confer the right to vote at meetings of shareholders.

Viateur and Lise each hold 35% of the class “A” common shares; 30 shareholders, who are not employees, hold the other class “A” common shares. As for the class “B” preferred shares, they are all held by 23 employees of *Visex inc.*

On January 15, 2003, in order to carry out its plans to expand, *Visex inc.* entered into an amalgamation agreement with *Valeurplus ltée*, one of its principal competitors whose head office is located in Saint-Georges-de-Beauce. *Valeurplus ltée* is also a corporation incorporated under the *Canada Business Corporations Act*. Georges Ledoux holds all of the shares of *Valeurplus ltée*.

To date, *Visex inc.* and *Valeurplus ltée* have filed all the reports and declarations required under the *Act respecting the legal publicity of sole proprietorships, partnerships and legal persons* and the *Canada Business Corporations Act*.

The amalgamation agreement provides as follows, among other things:

- the name of the amalgamated corporation will be *Visexplus et Cie*;
- the amalgamation will date back to December 31, 2002, the date of the most recent financial statements prepared by the auditors of both corporations.

The directors of *Visex inc.* provide you with the following notice of meeting. This is the only notice that was sent. It was sent only to the recipients identified therein.

Victoriaville, February 12, 2003

RECIPIENTS: To all class “A” shareholders and to the directors of *Visex inc.*

FROM: Lise Houle, Director and Secretary of *Visex inc.*

Dear Sir or Madam:

You are hereby called to a special meeting of the shareholders of *Visex inc.* to be held at the corporation’s head office in Victoriaville on June 16, 2003 at 9:00 a.m.

The class “A” shareholders will be called upon to vote by ordinary resolution on the amalgamation agreement with *Valeurplus ltée.*

The amalgamation agreement, a proxy form and a proxy circular are annexed to this notice.

Lise Houle

Lise Houle, Director and Secretary of *Visex inc.*

QUESTION 1 (6 marks)

- (a) Does the name of the proposed corporation, namely *Visexplus et Cie*, comply with the requirements of the *Canada Business Corporations Act*? Explain your answer.
- (b) Can the proposed amalgamation date back to December 31, 2002?

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

QUESTION 2 (15 marks)

State five irregularities or illegalities relating to the calling of the special meeting of shareholders of *Visex inc.*

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

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

QUESTION 3 (4 marks)

Assuming that a certificate of amalgamation were to be validly issued, what declaration(s) would have to be filed with the Inspector General of Financial Institutions in accordance with the *Act respecting the legal publicity of sole proprietorships, partnerships and legal persons*? Specify the corporation(s) that has (have) to file the said declaration(s).

FILE 2 (23 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.

Danielle and Marc Joly consult you today and relate the following facts to you.

Ferme Joly inc., an agricultural firm, was constituted under Part 1A of the *Companies Act*. The authorized share capital of the company is comprised of four classes of shares with the following rights, privileges, conditions and restrictions relating to the right to vote and to dividends:

- the class “A” shares confer the right to one vote per share. They also confer the right to receive all declared dividends;
- the class “B” shares confer the right to one vote per share. They do not confer the right to any dividends;
- the class “C” shares do not confer any right to vote. They confer the right to receive a monthly, fixed, non-cumulative, preferred dividend of 1% per month calculated on the “redemption value” of the class “C” shares, said dividend to be paid in preference to dividends on the class “D” shares and class “A” shares. They do not confer the right to any additional participation in the dividends of the company;
- the class “D” shares do not confer any right to vote. They confer the right to receive an annual, fixed, non-cumulative, preferred dividend of 5% per annum calculated on the amount paid into the issued and paid-up share capital account for the said class “D” shares, said dividend to be paid in preference to dividends on the class “A” shares. Furthermore, they confer the right to an additional participation in the dividends of the company, ranking equally with the class “A” shares.

Furthermore, the provisions of the articles relating to the class “B” shares, class “C” shares and class “D” shares provide that no amendments to the rights, privileges, conditions or restrictions attaching to the shares of any one of these classes may be authorized without the prior approval of at least three quarters ($\frac{3}{4}$) of the votes cast by the shareholders of the class affected by the amendment.

The balance sheet of *Ferme Joly inc.* as at today’s date indicates the following:

Ferme Joly inc.			
Balance Sheet			
As at June 2, 2003			
<u>ASSETS</u>		<u>LIABILITIES</u>	
	\$1,300,000		\$850,000
		<u>SHAREHOLDERS’ EQUITY</u>	
		Issued and paid up share capital	
		Class “A” shares	3,000
		Class “B” shares	2,000
		Class “C” shares	20,000
		Class “D” shares	250,000
		Retained earnings	175,000
		TOTAL LIABILITIES AND	
TOTAL ASSETS	\$1,300,000	SHAREHOLDERS’ EQUITY	\$1,300,000

The following information is also relevant:

- the realizable value of the assets is equal to their book value;
- the issued shares are allotted as follows:

SHAREHOLDERS	NUMBER OF SHARES	CLASSES
<i>Placements Joly inc.</i>	100	“A”
Francine Lupien	100	“A”
Danielle Joly	2,000	“B”
	400,000	“C”
	200	“D”

- the “redemption value” of the class “C” shares is \$400,000, namely \$1 per share;
- as at today’s date, no dividends have been declared for the current fiscal year.

Today, the board of directors will meet. The directors of the company will then declare a dividend of \$100,000 payable immediately.

QUESTION 4 (8 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 “C” shares and the class “D” shares. Show all your calculations.

SUPPLEMENTARY FACTS

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

<u>ASSETS</u>		<u>LIABILITIES</u>	
	\$1,200,000		\$850,000
		<u>SHAREHOLDERS’ EQUITY</u>	
		Issued and paid up share capital:	
		Class “A” shares	3,000
		Class “B” shares	2,000
		Class “C” shares	20,000
		Class “D” shares	250,000
		Retained earnings	75,000
TOTAL ASSETS	\$1,200,000	TOTAL LIABILITIES AND SHAREHOLDERS’ EQUITY	\$1,200,000

At the same meeting of the board of directors, the directors intend to adopt a resolution authorizing *Ferme Joly inc.* to give security in favour of *Banque de l'Est* for a loan of \$200,000 which Marc Joly, the brother of Danielle and sole shareholder and director of *Placements Joly inc.*, intends to take out. Marc will use the borrowed amount to acquire a rental property.

QUESTION 5 (5 marks)

Can *Ferme Joly inc.* give security (“cautionner”) for the \$200,000 loan that Marc Joly intends to take out with *Banque de l'Est*?

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

- (a) Yes, this security (“cautionnement”) is contemplated in section 123.66 *Q.C.A.* and *Ferme Joly inc.* satisfies the accounting test provided for therein.**
- (b) No, this security (“cautionnement”) is contemplated in section 123.66 *Q.C.A.* and *Ferme Joly inc.* does not satisfy the accounting test provided for therein.**
- (c) Yes, this security (“cautionnement”) is contemplated in section 123.67 *Q.C.A.***
- (d) Yes, this security (“cautionnement”) is not contemplated in section 123.66 *Q.C.A.***
- (e) No, the *Companies Act* forbids a company from giving security (“cautionnement”) for a loan taken out by a shareholder of its parent legal person.**

SUPPLEMENTARY FACTS

At the same meeting, the members of the board of directors intend to adopt a by-law to amend the articles such that the monthly dividend rate of 1% for the Class “C” shares will henceforth be an annual rate of 5%.

QUESTION 6 (5 marks)

In order to make this amendment, the by-law must be ratified by the shareholders. What procedure must be followed?

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

- (a) The by-law will have to be ratified by $\frac{2}{3}$ of the votes cast by the holders of class “A” shares and class “B” shares at one and the same meeting.
- (b) The by-law will have to be ratified by $\frac{2}{3}$ of the votes cast by the holders of class “A” shares at a meeting of holders of class “A” shares and by $\frac{2}{3}$ of the votes cast by the holders of class “B” shares at a meeting of holders of class “B” shares.
- (c) The by-law will have to be ratified by $\frac{2}{3}$ of the votes cast by the holders of class “A” shares, class “B” shares and class “C” shares at one and the same meeting.
- (d) The by-law will have to be ratified by $\frac{2}{3}$ of the votes cast by the holders of class “A” shares and class “B” shares at one and the same meeting of holders of class “A” shares and class “B” shares and by $\frac{3}{4}$ of the votes cast by holders of class “C” shares at a meeting of holders of class “C” shares.
- (e) The by-law will have to be ratified by $\frac{2}{3}$ of the votes cast by the holders of class “A” shares at a meeting of holders of class “A” shares, by $\frac{2}{3}$ of the votes cast by the holders of class “B” shares at a meeting of holders of class “B” shares and by $\frac{3}{4}$ of the votes cast by the holders of class “C” at a meeting of holders of class “C” shares.

SUPPLEMENTARY FACTS

Placements Joly inc. holds all the issued and outstanding shares of *Immeubles Joly-Bec inc.*, a profitable and thriving company constituted under the *Companies Act*.

Placements Joly inc. will require a significant injection of funds. It intends to cause *Immeubles Joly-Bec inc.* to subscribe for voting and participating shares to be issued by *Placements Joly inc.*

QUESTION 7 (5 marks)

In virtue of the *Companies Act* can *Immeubles Joly-Bec inc.* subscribe for voting and participating shares to be issued by *Placements Joly inc.*?

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

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.

André Gaudreau, president of *Structures Métalliques Modernes ltée*, consults you today regarding financial matters.

He tells you that this corporation was incorporated in 1990 and, since then, has been manufacturing metallic structure components.

In 1998 and 1999, the corporation had major financial difficulties which it was able to overcome by implementing a recovery plan.

In 2000, the corporation once again showed profits and these profits increased in the following years, to such an extent that they exceeded \$1,000,000 for the fiscal year ended December 31, 2002.

Since 1998, *Structures Métalliques Modernes ltée* has not paid any dividends to its shareholders. The corporation is therefore preparing to cash in a short-term investment of \$530,000 in order to declare and pay, this very day, dividends totalling \$530,000.

André asks you whether, after the payment of these dividends, the corporation will satisfy certain capital debt ratios (“coefficients de solvabilité”) and financial structure ratios (“coefficients de structure financière”). To this end, he provides you with a *pro forma* balance sheet representing the corporation’s financial situation as at June 2, 2003, before the declaration and payment of the dividends.

STRUCTURES MÉTALLIQUES MODERNES LTÉE			
<i>Pro Forma</i> Balance Sheet			
As at June 2, 2003			
	<u>ASSETS</u>		<u>LIABILITIES</u>
Current assets		Current liabilities	
Cash	\$1,600,000	Bank loan	\$450,000
Short-term investments	1,530,000	Accounts payable and accrued expenses	1,900,000
Accounts receivable	1,360,000	Long-term debt owed to a financial institution coming due in less than one year	300,000
Inventory	1,010,000		
Prepaid expenses	65,000	Long-term debt owed to a financial institution	1,400,000
Fixed assets	6,685,000	Debt owed to a shareholder	1,500,000
Other assets	250,000	Future taxes	950,000
			<u>6,500,000</u>
		<u>SHAREHOLDERS' EQUITY</u>	
		Share capital	4,000,000
		Retained earnings	<u>2,000,000</u>
			6,000,000
TOTAL ASSETS	<u>\$12,500,000</u>	TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	<u>\$12,500,000</u>

QUESTION 8 (5 marks)

After the declaration and payment of the dividends totalling \$530,000, will the working capital ratio (“coefficient du fonds de roulement”) of *Structures Métalliques Modernes ltée* be at least 1.75? Show all your calculations and the result.

QUESTION 9 (5 marks)

After the declaration and payment of the dividends totalling \$530,000, will the ratio of total liabilities to net worth (“coefficient du passif total sur la valeur nette”) of *Structures Métalliques Modernes ltée* be greater than 75%? Show all your calculations and the result.

SUPPLEMENTARY FACTS

André also consults you regarding tax matters.

Structure Métalliques Modernes ltée was incorporated in 1990 under the *Canada Business Corporations Act*. The corporation operates only one plant which is located in Montreal and it makes all its sales in Quebec and Ontario. The share capital of the corporation is comprised of only one class of shares, namely the class “A” shares.

Placements Gaudreau ltée holds 75% of the class “A” shares of the share capital of *Structures Métalliques Modernes ltée*. *Placements Gaudreau ltée* was incorporated in 1992 under the *Canada Business Corporations Act*. André and his wife are the only shareholders of *Placements Gaudreau ltée*. Both of them have always been residents of Canada within the meaning of the *Income Tax Act*.

Besson-Métallica SA holds 25% of the class “A” shares of the share capital of *Structures Métalliques Modernes ltée*. *Besson-Métallica SA* is a non-resident corporation within the meaning of the *Income Tax Act*. It is controlled by Joseph Besson, a resident of France who has been doing business for a long time with the Gaudreau family.

Structures Métalliques Modernes ltée currently has a capital dividend account of \$100,000. This very day it will declare and pay a first dividend of \$100,000 from its capital dividend account. Before doing so it will make the election provided for in subsection 83 (2) of the *Income Tax Act* with respect to the total amount of this \$100,000 capital dividend.

Moreover, this very day *Structures Métalliques Modernes ltée* will declare and pay a second dividend of \$430,000. This \$430,000 dividend will be a “taxable dividend” within the meaning of the *Income Tax Act*.

Overall, *Placements Gaudreau ltée* will therefore receive a capital dividend of \$75,000 and a taxable dividend of \$322,500. As for *Besson-Métallica SA*, it will receive a capital dividend of \$25,000 and a taxable dividend of \$107,500.

Structures Métalliques Modernes ltée will not pay any other dividend during the 2003 taxation year.

The refundable dividend tax on hand of *Structures Métalliques Modernes ltée* will be \$8,000 at the end of its taxation year ending December 31, 2003. This refundable tax on hand is the result of \$30,000 in interest received by the corporation from certain short-term investments during its 2003 taxation year. These short-term investments were not being used or at risk in the manufacturing business operated by the corporation and therefore were non-operating assets for the corporation.

André consults you regarding the tax treatment of these dividends.

QUESTION 10 (5 marks)

Will the payment of the \$100,000 capital dividend allow *Structures Métalliques Modernes ltée* to obtain a dividend refund? Explain your answer.

QUESTION 11 (5 marks)

As a result of the payment of the \$430,000 taxable dividend, what will be the amount of the dividend refund to *Structures Métalliques Modernes ltée*?

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

- (a) a zero refund because *Structures Métalliques Modernes ltée* is not a private corporation.**
- (b) a zero refund because *Structures Métalliques Modernes ltée* is a paying corporation connected with a non-resident corporation (“société payante rattachée à une société non-résidente”).**
- (c) a refund of \$8,000 equal to the refundable dividend tax on hand of *Structure Métalliques Modernes ltée* at the end of the 2003 taxation year.**
- (d) a refund of \$143,333 equal to one third of the \$430,000 taxable dividend.**

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.

Your client, trustee Charles Leblanc, consults you today and relates the following facts to you.

On May 5, 2003, he was appointed trustee in the bankruptcy of *BMB inc.* following the assignment by *BMB inc.* of its property for the benefit of its creditors.

At the time of the bankruptcy, *BMB inc.* owned a delivery vehicle. Trustee Leblanc did not insure this vehicle because the president of *BMB inc.*, François Boileau, had informed him that the insurance covering this vehicle, which insurance was subscribed in December of 2002, was still in effect at the time of the bankruptcy. A verification of this information showed that it was true.

Trustee Leblanc has just learned from an officer of the Sûreté du Québec that the delivery vehicle was stolen and was later found after having been destroyed by fire.

QUESTION 12 (5 marks)

Is trustee Leblanc entitled to the proceeds of the insurance on the delivery vehicle although he himself did not subscribe for the insurance on the vehicle?

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

SUPPLEMENTARY FACTS

Martin Bertrand, a creditor of *BMB inc.*, filed a proof of claim prior to the meeting of creditors. The proof of claim refers only to his status as creditor and the amount claimed, namely \$15,000. No other document was sent with the proof of claim.

At the meeting of creditors, the official receiver, who is acting as chairman of the meeting, does not allow Martin to vote for the appointment of the inspector, on the ground that the proof of claim submitted is incomplete.

As a result of the vote, Gaétan Laberge is appointed as the inspector. Martin wants to have the appointment of Gaétan Laberge set aside on the ground that the chairman of the meeting did not allow him to vote.

QUESTION 13 (5 marks)

Is the decision of the chairman of the meeting not to allow Martin Bertrand to vote for the appointment of the inspector well founded? Explain your answer.

SUPPLEMENTARY FACTS

After investigating, trustee Leblanc learns that on December 1, 2002, *BMB inc.* sold a Ford Windstar 2000 pickup truck to Rosaria Lemay at a price of \$13,000 paid in cash. Rosaria is the spouse of François Boileau, president, sole director and shareholder of *BMB inc.*, and has been living with him for five years.

In the trustee's opinion, at the time of the sale the pickup truck had a value of \$23,000.

The trustee learned that on March 4, 2003, Rosaria resold the pickup truck to Pierre Boisvert for an amount of \$23,000.

QUESTION 14 (5 marks)

- (a) Under the *Bankruptcy and Insolvency Act*, what recourse can the trustee exercise against Rosaria Lemay as a result of the sale to her of the Ford Windstar 2000 pickup truck by *BMB inc.*?**
- (b) Assuming that the recourse were to be successful, what would the trustee obtain for the benefit of the mass of creditors?**

SUPPLEMENTARY FACTS

Trustee Leblanc published a notice of sale in a local newspaper regarding the following item of property:

- A Compaq, Armada 500, Pentium 4 portable computer with CDRW, having a value of \$5,000.

He received only one offer to purchase which was made by Gaétan Laberge, the inspector in the bankruptcy; the offer is for \$3,500.

QUESTION 15 (5 marks)

Can the trustee proceed with the sale of the computer to Gaétan Laberge without any other formalities?

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

FILE 5 (12 MARKS)

M^c Donald Prévost represents Gérard Bellefeuille. Gérard was dissatisfied with a decision of the Administrative Tribunal of Québec which dismissed his appeal from a decision of the Direction de la révision of the Société de l'assurance automobile du Québec.

M^c Prévost claimed that the decision of the Administrative Tribunal of Québec was not well founded because the Tribunal exceeded its jurisdiction. Therefore, he decided to apply for a judicial review of the decision before the Superior Court.

M^c Lafontaine appeared on behalf of the Société de l'assurance automobile du Québec.

Before the hearing, M^c Lafontaine examined Gérard out of court regarding the affidavit which he signed and which was served with the motion. The transcript of the examination was filed in the court record.

Mr. Justice Luc Plouffe heard the motion to institute proceedings for judicial review and the representations of the lawyers. After the hearing, which lasted two full days, the judge asked the lawyers to provide written arguments before rendering judgment.

The lawyers filed their written pleadings and judgment was rendered, in favour of Gérard, allowing the motion to institute proceedings for judicial review, with costs.

QUESTION 16 (12 marks)

State all the taxable judicial fees which M^c Donald Prévost can claim as the lawyer for Gérard Bellefeuille, indicating for each fee the amount and the relevant section or sections of the *Tariff of judicial fees of advocates*.

CORRIGÉ
DROIT DES AFFAIRES - EXAMEN DE REPRISE
 2 juin 2003

DOSSIER 1 (25 POINTS)

QUESTION 1 (6 points)

a) La dénomination sociale de la société projetée, soit *Visexplus et Cie*, est-elle conforme aux exigences de la *Loi canadienne sur les sociétés par actions* ? Dites pourquoi.

Non, parce qu'il manque l'élément légal (art. 10 (1) *L.c.s.a.*)

1. 3

b) La fusion projetée peut-elle remonter au 31 décembre 2002 ?

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

1. Non, art. 262 (3) *L.c.s.a.* (il n'y a pas de rétroactivité)

1. 3 pts

ou

Non, art. 185 (4) *L.c.s.a.* (il n'y a pas de rétroactivité)

2. 3

OU

OU

2. Non, art. 186 a) *L.c.s.a.* (la date du certificat de fusion)

2. 2 pts

QUESTION 2 (15 points)

Énoncez cinq irrégularités ou illégalités relatives à la convocation de l'assemblée extraordinaire des actionnaires de *Visex inc.*

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* ou de son règlement.

SEULES LES CINQ PREMIÈRES IRRÉGULARITÉS OU ILLÉGALITÉS INSCRITES AU CAHIER DE RÉPONSES SERONT CORRIGÉES.

IRRÉGULARITÉS ou ILLÉGALITÉS	5 / 7 2 pts / bulle	DISPOSITIONS	5 / 7 1 pt / bulle
	3. 10		4. 5
1. L'avis de convocation à une assemblée des actionnaires a été envoyé plus de 60 jours avant l'assemblée.	1. <input type="radio"/>	art. 135 (1) <i>L.c.s.a.</i> OU 44 <i>R.s.a.</i>	8. <input type="radio"/>
2. L'avis de convocation n'a pas été envoyé au vérificateur.	2. <input type="radio"/>	art. 135 (1) c) <i>L.c.s.a.</i> OU art. 168 (1) <i>L.c.s.a.</i>	9. <input type="radio"/>
3. L'avis de convocation n'a pas été envoyé aux actionnaires de catégorie « B ».	3. <input type="radio"/>	art. 183 (3) <i>L.c.s.a.</i>	10. <input type="radio"/>
4. L'avis de convocation ne fait pas état du droit de dissidence.	4. <input type="radio"/>	art. 183(2) b) <i>L.c.s.a.</i>	11. <input type="radio"/>
5. La convention de fusion n'a pas été approuvée par une résolution spéciale des actionnaires.	5. <input type="radio"/>	art. 183(5) <i>L.c.s.a.</i>	12. <input type="radio"/>
6. Le texte de la résolution spéciale n'a pas été annexé à l'avis de convocation.	6. <input type="radio"/>	art. 135(6)b) <i>L.c.s.a.</i>	13. <input type="radio"/>
7. L'avis de convocation et les documents expédiés aux actionnaires n'ont pas été envoyés au directeur.	7. <input type="radio"/>	art. 150 (2) <i>L.c.s.a.</i>	14. <input type="radio"/>

QUESTION 3 (4 points)

Dans l'hypothèse où un certificat de fusion serait valablement émis, quelle(s) déclaration(s) doit (doivent) être produite(s) à l'Inspecteur général des institutions financières conformément à la *Loi sur la publicité légale des entreprises individuelles, des sociétés et des personnes morales* ? Précisez la (les) société(s) qui doit (doivent) produire cette (ces) déclaration(s).

Une déclaration d'immatriculation de *Visexplus et Cie* (la société résultant de la fusion).

5. 4

DOSSIER 2 (23 POINTS)

QUESTION 4 (8 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 », « C » et « D ». Faites état de tous vos calculs.

- Actions de catégorie « C » :
 1% de la valeur de rachat des actions de catégorie « C » 6.
 $1\% \times 400\,000 \$ = 4\,000 \$$
- Actions de catégorie « D » :
 5 % du montant versé sur les actions de catégorie « D » + une participation additionnelle égale à 208,75 \$ par action x 200 actions 7.
 $[5\% \times 250\,000 \$ = 12\,500 \$]^7 + [41\,750 \$]^8 = 54\,250 \$$ 8.
- Actions de catégorie « A » :
 $208,75 \$ \times 200$ actions de catégorie « A » 9.
 41 750 \$

QUESTION 5 (5 points)

Ferme Joly inc. peut-elle cautionner l'emprunt de 200 000 \$ qu'entend contracter Marc Joly auprès de *Banque de l'Est* ?

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

- a) Oui, ce cautionnement est visé par l'article 123.66 *L.c.Q.* et *Ferme Joly inc.* satisfait le test comptable qui y est prévu.
- b) Non, ce cautionnement est visé par l'article 123.66 *L.c.Q.* et *Ferme Joly inc.* ne satisfait pas le test comptable qui y est prévu.
- c) Oui, ce cautionnement est visé par l'article 123.67 *L.c.Q.*
- d) Oui, ce cautionnement n'est pas visé par l'article 123.66 *L.c.Q.*
- e) Non, la *Loi sur les compagnies* interdit le cautionnement par une compagnie d'un emprunt contracté par l'actionnaire de sa personne morale mère.

Réponse : d) Oui, ce cautionnement n'est pas visé par l'article 123.66 *L.c.Q.* 10.

QUESTION 6 (5 points)

Pour effectuer cette modification, le règlement doit être ratifié par les actionnaires. Quelle est la procédure à suivre ?

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

- a) Le règlement devra être ratifié au $\frac{2}{3}$ des voix exprimées par les actionnaires de catégorie « A » et « B » à une même assemblée.
- b) Le règlement devra être ratifié au $\frac{2}{3}$ des voix exprimées par les actionnaires de catégorie « A » à une assemblée des actionnaires de catégorie « A » et au $\frac{2}{3}$ des voix exprimées par les actionnaires de catégorie « B » à une assemblée des actionnaires de catégorie « B ».
- c) Le règlement devra être ratifié au $\frac{2}{3}$ des voix exprimées par les actionnaires de catégorie « A », « B » et « C » à une même assemblée.
- d) Le règlement devra être ratifié au $\frac{2}{3}$ des voix exprimées par les actionnaires de catégorie « A » et « B » à une même assemblée des actionnaires de catégorie « A » et « B » et au $\frac{3}{4}$ des voix exprimées par les actionnaires de catégorie « C » à une assemblée des actionnaires de catégorie « C ».
- e) Le règlement devra être ratifié au $\frac{2}{3}$ des voix exprimées par les actionnaires de catégorie « A » à une assemblée des actionnaires de catégorie « A », au $\frac{2}{3}$ des voix exprimées par les actionnaires de catégorie « B » à une assemblée des actionnaires de catégorie « B » et au $\frac{3}{4}$ des voix exprimées par les actionnaires de catégorie « C » à une assemblée des actionnaires de catégorie « C ».

Réponse : d) Le règlement devra être ratifié au $\frac{2}{3}$ des voix exprimées par les actionnaires de catégorie « A » et « B » à une même assemblée des actionnaires de catégorie « A » et « B » et au $\frac{3}{4}$ des voix exprimées par les actionnaires de catégorie « C » à une assemblée des actionnaires de catégorie « C ». 11.

QUESTION 7 (5 points)

Immeubles Joly-Bec inc. peut-elle, en vertu de la *Loi sur les compagnies*, souscrire à des actions avec droit de vote et participantes qu'émettra *Placements Joly inc.* ?

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

Non, art. 123.43 *L.c.Q.* 12.

DOSSIER 3 (20 POINTS)

QUESTION 8 (5 points)

Après déclaration et paiement des dividendes totalisant 530 000 \$, le coefficient du fonds de roulement de *Structures Métalliques Modernes ltée* sera-t-il d'au moins 1,75? Faites état de tous vos calculs et du résultat.

Oui, le coefficient du fonds de roulement sera de 1,9.

$$\frac{\text{Actif à court terme}}{\text{Passif à court terme}} =$$

13.

$$\frac{5\,565\,000 \$ - 530\,000 \$}{2\,650\,000 \$} = 1,9$$

QUESTION 9 (5 points)

Après déclaration et paiement des dividendes totalisant 530 000 \$, le coefficient du passif total sur la valeur nette de *Structures Métalliques Modernes ltée* sera-t-il supérieur à 75 %? Faites état de tous vos calculs et du résultat.

Non, le coefficient du passif total sur la valeur nette sera de 71,7 %.

$$\frac{\text{Passif à court terme et à long terme}}{\text{Valeur nette}} \times 100$$

14.

$$\frac{6\,500\,000 \$ - 1\,500\,000 \$}{6\,000\,000 \$ + 1\,500\,000 \$ - 530\,000 \$} \times 100 = 71,7 \%$$

QUESTION 10 (5 points)

Le versement du dividende en capital de 100 000 \$ permettra-t-il à *Structures Métalliques Modernes ltée* d'obtenir un remboursement au titre de dividendes? Dites pourquoi.

Non, puisqu'il ne s'agit pas d'un dividende imposable [*L.i.r.*, paragraphe 129(1)].

15.

QUESTION 11 (5 points)

À la suite du versement du dividende imposable de 430 000 \$, quel sera le remboursement au titre de dividendes en faveur de *Structures Métalliques Modernes ltée*?

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

- a) un remboursement nul, puisque *Structures Métalliques Modernes ltée* n'est pas une société privée.
- b) un remboursement nul, puisque *Structures Métalliques Modernes ltée* est une société payante rattachée à une société non-résidente.
- c) un remboursement de 8 000 \$ égal à l'impôt en main remboursable au titre de dividendes de *Structures Métalliques Modernes ltée* à la fin de l'année d'imposition 2003.
- d) un remboursement de 143 333 \$ égal au tiers du dividende imposable de 430 000 \$.

Réponse : c) un remboursement de 8 000 \$ égal à l'impôt en main remboursable au titre de dividendes de *Structures Métalliques Modernes ltée* à la fin de l'année d'imposition 2003.

16.

DOSSIER 4 (20 POINTS)

QUESTION 12 (5 points)

Le syndic Leblanc a-t-il droit au produit de l'assurance sur le véhicule de livraison même s'il n'a pas lui-même souscrit une assurance sur ce bien?

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. 24 (2) *L.f.i.*

17.

QUESTION 13 (5 points)

La décision du président d'assemblée de ne pas permettre à Martin Bertrand de voter pour la nomination de l'inspecteur est-elle bien fondée? Dites pourquoi.

Oui, la preuve de réclamation doit être accompagnée des pièces justificatives (art. 109 (1) et 124(4) *L.f.i.*)

OU

Non, en cas de doute raisonnable sur la recevabilité, il permet au créancier de voter (art. 108 (3) *L.f.i.*)

18.

QUESTION 14 (5 points)

a) En vertu de la *Loi sur la faillite et l'insolvabilité*, quel recours peut exercer le syndic contre Rosaria Lemay à la suite de la vente de la fourgonnette Ford Windstar 2000 par *BMB inc.* à celle-ci?

Recours en révision de la transaction (art. 100 *L.f.i.*)

19.

b) Dans l'hypothèse où ce recours serait accueilli, qu'obtiendrait le syndic pour le bénéfice de la masse des créanciers?

10 000 \$ (art. 100 (2) *L.f.i.*)

20.

QUESTION 15 (5 points)

Le syndic peut-il conclure, sans autre formalité, la vente de l'ordinateur à Gaétan Laberge?

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. 120 (1) *L.f.i.* (l'inspecteur ne peut se porter acquéreur sans l'approbation préalable du tribunal.)

21.

DOSSIER 5 (12 POINTS)

QUESTION 16 (12 points)

Énoncez tous les honoraires judiciaires taxables que M^e Donald Prévost peut réclamer à titre de procureur de Gérard Bellefeuille en indiquant, pour chacun d'eux, le montant et le ou les articles pertinents du *Tarif des honoraires judiciaires des avocats*.

HONORAIRES	ARTICLE	MONTANT	
Jugement au fond	art. 38 (classe II B) ET art. 25 <i>Tarif des honoraires judiciaires des avocats</i>	500 \$	22. <input type="text" value="4"/>
Pour avoir plaidé par écrit	art. 28 <i>Tarif des honoraires judiciaires des avocats</i>	50 \$	23. <input type="text" value="2"/>
Pour l'interrogatoire d'une partie	art. 27 <i>Tarif des honoraires judiciaires des avocats</i>	30 \$	24. <input type="text" value="2"/>
Pour les deux demi-journées additionnelles	art. 33.1) <i>Tarif des honoraires judiciaires des avocats</i>	100 \$	25. <input type="text" value="2"/>

Aucuns autres honoraires mentionnés

26.