



# FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

## EXAMINATION BOOKLET

### DROIT DES AFFAIRES

#### SUPPLEMENTAL EXAMINATION

May 25, 2004

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

<b>FILE 1 (25 MARKS)</b>
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**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.**

*Grossiste Voiture Meilleur Prix inc.* is a company constituted under Part IA of the *Companies Act*. It is a closed company within the meaning of the *Securities Act*. Its articles contain the following provisions, among others:

“Description of share capital:

An unlimited number of common shares.

Restrictions on share transfers, if any:

No shares of the company shall be transferred or assigned without the consent of a majority of the directors, which consent shall be evidenced by a resolution of the board of directors.”

The board of directors is comprised of three directors: Charles Leblanc, Danielle Bousquet and Jocelyne Desroches. Each of the three directors holds 15,000 common shares of the share capital of the company.

To date, *Grossiste Voiture Meilleur Prix inc.* has filed all the declarations required under the *Act respecting the legal publicity of sole proprietorships, partnerships and legal persons*.

At a meeting of the board of directors held on February 10, 2003, 10,000 common shares were issued to Guy Lalande. These shares were issued for a consideration of \$10 per share, payable with 5 \$ per share at the time of issuance and the balance being payable on March 31, 2005.

On March 1, 2004, Guy sold his 10,000 common shares of *Grossiste Voiture Meilleur Prix inc.* to Amélie Turner, a prosperous businesswoman, for an amount of \$55,000 which was paid in cash; furthermore, Amélie undertook to pay *Grossiste Voiture Meilleur Prix inc.* the balance of the issuance price of the shares due on March 31, 2005. At the time of the transaction, Amélie received the share certificate representing the shares sold. The certificate was duly endorsed by Guy. The share certificate did not refer to any restriction regarding the transfer of the shares or to the existence of a unanimous shareholders’ agreement.

In actual fact, Guy was a party to an agreement signed by all the shareholders of *Grossiste Voiture Meilleur Prix inc.* on February 14, 2003. This agreement contains the following clause, among others:

<p>“If a shareholder wishes to sell his common shares to a third party, he shall first, by written notice and for a period of 10 days, offer the said shares to the other shareholders at the same price as that offered by the third party.”</p>
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*Grossiste Voiture Meilleur Prix inc.* intervened in this agreement.

Amélie was unaware that this agreement existed.

On March 15, 2004, Amélie asked the board of directors of the company to record her as a shareholder following the transfer of the 10,000 common shares.

On March 22, 2004, the board of directors sent Amélie a letter in which it refused to record her as the owner of the 10,000 common shares sold to her.

In support of its refusal, the board of directors raised the following three arguments:

1. The law forbids the board of directors of a company from authorizing the transfer of shares that are not fully paid up.
2. According to the company's articles, the board of directors has full discretion to refuse this transfer of shares.
3. Guy Lalande did not offer his shares to the other shareholders before selling them to Amélie Turner, contrary to the shareholders' agreement to which he was a party. This failure makes the transfer invalid.

#### **QUESTION 1 (12 marks)**

**Indicate whether each of the arguments raised by the board of directors is well founded.**

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

1. **The law forbids the board of directors of a company from authorizing the transfer of shares that are not fully paid up.**
2. **According to the company's articles, the board of directors has full discretion to refuse this transfer of shares.**
3. **Guy Lalande did not offer his shares to the other shareholders before selling them to Amélie Turner, contrary to the shareholders' agreement to which he was a party. This failure makes the transfer invalid.**

<b>SUPPLEMENTARY FACTS</b>
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Following drawn out negotiations, the board of directors agreed to record Amélie as a shareholder of the company as a replacement for Guy.

At a meeting of the board of directors held today, May 25, 2004, the following decisions were made:

1. The adoption of By-law 2004-2 which creates one new position of vice-president, and the appointment of Amélie Turner to this position;
2. The adoption of a resolution to split each issued common share into two common shares;
3. The adoption of a resolution to operate a new division under the name of *Réparation GVMP*.

No provision of the articles or the general by-laws of *Grossiste Voiture Meilleur Prix inc.* and no provision of the shareholders' agreement dated February 14, 2003 deals with these matters.

**QUESTION 2 (5 marks)**

**Is the appointment of Amélie Turner as vice-president legal?**

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

**QUESTION 3 (4 marks)**

**Is the adoption of a resolution by the board of directors sufficient to make the splitting of each common share into two common shares legal? Explain your answer.**

**QUESTION 4 (4 marks)**

**What formality must be carried out in order to follow up, today, on the resolution authorizing *Grossiste Voiture Meilleur Prix inc.* to operate a new division under the name of *Réparation GVMP*?**

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

<b>FILE 2 (30 MARKS)</b>
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**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.**

Éric Binet consults you with respect to a corporation he intends to constitute soon to operate a glazier's shop under the name of *Vitrerie Michaud Corporation*, in memory of his spouse, Marie-Pier Michaud, who died last year.

In addition to Éric, four other people will also be shareholders of this corporation: Jack Farraday, Lise Farraday, Peter Gagnon and Louise Smith-Gagnon.

Éric provides you with draft incorporation documents prepared by him and gives you the following mandate:

1. Ensure that the incorporation documents comply with the requirements of the *Canada Business Corporations Act*;
2. Ensure that the corporation is a closed company within the meaning of the *Securities Act*.

The following are excerpts of Éric's draft:

<b>Form 1: Articles of incorporation</b>	
<b>Name of corporation</b>	Vitrerie Michaud Corporation
<b>Province where the registered office is located</b>	Québec
<b>The classes and maximum number of shares the corporation is authorized to issue</b>	<p>Class "A": An unlimited number of class "A" shares conferring upon the holder thereof the right to vote and to share in the remaining property of the corporation upon its dissolution.</p> <p>Class "B": A maximum of 5,000 class "B" shares conferring upon the holder thereof 20 votes per share and the right to share in the remaining property of the corporation upon its dissolution.</p> <p>Class "C": An unlimited number of class "C" non-voting shares conferring the right to a dividend of 5% per year on the amount paid into the stated capital account. Upon the dissolution of the corporation, these shares confer the right to receive, in preference to the class "A" shares and the class "B" shares, the repayment of the amount paid into the stated capital account for the said shares. Any amendment to the rights, restrictions or privileges attaching to the class "C" shares which gives rise to a vote by class shall require the approval of at least 75% of the votes cast by the shareholders of that class.</p>

<b>Restrictions on share transfers</b>	Not applicable
<b>Number of directors</b>	Min. 1 – Max. 10
<b>Restrictions on business the corporation may carry on</b>	Not applicable
<b>Other provisions</b>	<p>The number of shareholders shall be limited to 50, not counting those who are or have been employees of the corporation or one of its subsidiaries.</p> <p>The corporation is not authorized to make a distribution of its securities to the public.</p> <p>The directors may appoint one or more additional directors whose term of office shall expire no later than the close of the next annual meeting, provided that the total number of directors thus appointed does not exceed one half of the number of directors elected at the most recent annual meeting.</p> <p>Directors may be removed only by a special resolution of the shareholders entitled to vote.</p>
<b>Incorporators</b>	Éric Binet (815 des Thuyas Street, Sainte-Agathe, Québec, J4R 3T7)

**Form 3: Notice of registered office or notice of change of registered office**

<b>Street address of registered office</b>	5160 Lancaster Street, Hawkesbury, Ontario, K0A 0M5
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**Form 6: Notice of directors or notice of change of directors**

Jack Farraday (American resident):	5 Town Square, Daytona, USA, 20032
Lise Farraday (American resident):	5 Town Square, Daytona, USA, 20032
Peter Gagnon (American resident):	79 Acacia Dr., Hollywood, USA, 22792
Louise Smith-Gagnon (American resident):	79 Acacia Dr., Hollywood, USA, 22792
Éric Binet (Canadian resident):	815 des Thuyas Street, Sainte-Agathe, Québec, J4R 3T7

**QUESTION 5 (24 marks)**

State six irregularities or errors contained in the excerpts of the draft incorporation documents prepared by Éric Binet.

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

**ONLY THE FIRST SIX IRREGULARITIES OR ERRORS WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.**

<b>SUPPLEMENTARY FACTS</b>
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Éric holds 100,000 Class “A” shares of the share capital of *Solarium Bellevue inc.*, a corporation constituted under the *Canada Business Corporations Act*. These class “A” shares are common shares conferring the three rights set forth in subsection 24(3) of the *Canada Business Corporations Act*. *Solarium Bellevue inc.* has also issued class “B” shares” and class “C” shares; these shares, which are preferred shares, are held by several investors other than Éric.

As at today’s date, May 25, 2004, the balance sheet of *Solarium Bellevue inc.* is as follows:

<u>ASSETS</u>		<u>LIABILITIES</u>	
Current assets	\$400,000	Current liabilities	\$250,000
Fixed assets	\$1,400,000	Long-term liabilities	\$400,000
		<u>SHAREHOLDERS’ EQUITY</u>	
		100,000 class “A” shares	\$700,000
		5,000 class “B” shares	\$100,000
		10,000 class “C” shares	\$200,000
		Retained earnings	\$150,000
<b>Total assets</b>	<b>\$1,800,000</b>	<b>Total liabilities and shareholders’ equity</b>	<b>\$1,800,000</b>

The realizable value of the assets is \$1,700,000.

Éric has an urgent need for cash. To obtain this cash, Éric and *Solarium Bellevue inc.*, the latter being highly profitable and solvent, agree that *Solarium Bellevue inc.* will purchase 50,000 class “A” shares held by Éric for an amount of \$450,000 paid in cash.

**QUESTION 6 (6 marks)**

**Assuming that *Solarium Bellevue inc.* were able to pay its liabilities as they become due, could it, as at today’s date, pay the amount of \$450,000 to Éric Binet to purchase his 50,000 class “A” shares? Show all your calculations.**

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

<b>FILE 3 (25 MARKS)</b>
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**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.**

Antoine Ouvrard, the president of *Boulangerie Au Bon Pain inc.*, consults you today regarding financial matters.

Antoine tells you that two years ago, the corporation had serious financial difficulties caused primarily by excessive debt and the inadequate collection of receivables.

Since then, various measures have been taken to remedy the situation, including an injection of additional funds by the shareholders and more rigorous collection procedures.

These measures have had good results and on June 30, 2004, the corporation will declare and pay a \$500,000 dividend which will be a taxable dividend within the meaning of the *Income Tax Act*.

Antoine provides you with a *pro forma* balance sheet for *Boulangerie Au Bon Pain inc.* as at June 30, 2004, before the declaration and payment of the \$500,000 dividend. He also provides you with the text of note 4 to the financial statements and an income statement for the corporation for the financial year ending June 30, 2004.

<b>BOULANGERIE AU BON PAIN INC.</b>			
<i>Pro Forma Balance Sheet</i>			
<b>June 30, 2004</b>			
<b>ASSETS</b>		<b>LIABILITIES</b>	
<b>Current assets</b>		<b>Current liabilities</b>	
Cash	\$1,100,000	Accounts payable	\$1,500,000
Receivables (note 4)	2,020,000	Bank loan	1,000,000
Inventory	1,800,000	Long-term debt coming due during the next financial year	<u>500,000</u>
Prepaid expenses	<u>80,000</u>		3,000,000
	5,000,000	<b>Long-term debt</b>	
		Hypothec in favour of the bank	1,500,000
		Shareholder loans	<u>1,000,000</u>
			2,500,000
<b>Fixed assets</b>		<b>SHAREHOLDERS' EQUITY</b>	
	5,400,000	Share capital	4,000,000
<b>Other assets</b>		Retained earnings	<u>1,000,000</u>
	<u>100,000</u>		5,000,000
	<u>10,500,000</u>		<u>10,500,000</u>

<b>BOULANGERIE AU BON PAIN INC.</b>	
<b>Notes to financial statements</b>	
<b>June 30, 2004</b>	
<b>4. Receivables</b>	
Accounts receivable	\$1,800,000
Income tax claimed	40,000
Loan to shareholder	<u>180,000</u>
	<u>2,020,000</u>

<b>BOULANGERIE AU BON PAIN INC.</b>	
<b>Income Statement</b>	
<b>Financial year ending June 30, 2004</b>	
<b>Sales</b>	\$20,000,000
<b>Cost price of goods sold</b>	<u>11,000,000</u>
<b>Gross earnings</b>	9,000,000
<b>Operating expenses</b>	<u>7,900,000</u>
<b>Profit before taxes</b>	1,100,000
<b>Income tax</b>	<u>340,000</u>
<b>Net earnings</b>	<u>760,000</u>

**QUESTION 7 (5 marks)**

What is the collection period of accounts receivable (*période de recouvrement des comptes-clients*) of *Boulangerie Au Bon Pain inc.* for the financial year ending June 30, 2004? Show all your calculations.

**QUESTION 8 (5 marks)**

What will be the ratio of total liabilities to net worth (*coefficient du passif total sur la valeur nette*) of *Boulangerie Au Bon Pain inc.* as at June 30, 2004 immediately after the payment of the \$500,000 dividend? Show all your calculations.

<b>SUPPLEMENTARY FACTS</b>
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Antoine also consults you regarding tax matters.

He tells you that *Boulangerie Au Bon Pain inc.* was incorporated in 1980 under the *Canada Business Corporations Act*. The registered office and principal place of business of the corporation are located in Chambly, Québec.

The only business of *Boulangerie Au Bon Pain inc.* is the production of bakery products.

The share capital of *Boulangerie Au Bon Pain inc.* is comprised of one class of shares, namely common shares. There are 100,000 common shares issued and outstanding which are held by the following persons:

- 85,000 common shares belong to *Groupe BABP inc.*, a management company which is a corporation resident in Canada within the meaning of the *Income Tax Act* and which is controlled by Antoine Ouvrard. Antoine Ouvrard, himself, is a Canadian resident within the meaning of the *Income Tax Act*.
- The 15,000 other common shares belong to *Publico inc.*, a corporation resident in Canada within the meaning of the *Income Tax Act* whose shares are listed on the Toronto Stock Exchange.

Antoine informs you that the refundable dividend tax on hand of *Boulangerie Au Bon Pain inc.* at the end of its taxation year ending on June 30, 2004 will be nil.

Antoine also tells you that on June 16, 2003, *Boulangerie Au Bon Pain inc.* loaned \$180,000 to *Groupe BABP inc.* The loan does not bear interest and is repayable on demand. As at June 30, 2004, no portion of the loan will have been repaid, as set forth in note 4 to the financial statements of *Boulangerie Au Bon Pain inc.* as at June 30, 2004.

#### QUESTION 9 (5 marks)

**Will *Publico inc.* be required to pay the tax under Part IV of the *Income Tax Act* in respect of its portion of the \$500,000 taxable dividend, namely \$75,000? Explain your answer.**

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

#### QUESTION 10 (5 marks)

**Will *Groupe BABP inc.* have to include the amount of the \$180,000 loan in computing its income? Explain your answer.**

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

<b>SUPPLEMENTARY FACTS</b>
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Finally, Antoine tells you that at the beginning of July of 2004, the shares of the share capital of *Groupe BABP inc.* will be listed on the Toronto Stock Exchange.

#### QUESTION 11 (5 marks)

**What will the status of *Boulangerie Au Bon Pain inc.* be under the *Income Tax Act*, as a result of the listing of the shares of the share capital of *Groupe BABP inc.* on the Toronto Stock Exchange?**

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

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

<b>FILE 4 (20 MARKS)</b>
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**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 Entreprises de construction Dumoulin inc.* (hereinafter referred to as “*ECD*”) carries on its operations in the Laurentians. Wilfrid Dumoulin is its majority shareholder and one of its directors.

*ECD* owns a parcel of land in Sainte-Adèle on which there is a warehouse and an immovable in which the company’s head office is located. This real estate complex is evaluated at more than \$400,000.

As at January 7, 2004, the following hypothecs are registered against this real estate complex:

- two conventional hypothecs for a total amount of \$240,000 registered on September 22, 2003 and October 16, 2003, respectively;
- a hypothec of the Commission de la santé et de la sécurité du travail for assessments of \$30,000 owed since May of 2003. This hypothec was registered on December 18, 2003.

On December 12, 2003, *ECD*, which can no longer meet its obligations, files a notice of intention in accordance with the provisions of the *Bankruptcy and Insolvency Act*. *ECD*’s proposal is filed on January 7, 2004 and includes the following provisions, among others:

[...]

**1. Definitions**

[...]

- |      |                       |  |
|------|-----------------------|--|
| 1.10 | “secured claims”:     | shall mean the claims of secured creditors up to the amount of the security held by them.      |
| 1.11 | “secured creditors”:  | shall have the meaning provided for in section 2 of the <i>Bankruptcy and Insolvency Act</i> . |
| 1.12 | “ordinary creditors”: | shall mean the persons having claims other than secured claims.                                |

**2. Offer of payment**

The debtor offers to pay its creditors as follows:

- (a) Secured creditors shall be paid in accordance with the contracts or existing rights, except that no amount of money shall be paid to them before the expiry of a period of one (1) year following the ratification of the proposal.
- (b) Ordinary creditors shall receive an amount of \$300,000 over a period of three (3) years. To this end, the debtor shall pay the trustee an amount of \$100,000 on June 1<sup>st</sup> of each year.

### 3. Classification

The class “secured creditors” shall include all creditors who have a valid security over the entire real estate complex belonging to the debtor.

The class “ordinary creditors” shall include all the other creditors, namely, the Municipality of Sainte-Adèle, for an amount of \$40,000 representing arrears of real estate taxes accrued during the year 2003, as well as the Commission de la santé et de la sécurité du travail, for an amount of \$30,000.

### 4. Claims against the directors

Acceptance of the proposal by the creditors shall have the effect of permanently extinguishing all the obligations for which the directors, in their capacity as directors, may be liable at law.

[...]

The Municipality of Sainte-Adèle argues that due to the particular nature of its claim, it is, in fact, part of the class “secured creditors”.

#### QUESTION 12 (4 marks)

**Is the Municipality of Sainte-Adèle well founded in arguing that it is part of the class “secured creditors”? Explain your answer.**

#### SUPPLEMENTARY FACTS

The Commission de la santé et de la sécurité du travail argues that it too is part of the class “secured creditors”. It submits, in particular, that in order to give effect to its legal hypothec provided for by *An Act respecting industrial accidents and occupational diseases*, it effected the required registrations.

#### QUESTION 13 (4 marks)

**Is the Commission de la santé et de la sécurité du travail well founded in arguing that it is part of the class “secured creditors”?**

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

#### SUPPLEMENTARY FACTS

On February 6, 2004, at the meetings of creditors, voting on the proposal takes place and the results are as follows:

Class “secured creditors”			Class “ordinary creditors”		
In favour:	1 creditor for	\$20,000	In favour:	22 creditors for	\$800,000
Against:	4 creditors for	\$200,000	Against:	8 creditors for	\$100,000

**QUESTION 14 (4 marks)**

**Was the debtor's proposal duly accepted notwithstanding the unfavourable vote of the secured creditors?**

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

<b>SUPPLEMENTARY FACTS</b>
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**FOR THE FOLLOWING QUESTIONS, ASSUME THAT THE PROPOSAL WAS DULY ACCEPTED.**

In the course of performing his mandate, the trustee is informed that the debtor made various preferential payments prior to filing its notice of intention.

The trustee under the proposal believes that he could successfully exercise recourses under the *Bankruptcy and Insolvency Act* in order to void these payments.

**QUESTION 15 (4 marks)**

**Does the trustee have the power to exercise these recourse even if the proposal does not expressly confer such a power upon him?**

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

<b>SUPPLEMENTARY FACTS</b>
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A few months after the proposal is ratified, *Banque Nationale* sues Wilfrid Dumoulin to claim from him the repayment of a demand loan of \$46,000 it had granted to *ECD* on September 12, 2002. At the time, Wilfrid had agreed to be a surety for the loan.

As a ground of defence, Wilfrid invokes clause 4 of the debtor's proposal.

**QUESTION 16 (4 marks)**

**Is this ground of defence well founded? Explain your answer.**

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

**CORRIGÉ**  
**DROIT DES AFFAIRES - EXAMEN DE REPRISE**  
25 mai 2004

**DOSSIER 1 (25 POINTS)**

**QUESTION 1 (12 points)**

Indiquez si chacun des arguments invoqués par le conseil d'administration est bien fondé.

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

1. La loi interdit au conseil d'administration d'une compagnie d'autoriser le transfert d'actions non entièrement payées.

Non, art. 72 *L.c.Q.*

1.  4

2. Selon les statuts de la compagnie, le conseil d'administration a entière discrétion pour refuser ce transfert d'actions.

Non, art. 123.30 *L.c.Q.*

OU

Non, art. 46 *L.c.Q.*

2.  4

3. Guy Lalonde n'a pas offert ses actions aux autres actionnaires avant de les vendre à Amélie Turner, contrairement à la convention entre actionnaires à laquelle il était partie. Ce défaut rend le transfert invalide.

Non, art. 1440 *C.c.Q.*

OU

Non, 123.93 *L.c.Q.* ne s'applique pas.

3.  4

**QUESTION 2 (5 points)**

La nomination d'Amélie Turner à titre de vice-présidente est-elle légale?

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

Non, art. 89 (4) *L.c.Q.*

4.  5

**QUESTION 3 (4 points)**

L'adoption d'une résolution par le conseil d'administration suffit-elle pour rendre légale la subdivision de chaque action ordinaire en deux actions ordinaires? Dites pourquoi.

Oui, car la *Loi sur les compagnies* n'exige aucune autre formalité pour la subdivision d'actions sans valeur nominale dont le nombre est illimité d'après les statuts.

5.  4

**QUESTION 4 (4 points)**

Quelle formalité doit être remplie pour donner suite aujourd'hui à la résolution qui autorise *Grossiste Voiture Meilleur Prix inc.* à exploiter une nouvelle division sous le nom de *Réparation GVMP*?

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

Une déclaration modificative, art. 34 (2) (ET 41) *L.p.l.*

6.  4

DOSSIER 2 (30 POINTS)

QUESTION 5 (24 points)

Énoncez six irrégularités ou erreurs contenues dans les extraits du projet de documents constitutifs préparés par Éric Binet.

Pour chaque irrégularité ou erreur, appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

SEULS LES SIX PREMIÈRES IRRÉGULARITÉS OU ERREURS INSCRITES AU CAHIER DE RÉPONSES SERONT CORRIGÉES.

IRRÉGULARITÉS OU ERREURS	DISPOSITIONS	6 / 7 4 pts / bulle
1. La dénomination sociale est prohibée parce que personne du nom de Michaud n'a d'intérêt important dans la société.	art. 12 (1) <i>L.c.s.a.</i> <b>ou</b> art. 24 <i>R.s.a.</i> <b>ou</b> art. 26 <i>R.s.a.</i>	1. <input type="radio"/>
2. Le siège social n'est pas dans la province indiquée aux statuts constitutifs.	art. 19 (1) <i>L.c.s.a.</i>	2. <input type="radio"/>
3. Aucune catégorie d'actions ne permet de recevoir tout dividende déclaré par la société.	art. 24 (3) b) <i>L.c.s.a.</i> <b>ou</b> art. 24 (4) b) <i>L.c.s.a.</i>	3. <input type="radio"/>
4. Absence d'une clause de restriction à la cession des actions.	art. 5 <i>L.v.m.</i>	4. <input type="radio"/> 7. <input type="checkbox"/> 24
5. Le conseil d'administration ne se compose pas d'au moins 25 % de résidents canadiens.	art. 105 (3) <i>L.c.s.a.</i>	5. <input type="radio"/>
6. Les administrateurs ne peuvent nommer plus de 1 / 3 d'administrateurs additionnels.	art. 106 (8) <i>L.c.s.a.</i>	6. <input type="radio"/>
7. Les administrateurs ne peuvent être démis par résolution spéciale des actionnaires.	art. 109 <b>ou</b> 6 (4) <i>L.c.s.a.</i>	7. <input type="radio"/>

QUESTION 6 (6 points)

Dans l'hypothèse où elle serait en mesure d'assumer son passif à échéance, *Solarium Bellevue inc.* pourrait-elle aujourd'hui même payer la somme de 450 000 \$ à Éric Binet pour l'achat de ses 50 000 actions de catégorie « A »? Faites état de tous vos calculs.

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

Valeur de réalisation de l'actif - montant à payer

Passif + Compte capital déclaré actions catégorie « A » restantes + Compte capital déclaré actions catégories « B » et « C »

1 700 000 - 450 000 = 1 250 000 \$ 8.  1

650 000 + (350 000 + 100 000 + 200 000) = 1 300 000 \$ 9.  1

Non, 1 250 000 \$ est inférieur à 1 300 000 \$ 10.  2

art. 34 *L.c.s.a.* (et art. 39 (1) *L.c.s.a.*) 11.  2

DOSSIER 3 (25 POINTS)

QUESTION 7 (5 points)

Quelle est la période de recouvrement des comptes-clients de *Boulangerie Au Bon Pain inc.* pour l'exercice qui prend fin le 30 juin 2004? Faites état de tous vos calculs.

$\frac{\text{Comptes-clients}}{\text{Chiffre d'affaires}} \times 365$

$$\frac{1\,800\,000\ \$}{20\,000\,000\ \$} \times 365 = 32,85 \text{ jours}$$

La période de recouvrement des comptes-clients est de 32,85 jours

12. 5

QUESTION 8 (5 points)

Quel sera le coefficient du passif total sur la valeur nette de *Boulangerie Au Bon Pain inc.* au 30 juin 2004, immédiatement après le paiement du dividende de 500 000 \$? Faites état de tous vos calculs.

$\frac{\text{Passif} - \text{sommes prêtées par les actionnaires}}{\text{Capitaux propres} + \text{sommes prêtées par les actionnaires} - \text{dividende}} \times 100$

$$\frac{3\,000\,000\ \$ + 2\,500\,000\ \$ - 1\,000\,000\ \$}{5\,000\,000\ \$ + 1\,000\,000\ \$ - 500\,000\ \$} \times 100 = 81,81 \%$$

Le coefficient du passif total sur la valeur nette sera de 81,81 %

13. 5

QUESTION 9 (5 points)

*Publico inc.* devra-t-elle payer l'impôt de la partie IV de la *Loi de l'impôt sur le revenu* à l'égard de sa partie du dividende imposable de 500 000 \$, soit 75 000 \$? Dites pourquoi.

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

Non, *Publico inc.* est une société publique, art. 186 (1) *L.i.r.*

14. 5

QUESTION 10 (5 points)

*Groupe BABP inc.* devra-t-elle inclure le montant du prêt de 180 000 \$ dans le calcul de son revenu? Dites pourquoi.

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

Non, il s'agit d'un prêt à une société résidente, art. 15 (2) *L.i.r.*

15. 5

QUESTION 11 (5 points)

Quel sera le statut de *Boulangerie Au Bon Pain inc.* en vertu de la *Loi de l'impôt sur le revenu*, à la suite de l'inscription des actions du capital-actions de *Groupe BABP inc.* à la Bourse de Toronto?

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

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

Réponse : d)

16. 5

DOSSIER 4 (20 POINTS)

QUESTION 12 (4 points)

La Municipalité de Sainte-Adèle est-elle bien fondée de prétendre qu'elle fait partie de la catégorie « créanciers garantis » ? Dites pourquoi.

Oui, car elle bénéficie (pour les impôts fonciers impayés) d'une priorité constitutive de droits réels.  
(art. 2 (1) a) *L.f.i.* et art. 2654.1 *C.c.Q.*)

17.

QUESTION 13 (4 points)

La Commission de la santé et de la sécurité du travail est-elle bien fondée de prétendre qu'elle fait partie de la catégorie « créanciers garantis » ?

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. 87 (1) c) *L.f.i.*

18.

QUESTION 14 (4 points)

La proposition de la débitrice a-t-elle été dûment acceptée malgré le vote défavorable des créanciers garantis?

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. 54 (2) c) ou d) *L.f.i.*

19.

QUESTION 15 (4 points)

Le syndic a-t-il le pouvoir d'intenter ces recours même si la proposition ne lui reconnaît pas expressément ce pouvoir?

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. 101.1 *L.f.i.*

20.

QUESTION 16 (4 points)

Ce moyen de défense est-il bien fondé? Dites pourquoi.

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

Non, la clause 4 ne s'applique pas aux obligations conventionnelles des administrateurs

21.

art. 50 (13) *L.f.i.*

22.