



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

CIVIL I

SUPPLEMENTAL EXAMINATION

May 12, 2003

- (1) The examination in the CIVIL I section is intended to determine the extent to which you have met the ultimate goals set forth in the document entitled “Préambule Civil I”.
- (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:
 - Civil I
- (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 **10** pages (including this page) and that your answer booklet contains **6** pages.

N.B.: You may assume that the provisions of *An Act to reform the Code of Civil Procedure* do not apply to this examination. However, all answers given under the new *Code of Civil Procedure* will be accepted.

FILE 1 (30 MARKS)**Situation 1**

On September 14, 2002, Philippe Tremblay, who is 13 years old, spends the day with his grandfather, Georges Duval, repairing his bicycle in the backyard. While his grandfather is gone to look for a screwdriver, Philippe, whose attention is drawn by some screams, goes into the neighbour's yard. This property belongs to Rémi Lortie who lives there alone with his son, Benoit Lortie, who is 12 years old.

Once he is in the neighbour's yard, Philippe notices that the screams are coming from the roof of the house.

In the yard, there is a metal ladder leaning against the back wall of the house.

Philippe climbs up the ladder and once up on the roof he finds Benoit manhandling Charles Larue, a young boy from the neighbourhood. Philippe intervenes in order to defend Charles. He separates the two boys, at which point Charles loses his footing and falls against the house's brick chimney which collapses on him. The child suffers serious injuries to his head.

Georges, whose attention has been drawn by the din noise, goes to his neighbour's yard and climbs up the ladder in order to get to the roof to see what is happening. Unfortunately, halfway up one of the ladder's rungs breaks and Georges falls heavily to the ground.

Charles is brought to the emergency department of the *Hôpital Sainte-Justine* where he remains for two weeks.

Georges is brought to the *Hôpital Charles-Lemoyne* where an emergency doctor diagnoses a fracture of the left wrist. The physician recommends a treatment of the fracture and antibiotics. Georges refuses any treatment and goes back home.

A few days later, suffering from excruciating pain, Georges is admitted to the hospital's emergency department where he is diagnosed with gaseous gangrene. The doctors are obliged to amputate Georges' left forearm.

A claims adjuster is mandated to shed light on all of these unfortunate events. His report includes the following statements, among others:

- Rémi Lortie bought the metal ladder on September 2, 2002 at *Quincaillerie Demers inc.*
- The ladder was manufactured by *Luminex inc.*
- The metal rung broke due to the weakness of the metal used to manufacture the ladder. This weakness was not detectable.
- The chimney collapsed due to the erosion of the mortar resulting from a lack of maintenance.
- At the time the events occurred, Rémi Lortie had left his home to run a two-hour errand.

A medical expertise reveals that the gangrene would have been avoided if Georges had agreed to the treatment.

Another medical expertise indicates that the head injuries suffered by Charles were caused by the falling chimney bricks.

Charles Larue's tutor institutes an action for damages for the injuries suffered by Charles, which action is instituted against Rémi Lortie personally and in his capacity as tutor to his son Benoit Lortie. As for Georges Duval, he is considering the possibility of instituting an action for damages.

Assume that none of the parties likely to be sued is insured against civil liability.

QUESTION 1 (5 marks)

In addition to article 1457 *C.C.Q.*, what provision of the *Civil Code of Québec* can Charles Larue's tutor rely upon as a basis for the personal liability of Rémi Lortie?

QUESTION 2 (5 marks)

What ground(s) of defence can Benoit Lortie's tutor raise in order to have the action instituted against him by Charles Larue's tutor dismissed in its entirety?

QUESTION 3 (11 marks)

(a) Name all the defendants against whom Georges Duval can institute an action for damages for the fracture he suffered.

Justify your answer by referring to one or more specific and relevant provisions of the *Civil Code of Québec*, excluding article 1457 *C.C.Q.*

(b) In addition to the lack of a causal link, state one argument of law that these defendants could assert against a claim contained in the same action and relating to the amputation of Georges Duval's forearm.

Justify your answer by referring to one or more specific and relevant provisions of the *Civil Code of Québec*.

ONLY THE FIRST ARGUMENT WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

Situation 2

Louise Martel works as a nurse's aide at the *Hôpital du Sacré-Coeur*. On March 12, 2003, at approximately 5:15 p.m., she is busy distributing the trays for the evening meal.

While walking towards room 705 which is occupied by Sylvie Latendresse, she unfortunately slips in a puddle of bath oil spilled by Jean-Michel Latendresse, Sylvie's 7-year old son.

As a result of the fall, she fractures her right forearm. Her injuries are evaluated at \$17,000. The Commission de la santé et de la sécurité du travail partially compensates Louise and pays her an amount of \$12,000.

Louise institutes an action for damages against Sylvie in her capacity as tutor to Jean-Michel for an amount of \$5,000, namely the injuries not compensated by the C.S.S.T.

QUESTION 4 (5 marks)

Can Sylvie Latendresse have the action dismissed on the sole ground that Louise Martel was compensated by the C.S.S.T. ? Explain your answer.

Situation 3

On January 12, 2003, Tom Crevier drives his wife to the Montreal airport. In the airport's parking lot, he slips on a sheet of ice, falls and fractures his elbow.

On January 15, 2003, Serge Lemire, the claims adjuster for the airport's insurer, meets with Tom and offers him an amount of \$2,000 as compensation for the injury suffered. Tom accepts the offer and signs the document presented to him by Serge evidencing the settlement.

A few weeks later, Tom meets a friend who is a lawyer and who tells him that, in the circumstances, it is clear that he could have obtained more than \$20,000.

QUESTION 5 (4 marks)

Can Tom Crevier have the settlement entered into on January 15, 2003 annulled?

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

FILE 2 (60 MARKS)

Situation 1

Josée Breton and Paul Daoust were married in 1987 without a marriage contract. The couple has no children, but Paul has two sons from a prior union: Jean, 20 years old, and Jérémie, 19 years old.

Paul dies in January of 2003, without having left a will, and is survived by his wife, Josée, his sons, Jean and Jérémie, and his parents, Denise Cossette and Richard Daoust. Josée renounces the partition of Paul's acquests.

At the time of the death, the property of each spouse is as follows:

Josée Breton:	
• Acquests	\$118,000
• Private property	\$30,000

Paul Daoust:	
• Acquests	\$3,000
• Private property	\$42,000

QUESTION 6 (5 marks)

Can Paul Daoust's heirs demand the partition of Josée Breton's acquests? Explain your answer.

QUESTION 7 (5 marks)

Name Paul Daoust's successor or successors and indicate the share each will receive.

Situation 2

Claude Garneau and Joannie Frenette, were married in 1982 under the regime of partnership of acquests. In January of 2002 they separate, at which time their balance sheets are as follows:

Claude Garneau:	
• Acquests	\$50,000
• Private property	\$10,000
• Indebtedness related to the acquests, owed to the <i>Banque Royale</i>	\$125,000

Joannie Frenette:	
• Acquests	\$256,000
• Private property	\$25,000

On December 13, 2002, a divorce judgment confirms the renunciation by the spouses to the partition of one another's acquests. This renunciation is published in the appropriate register in due course.

On February 14, 2003, Claude makes an assignment of his property under the *Bankruptcy and Insolvency Act*. The trustee informs the *Banque Royale* that the bank cannot collect more than \$20,000 of its claim.

QUESTION 8 (5 marks)

In view of the partnership of acquests, what recourse can the *Banque Royale* or the trustee in bankruptcy exercise in order to collect the balance owing?

Justify your answer by referring to one or more specific and relevant provisions of the *Civil Code of Québec*.

Situation 3

Jules Hébert operates, on his own, a family business specializing in the raising of pigs.

Since 1987, he has cohabited in a *de facto* union with Corinne Éthier. She is a lawyer and has never been interested by her spouse's business activities. A child was born of their union: Laurent Hébert, who is 16 years old.

Jules dies of a heart attack on May 1, 2003. He bequeaths his business in equal parts to his brother, Benjamin Hébert, and to Corinne.

Benjamin wants to sell the business in order to collect his share of the succession. Corinne wants to keep the business until her son Laurent is of full age and can decide whether he is interested in taking over its operation.

QUESTION 9 (5 marks)

Can Corinne Éthier make an application to have the partition of the pig-raising business deferred? Explain your answer.

Situation 4

Annie Latour and Joseph Primeau were married on July 4, 1975, under the regime of separation as to property. At the time of the marriage, the spouses had no assets given that they were both students. Over the years, Joseph accumulated a small fortune, including an RRSP of \$180,000 paid for from his employment income. In 2001, Joseph left Annie in order to cohabit in a *de facto* union with Madeleine Poirier.

In March of 2002, Annie instituted divorce proceedings.

Joseph died on January 5, 2003. At the time of the death, no divorce judgment had yet been rendered. Joseph's will, dated December 21, 2002, includes, among other things, a bequest to Madeleine of the RRSP having a value of \$180,000.

QUESTION 10 (5 marks)

Does Annie Latour have a right to assert with respect to the \$180,000 RRSP? If so, indicate the amount to which she is entitled. If not, explain your answer.

Situation 5

Marie Trottier and Ray Michaud were married in 1988 under the regime of partnership of acquests and signed, in due course, an agreement to exclude the provisions relating to the family patrimony.

In 1991, Ray acquired an immovable at a price of \$60,000, which he paid for as follows: \$40,000 from his savings accumulated during the marriage and \$20,000 from an inheritance.

In 2000, Ray sold the immovable for an amount of \$120,000. The money was deposited in Ray's name in a bank account with a progressive interest rate. In May of 2003, when the spouses separate and begin divorce proceedings, this account has a balance of \$128,000 thanks to interest of \$8,000 paid by the bank.

QUESTION 11 (7 marks)

With regard to the partition of the partnership of acquests, should there be compensation as regards the immovable? If so, indicate the amount thereof, show all your calculations and specify in favour of which mass the compensation will take place. If not, explain your answer.

Situation 6

Micheline Tremblay and Claude Leblanc were married on August 25, 1988 under the regime of separation as to property. On October 15, 1990, they signed an agreement to exclude the provisions relating to the family patrimony. In 1996, Claude purchased a house located in Laval and the family moved into it.

Throughout the marriage, the spouses have been financially independent and have contributed equally to the household expenses, such that neither of them has a financial claim to assert other than those provided for by law.

In May of 2001, the couple separated and Micheline instituted divorce proceedings. A provisional judgment awarded Micheline custody of the two children born of the union and authorized her to occupy the family residence with the children during the proceedings.

The hearing of the action for divorce is scheduled for May 12, 2003. The children wish to live with their father and the parents agree that this will be the situation after the divorce. Micheline wishes to continue living in the family residence after the divorce, but Claude is opposed thereto.

QUESTION 12 (5 marks)

At the time the court renders the divorce judgement, can it grant Micheline Tremblay a right of use of the family residence? Explain your answer.

Situation 7

Bill Faulkner and Maggie Jones were married on May 25, 1984 under the regime of separation as to property. Their marriage contract contains the following gift, among other things:

“The future husband makes a gift *mortis causa* to the future wife in an amount of \$10,000. However, this gift shall become exigible in case of separation from bed and board or divorce.”

In January of 2003, the spouses separated and Maggie instituted an action for divorce in which she demanded the payment of the gift provided for in the marriage contract.

QUESTION 13 (5 marks)

Can Bill Faulkner oppose the application for payment of the gift provided for in the marriage contract on the ground that it is a gift *mortis causa*? Explain your answer.

Situation 8

Louise Léger and Normand Rémillard were married on July 27, 1980 under the regime of separation as to property.

In 1984, Normand purchased a house in Laval into which the family settled. He paid \$120,000, of which \$10,000 in cash came from his income, and he financed the balance of \$110,000 with a hypothec payable over ten years. Normand furnished the new residence with furniture he owned before the marriage and with new furniture purchased with his savings accumulated during the marriage.

That same year, Normand borrowed \$60,000 from Louise’s father in order to renovate his computer sales firm. This loan was guaranteed by a second ranking hypothec on the Laval residence. Louise’s father was satisfied with this guarantee and has not demanded any repayment of capital or interest.

In 1991, Louise purchased a country house in Saint-Sauveur for an amount of \$100,000 which she paid in cash using savings accumulated during the marriage. Louise furnished the country house with new furniture costing \$30,000 which she also paid in cash using her savings accumulated during the marriage. As of 1993, the couple has spent every weekend at the country house.

On September 13, 2000, Louise’s father died. Louise then inherited an amount of \$50,000 as well as the claim owed by Normand to her father. With the Laval residence being worth \$255,000, she invested \$20,000 from her inheritance to renovate the kitchen, thereby increasing the value of the house to \$275,000.

In January of 2003, the couple went on a cruise. This trip, which cost \$15,000, was paid for by Louise using her credit card.

The spouses separated on April 13, 2003. At the time the divorce proceedings are instituted, the balance sheets of the spouses are as follows:

<u>LOUISE LÉGER</u>	
ASSETS:	
Claim owed by Normand Rémillard (secured by hypothec)	\$60,000
Saint-Sauveur country house	\$200,000
Furniture in the country house	\$30,000
Bank account (balance of the inheritance)	\$25,000
Total	\$315,000
LIABILITIES:	
Credit card (cruise)	(\$15,000)
<u>TOTAL NET WORTH:</u>	\$300,000

<u>NORMAND RÉMILLARD</u>	
ASSETS:	
Laval residence	\$300,000
Furniture in the Laval residence:	
- furniture owned before the marriage	\$2,000
- furniture bought in 1984	\$40,000
Total	\$342,000
LIABILITIES:	
Hypothec on the Laval residence (debt incurred in favour of Louise's father)	(\$60,000)
<u>NET WORTH:</u>	\$282,000

QUESTION 14 (12 marks)

- (a) Establish the net value of the property in the family patrimony of which Louise Léger is the owner. Show all your calculations.
- (b) Establish the net value of the property in the family patrimony of which Normand Rémillard is the owner. Show all your calculations.

QUESTION 15 (6 marks)

Is Louise Léger entitled to one or more deductions for purposes of establishing the value of the family patrimony which may be partitioned?

If applicable, indicate the item(s) of property to which the deduction(s) relate(s) and indicate the total amount of such deduction(s). Show all your calculations.

FILE 3 (10 MARKS)

Situation 1

Nicolas Laplante, who is 27 years old, consults you by telephone on May 12, 2003. He is currently hospitalized at the *Hôpital Enfant-Jésus* where he has been for four days and relates the following facts to you.

On May 7, 2003, at noon, he was driven to the hospital by police officers following an order for temporary confinement in order to undergo a psychiatric assessment.

On May 8, 2003, at 2:00 p.m., an initial psychiatric assessment carried out by Doctor Yves Gingras concluded that Nicolas needed to be confined in an institution in view of his depressive state and suicidal thoughts.

On May 11, 2003, at 4:00 p.m., a second medical report prepared by Doctor Francine Fauteux concluded similarly that Nicolas needed to be confined in an institution. Nicolas is refusing any treatment and would like to leave the hospital, but the authorities have refused to sign his discharge papers.

QUESTION 16 (5 marks)

Were the legal formalities with respect to maintaining the order of temporary confinement satisfied? Explain your answer.

Situation 2

Angelo Chicoine and Rita Harvey had been living together since 1986. In January of 2003, the couple separated and on March 10, 2003, the Quebec Superior Court rendered a judgment containing only the following conclusion:

“Grants custody of the child Bridgit Chicoine to Angelo Chicoine.”

On April 14, 2003, Bridgit, who is 14 years old, suffered bodily injuries as a result of an assault by Sylvie Nantel, a young neighbour of the same age.

QUESTION 17 (5 marks)

Name the person or persons who can institute an action, on behalf of Bridgit Chicoine, for compensation for the injuries suffered by her.

CORRIGÉ

CIVIL I - EXAMEN DE REPRISE

Le 12 mai 2003

DOSSIER 1 (30 POINTS)

QUESTION 1 (5 points)

Outre l'article 1457 C.c.Q., quelle disposition du Code civil du Québec le tuteur de Charles Larue peut-il invoquer comme fondement de la responsabilité personnelle de Rémi Lortie?

Article 1467 C.c.Q.

1. 5

QUESTION 2 (5 points)

Quel(s) moyen(s) de défense le tuteur de Benoit Lortie peut-il faire valoir afin de faire rejeter en totalité l'action intentée contre lui par le tuteur de Charles Larue?

1. La rupture du lien de causalité **ou** la chute de la cheminé a entraîné un *novus actus interveniens* 1. 5 points

OU

OU

2. 5

2. Le geste de Philippe a rompu le lien de causalité **ou** a entraîné un *novus actus interveniens* 2. 3 points

QUESTION 3 (11 points)

a) Nommez tous les défendeurs contre qui Georges Duval peut intenter une action en dommages et intérêts pour la fracture subie.

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code civil du Québec, à l'exclusion de l'article 1457 C.c.Q.

Quincaillerie Demers inc., article 1468, alinéa 2 C.c.Q.

3. 2

Luminex inc., article 1468, alinéa 1 C.c.Q.

4. 2

Aucun autre défendeur mentionné

5. 2

b) Outre l'absence de lien causal, précisez un argument de droit que pourraient faire valoir ces défendeurs à l'encontre d'une réclamation contenue dans la même action et relative à l'amputation de l'avant-bras de Georges Duval.

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code civil du Québec.

SEUL LE PREMIER ARGUMENT INSCRIT AU CAHIER DE RÉPONSES SERA CORRIGÉ.

Les défendeurs ne sont pas responsables de l'aggravation que la victime pouvait éviter, article 1479 C.c.Q.

6. 5

QUESTION 4 (5 points)

Sylvie Latendresse peut-elle faire rejeter l'action au seul motif que Louise Martel a été indemnisée par la C.S.S.T. ? Dites pourquoi.

Non, parce que la *L.a.t.m.p.* n'accorde pas d'immunité à un tiers (Seul l'employeur ou un autre employeur assujetti à la loi ou un travailleur bénéficie de cette immunité articles 438 , 441 , 442 et 443 *L.a.t.m.p.*)

OU

7. 5

Non, parce qu'elle a deux recours : 1) contre la Commission
2) contre le tiers

QUESTION 5 (4 points)

Tom Crevier peut-il faire annuler le règlement intervenu le 15 janvier 2003?

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

Oui, art.1609 C.c.Q.

8. 4

DOSSIER 2 (60 POINTS)

QUESTION 6 (5 points)

Les héritiers de Paul Daoust peuvent-ils exiger le partage des acquêts de Josée Breton? Dites pourquoi.

Non, parce que Josée a renoncé au partage des acquêts de Paul (article 473 al. 1 *C.c.Q. a contrario*).

9.

QUESTION 7 (5 points)

Nommez le ou les successibles de Paul Daoust et indiquez la part de chacun.

Josée Breton = 1/3 (art. 666 *C.c.Q.*) **ou** 15 000 \$

Jean Daoust = 1/3 **ou** 15 000 \$

Jérémy Daoust = 1/3 **ou** 15 000 \$

10.

QUESTION 8 (5 points)

Eu égard au régime de la société d'acquêts, quel recours peut être exercé par la *Banque Royale* ou le syndic à la faillite pour récupérer le solde dû?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du *Code civil du Québec*.

Elle ou il peut demander que la renonciation de Claude Garneau lui soit inopposable, (et accepter la part des acquêts de Joannie Frenette) art. 470 al. 2 *C.c.Q.*

11.

QUESTION 9 (5 points)

Corinne Éthier peut-elle demander que le partage de l'entreprise d'élevage de porcs soit différé? Dites pourquoi.

Non, parce que Corinne ne participait pas activement à l'exploitation de l'entreprise (art. 841 *C.c.Q.*)

12.

QUESTION 10 (5 points)

Annie Latour a-t-elle un droit à faire valoir à l'égard du REER de 180 000 \$? Si oui, indiquez le montant auquel elle a droit. Si non, dites pourquoi.

Oui, 90 000 \$ (art. 416 al. 1 *C.c.Q.*)

13.

QUESTION 11 (7 points)

Dans le cadre du partage de la société d'acquêts, y a-t-il lieu à récompense à l'égard de l'immeuble? Si oui, indiquez-en le montant, faites état de tous vos calculs et précisez en faveur de quelle masse elle aura lieu. Si non, dites pourquoi.

Oui, $\frac{20\,000}{60\,000} \times 120\,000 = 40\,000$

14.

en faveur des propres de Ray Michaud

15.

QUESTION 12 (5 points)

Le tribunal peut-il, au moment du jugement de divorce, attribuer à Micheline Tremblay un droit d'usage de la résidence familiale? Dites pourquoi.

Non, parce qu'elle n'aura pas la garde des enfants, (art. 410 al. 2 C.c.Q.)

16.

QUESTION 13 (5 points)

Bill Faulkner peut-il s'opposer à la demande d'exécution de la donation prévue au contrat de mariage au motif qu'il s'agit d'une donation à cause de mort? Dites pourquoi.

Non, parce que la clause de divorce a été jugée valide

OU

Non, parce que la donation à cause de mort est devenue entre vifs

(art. 520 C.c.Q.)

17.

QUESTION 14 (12 points)

a) Établissez la valeur nette des biens du patrimoine familial dont Louise Léger est propriétaire. Faites état de tous vos calculs.

Chalet : 200 000 \$

Meubles du chalet : 30 000 \$

Valeur nette totale pour Louise :

18.

b) Établissez la valeur nette des biens du patrimoine familial dont Normand Rémillard est propriétaire. Faites état de tous vos calculs.

Résidence de Laval : 300 000 \$

Meubles de la résidence de Laval : 42 000 \$ (40 000 \$ + 2 000 \$)

Valeur nette totale pour Normand :

19.

QUESTION 15 (6 points)

Louise Léger a-t-elle droit à une ou des déductions aux fins de l'établissement de la valeur partageable du patrimoine familial?

Le cas échéant, indiquez le ou les biens au(x)quel(s) se rattache(nt) cette (ces) déduction(s) et indiquez le montant total cette (ces) déduction(s). Faites état de tous vos calculs.

Oui, relativement à la résidence de Laval (rénovations de la cuisine à même héritage)

Apport : 20 000,00 \$

Plus-value : $\frac{20\,000}{275\,000} \times 25\,000 = 1\,818,18 \$$

TOTAL : 21 818,18 \$

20.

QUESTION 16 (5 points)

**Les formalités légales relatives au maintien de l'ordonnance de garde provisoire ont-elles été respectées?
Dites pourquoi.**

Non, parce que le premier examen n'a pas eu lieu dans les 24 heures de la prise en charge par l'établissement
(art. 28 al. 1 C.c.Q.)

OU

21.

Non, parce que la deuxième évaluation psychiatrique a été faite plus de 96 heures après la prise en charge
(art. 28 al. 2 C.c.Q.)

QUESTION 17 (5 points)

**Nommez la ou les personnes qui peuvent intenter, au nom de Bridgit Chicoine, une action en réparation
du préjudice qu'elle a subi.**

Angelo Chicoine

22.

Rita Harvey