



# FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

## EXAMINATION BOOKLET

### CIVIL II

December 11, 2000

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- 1) The examination in the CIVIL II section is intended to determine the extent to which you have met the ultimate goals set forth in the document entitled « Préambule Civil II ».
  - 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 :
    - Civil II
    - Rédaction
  - 4) The questions total 100 marks. You must obtain a mark of 60% or more in order to pass this examination.
  - 5) You may use any written documentation which you deem to be useful.
  - 6) For photocopying purposes, kindly use a **pen with black ink** to write your answers in your answer booklet.
  - 7) **You must write legibly, otherwise your answers will not be graded.**
  - 8) Please ensure that your examination booklet contains **12** pages (including this page) and that your answer booklet contains **8** pages.

**N.B.:** You may assume that the Civil Code of Québec and Titles II and III of *An Act respecting the implementation of the reform of the Civil Code, S.Q. 1992, c. 57* apply. Do not take the transitional provisions into account, except those relating to the publication of rights.

<b>FILE 1 (40 MARKS)</b>
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Your articling supervisor, M<sup>e</sup> Lucie Daumier, meets with you today and provides you with the notes taken during a meeting with Omer Rousseau, president of *Placements Immobiliers O.R. inc.*, which notes are reproduced hereinbelow.

**NOTES FROM THE MEETING  
OF DECEMBER 8, 2000**

- Client, *Placements Immobiliers O.R. inc.*, leases commercial premises to Gaétan Rouillard by means of lease signed 30 Sep. 95;
- Rent of \$1,955.42 (including taxes), payable 1<sup>st</sup> of every month;
- Term of 5 years, from 1 Oct. 95 to 30 Sep. 00;
- Lease published on 3 Oct. 95 at the registry office of registration division of Trois-Rivières, under no. 677899;
- Area of premises is 1,655 m<sup>2</sup>, including offices, showroom and warehouse;
- Included in rent : furniture belonging to client, which furnishes the reception area and waiting room;
- Client did not request any deposit when lease signed, trusted Rouillard;
- Rouillard is a golf equipment importer and wholesaler;
- Lease dated 30 Sep. 95 stipulates that lessee has an option to renew for a further period of 5 years, at a rent increased by a rate equal to inflation rate as determined by Statistics Canada for the Trois-Rivières region for the initial term of the lease;
- To exercise the option, the lessee must give a written notice to the lessor no later than 180 days before the end of the lease;
- Rouillard's business doing well and must find larger premises to operate his business;
- Feb. 98 : Rouillard moves his firm to Montreal;
- Rouillard finds a sublessee for the Trois-Rivières commercial premises, namely, *Pompes de la Mauricie inc.* (« Pompes »), a distributor of pumps for artesian wells and related equipment, of which Gilbert Poirier is the sole shareholder and director;
- 25 Feb. 98 : sublease agreement signed between Rouillard and Pompes;
- At client's request, in the sublease agreement itself, Pompes and Gilbert Poirier undertake solidarily with Rouillard to perform all the obligations set forth in the lease dated 30 Sep. 95;
- Client intervenes in the sublease agreement and accepts sublease, having first assured itself of the solvency of Pompes and Poirier;

- Sublease agreement is for term of 31 months, ending on 30 Sep. 00, at the same rent as in Rouillard's lease;
- Sublessee takes possession of premises on 1 April 98;
- August 00 : Omer Rousseau finds new lessee for premises : *Papeterie Laviolette inc.* (« Papeterie ») for occupancy on 1 Nov. 00;
- 5 Sep. 00 : Client signs 7-year lease with Papeterie for a monthly rent of \$2,124 (including taxes);
- 28 Sep. 00 : telephone conversation between Poirier and Rousseau : Poirier informs Rousseau that Pompes will leave the premises at the end of the term of the sublease;
- Pompes leaves the premises during the night of 29 to 30 Sep. 00;
- 2 oct. 00, 9:30 a.m.: Rousseau visits the premises with a representative of Papeterie. They notice that premises are in lamentable state and that provisions of lease regarding restoration of premises to original condition have not been respected, and in particular :
  - Changes to electrical panel not in compliance with standards, will require major repairs;
  - Lighting fixtures have been rendered unusable;
  - Gyproc walls are knocked down;
  - Acoustic ceiling tiles are broken;
  - Door accessing warehouse is partly off its hinges, possibly by moving van;
- Moreover, Pompes has taken with it all furniture which furnished reception and waiting room;
- 3 Oct. 00 : client sends demand letter to all persons bound by the obligations; letter demands that necessary repairs be made and that possession of furniture be returned no later than 16 Oct. 00 at 5:00 p.m., failing which work will be done and furniture replaced at their expense;
- 17 Oct. 00 : given that there is no answer to his letter, Rousseau gives *Rénovations Trifluviennes inc.* mandate to carry out repairs and restore premises to original condition;
- Cost of repairs : \$12,623.48; repairs completed on 28 Nov. 00;
- Client purchases replacement furniture from *Fournitures de Bureau des Récollets inc.* for \$7,326.52; new furniture delivered on 27 Nov. 00;
- Because of the work, Papeterie only takes possession of the premises on 1 Dec. 00, does not pay rent for Nov. 00, but agrees not to claim any compensation for the delay, even if term of its lease has not been extended;
- 29 Nov. 00 : demand letter claiming, from all persons liable to pay, the amount of the damages as well as all lost income. No answer;
- Mandate from client : institute appropriate legal proceedings to collect these amounts from all persons liable to pay;
- 29 Sep. 00 : Cancellation of the registration of the lease by Rouillard;

- Addresses :
  - *Placements Immobiliers O.R. inc.* : head office at 250 Bonaventure Street, Trois-Rivières, district of Trois-Rivières, G9A 5E2;
  - Commercial premises leased : 5371 Industriel Blvd., Trois-Rivières, G9A 5H3;
  - Gaétan Rouillard : domiciled and residing at 10 623 Sherbrooke Street East, apartment 206, Montreal, district of Montreal, H4L 2P8;
  - *Pompes de la Mauricie inc.* : head office at 112 4<sup>th</sup> Street, Shawinigan, district of Saint-Maurice, G9N 1G5;
  - Gilbert Poirier : domiciled and residing at 395 Ste-Madeleine Blvd., Cap-de-la-Madeleine, district of Trois-Rivières, G8T 5A7;
  - *Papeterie Laviolette inc.* : head office henceforth located at the commercial premises leased;
- Documents received from client :
  - lease dated 30 Sep. 95, signed in Trois-Rivières, between client and Rouillard;
  - demand letter dated 29 Nov. 00;
  - sublease agreement dated 25 Feb. 98 signed by client, Rouillard, Pompes and Poirier in Cap-de-la-Madeleine;
  - lease between client and Papeterie dated 5 Sep. 00;
  - demand letter dated 3 Oct. 00;
  - final invoice from *Rénovations Trifluviennes inc.* in the amount of \$12,623.48 dated 28 Nov. 00;
  - final invoice in the amount of \$7 326.52, dated 27 Nov. 00, from *Fournitures de Bureau des Récollets inc.*;
  - incident report prepared by Police Department of the City of Trois-Rivières, dated 2 Oct. 00.

#### QUESTION 1 (40 marks)

**Draft, in full (heading, title, address, allegations and conclusions) the appropriate written proceeding. Do not draft the affidavit or the notice of presentation, if any. In order to protect your anonymity, do not sign the written proceeding.**

<b>FILE 2 (25 MARKS)</b>
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Mireille Turmel consults you today, December 11, 2000, with respect to the following five problems.

<b>First problem :</b>
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Mireille Turmel owns a six-dwelling immovable located at 3477 Park Avenue, in Montreal. The Park Avenue immovable is the only one which Mireille Turmel owns.

One of the dwellings in this immovable is leased by Michel Langelier pursuant to a three-year lease which began on July 1, 1999. The dwelling is the only one located on the ground floor of the immovable, and Michel Langelier lives there with his family.

Mireille Turmel wants to repossess this dwelling as a residence for her mother, for whom Mireille Turmel is the main support. Her mother must move on July 1, 2001 and it is important that she live on the ground floor, because she is unable to climb stairs due to her old age.

**QUESTION 2 (5 marks)**

**Can Mireille Turmel repossess the dwelling occupied by Michel Langelier on July 1, 2001 as a residence for her mother? If yes, indicate all the formalities which must be fulfilled. If not, explain your answer.**

<b>Second problem :</b>
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Mireille Turmel is a professional violinist. She will be giving a concert at the Église Notre-Dame de Montréal on December 22, 2000.

For this concert, Mireille Turmel asks the Musée historique de Montréal to lend her the famous «Violon Bleu » which forms part of its collection. This violin belonged to a famous 18<sup>th</sup> century violinist and has not been used in a public concert for 50 years. The curator of the Musée historique de Montréal tells her that he will accept her request if she takes out insurance covering all loss or damage which might occur while she is in possession of the violin. Mireille Turmel takes out this insurance and sends a copy of the policy to the Musée historique de Montréal which then sends her the following letter :

Mireille Turmel 3477 Parc Avenue Apt. 5 Montreal, Quebec H2X 3C7	Montreal, October 2, 2000
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Dear Ms. Turmel,

We are entirely satisfied with the insurance policy which you provided to us. Therefore, we undertake to make available to you, at no cost, the « Violon Bleu » for your concert on December 22, 2000. We will instruct our personnel to give the instrument to you on December 20, 2000 and you will have to return it to us on December 23, 2000.

Yours truly,

*Jean Lessard*  
\_\_\_\_\_  
Musée historique de Montréal  
Per : Jean Lessard, Curator

Upon receipt of this letter, Mireille Turmel undertakes a major advertising campaign which emphasizes the fact that she will be using the « Violon Bleu » for her concert on December 22, 2000. The tickets are sold out very quickly.

On December 11, 2000, the Musée historique de Montréal informs her in writing that the « Violon Bleu » cannot be lent to her due to a change in the museum's policy.

### QUESTION 3 (5 marks)

- **Irrespective of the procedural means, can Mireille Turmel legally force the Musée historique de Montréal to lend her the « Violon Bleu »?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

<b>Third problem :</b>
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In June of 2000, Mireille has *Son de scènes ltée* repair the sound equipment she uses for her performances.

On July 4, 2000 *Son de scènes ltée* brings her repaired equipment back to her and gives her a \$5,000 invoice for the repairs. The invoice is payable by August 4, 2000.

On November 30, 2000, she asks *Son de scènes ltée* to transport her sound equipment to the Église Notre-Dame de Montréal in preparation for the concert she will be giving there on December 22, 2000.

Given that the July 4, 2000 invoice for the repairs has not been paid, *Son de scènes ltée* demands that the transportation costs, in an amount of \$300, be paid in advance.

Therefore, Mireille Turmel pays \$300 to *Son de scènes ltée* and on December 7, 2000 the employees of *Son de scènes ltée* load the sound equipment into one of the company's trucks.

A few hours later, the representative of *Son de scènes ltée* calls Mireille Turmel to tell her that the sound equipment will not be delivered to the Église Notre-Dame de Montréal as long as the July 4, 2000 invoice for the repairs is not paid in full.

Mireille Turmel objects, but the representative of *Son de scènes ltée* tells her that what he is doing is legal because the company is entitled to retain the sound equipment it repaired.

### QUESTION 4 (5 marks)

**On December 7, 2000, did *Son de scènes ltée* still have a right of retention on Mireille Turmel's sound equipment? Explain your answer.**

<b>Fourth problem :</b>
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On November 15, 1995, Mireille Turmel takes out a \$100,000 life insurance policy on her father, Roger Turmel, with *La Prévenante compagnie d'assurances*. The insurance policy number is 2425-1012. Mireille Turmel is the only beneficiary under the insurance policy whose premiums are payable on November 15<sup>th</sup> of each year. The insurance policy stipulates that the policyholder has a grace period of two weeks following the due date within which to pay the annual premium.

Mireille Turmel pays all the premiums until November 15, 1999, inclusively, but fails to pay the premium which is exigible on November 15, 2000. On November 20, 2000, *La Prévenante compagnie d'assurances* sends her a letter which states the following, among other things :

[...]

You have not paid the premium due on November 15, 2000 with respect to insurance policy number 2425-1012. As provided for in the insurance policy, the contract will be resiliated on November 30, 2000, without further notice or delay, unless the premium is paid by that date.

[...]

Mireille Turmel immediately prepares a cheque to pay the premium, but she is preoccupied with the preparations for her upcoming concert and forgets to mail the cheque.

On December 3, 2000, Roger Turmel dies. On December 4, 2000, Mireille Turmel sends the cheque in payment of the overdue premium to *La Prévenante compagnie d'assurances* by means of a messenger, together with a letter in which she informs the insurer of her father's death. On December 11, 2000, Mireille Turmel receives a letter from the insurer which states the following, among other things :

[...]

Insurance policy number 2425-1012 was resiliated as of right for the failure to pay the premium upon the expiry of the deadline set forth in our letter dated November 20, 2000. We are therefore returning the cheque which you sent to us on December 4, 2000.

[...]

#### QUESTION 5 (5 marks)

- **Was the insurance contract resiliated as of right upon the expiry of the deadline set forth in the letter dated November 20, 2000?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

**Fifth problem :**

Mireille Turmel shows you the following contract which she signed on May 1, 2000 :

Montreal, May 1, 2000

Mireille Turmel sells to Gilles Lévesque her used *Plein air*, Colonial 1998 model camping trailer for a price of \$10,000. The price shall not bear interest and shall be payable in \$500 instalments exigible on the first day of every month, from June 1, 2000 to January 1, 2002, inclusively. The trailer is currently located on lot 24 at the *Camping de la plage inc.* at Lac-à-la-Truite and Gilles Lévesque takes possession thereof today.

*Mireille Turmel*

Mireille Turmel

*Gilles Lévesque*

Gilles Lévesque

In September of 2000, Gilles Lévesque moved to the United States and his address is unknown.

The exigible monthly instalments, since the instalment of September 1, 2000, inclusively, have not been paid. Mireille Turmel wants to retake possession of the trailer which is still located on lot 24 at the *Camping de la plage inc.* at Lac-à-la-Truite. Yesterday, she learned that Gilles Lévesque sold the camping trailer on August 30, 2000 to *Camping de la plage inc.* for \$9,000 which was paid in cash on that same day.

#### QUESTION 6 (5 marks)

**Can Mireille Turmel revendicate the camping trailer? Select the correct answer from among the answers set forth hereinbelow and write it in the answer booklet.**

- **Yes, article 2651(2) C.C.Q.**
- **No, because the contract dated May 1, 2000 was not published.**
- **Yes, article 1714 C.C.Q.**
- **No, this is not a contract contemplated in the *Consumer Protection Act*.**
- **None of the above.**



<b>FILE 3 (35 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.**

Réal Matteau, the sole owner of an automobile body repair and painting business, meets with you for the first time on September 15, 2000 with respect to an amount owed by Monique Légaré, a secretary working in a notarial firm in downtown Montreal. The unpaid amount of \$10,680 represents the cost of repairs made to Monique Légaré's *Boca* automobile after an accident which occurred in July of 2000.

On September 14, 2000, Monique Légaré told Réal Matteau that she could not pay him immediately. She asked him to be patient, telling him that she had reported the accident to her insurer and that she thought she was entitled to insurance benefits which would allow her to pay him in full. At the end of their conversation, she added : « To prove my good faith, I'm willing to give you a hypothec on the amount owed to me by my insurer. Have the papers drawn up and I'll sign them ».

**QUESTION 7 (10 marks)**

- a) **Can Monique Légaré grant to Réal Matteau a hypothec without delivery on the claim she has against her insurer? If yes, indicate all the formalities which must be accomplished. If not, explain your answer.**
- b) **Can Monique Légaré grant to Réal Matteau a hypothec with delivery on the claim she has against her insurer? If yes, indicate all the formalities which must be accomplished. If not, explain your answer.**

<b>SUPPLEMENTARY FACTS</b>
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On September 18, 2000, your client learns that Monique Légaré will not receive anything from her insurer following the accident which occurred in July of 2000. He therefore instructs you to send a demand letter to Monique Légaré.

Monique Légaré does not respond to this demand letter.

On October 2, 2000, Real Matteau instructs you to institute legal proceedings against Monique Légaré.

Monique Légaré does not file an appearance after having been served with the legal proceedings which you instituted on your client's behalf.

On November 17, 2000, the action is allowed in accordance with its conclusions and Monique Légaré is ordered to pay \$10,680 plus interest and costs.

Monique Légaré has not paid the award which, without taking the costs into account, amounts today to \$10,680 in capital plus \$320 of interest, the whole for a total amount of \$11,000.

Today, December 11, 2000, you examined Monique Légaré in accordance with the provisions of article 543 C.C.P., and you learned the following :

- Monique Légaré owns a fraction of a divided co-ownership (hereinafter referred to as the « Condominium ») where she lives. The address of the Condominium is number 320 in the *Prestige* building located at 1350 Centrale Street, in Saint-Jérôme, H3B 5B2. The Condominium was sold to her in May of 1998 for \$100,000 by *Développements Prestige ltée*. At the time of the purchase, Monique Légaré had \$10,000 of savings which she used to pay part of the purchase price, and she financed the balance as follows :
  - she took out a \$75,000 hypothecary loan with *Caisse populaire du Nord*. As at today's day, the balance of the loan is \$70,000;
  - the contract of sale of the Condominium stipulates that the balance of the purchase price, namely \$15,000, is payable to the vendor, without interest, in one instalment exigible on November 28, 2000. In order to secure the payment of the amount of \$15,000, Monique Légaré hypothecated the Condominium in favour of *Développements Prestige ltée*. In October of 1998, *Développements Prestige ltée* duly assigned to *Banque industrielle* all the rights arising under the contract entered into between it and Monique Légaré. On November 1, 1998, Monique Légaré was served with a copy of the assignment, together with a certified statement of its registration in the land register. Monique Légaré never paid the amount of \$15,000 which represents the balance of the purchase price of the Condominium.
- In the spring of 2000, Monique Légaré had the kitchen in her Condominium renovated by *Belles Cuisines ltée*. The work was completed on June 1, 2000 and resulted in an increase in the value of the Condominium which was equal to the cost of the work, namely, \$9,000. Monique Légaré paid \$5,000 to *Belles Cuisines ltée* on June 30, 2000 and the balance of the cost of the work was never paid.
- The market value of the furniture which furnishes Monique Légaré's Condominium is \$30,000, including a *Nanimo* piano which she purchased for her own personal use. This piano was sold to her on September 1, 2000 by *Musique Laurentienne ltée* for \$15,000. Monique Légaré paid \$5,000 upon delivery of the piano, and the contract of sale stipulates that the balance is payable on December 1, 2000. The balance of \$10,000 has not been paid to date.
- Monique Légaré is the owner of her *Boca* automobile which is charged with a hypothec in favour of *Banque Boréale* in order to secure the repayment of the \$15,000 she borrowed in order to purchase the automobile. The deed of hypothec was signed and duly published on October 29, 1999, the date on which Monique Légaré purchased her new automobile. As of today's date, the balance of the loan owed to *Banque Boréale* is \$9,000.
- Monique Légaré owes \$4,000 to the Minister of Revenue of Quebec for arrears of income taxes.
- Monique Légaré owns a personal watercraft which is fully paid.
- Monique Légaré does not own any other property and has no other debts, except for the judgement rendered in favour of your client Réal Matteau.

Immediately after the examination, you obtain an extract of the land register regarding Monique Légaré's Condominium (reproduced in a schedule hereto). You also read the notice published by *Belles Cuisines inc.* under number 837499 and you observe that this is a notice of preservation of a legal hypothec for the construction. You subsequently learn that this notice was duly served on June 28, 2000.

INDEX DES IMMEUBLES

Circonscription foncière de TERREBONNE  
 Plan n° 2165  
 Date d'établissement 1998 - 03 - 02 9 h 00  
Année Mois Jour Heure Minute  
 Signature de l'officier Pierre Mercier

Lot n° 1212-320  
 Rang \_\_\_\_\_  
 Canton \_\_\_\_\_  
 Autres \_\_\_\_\_  
 Cadastre de la rivière

Concordance

NOMS DES PARTIES	NATURE DE L'ACTE	INSCRIPTION		REMARQUES ET AVIS D'ADRESSE	RADIATIONS
		DATE	N°		
Développements Prestige Hée	Déclaration de copropriété	98-03-09	807134		
Caisse populaire du Nord et Monique Légaré	Hyp.	98-05-15	808531	75 000 \$ 2503	
Développements Prestige Hée et Monique Légaré	Vente	98-05-29	808900	100 000 \$	
Développements Prestige Hée et Monique Légaré	Hyp.	98-05-29	808900	15 000 \$ 3805	
Monique Légaré et Gilles Viens et als	Servitude	98-05-30	808912	Servitude de vue	
Développements Prestige Hée et Banque Industrielle	Cession	98-10-13	815702	Ce: 808900 3712	
Syndicats des copropriétaires de l'Édifice Prestige et Monique Légaré	Hyp. légale	99-07-26	825500	5500 \$ 3950	T88004
Belles Cuisines Hée et Monique Légaré	Hyp. légale	00-06-28	837499	9000 \$	
Caisse populaire du Nord et Monique Légaré	Pré avis	00-10-02	839326	Re: 808531 vente sous contrôle de justice	

**QUESTION 8 (5 marks)**

- Assuming that Monique Légaré's Condominium were sold today by means of a sale by judicial authority at the request of *Caisse populaire du Nord*, would the servitude of view published under number 808912 be extinguished?
- Justify your answer by referring to one or more specific and relevant provisions of any legislation.

**SUPPLEMENTARY FACTS**

According to the information you obtained, Monique Légaré's Condominium would be adjudicated at a price of \$80,000 if it were sold today by means of a sale by judicial authority at the request of *Caisse populaire du Nord*. The amount of the legal costs and expenses incurred in the common interest would be \$3,000, such that the net amount to be distributed would be \$77,000.

**QUESTION 9 (8 marks)**

**Upon the amount of \$77,000 referred to hereinabove, indicate the name of the only persons who would receive a sum of money as well as the order in which they would be paid.**

**YOU MAY ASSUME THAT ALL INTERESTED PARTIES WOULD DULY ASSERT THEIR RIGHTS AND THAT NO ONE WOULD ALLEGE THE INSOLVENCY OF MONIQUE LÉGARÉ.**

**SUPPLEMENTARY FACTS**

When you return to your office, you meet with your client, Réal Matteau. He tells you that the manager of *Caisse populaire du Nord* informed him that Monique Légaré's Condominium will not be sold by means of a sale by judicial authority, because, today, she remedied the omissions mentioned in the prior notice of the exercise of a hypothecary remedy as well as the subsequent omissions and she paid the costs incurred.

After being made aware of the information you obtained during the examination, your client asks you how the proceeds of sale of the following property would be distributed if the said property were sold today, as his request, by bailiff, for a total of \$23,000, as follows :

- the piano would be sold for \$6,000;
- the automobile would be sold for \$13,000;
- the personal watercraft would be sold for \$4,000.

**QUESTION 10 (12 marks)**

**Assuming a sale of the above-mentioned property were to take place today in execution of a seizure of movable property carried out upon an application by Réal Matteau, indicate the name of each person who would receive a sum of money as well as the amount the person would receive. You may assume the following :**

- all interested parties would duly assert their rights;
- no one would allege the insolvency of Monique Légaré;
- the total amount of the legal costs and expenses incurred in the common interest would be \$1,000, and this amount would be collocated in first place.

**CORRIGÉ**  
**CIVIL II - EXAMEN RÉGULIER**  
 11 décembre 2000

**DOSSIER 1 (40 POINTS)**

**QUESTION 1 (40 points)**

Rédigez en entier (en-tête, titre, adresse, allégations et conclusions) l'acte de procédure approprié. Ne rédigez ni affidavit ni avis de présentation, le cas échéant. Ne signez pas l'acte de procédure pour assurer votre anonymat.

CANADA  
 PROVINCE DE QUÉBEC  
 DISTRICT DE TROIS-RIVIÈRES  
     OU MONTRÉAL  
     OU SAINT-MAURICE  
 NO. \_\_\_\_\_

C O U R D U Q U É B E C  
 (Chambre civile)

1. 1

PLACEMENTS IMMOBILIERS O.R. INC., personne morale légalement constituée, ayant son siège au 250, rue Bonaventure, à Trois-Rivières, (district de Trois-Rivières,) G9A 5E2

Requérante

c.

GAÉTAN ROUILLARD, résidant au 10 623 rue Sherbrooke est, appartement 206, à Montréal, (district de Montréal,) H4L 2P8

et

2. 2

POMPES DE LA MAURICIE INC., personne morale légalement constituée ayant son siège au 112, 4e Rue, Shawinigan, (district de Saint-Maurice,) G9N 1G5

et

GILBERT POIRIER résidant au 395, boulevard Ste-Madeleine, Cap-de-la-Madeleine, (district de Trois-Rivières,) G8T 5A7

Intimés

*Description complète des parties*

3. 1

REQUÊTE RELATIVE AUX DROITS ET  
 OBLIGATIONS RÉSULTANT D'UN BAIL  
 (art. 762, al. 2 f) C.p.c.)

4. 1

À L'UN DES JUGES DE LA COUR DU QUÉBEC, SIÉGEANT EN CHAMBRE DE PRATIQUE, DANS LE DISTRICT DE TROIS-RIVIÈRES (OU MONTRÉAL OU SAINT-MAURICE), LA REQUÉRANTE EXPOSE :

5. 1

1. Le 30 septembre 1995, la requérante loue à l'intimé Gaéтан Rouillard un local commercial situé au 5371, boulevard Industriel, à Trois-Rivières, pour un terme de 5 ans, à compter du 1er octobre 1995, tel qu'il appert du bail, pièce R-1;

6. 1

2. Le 25 février 1998, l'intimé Gaéтан Rouillard sous-loue ce local à l'intimée Pompes de la Mauricie inc. pour un terme de 31 mois se terminant le 30 septembre 2000, tel qu'il appert de la convention de sous-location, pièce R-2;

7. 1

3. Aux termes de la convention de sous-location, pièce R-2, les intimés Pompes de la Mauricie inc. et Gilbert Poirier s'engagent solidairement avec l'intimé Gaéтан Rouillard à exécuter toutes les obligations prévues au bail, pièce R-1;

8. 1

- (4. Dans la nuit du 29 au 30 septembre 2000, l'intimée Pompes de la Mauricie inc. quitte les lieux loués;)
5. Lors d'une visite des lieux loués, le 2 octobre 2000, le représentant de la requérante constate qu'ils sont dans un état pitoyable et que les dispositions du bail sur la remise en état des lieux loués n'ont pas été respectées et que plus particulièrement :
- a) des modifications non conformes aux normes applicables ont été effectuées au panneau électrique; 9.  1
- b) les murs de gypse, les tuiles acoustiques du plafond, les appareils d'éclairage ainsi que la porte d'accès à l'entrepôt ont été endommagés; 10.  1
11.  1
6. De plus, l'intimée Pompes de la Mauricie inc. a emporté les meubles garnissant la réception et la salle d'attente, propriété de la requérante; 12.  1
7. Par lettre du 3 octobre 2000, la requérante a mis les intimés en demeure d'effectuer les réparations requises et de lui remettre la possession des meubles, le tout, au plus tard le 16 octobre 2000, tel qu'il appert de cette lettre, pièce R-3; 13.  1
8. Vu le défaut des intimés de donner suite à cette lettre dans le délai prévu, la requérante a fait effectuer les réparations requises au cours des mois d'octobre et novembre 2000, au coût de 12 623,48 \$; 14.  1
15.  1
9. De plus, la requérante a dû faire l'acquisition de nouveaux meubles, au coût de 7 326,52 \$ OU 7 362,52 \$; 16.  1
10. Vu l'impossibilité de procurer la jouissance des lieux au nouveau locataire le 1<sup>er</sup> novembre 2000, en raison des réparations, la requérante n'a pu percevoir le loyer du mois de novembre 2000, au montant de 2 124 \$; 17.  1
- (11. La requérante est bien fondée à réclamer la somme de 22 074 \$ , laquelle se détaille comme suit :
- a) Coût des réparations : 12 623,48 \$
- b) Remplacement des meubles : 7 326,52 \$
- c) Perte de loyer pour le mois de novembre 2000 : 2 124,00 \$)
12. En date du 29 novembre 2000, la requérante a mis en demeure les intimés de lui payer la somme de 22 074 \$ ou 22 110 \$, tel qu'il appert de la lettre de mise en demeure, pièce R-4; 18.  1
13. À ce jour, les intimés refusent ou négligent de payer les sommes réclamées; 19.  1

POUR CES MOTIFS, PLAISE AU TRIBUNAL :

- CONDAMNER les intimés, à payer à la requérante solidairement, 20.  1
- la somme de 22 074 \$ OU 22 110 \$, 21.  1
- avec intérêts au taux légal et l'indemnité additionnelle prévue par la loi, 22.  1
- à compter du 29 novembre 2000; 23.  1
24.  1

Le tout avec dépens.

Trois-Rivières, le 11 décembre 2000

PROCUREUR DE LA REQUÉRANTE.



## DOSSIER 2 ( 25 POINTS )

## QUESTION 2 ( 5 points )

Mireille Turmel peut-elle reprendre possession, le 1er juillet 2001, du logement occupé par Michel Langelier pour y loger sa mère? Si oui, indiquez toutes les formalités qui doivent être accomplies. Si non, dites pourquoi.

Non, parce que la reprise de possession est possible seulement à l'expiration du bail.

OU

Non, parce qu'il s'agit d'un bail de trois ans.

32. 

## QUESTION 3 ( 5 points )

- Sans égard au moyen procédural, Mireille Turmel peut-elle légalement forcer le Musée historique de Montréal à lui prêter le “ Violon Bleu “?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Non, art. 2316 C.c.Q.

33. 

## QUESTION 4 ( 5 points )

En date du 7 décembre 2000, Son de scènes ltée avait-elle toujours un droit de rétention sur les appareils de son de Mireille Turmel? Dites pourquoi.

Non, le droit de rétention de *Son de scènes ltée* s'est éteint lors de remise des appareils de son après les réparations (quoique Mireille ait consenti à confier les biens à *Son de scènes ltée* et que la créance impayée y soit intimement liée.)

OU

Non, *Son de scènes ltée* n'a jamais eu de droit de rétention parce que Mireille Turmel bénéficiait d'un terme.

34. 

## QUESTION 5 ( 5 points )

- Le contrat d'assurance a-t-il été résilié de plein droit à l'expiration du délai mentionné dans la lettre du 20 novembre 2000?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Non, art. 2427 C.c.Q. (Le preneur dispose d'un délai de grâce de 30 jours pour payer la prime échue malgré toute convention contraire.)

35. 

## QUESTION 6 ( 5 points )

Mireille Turmel peut-elle revendiquer la roulotte de camping? Choisissez la bonne réponse parmi celles énoncées ci-dessous et écrivez-la dans votre cahier de réponses.

- Oui, art. 2651(2) C.c.Q.
- Non, parce que le contrat du 1er mai 2000 n'a pas été publié.
- Oui, art. 1714 C.c.Q.
- Non, il ne s'agit pas d'un contrat visé par la Loi sur la protection du consommateur.
- Aucune de ces réponses

Aucune de ces réponses. (Il ne s'agit pas d'un contrat de vente à tempérament et Mireille Turmel n'a aucun droit personnel contre Camping de la plage inc. Elle n'a pas non plus de droit réel dans le bien vendu.)

36.



## DOSSIER 3 (35 POINTS)

## QUESTION 7 ( 10 points )

- a) **Monique Légaré peut-elle consentir en faveur de Réal Matteau une hypothèque sans dépossession grevant la créance qu'elle a contre son assureur? Si oui, indiquez toutes les formalités qui doivent être accomplies. Si non, dites pourquoi.**

COMPTE TENU DES DEUX INTERPRÉTATIONS POSSIBLES DE L'ARTICLE 15.02 DU RÈGLEMENT SUR LE RDPRM ET DE L'ABSENCE DE JURISPRUDENCE, LES DEUX RÉPONSES SUIVANTES SONT ACCEPTÉES :

Non, parce que Monique Légaré n'exploite pas une entreprise (principe de 2683 C.c.Q.)

OU

Oui, au moyen d'un (acte) écrit (sous seing privé) (principe de l'article 2696 C.c.Q)

37.

- b) **Monique Légaré peut-elle consentir en faveur de Réal Matteau une hypothèque avec dépossession grevant la créance qu'elle a contre son assureur? Si oui, indiquez toutes les formalités qui doivent être accomplies. Si non, dites pourquoi.**

Non, parce que cette créance n'est pas représentée par un titre. (principe de l'art. 2702 C.c.Q.).

OU, COMPTE TENU DE LA CONTROVERSE SOULIGNÉE DANS LA DOCUMENTATION, LES RÉPONSES SUIVANTES SONT ACCEPTÉES :

Le législateur n'ayant pas défini la notion de titre, il appartiendra aux tribunaux de décider si oui ou non l'indemnité d'assurance peut être hypothéquée par Monique Légaré.

OU

Oui, sans aucune autre formalité que la remise du titre à Réal Matteau.

38.

## QUESTION 8 ( 5 points )

- **La servitude de vue publiée sous le no 808912 s'éteindrait-elle dans l'hypothèse où le condominium de Monique Légaré serait vendu aujourd'hui par vente sous contrôle de justice à la demande de Caisse populaire du Nord?**
- **Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.**

Non. (Art. 2794 C.c.Q. et) 696 C.p.c.

OU

Non, art. 1182 C.c.Q.

39.

## QUESTION 9 ( 8 points )

**Lors de la distribution de la somme de 77 000 \$ mentionnée ci-dessus, indiquez le nom des seules personnes qui recevraient un montant d'argent ainsi que l'ordre dans lequel elles seraient payées.**

TENEZ POUR ACQUIS QUE TOUS LES INTÉRESSÉS FERAIENT DÛMENT VALOIR LEURS DROITS ET QUE PERSONNE N'ALLÉGUERAIT LA DÉCONFITURE DE MONIQUE LÉGARÉ.

Banque Industrielle et Caisse populaire du Nord

40.

Cette case est accordée lorsque la réponse indique que le solde de prix de vente serait payé avant la créance de Caisse populaire du Nord.

41.

**QUESTION 10 ( 12 points )**

Dans l'hypothèse où une vente des biens indiqués ci-dessus serait faite aujourd'hui en exécution d'une saisie mobilière pratiquée à la demande de Réal Matteau, indiquez le nom de chaque personne qui recevrait un montant d'argent ainsi que le montant qu'elle recevrait. Tenez pour acquis ce qui suit :

- tous les intéressés feraient dûment valoir leurs droits;
- personne n'alléguerait la déconfiture de Monique Légaré;
- le coût total des frais de justice et des dépenses faites dans l'intérêt commun s'élèverait à la somme totale de 1 000 \$ et serait colloqué au premier rang.

Musique Laurentienne ltée	42.	1
ministre du Revenu du Québec	43.	1
Banque Boréale	44.	1
Réal Matteau	45.	1

**Hypothèse SANS droit de rétention de l'automobile en faveur de Réal Matteau**

**OU Hypothèse AVEC droit de rétention de l'automobile en faveur de Réal Matteau**

Frais de justice	1000 \$
Musique Laurentienne ltée	6 000 \$
ministre du Revenu du Québec	4 000 \$
Banque Boréale	9 000 \$
Réal Matteau	3 000 \$ (ou 4000 \$ si les frais de justice et autres dépenses faites dans l'intérêt commun n'ont pas été colloqués séparément.)

46. 2

47. 2

48. 2

49. 2

Frais de justice	1000 \$
Musique Laurentienne ltée	6 000 \$
ministre du Revenu du Québec	4 000 \$
Banque Boréale	1 000 \$ à la condition que la réponse indique que Réal Matteau reçoive 11 000 \$ (ou 12 000 \$ si les frais de justice et autres dépenses faites dans l'intérêt commun n'ont pas été colloqués séparément)
Réal Matteau	11 000 \$ (ou 12 000 \$ si les frais de justice et les autres dépenses faites dans l'intérêt commun n'ont pas été colloqués séparément) à condition que le montant total payé à Banque Boréale et à Réal Matteau n'excède pas le prix de vente du véhicule, soit 13 000 \$