



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

CIVIL II

December 12, 2001

- 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 **14** pages (including this page) and that your answer booklet contains **7** pages.

N.B. :

- **As mentioned in the letter dated November 26, 2001 which was previously provided to you, you may assume that the statutory and regulatory provisions which came into force on October 9, 2001 do not apply.**
- **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.**

FILE 1 (45 MARKS)

You are the articling student for M^c Patrick Trudel of the firm of Boisvert Trudel. He provides you with the following notes taken during a meeting with his client, Normand Dumouchel.

**NOTES FROM THE MEETING OF NOVEMBER 26, 2001
WITH NORMAND DUMOUCHEL**

- Normand Dumouchel, shareholder of *Château Enchanté inc.* (« *Château* »), store specializing in sale of medieval games, accessories and clothing.
- Store went out of business on June 12, 2001.
- Dumouchel had agreed to be a shareholder of *Château* at the request of his niece Danielle Senécal and her *de facto* spouse, Drew Gardner.
- Dumouchel, Senécal and Gardner each hold one third of the share capital of *Château*.
- The 2 directors of *Château*: Senécal, president and Gardner, secretary of the co.
- Store operated at 1622 Mount-Royal East, Montreal, H2W 4H7.
- 7 August 98 : *Château* signs lease for premises, for term of 3 years, namely, from 1 Sept. 98 to 31 August 01. Rent: \$5,000/month, including taxes. Tenant has an option to renew for an additional term of 3 years.
- Lessor: *Immeubles Gilford inc.* (« *Gilford* »), Sylvain Robitaille, president.
- 14 August 98: loan from *Caisse Populaire Pointe-de-l'Île* (« *Caisse* ») to *Château* for an amount of \$20,000 payable in 36 monthly instalments of \$644.66, on the 15th of each month as of 15 Sept. 98.
- Loan secured by movable hypothec on the universality of *Château*'s property (inventory, equipment and accounts receivable) and solidary suretyship of Dumouchel, Senécal and Gardner.
- 16 Jan. 01 : *Château* signs contract of enterprise with *Rénovation Commerciale inc.* (« *RCI* ») which agrees to carry out renovations in the leased premises for an amount of \$48,000, taxes included, payable upon completion of the work.
- 16 Jan. 01 : 3 shareholders of *Château* intervene in the contract of enterprise to become solidary sureties of *Château*'s obligations towards *RCI*.
- Roger Cloutier, president of *RCI*, required suretyship of 3 shareholders of *Château* given impossibility for *RCI* to obtain a legal hypothec.

- Dumouchel not involved in management of *Château*, leaving the administration up to his niece and Gardner.
- Senécal and Gardner always stated to Dumouchel that business was good.
- 18 May 01 : Dumouchel is served with a prior notice of the exercise of a hypothecary right of taking in payment by *Caisse* which states that *Château* failed to pay the instalments of 15 April 01 and 15 May 01. (Registered in the RPMRR on 22 May 01, n° 01-0001234-0001.)
- Perplexed, Dumouchel telephones Senécal; she tells him that everything will be settled in next few days.
- However, Dumouchel soon realizes that Senécal lied to him.
- 4 July. 01 : Dumouchel receives letter from *RCI*, dated 3 July 01, informing him that renovation work was completed more than 4 months ago and that *Château* has only made following payments (statement of account annexed to letter) :
 - 16 Feb. 01 : \$6,000
 - 2 March 01 : \$4,000
 - 12 March 01 : \$2,000
- In same letter, *RCI* puts *Château*, Dumouchel, Senécal and Gardner in default to pay balance of \$36,000 for the work performed.
- 5 July 01, Dumouchel goes to the store on Mount-Royal Street and notes that premises are empty. He immediately telephones Senécal for explanation : Senécal admits that *Château* was not profitable and that on 12 June 01 all the movable property was voluntarily surrendered in writing in favour of *Caisse*.
- Deed of surrender complies with all provisions of the law and cannot be impugned.
- Senécal informs Dumouchel that Gardner has left her, that they are both dead broke, that their finances are in a lamentable state and that *Château* no longer has any assets.
- Senécal was convinced that *Château* would obtain municipal grant to pay for renovations, but, ultimately, grant definitively refused.
- 28 Sep. 01 : assignment of property by *Château* under *Bankruptcy and Insolvency Act* due to pressure from unpaid suppliers.
- *Château's* creditors will not receive any amount from trustee in bankruptcy.
- Dumouchel concludes that he has no ground of defence whatsoever against *RCI's* claim.
- 15 Oct. 01 : Dumouchel reaches agreement with *RCI* for final settlement of all obligations of *Château* and of sureties under the contract of enterprise for amount of \$33,000 (capital, interest, costs).

- 15 Oct. 01 : Dumouchel and *RCI* sign document evidencing transaction and acknowledging payment of \$33,000 by Dumouchel.
- Dumouchel no longer believes Senécal's statement that she and Gardner are insolvent. Dumouchel carried out investigation and discovered that each has employment income and sufficient assets to honour their obligations.
- Mandate from client : institute appropriate proceedings to collect amounts owing from all persons liable to pay.

On November 26, 2001, M^e Trudel served a demand letter in which he claimed the amounts owed to his client, Normand Dumouchel, from all persons liable to pay. This letter required payment no later than December 10, 2001.

Given that the letter dated November 26, 2001 remains unanswered, your articling supervisor asks you to draft the appropriate written proceeding.

Documents in the file :

- Lease signed in Montreal on 7 August 1998.
- Loan and hypothec agreement dated August 14, 1998.
- Prior notice of the exercise of a hypothecary right registered under number 01-0001234-0001.
- Contract of enterprise signed in Montreal on 16 January 2001, including the intervention of the sureties.
- Demand letter dated July 3, 2001 from *Rénovation Commerciale inc.*, received on July 4, 2001, with statement of account.
- Photocopy of the \$33,000 bank draft payable to the order of *Rénovation Commerciale inc.*
- Deed of voluntary surrender in favour of *Caisse Populaire Pointe-de-l'Île* dated June 12, 2001.
- Demand letter dated November 26, 2001 and certificates of service.
- Transaction document dated October 15, 2001.
- Notice of the first meeting of creditors given by the trustee in bankruptcy of *Château Enchanté inc.*

Addresses :

- *Château Enchanté inc.* : 1622 Mount-Royal Street East, Montreal, district of Montreal, H2W 4H7 (head office).
- *Perrier, Lafleur et associés inc.*, trustee in bankruptcy of *Château Enchanté inc.* : 623 de Maisonneuve Blvd. West, Suite 600, Montreal, district of Montreal, H2Y 6N3 (head office and place of business).
- Normand Dumouchel : 24 Willowtree Street, Rosemère, district of Terrebonne, J0R 2K7 (domicile and residence).
- *Immeubles Gilford inc.* : 200 Gilford Street, Suite 4, Montreal, district of Montreal, H2W 5P0 (head office and place of business).
- Danielle Senécal : 4432 Henri-Julien Street, Montreal, district of Montreal, H2W 6M8 (domicile and residence).
- Drew Gardner : 155 Limoges Avenue, City of St-Laurent, district of Montreal, H7G 8B3 (domicile and residence).
- *Caisse Populaire Pointe-de-l'Île* : 17 622 Sherbrooke Street East, Montreal, district of Montreal, H4S 1V4 (head office and place of business).
- *Rénovation Commerciale inc.* : 3623 Ontario Street East, Montreal, district of Montreal, H4G 2Z2 (head office and place of business).
- Roger Cloutier : 63 Place Saint-Charles, Longueuil, district of Longueuil, J3V 4Y1 (domicile and residence).

QUESTION 1 (45 marks)**Legal content : 30 marks****Drafting techniques : 15 points**

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

FILE 2 (25 MARKS)

You are the lawyer for André Mathieu, who consulted you during the year with respect to five problems.

Problem 1	
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André Mathieu operates a garage where he sells gas and repairs vehicles. On March 15, 2001, Diane Gauthier has her broken-down vehicle towed to André Mathieu's garage. She asks him to prepare an estimate of the cost of the repair.

On March 17, 2001, André Mathieu provides Diane Gauthier with a written estimate in an amount of \$625.33. He carefully explains to her the importance of the repair required, as well as the cost of the labour and of the parts. He tells her that the estimate is usually accurate, but that sometimes the final invoice may be higher. He also draws her attention to the following provision included in the estimate : « The invoice is payable upon completion of the work, failing which the vehicle shall not be returned. » Diane Gauthier authorizes the repair by signing a copy of the estimate. There is no further communication between Diane Gauthier and André Mathieu until the work is completed on March 21, 2001.

On March 21, 2001, André Mathieu calls your office. He explains to you that the cost of repairing Diane Gauthier's vehicle, namely \$776.35, is higher than that stated in the estimate. The difference of \$151.02 represents the delivery cost for a part which he had to have delivered from Toronto because it was not available in Quebec. Notwithstanding the explanations provided to her, Diane Gauthier refuses to pay the total amount of the invoice. Instead, she offers to pay \$625.33 in cash and demands that André Mathieu return her vehicle to her.

QUESTION 2 (5 marks)

Under the circumstances, what advice would you give to André Mathieu?

Select the correct answer from among the answers set forth hereinbelow and write it in the answer booklet.

- a) **André Mathieu can refuse the offer of payment for \$625.33 and retain the vehicle until he has received the amount of \$776.35.**
- b) **André Mathieu must accept the payment of \$625.33 under protest, return the vehicle and subsequently claim the balance of the invoice.**
- c) **André Mathieu may accept the payment of \$625.33 and retain the vehicle until he has received payment of the balance of the invoice.**
- d) **André Mathieu must accept the amount of \$625.33 as final payment and return the vehicle.**
- e) **André Mathieu must return the vehicle, but he may refuse the payment of \$625.33 and subsequently claim the amount of \$776.35.**

Problem 2

André Mathieu consults you again today, December 12, 2001.

On May 1, 2001, André Mathieu sells his garage to Gérald Laguë, a mechanic who had been employed by him for several years. The sale complies with all of the legal formalities required for the sale of an enterprise.

On November 1, 2001, Gérald Laguë receives a demand letter from the owner of the adjacent parcel of land demanding that the fence separating their respective parcels of land be moved. After checking with a land surveyor, Gérald Laguë notes that the fence must be moved because it is located on the neighbouring parcel of land.

The cost of the work for moving the fence and installing it on Gérald Laguë's parcel of land is \$1,000. In addition, in order to comply with the municipal fire prevention by-laws, Gérald Laguë will have to shut down all the gas pumps during the performance of the work, causing him to suffer \$10,000 of damages. He immediately sends a letter to André Mathieu in which he gives notice of the situation and puts André Mathieu in default to pay him \$11,000.

André Mathieu does not contest the accuracy of the amounts, but he refuses to pay anything whatsoever to Gérald Laguë. He contends that his former employee knew the site just as well as he did before purchasing it and that he even witnessed the construction of the fence in 1996.

André Mathieu acted in good faith, he was unaware that the fence was not on his parcel of land and the problem was not apparent.

QUESTION 3 (5 marks)

Is André Mathieu required to pay a sum of money to Gérald Laguë? If so, how much must he pay?

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

Problem 3

During the same meeting on December 12, 2001, André Mathieu informs you that he lives on the ground floor of a two-storey immovable which he owns and which is located in Laval.

André Mathieu signed a lease with Suzanne Rolland for a term of seven months from December 1, 2000 until June 30, 2001 with respect to the apartment located on the other floor of the immovable. The rent is \$500 per month. Suzanne Rolland lives in this apartment which has a total area of 85 m² and uses the back room, having an area of 10 m², to operate her computer graphics business. The parties never discuss the lease again and André Mathieu does not send Suzanne Rolland any notice of a rent increase or of a modification of the lease. She is still occupying the premises and continues to pay André Mathieu the rent of \$500 per month.

André Mathieu is the primary source of financial support for Sophie Mathieu, his granddaughter, who is 18 years old. At the end of the lease currently in effect, he would like to use the apartment now occupied by Suzanne Rolland as a dwelling for his granddaughter. He is willing to indemnify Suzanne Rolland for her moving costs.

QUESTION 4 (5 marks)

Will André Mathieu be able to retake possession of the dwelling occupied by Suzanne Rolland upon the expiry of the lease currently in effect if, prior to the end of December of 2001, he sends her a notice setting forth all the particulars required by law?

Select the correct answer from among the answers set forth hereinbelow and write it in the answer booklet.

- a) **No, because it is too late to give a notice of repossession.**
- b) **No, because Sophie Mathieu is not a descendant in the first degree of André Mathieu.**
- c) **Yes, because the special rules respecting leases of dwellings do not apply to this lease.**
- d) **Yes, because the conditions for repossession of a dwelling have been satisfied.**
- e) **None of the above.**

Problem 4

During the same meeting on December 12, 2001, André Mathieu tells you about the following problem.

Since May 31, 2001, he has been a shareholder, in equal proportions with his brother Roger Mathieu, of *Réparations Mathieu inc.*, an electric appliance repair and servicing business. This business is the lessee of commercial premises located in Terrebonne which are owned by *Gestion immobilière Grégoire inc.*

The lease, which has a term of twelve months beginning on June 1, 2001, provides for a rent of \$2,000 payable on the first day of each month. The lease includes the following provision, among others :
« André Mathieu and Roger Mathieu agree to be solidary sureties for the lessee's obligations. »

On October 15, 2001, *Réparations Mathieu inc.* and *Gestion immobilière Grégoire inc.* enter into a contract for services for a term of two years, namely, from December 1, 2001 to November 30, 2003. The contract provides that *Réparations Mathieu inc.* will maintain certain equipment located at *Gestion immobilière Grégoire inc.*'s place of business. The total cost under the contract is \$3,500, payable in two annual instalments of \$1,750 exigible on December 1, 2001 and December 1, 2002. To date, *Gestion immobilière Grégoire inc.* has not paid any amount.

Due to temporary financial difficulties, *Réparations Mathieu inc.* has not paid the rent for the months of November or December of 2001. André Mathieu is in a better financial situation than his brother Roger. Consequently, on December 5, 2001, *Gestion immobilière Grégoire inc.* sends André Mathieu a demand letter in which it claims from him payment of the rent due on November 1st and December 1st of 2001, namely \$4,000, no later than December 12, 2001.

QUESTION 5 (5 marks)

As at December 12, 2001, can André Mathieu fulfill his obligations resulting from the suretyship by paying an amount less than \$4,000 and, if so, how much must he pay?

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

Problem 5

During the same meeting on December 12, 2001, André Mathieu submits the following problem to you.

His father, Pierre Mathieu, died on September 5, 2001. He was the sole shareholder of *Forage Mathieu inc.* This mining company has 50 employees and has been experiencing financial difficulties since the death of Pierre Mathieu.

On September 10, 2001, André Mathieu is filing away some of his father's documents and finds a group insurance certificate, the relevant extract of which is reproduced hereinbelow :

Group Insurance Certificate	
QUÉBEC-VIE, insurance company	
Client :	<i>Forage Mathieu inc.</i>
Participant :	Pierre Mathieu
Beneficiary :	André Mathieu
Benefit payable upon death :	\$100,000
[...]	

André Mathieu immediately files a claim with *Québec-Vie, insurance company* which sends him the following letter which he received yesterday :

December 7, 2001

André Mathieu
3457 des Mille-Îles Blvd.
Laval, Quebec
H7N 6J8

Dear Sir :

Please find enclosed herewith a cheque in your name for an amount of \$80,000 in payment of the life insurance benefit which you claimed. We have deducted \$20,000 from the life insurance benefit of \$100,000 payable upon death because Pierre Mathieu was the sole shareholder of *Forage Mathieu inc.* and the latter did not pay the monthly group insurance premiums of \$5000 each for the months of September, October, November and December of 2001.

Yours truly,

Gilles Sansoucy

Gilles Sansoucy,
representative of *Québec-Vie, insurance company*

QUESTION 6 (5 marks)

Can the insurer deduct from the insurance benefit all or part of the premiums not paid by *Forage Mathieu inc.*?

Select the correct answer from among the answers set forth hereinbelow and write it in the answer booklet.

- a) **The insurer cannot deduct any amount from the insurance benefit because it never informed André Mathieu that the premiums had not been paid.**
- b) **The insurer cannot deduct any amount from the insurance benefit because this is a group insurance contract.**
- c) **The insurer may deduct \$20,000 representing the amount of the premiums not paid to date.**
- d) **The insurer may deduct only \$5,000 representing the amount of the premium due and not paid at the time of Pierre Mathieu's death.**
- e) **None of the above.**

FILE 3 (30 MARKS)

The situation described in File 3 is an evolving one : all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.

Luc Poulin meets with you for the first time on April 12, 2001 and relates the following facts to you.

On May 20, 2000, Luc Poulin sold his automobile, his motorcycle and his personal watercraft because he had to leave Quebec in order to continue his studies in California until April of 2001. At that time, he signed the following contract with Guy Dion, a friend.

CONTRACT OF SALE

Luc Poulin sells the following items to Guy Dion:

one 1998 Capri automobile, Country model, serial number 1F2TJ34RMCH987562 :	\$7,500
one Nordic motorcycle, Sport model, serial number 2TIBA03E5VC618401 :	\$6,500
one Super personal watercraft, serial number 74D816F :	\$4,000

The selling price, namely \$18,000, shall be payable by monthly instalments of \$500 on the first day of each month as of July 1, 2000. Any balance owed shall become exigible immediately if the Purchaser fails to pay a monthly instalment.

As security for the payment of the selling price, Guy Dion hypothecates the items being sold in favour of Luc Poulin for an amount of up to \$18,000. The hypothec shall cease to have effect on May 1, 2010.

Montreal, May 20, 2000

Luc Poulin
LUC POULIN, vendor
1234 Dorion Street
Montreal, Quebec
H3B 3C2

Guy Dion
GUY DION, purchaser
9876 de l'Île Street
Montreal, Quebec
H5B 2R3

The hypothec granted in favour of Luc Poulin was duly published on May 23, 2000 by means of the form RH which contained all the particulars required for opening the name and descriptive files provided for in the *Regulation respecting the register of personal and movable real rights*.

Guy Dion did not pay any of the instalments provided for in the contract dated May 20, 2000.

On April 12, 2001, Luc Poulin instructs you to claim the entire amount of the selling price from Guy Dion. The demand letter sent by you on April 17, 2001 is not acted upon. On April 30, 2001, you serve upon Guy Dion a declaration in which you ask the court to order Guy Dion to pay Luc Poulin \$18,000 plus interest, the indemnity provided for in article 1619 of the *Civil Code of Québec* and the costs.

On May 4, 2001, Luc Poulin instructs you to put the file on hold because Guy Dion called him to say that he would soon be sending him a settlement offer.

On May 28, 2001, Luc Poulin consults you again regarding this file and provides you with the following letter which he received on May 7, 2001.

Montreal, May 5, 2001

Dear Luc,

I received by bailiff the action in which you are claiming \$18,000 from me. I will not contest the action, because I acknowledge not having paid any of the monthly instalments provided for in the contract entered into between us on May 20, 2000.

However, I think this matter can be settled since I do have some money available. Indeed, on May 2, 2001, I sold the personal watercraft to *Sports Rive-sud Ltée*, 1010 Taschereau Blvd., Longueuil, Quebec, J4G 3B9, for the amount of \$3,500. In addition, I replaced the Nordic motorcycle, Sport model, with a Starbike motorcycle, Junior model. In the course of this exchange, *Sports Rive-sud Ltée* gave me \$3,500 because the new motorcycle is smaller than the one you had sold to me.

Therefore, I have an amount of \$7,000 with which I can offer to pay you all the instalments due as well as all the costs incurred. Furthermore, I undertake to pay promptly the future instalments which will become due and exigible.

Guy Dion

GUY DION
9876 de l'Île Street
Montreal, Quebec
H5B 2R3

QUESTION 7 (5 marks)

As at May 28, 2001, is Luc Poulin required to accept Guy Dion's offer? Explain your answer.

SUPPLEMENTARY FACTS

On May 29, 2001, Luc Poulin informs Guy Dion that he accepts his offer, but Guy Dion tells Luc Poulin that it is unfortunately too late because he has already used the amount of \$7,000 to pay his other debts.

On May 29, 2001, after having heard this news, Luc Poulin goes to *Sports Rive-sud Ltée's* place of business before coming to consult you. He learns that the Nordic motorcycle, Sport model, and the Super personal watercraft have not yet been sold by *Sports Rive-sud Ltée* which still has them in its possession.

QUESTION 8 (5 marks)

As at May 29, 2001, can Luc Poulin exercise a hypothecary recourse with respect to the personal watercraft? If so, indicate the preliminary formalities and the time limit for the prior notice. If not, explain your answer.

SUPPLEMENTARY FACTS

On May 29, 2001, Luc Poulin instructs you to pursue the proceedings already instituted. You file an inscription for judgment by default and the judgment allowing the action is rendered on June 8, 2001.

On June 19, 2001, you examine Guy Dion with respect to his property and claims in accordance with the provisions of article 543 of the *Code of Civil Procedure* and you learn the following :

- Guy Dion has a job with a good salary, but he lives in a furnished dwelling and his only two assets are the automobile purchased from Luc Poulin on May 20, 2000 and a parcel of land he inherited from his mother. This parcel of land which is located in the countryside has a value of \$15,000.
- Guy Dion does not have any debts other than the judgment rendered in favour of your client and \$4,000 of tax arrears owed to the Minister of Revenue of Quebec.

QUESTION 9 (5 marks)

Assuming that a sale by bailiff were to take place on June 19, 2001 in execution of a seizure of movable property carried out upon an application by your client, indicate how the proceeds of the sale of the automobile would be distributed. You may assume the following :

- **the automobile would be sold for \$8,000;**
- **all interested parties would duly assert their rights;**
- **no one would allege the insolvency of Guy Dion;**
- **the total amount of the legal costs and expenses incurred in the common interest would be \$1,000 and would be collocated in first place, as indicated in the answer booklet.**

SUPPLEMENTARY FACTS

Ultimately, Guy Dion's automobile is not seized. Indeed, on June 20, 2001, your client learns that the automobile was stolen the preceding night and that it was not insured. He instructs you to put the file on hold because he has to leave the country again on a business trip.

On November 29, 2001, your client meets with you and informs you that he would like to have the parcel of land inherited by Guy Dion seized. At his request, you consult the land register that same day and notice the following :

- Guy Dion inherited the parcel of land on January 10, 2001 and, on that date, the parcel of land was not hypothecated.
- On June 22, 2001, *Banque Financière* granted Guy Dion a loan of \$9,000. The repayment of this loan is secured by an immovable hypothec published the same day and charged against Guy Dion's parcel of land.
- On August 31, 2001, *Banque Financière* duly published a prior notice of the exercise of a hypothecary recourse for sale by judicial authority of the hypothecated parcel of land, in which notice it alleged that Guy Dion failed to perform the obligations set forth in the hypothecary loan agreement.

After some verification, you learn that on November 27, 2001 *Banque Financière* obtained a judgment ordering the forced surrender of Guy Dion's parcel of land and fixing the reserve price as well as all the conditions of an auction sale by judicial authority. The sale by judicial authority will take place on January 14, 2002.

QUESTION 10 (5 marks)

Assuming that Guy Dion's parcel of land were seized on November 29, 2001 upon an application by Luc Poulin, could *Banque Financière* oppose the seizure?

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

SUPPLEMENTARY FACTS

Given *Banque Financière*'s intention to carry out a sale by judicial authority, your client decides not to have Guy Dion's parcel of land seized. On or about December 1, 2001, Luc Poulin hears that Guy Dion remedied all the defaults mentioned in the prior notice of the exercise of a hypothecary recourse given by *Banque Financière* as well as the subsequent defaults and that he paid all the expenses incurred by *Banque Financière*. He asks you to verify this information. You consult the land register on December 3, 2001 and learn that *Banque Financière*'s prior notice of the exercise of a hypothecary recourse was in fact cancelled on November 30, 2001. You provide this information to your client and he instructs you to have Guy Dion's parcel of land seized. The seizure is carried out on December 4, 2001 and the minutes of seizure are duly registered in the land register on the same day.

Today, December 12, 2001, you consult the land register again and you notice that on December 10, 2001 the Minister of Revenue of Quebec duly published a legal hypothec affecting Guy Dion's parcel of land in order to secure payment of the amount of \$4,000 due for arrears of income taxes.

QUESTION 11 (10 marks)

- a) **Assuming that the parcel of land were validly sold by the sheriff on December 12, 2001 in execution of the seizure of an immovable made on December 4, 2001 pursuant to Luc Poulin's application, upon the distribution of the proceeds of sale, would Luc Poulin's claim rank before or after the claim of *Banque Financière* whose hypothec was published on June 22, 2001? Explain your answer.**

You may assume that all interested parties would duly assert their rights and that no one would allege the insolvency of Guy Dion.

- b) **Assuming that the parcel of land were validly sold by the sheriff on December 12, 2001 in execution of the seizure of an immovable made on December 4, 2001 pursuant to Luc Poulin's application, upon the distribution of the proceeds of sale, would Luc Poulin's claim rank before or after the claim of the Minister of Revenue of Quebec whose legal hypothec was published on December 10, 2001?**

You may assume that all interested parties would duly assert their rights and that no one would allege the insolvency of Guy Dion.

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

CORRIGÉ
CIVIL II - EXAMEN RÉGULIER
 12 décembre 2001

DOSSIER 1 (45 POINTS)

QUESTION 1 (45 points)

Contenu juridique : 30 points Techniques de rédaction : 15 points

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

CANADA

PROCÉDURE ALLÉGÉE

PROVINCE DE QUÉBEC
 DISTRICT DE MONTRÉAL

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

1. 1

NO

NORMAND DUMOUCHEL, domicilié et résidant au 24, rue Willowtree, Rosemère, district de Terrebonne, (Province de Québec), J0R 2K7.

demandeur

c.

DANIELLE SENÉCAL, résidant au 4432, rue Henri-Julien, Montréal, district de Montréal, (Province de Québec), H2W 6M8

2. 2

défenderesse

et

DREW GARDNER, résidant au 155, avenue Limoges, Ville St-Laurent, district de Montréal, (Province de Québec), H7G 8B3

défendeur

Description complète des parties

3. 1

Aucune autre partie ajoutée

4. 1

DÉCLARATION

5. 1

AU SOUTIEN DE SON ACTION, LE DEMANDEUR EXPOSE :

6. 1

1. Le 16 janvier 2001, Château Enchanté inc. a conclu un contrat d'entreprise avec Rénovation Commerciale inc. pour la rénovation d'un local commercial situé au 1622, rue Mont-Royal Est, Montréal, tel qu'il appert du contrat, pièce P-1;

7. 2

2. Aux termes du contrat, pièce P-1, Château Enchanté inc. s'engageait à payer à Rénovation Commerciale inc. la somme de 48 000 \$, taxes incluses, pour ces travaux;

8. 2

3. Le 16 janvier 2001, le demandeur et les défendeurs sont intervenus au contrat, pièce P-1, pour se porter cautions solidaires des obligations de Château Enchanté inc. envers Rénovation Commerciale inc.;

9. 2

4. Château Enchanté inc. a fait défaut de payer le solde dû pour ces travaux, soit la somme de 36 000 \$ (tel qu'il appert de l'état de compte, pièce P-2);

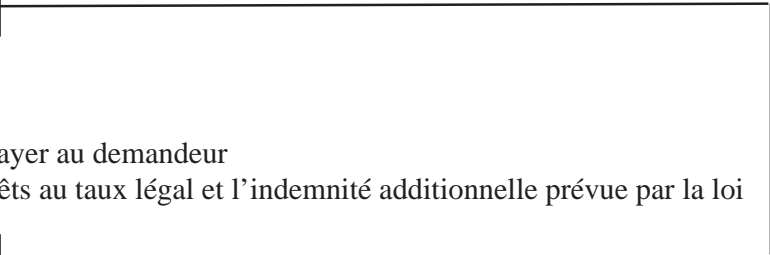
10. 1

(5. Le 4 juillet 2001, le demandeur a reçu une lettre de mise en demeure de Rénovation Commerciale inc., par laquelle elle réclame le solde dû, tel qu'il appert de la lettre de mise en demeure datée du 3 juillet 2001, pièce P-3);

- 6. Château Enchanté inc. est insolvable (ayant fait cession de ses biens le 28 septembre 2001, tel qu'il appert de l'avis de la première assemblée des créanciers, pièce P-4); 11. 2
- 7. Le 15 octobre 2001, le demandeur a payé la somme de 33 000 \$ à Rénovation Commerciale inc. en règlement final de toutes les obligations de Château Enchanté inc. en vertu du contrat, pièce P-1, tel qu'il appert du document de transaction, pièce P-5; 12. 2
- 8. Le demandeur est en droit de réclamer de chacun des défendeurs, la somme de 11 000 \$, qui représente leur part en vertu du cautionnement contenu au contrat, pièce P-1; 13. 1
- 9. Bien que dûment requis de payer par lettre de mise en demeure du 26 novembre 2001, signifiée le même jour, tel qu'il appert d'une copie de cette lettre et des procès-verbaux de signification, pièce P-6, les défendeurs refusent ou négligent de le faire. 14. 2

POUR CES MOTIFS, PLAISE AU TRIBUNAL :

CONDAMNER la défenderesse à payer au demandeur 15. 2
la somme de 11 000 \$ avec intérêts au taux légal et l'indemnité additionnelle prévue par la loi 16. 2

à compter du 11 décembre 2001;  17. 1

CONDAMNER le défendeur à payer au demandeur 18. 2
la somme de 11 000 \$ avec intérêts au taux légal et l'indemnité additionnelle prévue par la loi 19. 2

à compter du 11 décembre 2001;

Le tout avec dépens.

TECHNIQUES DE RÉDACTION (15 points)

Allégation de plus d'un fait par paragraphe :

Aucune allégation **1 point**

Une allégation **0 point**

20. 1

Allégation non pertinente ou erronée :

Aucune allégation **4 points**

Une allégation **3 points**

Deux allégations **2 points**

Trois allégations **1 point**

Quatre allégations **0 point**

21. 4

**Conclusion non pertinente
OU non fondée**

Aucune conclusion **1 point**

Une conclusion **0 point**

22. 1

Référence aux pièces pertinentes

- Contrat d’entreprise du 16 janvier 2001
 - (• État de compte)
 - (• Lettre de mise en demeure du 3 juillet 2001)
 - (• Avis de la première assemblée des créanciers)
 - Document de transaction du 15 octobre 2001
 - Lettre de mise en demeure du 26 novembre 2001 et procès-verbaux
23. 1

Aucune référence à une pièce non pertinente

24. 1

Cote des pièces : P

25. 1

Qualité de l’expression écrite :

**utilisation du langage juridique approprié; la concision et la précision
des allégations; l’absence de confusion ou de contradiction dans les
allégations; des phrases complètes; un style non télégraphique.**

- Aucun manquement** **6 points**
- Un manquement** **5 points**
- Deux manquements** **4 points**
- Trois manquements** **3 points**
- Quatre manquements** **2 points**
- Cinq manquements** **1 point**
- Six manquements** **0 point**
26. 6

DOSSIER 2 (25 POINTS)

QUESTION 2 (5 points)

Dans les circonstances, que conseillez-vous à André Mathieu?

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

- a) André Mathieu peut refuser l'offre de paiement de 625,33 \$ et retenir le véhicule jusqu'à ce qu'il ait reçu la somme de 776,35 \$.
- b) André Mathieu doit accepter sous protêt le paiement de 625,33 \$, remettre le véhicule et réclamer le solde de la facture par la suite.
- c) André Mathieu peut accepter le paiement de 625,33 \$ et retenir le véhicule jusqu'à ce qu'il ait reçu le paiement du solde de la facture.
- d) André Mathieu doit accepter la somme de 625,33 \$ comme paiement final et remettre le véhicule.
- e) André Mathieu doit remettre le véhicule, mais il peut refuser le paiement de 625,33 \$ et réclamer la somme de 776,35 \$ par la suite.

Réponse : d) André Mathieu doit accepter la somme de 625,33 \$ comme paiement final et remettre le véhicule (art. 171 ET 179 par. b) *L.p.c.*) 27. 5

QUESTION 3 (5 points)

André Mathieu est-il tenu de payer une somme d'argent à Gérald Laguë? Le cas échéant, combien doit-il payer?

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

Oui, 11 000 \$, art. 1724 *C.c.Q.* (et art. 1590, 1458, 1607, 1611, 1613, 1716, 1719 *C.c.Q.*) 28. 5

QUESTION 4 (5 points)

André Mathieu pourra-t-il reprendre possession du logement occupé par Suzanne Rolland à l'expiration du bail en cours s'il lui fait parvenir, avant la fin du mois de décembre 2001, un avis contenant toutes les mentions prévues par la loi?

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

- a) Non, parce qu'il est trop tard pour donner un avis de reprise de possession.
- b) Non, parce que Sophie Mathieu n'est pas une descendante au premier degré d'André Mathieu.
- c) Oui, parce que les règles particulières au bail d'un logement ne s'appliquent pas à ce bail.
- d) Oui, parce que les conditions posées pour la reprise de possession d'un logement sont respectées.
- e) Aucune de ces réponses.

Réponse : a) Non, parce qu'il est trop tard pour donner un avis de reprise de possession. (art. 1941, 1960 *C.c.Q.*) 29. 5

QUESTION 5 (5 points)

En date du 12 décembre 2001, André Mathieu peut-il s'acquitter des obligations qui résultent du cautionnement en payant une somme inférieure à 4 000 \$ et, le cas échéant, combien doit-il payer?

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

1. Oui, 2 250 \$, art. 1679 C.c.Q.

OU

Oui, 2 250 \$, art. 2353 ET 1672 C.c.Q. ou art. 2353 ET 1673 C.c.Q.

1. 5 pts

30.

OU

2. Oui, 2 250 \$, art. 1672 ou 1673 C.c.Q.

2. 3 pts

QUESTION 6 (5 points)

L'assureur peut-il retenir, en réduction de la prestation d'assurance, la totalité ou une partie du montant des primes impayées par *Forage Mathieu inc.*?

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

- a) L'assureur ne peut rien retenir en réduction de la prestation d'assurance parce qu'il n'a jamais informé André Mathieu du défaut de paiement des primes.
- b) L'assureur ne peut rien retenir en réduction de la prestation d'assurance parce qu'il s'agit d'un contrat d'assurance collective.
- c) L'assureur peut retenir 20 000 \$ représentant le montant des primes impayées à ce jour.
- d) L'assureur peut retenir seulement 5 000 \$ représentant le montant de la prime échue et impayée lors du décès de Pierre Mathieu.
- e) Aucune de ces réponses.

Réponse : b) L'assureur ne peut rien retenir en réduction de la prestation d'assurance parce qu'il s'agit d'un contrat d'assurance collective.

31.

DOSSIER 3 (30 POINTS)

QUESTION 7 (5 points)

En date du 28 mai 2001, Luc Poulin est-il tenu d'accepter l'offre de Guy Dion? Dites pourquoi.

Non, le contrat renferme une clause de déchéance du bénéfice du terme, ce qui rend l'obligation immédiatement exigible (art. 1515 C.c.Q.).

OU

Non, parce que Luc Poulin a intenté une action personnelle et non pas un recours hypothécaire.

32.

OU

Non, parce que le créancier n'est pas tenu d'accepter un paiement partiel (art. 1561 al. 2 C.c.Q.)

QUESTION 8 (5 points)

En date du 29 mai 2001, Luc Poulin peut-il exercer un recours hypothécaire relativement à la moto-marine? Si oui, indiquez les formalités préalables et le délai du préavis. Si non, dites pourquoi.

Non, parce que cette hypothèque (qui ne peut pas être inscrite sur une fiche établie sous la description du bien) n'a pas été conservée au moyen de l'avis prévu par la loi (principe de l'art. 2700 C.c.Q.).

33.

QUESTION 9 (5 points)

Dans l'hypothèse où une vente par huissier serait faite le 19 juin 2001 en exécution d'une saisie mobilière pratiquée à la demande de votre client, indiquez comment serait distribué le produit de la vente de l'automobile. Tenez pour acquis ce qui suit :

- l'automobile serait vendue 8 000 \$;
- tous les intéressés feraient dûment valoir leurs droits;
- personne n'alléguerait la déconfiture de Guy Dion;
- le coût total des frais de justice et des dépenses faites dans l'intérêt commun s'élèverait à la somme de 1 000 \$ et serait colloqué au premier rang, tel qu'indiqué au cahier des réponses.

Frais de justice et dépenses faites dans l'intérêt commun / <i>Legal costs and expenses incurred in the common interest</i>	1 000 \$
Luc Poulin :	7 000 \$ (art. 2651, par. 2 C.c.Q.)

34.

QUESTION 10 (5 points)

Dans l'hypothèse où le terrain de Guy Dion serait saisi le 29 novembre 2001 à la demande de Luc Poulin, Banque Financière pourrait-elle s'opposer à cette saisie?

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

Non, art. 604 C.p.c. (et 678 C.p.c.)

35.

QUESTION 11 (10 points)

- a) Dans l'hypothèse où le terrain serait valablement vendu par le shérif, le 12 décembre 2001, en exécution de la saisie immobilière pratiquée à la demande de Luc Poulin le 4 décembre 2001, la créance de Luc Poulin prendrait-elle rang, lors de la distribution du produit de la vente, avant ou après celle de *Banque Financière* dont l'hypothèque a été publiée le 22 juin 2001? Dites pourquoi.

Tenez pour acquis que tous les intéressés feraient dûment valoir leurs droits et que personne n'alléguerait la déconfiture de Guy Dion.

La créance de Luc Poulin prendrait rang après la créance de *Banque Financière* parce que *Banque Financière* détient une hypothèque.

OU

La créance de Luc Poulin prendrait rang après la créance de *Banque Financière* parce que Luc Poulin est un créancier ordinaire quant à l'immeuble.

36.

5

- b) Dans l'hypothèse où le terrain serait valablement vendu par le shérif le 12 décembre 2001 en exécution de la saisie immobilière pratiquée à la demande de Luc Poulin le 4 décembre 2001, la créance de Luc Poulin prendrait-elle rang, lors de la distribution du produit de la vente, avant ou après celle du ministre du Revenu du Québec dont l'hypothèque légale a été publiée le 10 décembre 2001?

Tenez pour acquis que tous les intéressés feraient dûment valoir leurs droits et que personne n'alléguerait la déconfiture de Guy Dion.

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

La créance de Luc Poulin prendrait rang avant la créance du ministre du Revenu du Québec, art. 2958 *C.c.Q.*

37.

5
