



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

CIVIL II

October 30, 2002

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

FILE 1 (40 MARKS)

Your articling supervisor, M^e Louis Plouffe, of the firm Castonguay, Lafontaine, provides you with the notes taken during his meeting with Jean Bergeron, the manager of *Financement Industriel ltée*, his client.

NOTES FROM THE MEETING OF OCTOBER 29, 2002 WITH JEAN BERGERON

- *Financement Industriel ltée* (« *FIL* »), company specializing in the financing of industrial equipment.
- 12 Sep. 01: *FIL* loaned \$105,000 to *Bain de Mer inc.* (« *BMI* ») at an interest rate of 8 % per year, repayable in 60 monthly instalments of \$2,123.10 as of 12 Oct. 01.
- *BMI* borrowed this amount to purchase certain equipment needed to manufacture bathtubs using a new process.
- To secure the repayment of the loan, *BMI* hypothecated the following items of property in favour of *FIL* :
 - a *Hybat*-make computerized hydraulic press, model 1200, serial no. 426A56;
 - a *Sentro*-make dryer, model 450, serial no. 73579.
- 27 May 02: service by *FIL* of a prior notice of the exercise of a hypothecary right of sale by judicial authority to *BMI* because of failure to pay the instalment of 12 May 02 and discontinuance of *BMI*'s activities; balance of loan \$95,049; prior notice signed on 24 May 02 by Julie Dion, lawyer for *FIL*.
- 28 May 02: registration of prior notice in the RPMRR under no. 02-0156987-0001.
- 22 July 02: judgment rendered by judge Laurette Harvey of the Superior Court of the district of Joliette in file no. 705-05-004681-028 granting the motion for forced surrender for sale by judicial authority and fixing the conditions of sale.

Judgment:

- Confirms the existence of *FIL*'s claim, *BMI*'s default and the refusal to surrender;
- Orders *BMI* to surrender the press and the dryer (described at length) in favour of *FIL* within 10 days after service of the judgment so that they may be sold separately by judicial authority by means of a call for tenders by invitation;
- Designates Guy Bibeau, bailiff, to sell the items of property by judicial authority and fixes his remuneration at \$75 per hour plus disbursements and applicable taxes;
- Fixes the reserve price for the press at \$80,000 plus applicable taxes and for the dryer at \$15,000 plus applicable taxes;
- Allows Bibeau to sell the items of property within 90 days after the date of the judgment.

- *FIL* obtained possession of the hypothecated items of property and Guy Bibeau filed his report, dated 23 Oct. 02, in the court record on 25 Oct. 02.
- 18 Oct. 02: Bibeau sold the dryer to *Peinture Plus inc.* for \$15,500 plus taxes (the highest bid).
- Bibeau received only one bid for the press, namely a bid from *Produits Côté inc.*, dated 15 Oct. 02, for an amount of \$72,000 plus applicable taxes and therefore did not sell it.
- His report indicates that it is impossible to sell the press at a price higher than \$72,000 because the model is rare and is for specialized use and the press has an operating defect.
- Given the operating defect, in April of 2002 *BMI* instituted an action for damages against *Kowitan*, the vendor of the press, claiming \$200,000 from it.
- The report states that Bibeau sent the call for tenders document with a detailed description of the items of property to all the firms in the province that might be interested in the press. *Produits Côté inc.* is the only firm which submitted a bid.
- Bibeau states in his report that after having contacted the representative of *Produits Côté inc.*, he obtained written confirmation, dated 22 Oct. 02, that the bid would be valid until 29 Nov. 02.
- Client wants the press to be sold at this price, by mutual agreement, in order to avoid making another unnecessary call for tenders.
- Balance owed to *FIL* by *BMI* has not decreased since the prior notice.
- *FIL* aware it will suffer major loss, but given situation, believes it to be illusory to think about selling the press at a higher price, even if the valuation annexed to Bibeau's report establishes its market value at \$85,000.
- Mandate from client: prepare the appropriate written proceeding in order for Guy Bibeau to be authorized to sell the press under judicial authority, by mutual agreement, at a price of \$72,000 plus applicable taxes to *Produits Côté inc.*, with the same remuneration for Bibeau.

M^e Plouffe asks you to prepare the motion for new instructions under article 909 of the *Code of Civil Procedure* in order to fully satisfy this new client. Given that she was appointed a judge of the Federal Court, the former lawyer, Julie Dion, closed the office where she had practised on her own. All the formalities necessary in order for the firm of Castonguay, Lafontaine to represent the client have been duly met.

Documents in the file :

- Loan agreement signed in Montreal on September 12, 2001.
- Deed of movable hypothec without delivery signed in Montreal on September 12, 2001.
- Copy of the declaration in the case of *Bain de Mer inc.* versus *Kowitan inc.* in file no. 500-05-008079-023.
- Prior notice of the exercise of a hypothecary right of sale by judicial authority signed by Julie Dion, lawyer for *Financement Industriel ltée*, in Montreal on May 24, 2002 with certificate of service to *Bain de Mer inc.* dated May 27, 2002.
- Judgment dated July 22, 2002 in file no. 705-05-004681-028.
- Report from Guy Bibeau dated October 23, 2002 to which is annexed the valuation report regarding the press.
- Offer to purchase the press by *Produits Côté inc.* dated October 15, 2002.
- Contract of sale of the dryer to *Peinture Plus inc.* dated October 18, 2002.
- Letter from *Produits Côté inc.* dated October 22, 2002.

Addresses :

- *Financement Industriel ltée* : 4626 Hogues Street, Suite 312, Montreal, district of Montreal, H3W 5F6 (head office and sole place of business).
- *Bain de Mer inc.* : 2135 Sacré-Coeur Street, Joliette, district of Joliette, J6E 3P4 (head office and sole place of business).
- Guy Bibeau : 826 Sabine Street, Montreal, district of Montreal, H3P 7V9 (domicile, residence and place of business).
- *Produits Côté inc.* : 698 Saint-Denis Street, Thetford Mines, district of Frontenac, G6G 3Y3 (head office and sole place of business).

QUESTION 1 (40 marks)**Legal content : 25 marks****Drafting techniques : 15 marks**

Complete the drafting of the MOTION FOR NEW INSTRUCTIONS under article 909 of the Code of Civil Procedure (heading, 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 (30 MARKS)

André Dubeau, president and sole shareholder of *Meubles Du-Bo inc.*, consults you today, October 30, 2002, and relates the following six problems to you.

Problem 1

Meubles Du-Bo inc. operates a furniture manufacturing business and urgently requires a compressor.

On October 10, 2002, *Meubles Du-Bo inc.* purchases a used compressor for an amount of \$20,000 from *Compresseurs international inc.* *Compresseurs international inc.*, whose president is Frédéric Lesage, is a firm specializing in the sale of new and used compressors.

At the time of the sale, Frédéric Lesage explains to André Dubeau that the compressor's motor has to be replaced, otherwise the machine is unusable.

André Dubeau knows nothing about mechanics. He thinks he will easily find a reconditioned motor for \$1,000 from his usual supplier. Therefore, he does not discuss the repair with the salesman.

After the purchase, *Meubles Du-Bo inc.* takes steps to have the compressor repaired. To André Dubeau's great surprise, the estimate is \$5,000 and the delivery time for the rebuilt motor is six weeks which will result in lost profits of \$9,000 for *Meubles Du-Bo inc.*

Meubles Du-Bo inc. would not have paid \$20,000 for the compressor if it had known the high cost of the repair and the delivery time for the rebuilt motor.

QUESTION 2 (5 marks)

Based on the legal warranty, can *Meubles Du-Bo inc.* claim a sum of money from *Compresseurs international inc.*? Explain your answer.

Problem 2

Before September 17, 2002, the shareholders of *Meubles Du-Bo inc.* were André Dubeau and René Borduas. Each shareholder had taken out life insurance of \$250,000 with *La Sécurité, compagnie d'assurances*, the beneficiary being *Meubles Du-Bo inc.*

René Borduas died on September 17, 2002 of generalized cancer. The insurance proposal signed by René Borduas is dated June 12, 2000 and the policy was issued on June 23, 2000, the date on which the first premium was paid. Thereafter, the premiums were always paid on time.

René Borduas, who had always been in good health, underwent routine medical examinations on June 15, 2000. On June 21, 2000, René Borduas learned that he had prostate cancer. Acting in good faith, he did not inform the insurer because he did not think it was necessary to do so. For this reason, the insurer has refused to pay the insurance proceeds.

QUESTION 3 (5 marks)

Is the refusal of *La Sécurité, compagnie d'assurances* justified?

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

Problem 3

On October 12, 2000, *Meubles Du-Bo inc.* signed the following contract with *Marco Gendron inc.*:

Meubles Du-Bo inc. lends *Marco Gendron inc.* an amount of \$30,000 without interest.

This loan shall be repaid in two equal and consecutive instalments of \$15,000 each exigible on October 12th of each year, beginning on October 12, 2001.

Marco Gendron, president of *Marco Gendron inc.*, agrees to act as solidary surety for the obligations of the borrower.

Signed in Montreal on October 12, 2000.

<u>André Dubeau</u>	<u>Marco Gendron</u>	<u>Marco Gendron</u>
Meubles Du-Bo inc.	Marco Gendron inc.	Marco Gendron, surety
Per André Dubeau, President	Per Marco Gendron, President	

Marco Gendron inc. has not paid any of the instalments provided for in the contract, it is insolvent and it would be useless to institute legal proceedings against it. Moreover, Marco Gendron, who is solvent, ceased being president of *Marco Gendron inc.* on July 1, 2002 when he sold his shares to Émilien Boisvert, the new president of *Marco Gendron inc.*

QUESTION 4 (5 marks)

What are *Meubles Du-Bo inc.*'s rights against Émilien Boisvert and Marco Gendron?

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

- Meubles Du-Bo inc.* cannot claim anything from Marco Gendron or Émilien Boisvert.
- Meubles Du-Bo inc.* can claim \$30,000 from Marco Gendron and Émilien Boisvert solidarily.
- Meubles Du-Bo inc.* can claim \$30,000 from Marco Gendron, but it cannot claim anything from Émilien Boisvert.
- Meubles Du-Bo inc.* cannot claim anything from Émilien Boisvert. With regard to Marco Gendron, it is not certain that the suretyship terminated when he ceased being president of *Marco Gendron inc.* but, if such is the case, nothing can be claimed from him.
- Meubles Du-Bo inc.* can claim \$15,000 from Émilien Boisvert and \$15,000 from Marco Gendron.

Problem 4

On August 1, 1995, *Meubles Du-Bo inc.* sells to Luc Poirier an immovable designated as being subdivision 240 of lot 1120 in the cadastre of the City of Laval, registration division of Laval. The contract provides that the selling price of \$200,000 will not bear interest and will be payable as follows: \$10,000 upon the signing of the deed of sale on August 1, 1995 and \$10,000 on August 1st of each year, beginning on August 1, 1996 until payment in full.

The contract of sale, which was duly published on August 2, 1995, includes the following clause, among others: « This sale may be resolved at the vendor's request if the purchaser fails to perform any of the obligations set forth herein.»

The August 1, 2002 instalment has not been paid notwithstanding Luc Poirier's repeated promises to do so.

QUESTION 5 (5 marks)

Can *Meubles Du-Bo inc.* demand the resolution of the sale, in view of the purchaser's failure to perform its obligations? Explain your answer.

Problem 5

In the course of its business activities, *Meubles Du-Bo inc.* restores antique furniture. On September 16, 2002, Chloé Lamothe entrusts *Meubles Du-Bo inc.* with the restoration of an antique dresser she has just purchased to furnish her new apartment. It is agreed that the restoration will be finished on October 18, 2002 and that Chloé Lamothe will be able to take delivery of her dresser after that date. The restoration contract signed by the parties contains, among other sections, section 3 which reads as follows: « *Meubles Du-Bo inc.* shall not have any liability in case of damage caused to the property entrusted to it for restoration purposes. »

The restoration of the dresser is finished on October 15, 2002. During the night of October 15 and 16, 2002, a storm breaks out and the dresser stored in *Meubles Du-Bo inc.*'s warehouse is destroyed by water having seeped in through the roof. Water infiltration had already occurred once two weeks earlier and *Meubles Du-Bo inc.* had signed a contract with a contractor for the complete recovering of the warehouse's roof. Given that the contractor was unable to begin its work before October 18, 2002, André Dubeau himself had performed a temporary repair. This repair proved to be inadequate given that it did not stand up to the storm. Despite the fact that the water infiltration is the result of André Dubeau's acts, it is clear that he did not commit a gross or intentional fault.

QUESTION 6 (5 marks)

Does section 3 of the contract allow *Meubles Du-Bo inc.* to refuse to compensate Chloé Lamothe?

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

Problem 6

On September 20, 2002, *Meubles Du-Bo inc.* purchases cherry wood boards from *Abitibi Planches inc.* intended for the manufacture of furniture. The boards are delivered the same day. The selling price of \$5,000 is payable within 30 days following the delivery.

On September 25, 2002, *Abitibi Planches inc.* assigns this account receivable to *La Maison de la Finance inc.* for an amount of \$4,500. On September 30, 2002, *Meubles Du-Bo inc.* is served with a copy of this assignment of claim.

On October 1, 2002, *Meubles Du-Bo inc.* sells office furniture to *Abitibi Planches inc.* and the delivery is made on October 2, 2002. The selling price of \$7,000 is payable within 10 days after the delivery.

On October 25, 2002, *Meubles Du-Bo inc.* receives a demand letter in which *La Maison de la Finance inc.* claims \$5,000 from it, representing the selling price of the boards purchased on September 20, 2002.

André Dubeau informs you that *Meubles Du-Bo inc.* did not pay this debt, because it never received payment for the furniture it sold to *Abitibi Planches inc.*

QUESTION 7 (5 marks)

Can *Meubles Du-Bo inc.* refuse to pay *La Maison de la Finance inc.* solely on the ground that *Abitibi Planches inc.* owes it a larger amount? Explain your answer.

FILE 3 (30 MARKS)

Claude Gervais, manager of *Banque Financière* consults you today, October 30, 2002, regarding four problems.

Problem 1

Problem 1 described in File 3 is an evolving situation: all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.

On June 1, 1995, *Banque Financière* lends \$125,000 to Pierre Lagacé. The repayment of this loan is secured by a hypothec published the same day against lot 1 555 222 of the cadastre of Québec on which the borrower's residence, located at 1122 Notre-Dame Street East in Montreal, is erected.

On May 6, 1996, Pierre purchases lot 1 234 789 of the cadastre of Québec. This parcel of land is contiguous to lot 1 555 222 which Pierre already owns and he purchases it in order to expand his backyard.

During the summer of 1996, Pierre has major landscaping work performed in his backyard and installs an in-ground swimming pool and a garden shed on lot 1 234 789.

The in-ground swimming pool cannot not be removed or moved because of its dimensions and the material used for its construction. The garden shed is a prefabricated model and could therefore be transported, although the landscaping makes it impossible to use heavy machinery.

Claude Gervais is reviewing Pierre's file because his loan will be coming due shortly and he questions you regarding the scope of *Banque Financière's* hypothec.

QUESTION 8 (5 marks)

From among the following statements, select the one that is correct as at October 30, 2002 and write it in your answer booklet :

- a) Lot 1 234 789, the swimming pool and the garden shed are hypothecated in favour of *Banque Financière* because the hypothec extends to everything united to the hypothecated property by accession.
- b) Lot 1 234 789 and the swimming pool are hypothecated in favour of *Banque Financière* because the hypothec extends to everything united to the hypothecated property by accession; however, the garden shed is not hypothecated because it is not an immovable.
- c) Lot 1 234 789 is hypothecated in favour of *Banque Financière* because the hypothec extends to everything united to the hypothecated property by accession.
- d) Lot 1 234 789, the swimming pool and the garden shed are not hypothecated in favour of *Banque Financière*.
- e) None of the above.

SUPPLEMENTARY FACTS

On October 10, 2002, Pierre signs a \$15,000 contract with *Menuiserie Moderne ltée* for the complete renovation of the kitchen in the residence

On October 29, 2002, Pierre meets with Claude Gervais to ask *Banque Financière* to grant him a loan in order to pay the contractor.

During this meeting, Pierre Lagacé offered to guarantee the repayment of the loan sought from *Banque Financière* by means of a hypothec on a legacy he should be receiving soon. Indeed, his uncle who passed away on October 1, 2002 bequeathed \$15,000 to him and the liquidator of the succession has told him that he will be able to pay the legacy before Christmas. The relevant clause in the will, a copy whereof was provided to Claude Gervais, reads as follows : « I bequeath an amount of \$15,000 to my nephew Pierre Lagacé ».

QUESTION 9 (10 marks)

- a) **Can Pierre Lagacé grant a hypothec without delivery on the legacy in favour of *Banque Financière*? Explain your answer.**
- b) **Can Pierre Lagacé grant a hypothec with delivery on the legacy in favour of *Banque Financière*? Explain your answer.**

Problem 2

On February 4, 2002, *Banque Financière* lends \$40,000 to *Econocopie inc.* which operates a photocopying business.

The repayment of this loan is secured by a hypothec on the following property :

- Machine number 1 : An Easy-make photocopier, colour model, serial number CO-3456 (hereinafter referred to as machine number 1)
- Machine number 2 : An Easy-make photocopier, classic model, serial number CL-9865 (hereinafter referred to as machine number 2)

On August 2, 2002, *Econocopie inc.* goes out of business due to persistent financial difficulties.

On August 3, 2002, Claude Gervais goes to *Econocopie inc.*'s place of business. He sees that machine number 2 is not there and, notwithstanding all his efforts, he is unable to find it.

On August 9, 2002, Claude Gervais instructs you to take the remaining machine in payment, namely machine number 1.

All the preliminary formalities for the taking in payment are duly fulfilled and on September 20, 2002 you obtain a judgment for the forced surrender and taking in payment of machine number 1.

Banque Financière takes possession of the machine in the following days and sells it on October 25, 2002 for an amount of \$15,000.

On October 29, 2002, Claude Gervais learns that machine number 2 is currently located in the place of business of *Copies pas chère inc.* which purchased it on July 25, 2002 without *Banque Financière* having been informed thereof. This sale was not carried out in the ordinary course of business of *Econocopie inc.* The selling price is equal to the market value of machine number 2, namely \$25,000, and was paid in full on the day of the sale. This amount was used by *Econocopie inc.* to pay various suppliers and arrears of salary.

QUESTION 10 (5 marks)

Is machine number 2 still hypothecated in favour of *Banque Financière*? Explain your answer.

Problem 3

Lise Drouin has to leave the country for two years as of June 17, 2002. On the eve of her departure, she signs the following contract with Gilles Mercier, a professor employed by the Commission scolaire de Montréal :

Lise Drouin sells to Gilles Mercier her 2001 Toyota automobile, Classic model, serial number: 2G5PL85RTCD140874.

This sale is made for a price of \$25,000. As security for the payment of the selling price, the vehicle shall remain pledged in the possession of Lise Drouin's mother, Huguette Palardy, until payment in full.

Montreal, June 16, 2002

Lise Drouin
Lise Drouin

Gilles Mercier
Gilles Mercier

On June 17, 2002, Gilles Mercier meets with Claude Gervais to obtain a loan from *Banque Financière* in order to pay for the vehicle. He tells Claude Gervais that he already has \$5,000 and *Banque Financière* agrees to lend him \$20,000. The repayment of this loan is secured by a movable hypothec without delivery on the vehicle. This hypothec is published on the same day.

The loan is disbursed by means of a \$20,000 cheque payable jointly to the order of Gilles Mercier and Lise Drouin.

On June 18, 2002, Gilles Mercier endorses the cheque and mails it to Lise Drouin with a letter in which he promises to pay the balance of the price before the end of the month. In the letter, he asks for the authorization to immediately take possession of the vehicle.

On June 26, 2002, Lise Drouin cashes the \$20,000 cheque after having endorsed it and authorizes her mother to deliver the vehicle to Gilles Mercier.

On October 29, 2002, Claude Gervais learns the following:

- Gilles Mercier never paid the balance of the selling price and Lise Drouin obtained a judgment ordering him to pay the amount of \$5,000 plus interest and costs;
- Lise Drouin caused the vehicle described in the contract of June 16, 2002 to be seized and it will be sold by judicial sale very shortly;
- Gilles Mercier's only two debts are those owed to Lise Drouin and *Banque Financière*.

QUESTION 11 (5 marks)

Does *Banque Financière*'s claim rank before or after Lise Drouin's claim?

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

Problem 4

Monte-Charge inc. is a firm specializing in the sale and installation of elevators. The elevators it has in inventory are sold to it on credit by the manufacturer *Myo inc.* The payment of the selling price of these elevators is secured by a movable hypothec without delivery charged against the universality of the current and future elevators forming part of *Monte-Charge inc.*'s inventory. This hypothec was duly published on February 26, 1999.

On June 6, 2002, *Banque Financière* signs a contract with *Monte-Charge inc.* for the supply and installation of a MYO-make elevator in its building.

On June 14, 2002, *Myo inc.* informs *Banque Financière* in writing of the existence of the hypothec published on February 26, 1999.

The work begins on June 28, 2002 and ends on July 30, 2002. *Banque Financière* pays the contractor on September 5, 2002.

Claude Gervais learned yesterday that *Monte-Charge inc.* failed to abide by its undertakings in favour of *Myo inc.* He also learned that on October 25, 2002, *Myo inc.* registered its hypothec against *Banque Financière*'s immovable pursuant to article 2796 of the *Civil Code of Québec*.

QUESTION 12 (5 marks)

Can *Banque Financière* apply to a court for an order to cancel the hypothec registered against its immovable on October 25, 2002 by *Myo inc.*?

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

CORRIGÉ
CIVIL II - EXAMEN RÉGULIER
 30 octobre 2002

DOSSIER 1 (40 POINTS)

QUESTION 1 (40 points)

Contenu juridique : 25 points Techniques de rédaction : 15 points

Complétez la rédaction de la REQUÊTE POUR NOUVELLES INSTRUCTIONS en vertu de l'article 909 du Code de procédure civile (en-tête, 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

PROVINCE DE QUÉBEC
 DISTRICT DE JOLIETTE

C O U R S U P É R I E U R E

No : 705-05-004681-028

FINANCEMENT INDUSTRIEL LTÉE
 requérante

c.

1. 2

BAIN DE MER INC.
 intimée

Absence de description complète des parties

2. 1

Aucune autre partie ajoutée

3. 1

REQUÊTE POUR NOUVELLES INSTRUCTIONS
 (Art. 909 C.p.c.)

À L'UN DES JUGES DE LA COUR SUPÉRIEURE SIÉGEANT EN CHAMBRE DE PRATIQUE
 DANS LE DISTRICT DE JOLIETTE, LA REQUÉRANTE EXPOSE :

4. 1

1. Le 22 juillet 2002, un jugement a été rendu dans la présente cause autorisant la vente sous contrôle de justice par appel d'offres de biens meubles hypothéqués par l'intimée en faveur de la requérante, tel qu'il appert du dossier de la cour ;

5. 2

2. Ce jugement autorise entre autres la vente d'une presse décrite aux conclusions de la présente requête à un prix de 80 000 \$ plus les taxes applicables, durant une période de 90 jours à compter de la date du jugement ;

6. 2

3. Guy Bibeau, huissier désigné pour procéder à cette vente, n'a pu vendre la presse selon les conditions fixées au jugement, tel qu'il appert de son rapport du 23 octobre 2002 produit au dossier de la cour ;

7. 1

4. Le rapport de Guy Bibeau mentionne qu'il a transmis le document d'appel d'offres avec une description détaillée des biens à toutes les entreprises de la province pouvant être intéressées par cette presse ;

8. 2

5. Guy Bibeau n'a reçu qu'une seule offre pour la presse provenant de Produits Côté inc. pour un montant de 72 000 \$ plus les taxes applicables, tel qu'il appert de l'offre d'achat datée du 15 octobre 2002, pièce R-1 ;

9. 2

6. Le rapport de Guy Bibeau indique qu'il ne pourra vendre la presse qu'à 72 000 \$(¹⁰) puisqu'il s'agit d'un modèle peu répandu, d'usage spécialisé et qu'elle est affectée d'un défaut de fonctionnement(¹¹);

10. 1

11. 1

7. Produits Côté inc. a prolongé son offre, pièce R-1, jusqu'au 29 novembre 2002, tel qu'il appert de la lettre datée du 22 octobre 2002, pièce R-2 ; 12. 2

8. La requérante demande à cette cour d'autoriser Guy Bibeau à vendre la presse sous contrôle de justice, de gré à gré, à un prix de 72 000 \$, plus les taxes applicables, à Produits Côté inc., avec la même rémunération que celle prévue au jugement. 13. 1

POUR CES MOTIFS, PLAISE AU TRIBUNAL :

AUTORISER Guy Bibeau à vendre (sous contrôle de justice), 14. 2

de gré à gré, (à Produits Côté inc.) 15. 1

d'ici le 29 novembre 2002, 16. 1

la presse hydraulique de marque Hybat, (modèle 1 200) numéro de série 426A56, 17. 1

pour un prix de 72 000 \$, plus les taxes applicables 18. 1

(FIXER la rémunération de Guy Bibeau à 75 \$ l'heure, plus les débours et les taxes applicables.)

Le tout avec dépens.

TECHNIQUES DE RÉDACTION (15 points)

Allégation de plus d'un fait par paragraphe :	Aucune allégation	<input type="radio"/>	1 point	19. <input type="text" value="1"/>
	Une allégation	<input type="radio"/>	0 point	

Allégation non pertinente ou erronée :	Aucune allégation	<input type="radio"/>	4 points	20. <input type="text" value="4"/>
	Une allégation	<input type="radio"/>	3 points	
	Deux allégations	<input type="radio"/>	2 points	
	Trois allégations	<input type="radio"/>	1 point	
	Quatre allégations	<input type="radio"/>	0 point	

Conclusion non pertinente OU non fondée	Aucune conclusion	<input type="radio"/>	1 point	21. <input type="text" value="1"/>
	Une conclusion	<input type="radio"/>	0 point	

Référence aux pièces pertinentes 2 / 2

• Offre d'achat 15 octobre 2002	<input type="radio"/>	22. <input type="text" value="1"/>
• Lettre du 22 octobre 2002	<input type="radio"/>	

Aucune référence à une pièce non pertinente 23.

Cote des pièces : R 24.

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	<input type="radio"/>	6 points	25. <input type="text" value="6"/>
Un manquement	<input type="radio"/>	5 points	
Deux manquements	<input type="radio"/>	4 points	
Trois manquements	<input type="radio"/>	3 points	
Quatre manquements	<input type="radio"/>	2 points	
Cinq manquements	<input type="radio"/>	1 point	
Six manquements	<input type="radio"/>	0 point	

DOSSIER 2 (30 POINTS)

QUESTION 2 (5 points)

Meubles Du-Bo inc. peut-elle, sur le fondement de la garantie légale, réclamer un montant d'argent de *Compresseurs international inc.*? Dites pourquoi.

Non, parce que le vice était connu de l'acheteur au moment de la vente (art. 1726 al. 2 *C.c.Q.*).

26.

QUESTION 3 (5 points)

Le refus de *La Sécurité, compagnie d'assurances* est-il justifié?

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

Non, art. 2424 al. 1 *C.c.Q.*

27.

QUESTION 4 (5 points)

Quels sont les droits de *Meubles Du-Bo inc.* contre Émilien Boisvert et Marco Gendron?

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

- a) *Meubles Du-Bo inc.* ne peut rien réclamer à Marco Gendron ni à Émilien Boisvert.
- b) *Meubles Du-Bo inc.* peut réclamer 30 000 \$ solidairement à Marco Gendron et à Émilien Boisvert.
- c) *Meubles Du-Bo inc.* peut réclamer 30 000 \$ à Marco Gendron, mais elle ne peut rien réclamer à Émilien Boisvert.
- d) *Meubles Du-Bo inc.* ne peut rien réclamer à Émilien Boisvert. Quant à Marco Gendron, il n'est pas certain que le cautionnement ait pris fin lorsqu'il a cessé d'être président de *Marco Gendron inc.* mais, si c'est le cas, rien ne peut lui être réclamé.
- e) *Meubles Du-Bo inc.* peut réclamer 15 000 \$ à Émilien Boisvert et 15 000 \$ à Marco Gendron.

Réponse : c) *Meubles Du-Bo inc.* peut réclamer 30 000 \$ à Marco Gendron, mais elle ne peut rien réclamer à Émilien Boisvert.

28.

(Vu l'art. 2364 *C.c.Q.*, peu importe que la démission ait mis fin ou non au cautionnement.)

QUESTION 5 (5 points)

Meubles Du-Bo inc. peut-elle demander la résolution de la vente, vu le défaut de l'acheteur d'exécuter ses obligations? Dites pourquoi.

Non, parce que la vente a eu lieu depuis plus de cinq ans (principe de l'article 1742 *C.c.Q.*)

29.

QUESTION 6 (5 points)

La clause 3 du contrat permet-elle à *Meubles Du-Bo inc.* de refuser d'indemniser Chloé Lamothe?

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

Non, art. 10 *L.p.c.*

30.

QUESTION 7 (5 points)

Meubles Du-Bo inc. peut-elle refuser de payer *La Maison de la Finance inc.* pour le seul motif qu'*Abitibi Planches inc.* lui doit une somme supérieure? Dites pourquoi.

Non, bien qu'il n'y ait eu aucun acquiescement à la cession de créance (art. 1680 al. 1 *C.c.Q.*), il ne peut y avoir compensation parce que la dette due par *Abitibi Planches inc.* est née après que la cession ait été rendue opposable à *Meubles Du-Bo inc.* par la signification du 30 septembre 2002 (principe de l'art. 1680 al. 2 *C.c.Q.*)

31.

DOSSIER 3 (30 POINTS)

QUESTION 8 (5 points)

Parmi les affirmations énoncées ci-après, choisissez celle qui est exacte en date du 30 octobre 2002 et écrivez-la dans votre cahier de réponses :

- a) Le lot 1 234 789, la piscine et la remise de jardin sont hypothéqués en faveur de *Banque Financière* puisque l'hypothèque s'étend à tout ce qui s'unit par accession au bien hypothéqué.
- b) Le lot 1 234 789 et la piscine sont hypothéqués en faveur de *Banque Financière* puisque l'hypothèque s'étend à tout ce qui s'unit par accession au bien hypothéqué ; cependant la remise de jardin n'est pas hypothéquée puisqu'elle n'est pas un immeuble.
- c) Le lot 1 234 789 est hypothéqué en faveur de *Banque Financière* puisque l'hypothèque s'étend à tout ce qui s'unit par accession au bien hypothéqué.
- d) Le lot 1 234 789, la piscine et la remise de jardin ne sont pas hypothéqués en faveur de *Banque Financière*.
- e) Aucune de ces réponses.

Réponse : d) Le lot 1 234 789, la piscine et la remise de jardin ne sont pas hypothéqués en faveur de *Banque Financière*. 32. 5

QUESTION 9 (10 points)

- a) Pierre Lagacé peut-il consentir en faveur de *Banque Financière* une hypothèque sans dépossession sur le legs? Dites pourquoi.

Non, parce que le legs n'est pas un des biens que l'article 2683 *C.c.Q.* permet d'hypothéquer sans dépossession. 33. 5

- b) Pierre Lagacé peut-il consentir en faveur de *Banque Financière* une hypothèque avec dépossession sur le legs? Dites pourquoi.

Non, parce que le legs n'est pas représenté par un titre. 34. 5

QUESTION 10 (5 points)

L'appareil numéro 2 est-il encore hypothéqué en faveur de *Banque Financière*? Dites pourquoi.

Non, parce que la prise en paiement a éteint l'obligation (et donc l'hypothèque qui en est l'accessoire) (principes de l'article 2782 et des articles 2661 et 2797 *C.c.Q.*)

OU compte tenu que la trame factuelle ne précise pas que l'hypothèque de *Banque Financière* a été publiée, la réponse suivante est aussi acceptée : 35. 5

Non, parce que l'hypothèque doit être publiée pour être opposable aux tiers (principe de l'article 2663 *C.c.Q.*)

QUESTION 11 (5 points)

La créance de *Banque Financière* prend-elle rang avant ou après celle de Lise Drouin?

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

Après, art. 2651 par. 2 OU art. 2650 *C.c.Q.* OU art. 2657 *C.c.Q.* 36. 5

QUESTION 12 (5 points)

Banque Financière peut-elle demander au tribunal d'ordonner la radiation de l'hypothèque inscrite le 25 octobre 2002 contre son immeuble par *Myo inc.*?

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

Oui, art. 2674 *C.c.Q.*

OU

Oui, art. 3063 *C.c.Q.* (Il n'y a pas de droit de suite lorsque le meuble hypothéqué est vendu dans le cours des activités d'une entreprise.) 37. 5