



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

CIVIL II

December 10, 2003

- (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.

FILE 1 (15 MARKS)

Your articling supervisor, M^e Suzanne Poudrier, provides you with the file for her client, *Restaurant Chat Botté inc.*, and the notes from an interview with Émile Chabot, the sole shareholder and director of *Restaurant Chat Botté inc.*

**NOTES FROM THE INTERVIEW WITH ÉMILE CHABOT
HELD ON NOVEMBER 17, 2003**

- *Restaurant Chat Botté inc.* has 10 employees and operates a restaurant in Longueuil.
- In order to make home deliveries, *Restaurant Chat Botté inc.* purchased from Peter Prince, who carries on business under the firm name of *Le Prince de l'Auto Usagée enr.*, one Ford Focus 2002 automobile, identification number VL2MP4321J1875492, for an amount of \$16,800, including taxes.
- The contract of sale for the automobile was signed in Longueuil on November 3, 2003. At that time, *Restaurant Chat Botté inc.* paid an amount of \$8,000. The balance is payable in 24 equal and consecutive monthly instalments of \$397.48 each, as of December 3, 2003.
- The contract contains a reservation of ownership clause in favour of the vendor.
- *Restaurant Chat Botté inc.* paid \$265 to register the vehicle and \$1,272 to insure it.
- Upon taking possession of the vehicle on November 3, 2003, Émile went to the place of business of *Accessoires Commerciaux inc.* to have the name and telephone number of the restaurant painted on the car.
- On November 6, 2003, Émile went to *Accessoires Commerciaux inc.* to take back his vehicle and paid the invoice in the amount of \$380. At that time, the representative of *Accessoires Commerciaux inc.* informed him that the employee who had done the lettering work had noticed that the vehicle had been involved in a serious accident and he advised Émile to have the car examined by a mechanic.
- Émile immediately went to see Charles Foisy, a mechanic, and asked him to examine the vehicle. Charles noticed that the vehicle had indeed been seriously damaged in an accident and that the chassis had been welded in a manner not in compliance with generally accepted trade practices. He informed Émile that the cost of restoring the vehicle would be approximately \$9,000 and he advised him not to use the vehicle because it was dangerous.
- That same day, Émile went to see the vendor, Peter Prince, and informed him of his mechanic's conclusions. He demanded reimbursement of the amount paid by him. Peter, who was surprised, indicated that he would inquire into the matter and contact him shortly. Consequently, Émile left with his vehicle.
- On November 14, 2003, not having heard from his vendor, Émile returned to see him. To his great surprise, he saw that the business was closed, the premises were empty and there were no vehicles on site.

At the meeting on November 17, 2003, Émile gave M^e Poudrier the mandate to institute the appropriate legal proceedings in order to recover the amount of \$8,000 already paid, the amount paid to *Accessoires Commerciaux inc.* and the costs of registering and insuring the vehicle as well as to obtain his release from any and all obligations arising under the contract.

M^e Poudrier checked the register of personal and movable real rights and noted that the reservation of ownership had been registered on November 6, 2003 under number 03-0456789-0001.

M^e Poudrier checked with the Inspector General of Financial Institutions and learned that Peter Prince operates a sole proprietorship under the firm name *Le Prince de l'Auto Usagée enr.* She obtained Peter Prince's residential address in Drummondville.

On November 17, 2003, M^e Poudrier sent Peter Prince a demand letter in which she offered to return the vehicle to him and claimed the reimbursement of the amounts paid, no later than November 27, 2003. As of today's date, she has not received an answer to the demand letter.

Addresses of the persons mentioned hereinabove:

- *Restaurant Chat Botté inc.* (head office and sole place of business): 580 de Chambly Road, Longueuil, district of Longueuil, J4H 3L8
- Émile Chabot (domicile and residence): 10 Marianne Street, Montreal, district of Montreal, H2W 1A9
- *Le Prince de l'Auto Usagée enr.* (sole place of business): 1200 de Chambly Road, Longueuil, district of Longueuil, J6H 5L6
- Peter Prince (domicile and residence): 860 Lindsay Street, Drummondville, district of Drummond, J4B 4W7
- *Accessoires Commerciaux inc.* (head office and sole place of business): 21 Saint-Charles Street, Longueuil, district of Longueuil, J2H 1C9
- Charles Foisy (domicile and residence): 100 Jacques-Cartier Blvd., Longueuil, district of Longueuil, J2M 4J8

QUESTION 1 (15 marks)

(a) Draft the heading of this motion to institute proceedings.

(b) Draft the conclusions of this motion to institute proceedings. In order to protect your anonymity, do not sign the written proceeding.

FILE 2 (45 MARKS)

Louise Lajoie meets with you today and relates the following facts to you.

Problem 1

The situation described in Problem 1 of File 2 is an evolving one: all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.

Louise Lajoie purchased an immovable, at a price of \$150,000, by notarial deed entered into on October 11, 2002 and registered in the land register on the same date. The immovable is located at 1010 St-Hubert Street in Montreal.

On the ground floor of the immovable, she set up a jewellery store to be operated by her and, on the upper floor, she set up offices to be leased out. All of the renovation work was carried out by *Construction R.H. inc.* with whom Louise signed a renovation contract on October 12, 2002 at a cost of \$50,000. The contract provides for an initial payment of \$10,000 five days after the beginning of the work, a second payment of \$15,000 upon completion of the work and a third payment of \$25,000 no later than 30 days after completion of the work.

On October 15, 2002, Louise received two written notices in compliance with the requirements of the *Civil Code of Québec* relating to the renovation work performed on her immovable in Montreal:

- The first was from *Vitrierie B.B. inc.* which indicated that it had signed a \$10,000 contract with *Construction R.H. inc.* to supply windows.
- The second was from *Les Entreprises Électriques du Nord inc.* which indicated that it had signed a \$5,000 contract with *Construction R.H. inc.* for the electricity work.

The work began on October 16, 2002 and was entirely completed on October 31, 2002. The work increased the value of the immovable by \$50,000. As at October 31, 2002, Louise had paid the first two instalments provided for in the contract.

On November 20, 2002, Louise was served with a notice of preservation of a legal hypothec in favour of *Vitrierie B.B. inc.* which was registered against her immovable on November 18, 2002 and indicated that *Construction R.H. inc.* owed a balance of \$10,000 to its supplier of windows. Louise met with the representative of *Construction R.H. inc.* who confirmed to her that the company had not paid the amount of \$10,000 to *Vitrierie B.B. inc.* because of a dispute between the two companies arising from work carried out on an immovable in Laval.

On November 21, 2002, Louise was served with a notice of preservation of a legal hypothec in favour of *Les Entreprises Électriques du Nord inc.* which was registered against her immovable on November 19, 2002 and indicated that *Construction R.H. inc.* owed a balance of \$5,000 to its subcontractor.

On November 29, 2002, Louise paid \$15,000 to *Construction R.H. inc.*

On March 21, 2003, Louise was served with a prior notice of sale by judicial authority from *Vitrerie B.B. inc.* with respect to the amount of \$10,000 which was still unpaid. The prior notice was registered in the land register against Louise's immovable on March 25, 2003.

Louise has not received any other documents regarding the two legal hypothecs and a check of the land register reveals that there are no other entries with regard to these two legal hypothecs.

On December 3, 2003, Louise received a demand letter from *Construction R.H. inc.* demanding the balance of \$10,000. Although Louise is satisfied with the work performed, she refuses to comply with the demand letter.

QUESTION 2 (5 marks)

Is Louise Lajoie justified in deducting the amount of \$10,000?

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

SUPPLEMENTARY FACTS

Les Entreprises Électriques du Nord inc. refuses to consent to the cancellation of its legal hypothec, notwithstanding Louise's numerous requests.

QUESTION 3 (5 marks)

Can Louise Lajoie obtain the cancellation without going before the courts?

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

SUPPLEMENTARY FACTS

In order to finance the purchase and the renovation of the immovable located at 1010 St-Hubert Street, Louise Lajoie borrowed an amount of \$175,000 from *Banque Financière* and granted the latter a hypothec charged against her immovable for that amount. The deed of hypothec, entered into before the notary on October 9, 2002, and the notice of address of *Banque Financière* were registered in the land register against the immovable that same day.

In the deed of sale registered on October 11, 2002, the vendor of the immovable, Léon Cyr, had granted Louise a period of one year, until October 11, 2003, within which to pay the balance of sale of \$6,000. The deed of sale contains a hypothec charged against the immovable in favour of Léon in order to guarantee the payment of the balance owing.

On November 12, 2002, Louise granted her neighbour, Sylvio Lata, a servitude of passage affecting the immovable located at 1010 St-Hubert Street in Montreal. The servitude allows Sylvio to use the rear courtyard of Louise's immovable and to park a vehicle there. The deed of servitude was published on November 13, 2002.

On October 27, 2003, given that Louise had not paid the balance of sale upon the expiry of the term, Léon served her with a prior notice of the exercise of a hypothecary right of sale by judicial authority with respect to the immovable. On October 29, 2003, the prior notice was registered in the land register. No deed of voluntary surrender was granted.

QUESTION 4 (5 marks)

Does Léon Cyr's hypothec rank prior to the hypothec of *Banque Financière*?

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

QUESTION 5 (5 marks)

As at today's date, December 10, 2003, can Léon Cyr change the nature of the hypothecary right he intends to exercise?

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

- (a) No, because his choice has already been made in the prior notice.**
- (b) Yes, only by obtaining Louise Lajoie's written consent.**
- (c) No, because the 60-day period has not expired.**
- (d) Yes, by serving and registering a new prior notice in the land register.**

QUESTION 6 (5 marks)

Will *Banque Financière* receive a notice from the registrar informing it of the registration in the land register of the deed of servitude published on November 13, 2002?

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

Problem 2

In July 2003, Sonia Rivard went to Louise Lajoie's jewellery store with an antique brooch she had purchased from an estate. The brooch, having a value of several thousand dollars, needed a major repair which Sonia asked Louise to carry out.

On August 7, 2003, Sonia went back to the jewellery store and Louise returned the brooch to her and gave her an invoice for \$800 for the repair work. Sonia paid \$300 and stated that she would soon send a cheque for the balance owing of \$500.

On September 10, 2003, Sonia returned to the jewellery store to have a ring with a value of over \$1,000 cleaned. At that time, Sonia told Louise that she would pay the \$500 owed on the invoice dated August 7, 2003 at the same time as the amount of \$25 for the cleaning of the ring when she came to pick up her ring.

On September 25, 2003, Sonia came back to the jewellery store to take back the ring and paid the \$25 invoice for the cleaning, but did not have the money to pay the \$500 to Louise.

Louise had learned that a jeweller has the right to retain a piece of jewellery if an amount owed is not paid by a client. Therefore, she refused to return the ring to Sonia until she received the amount owed. Sonia left the jewellery store without the ring, stating that she would come back the following day with the money to pay her \$500 account, but Louise never saw her again.

Following legal proceedings instituted against Sonia, the ring was seized and sold in a judicial sale. All of Sonia's creditors asserted their rights and filed their claims in accordance with the *Code of Civil Procedure*.

QUESTION 7 (5 marks)

Is the amount of \$500 owed to Louise Lajoie a prior claim? Explain your answer.

Problem 3

Louise Lajoie leased the offices located on the upper floor of her immovable to *Messagerie M.C. inc.* This firm delivers letters and small packages. Maurice Croteau is its sole shareholder and director.

On June 9, 2003, in order to help her lessee who was experiencing temporary financial difficulties, Louise loaned *Messagerie M.C. inc.* an amount of \$7,500 which she disbursed that same day. The principal and interest, at a rate of 6% per year, have been due since September 9, 2003.

On June 9, 2003, in order to guarantee the repayment of the loan, *Messagerie M.C. inc.* had granted a movable hypothec charged against a truck belonging to *Messagerie M.C. inc.* and used to make its deliveries. Maurice had agreed to be a solidary surety for his company in favour of Louise in order to also guarantee the repayment of the loan.

On November 19, 2003, Louise received a letter from *Messagerie M.C. inc.*, signed by Maurice Croteau, informing her of the company's significant financial problems. The letter stated that the hypothecated truck had been sold on November 3, 2003 to Georges Lemaire whose address was set out in the letter. Georges operates a water bottle delivery firm, *Les Olimpides ltée*, of which he is the sole shareholder and director.

Maurice Croteau added that the selling price of the truck had been paid in full and had been remitted to his bank to decrease the balance owing on his company's line of credit. Maurice added that he would contest any proceedings instituted by Louise against him, as surety, as long as Louise had not caused the judicial sale of the office equipment owned by *Messagerie M.C. inc.* and still located in the company's premises. According to him, the value of the equipment would be sufficient to pay the balance owing to Louise.

Louise provides you with the certified statement of registration of her hypothec which contains a description of the vehicle with its identification number. She informs you that Georges told her that he had resold the truck to *Les Olimpides ltée* the same day that it had been acquired. In addition to this information, Louise tells you that she has not done anything regarding the truck or the suretyship since receipt of the letter dated November 19, 2003 and that she has not received any amount in repayment of the loan.

QUESTION 8 (5 marks)

Assuming that the sale of the truck by *Messagerie M.C. inc.* did not take place in the ordinary course of business of the company, does Louise Lajoie still hold a valid hypothec on the truck?

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

QUESTION 9 (5 marks)

Assuming that Louise Lajoie holds a valid hypothec on the truck, upon whom must she serve a prior notice of the exercise of a hypothecary right?

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

- (a) *Messagerie M.C. inc.*
- (b) *Les Olimpides ltée*
- (c) *Messagerie M.C. inc.* and *Les Olimpides ltée*
- (d) *Messagerie M.C. inc.*, *Les Olimpides ltée* and Georges Lemaire
- (e) *Messagerie M.C. inc.* and Georges Lemaire

QUESTION 10 (5 marks)

Is Maurice Croteau justified in arguing that Louise Lajoie must first cause the property of *Messagerie M.C. inc.* to be sold before claiming payment from him as surety?

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

FILE 3 (40 MARKS)

Robert Létourneau and Solange Rousseau consult you today regarding problems they are facing.

Problem 1

In May of 2003, Robert Létourneau carried out work on his residence. He used the services of his son, Olivier, to do the painting. Olivier, who is 20 years old, had left the family domicile in 2001 and had moved to the outskirts of Montreal to continue his undergraduate studies in building mechanics.

When performing the work, Olivier used an advanced technique to apply the paint on recently installed gyproc panels. However, he made a mistake in using this technique, because he did not scrupulously follow the manufacturer's directions. This mistake resulted in substantial damage caused by humidity and required the installation of new gyproc panels.

Robert filed a claim with his insurer, *La Québécoise, compagnie d'assurances*, which agreed to pay an indemnity of \$10,000 because the risk was covered under the insurance contract.

On November 10, 2003, Olivier received a demand letter from *La Québécoise, compagnie d'assurances*, demanding that he repay the amount paid to Robert.

QUESTION 11 (5 marks)

Can *La Québécoise, compagnie d'assurances* claim from Olivier Létourneau the repayment of the insurance indemnity paid to its insured?

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

Problem 2

Solange Rousseau operates a beauty parlor, *Coiffure 3000 inc.* Recently, she acquired a piece of office equipment which combines the functions of a printer, fax machine, scanner and photocopier. She therefore decided to get rid of the old equipment she had used until then. During a conversation with the owner of a neighbouring business, *Boutique Presse du Quartier inc.*, she learned that this business wanted to offer a backup service for copying, printing and transmitting documents.

On November 28, 2003, she sold all of her old equipment to that business for an amount of \$3,500 payable within ten days. *Boutique Presse du Quartier inc.* took possession of the equipment that same day.

On December 9, 2003, Solange had not yet received payment. She then contacted the owner of *Boutique Presse du Quartier inc.* who admitted to her that his company would not be able to pay the purchase price because it was experiencing serious financial difficulties. The owner added that all the movable property used to operate his business had been seized the previous day by *Éditions Médiatéc ltée*, a hypothecary creditor, and that they would soon be sold by judicial authority.

QUESTION 12 (5 marks)

As at today's date, can Solange Rousseau revendicate, as an unpaid vendor, the equipment which she sold to *Boutique Presse du Quartier inc.* and which was seized by *Éditions Médiatéc ltée* ? Explain your answer.

Problem 3

In the spring of 2003, Robert Létourneau entered into a lease for a large and luxurious apartment owned by Michel Therrien and located in Bromont. The apartment, having an area of 450 m² over two floors, was used by Robert on weekends during the mountain biking season. Robert used the upper floor of the apartment, having an area of 100 m², to invite clients of his public relations firm on weekends. The lease was for a period of seven months, from April 1, 2003 to October 31, 2003.

In the fall of 2003, Robert learned that Michel had left Québec to go live in Florida. Given that he had not received any communication regarding the apartment and that he wished to keep using it in order to take advantage of the downhill skiing season, he continued to occupy the apartment on weekends and to pay the monthly rent by direct deposit into Michel's account.

On December 3, 2003, Robert received a letter from Michel informing him of Michel's intention to retake possession of the apartment on June 1, 2004 as a residence for Marie-Ève Joncas, the daughter of his spouse, Lucille Joncas. While there is no bond of filiation between Marie-Ève and Michel, the latter has been providing for the needs of his spouse's daughter for several years, particularly given that she has health problems preventing her from entering the workforce.

QUESTION 13 (5 marks)

Can Michel Therrien retake possession of the leased apartment on June 1, 2004?

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

- (a) Yes, because the term of the lease will then have expired.**
- (b) No, because notice of repossession was not given within a sufficient period of time.**
- (c) Yes, because Michel Therrien provides for the needs of his spouse's daughter.**
- (d) No, because there is no bond of filiation between Michel Therrien and Marie-Ève Joncas.**
- (e) No, because less than one third of the area is used to operate a business.**

Problem 4

The situation described in Problem 4 of 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.

At the beginning of September of 2003, Solange Rousseau received, at her place of business, a specialized magazine from *Mode coiffure inc.* which advertised various products for the exclusive use of professional hairdressers. The magazine advertised a new hair dye in the form of a super-concentrated cream.

On December 3, 2003, Solange placed an order by fax. On the order form, she indicated that she was purchasing ten containers of dye of 500 ml each for a total price of \$500, plus taxes, and she paid this amount that same day with the credit card of her company, *Coiffure 3000 inc.*

On December 5, 2003, she received her order. That same day, one of her clients noted that the containers did not seem to contain the quantity of dye specified on the label. This impression was confirmed by tests which were carried out the following day in a laboratory and concluded that there were only 425 ml of dye in each container. Before taking any steps as regards *Mode coiffure inc.*, Solange wants to know her rights.

QUESTION 14 (5 marks)

Can Solange Rousseau ask for a reduction of the price paid for the containers of dye?

Justify your answer by referring to one or more specific and relevant provisions of any legislation, other than articles 1590 and 1604 of the *Civil Code of Québec*.

SUPPLEMENTARY FACTS

Solange Rousseau also informs you that in October of 2003 she received, by mail, at her home in Montreal, an advertisement originating from *Disques CD inc.* whose place of business is located in Gatineau. The publicity advertised new CDs sold at half the regular price. The CDs could be ordered by mailing or faxing the order form annexed to the advertisement.

On October 10, 2003, Solange placed an order. On the order form, she indicated that she was purchasing fifteen CDs for a total price of \$300, plus taxes, and she also provided the necessary information to pay with her personal credit card.

On October 27, 2003, Solange received the order at her home. She noticed that two CDs were missing and that, among the thirteen CDs she had received, six were not those that she had ordered.

QUESTION 15 (5 marks)

Assuming that Solange Rousseau has a valid right of action against *Disques CD inc.*, can she institute her recourse in the district of Montreal? Explain your answer.

Problem 5

On November 1, 2001, Joannie Létourneau, the niece of Robert Létourneau, obtained an interest-free loan of \$10,000 from her father-in-law, Albert Thibodeau. That same day, Albert was granted a first-ranking hypothec on land worth \$15,000 which Joannie had inherited from her father. On November 2, 2001, Robert signed a contract in which he agreed to act as surety for Joannie's loan, waiving the benefits of division and discussion. The loan was repayable by Joannie in two equal instalments of \$5,000, payable on November 1st of each year, as of November 1, 2002.

Joannie paid the first instalment of \$5,000 on November 1, 2002. However, as of the spring of 2003, she began to have financial problems. On April 23, 2003, Albert, who knew that Robert was highly solvent, waived his hypothecary rights at Joannie's request. The waiver allowed Joannie to sell her land and quickly pay certain urgent debts. On November 5, 2003, Albert claimed from Robert payment of the \$5,000 instalment due on November 1, 2003. Robert knows perfectly well that Joannie is insolvent and will not be able to reimburse him if he makes this payment.

QUESTION 16 (5 marks)

Is Robert Létourneau bound to pay the amount of \$5,000 claimed from him by Albert Thibodeau?

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

Problem 6

On March 1, 2002, Robert Létourneau loaned an amount of \$8,000 to his uncle, Marcel Létourneau, who was experiencing temporary financial difficulties. The loan, which was interest-free, was repayable on September 1, 2002.

Marcel failed to repay Robert on the due date, notwithstanding the demand letter sent by Robert. On March 3, 2003, Robert obtained a judgment ordering Marcel to pay him the amount of \$8,000.

Marcel died on July 22, 2003 without having repaid Robert. Roxanne Létourneau, Marcel's only child, is the universal legatee of her father's property under his will. As a result of certain complications, the liquidation of the succession could take several months. However, Robert has learned that Roxanne is the designated beneficiary under a life insurance contract issued by *La Protection, compagnie d'assurances* in the name of her father, Marcel. In accordance with the insurance contract, Roxanne received an insurance indemnity of \$50,000 in November of 2003.

QUESTION 17 (5 marks)

As at today's date, can Robert Létourneau seize, in execution of the judgment rendered on March 3, 2003, the life insurance proceeds paid by *La Protection, compagnie d'assurances* to Roxanne Létourneau?

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

Problem 7

In September of 2003, Solange Rousseau took steps to purchase an income-producing immovable owed by Jean-Pierre Sansfaçon, a very successful Montreal businessman. After preliminary discussions, Jean-Pierre indicated that he was not yet certain he wanted to sell his immovable. However, he agreed that he would sell the immovable to Solange for \$400,000, namely its current market value, if he decided to dispose of it by December 15, 2003. He confirmed everything in writing.

In November of 2003, Solange learned of the forthcoming construction of a commercial and residential project in the neighbourhood where Jean-Pierre's immovable was located. This large-scale project increased the value of the immovable quite significantly. Indeed, its market value increased to \$550,000.

On December 8, 2003, Solange received a letter from Jean-Pierre informing her that he did not intend to sell his immovable.

QUESTION 18 (5 marks)

Can Solange Rousseau compel Jean-Pierre Sansfaçon to sell her his immovable at a price of \$400,000 or to pay her damages? Explain your answer.

CORRIGÉ
CIVIL II - EXAMEN RÉGULIER
 10 décembre 2003

DOSSIER 1 (15 POINTS)

QUESTION 1 (15 points)

- a) Rédigez l'en-tête de cette requête introductive d'instance.
- b) Rédigez les conclusions de cette requête introductive d'instance. Ne signez pas l'acte de procédure pour assurer votre anonymat.

a)
 CANADA
 PROVINCE DE QUÉBEC
 DISTRICT DE LONGUEUIL
 OU
 DISTRICT DE DRUMMOND

COUR DU QUÉBEC
(Chambre civile)

1.

NO

RESTAURANT CHAT BOTTÉ INC., personne morale légalement constituée, ayant son siège au 580, chemin de Chambly, à Longueuil, district de Longueuil, province de Québec, J4H 3L8

2.

Demanderesse

c.

PETER PRINCE, (faisant affaire sous la raison sociale de Le Prince de l'Auto Usagée enr.) résidant au 860, rue Lindsay, Drummondville, district de Drummond, province de Québec, J4B 4W7

3.

Défendeur

Aucune autre partie ajoutée

4.

Description complète des parties

5.

b)
 POUR CES MOTIFS, PLAISE AU TRIBUNAL :

RÉSOUUDRE ou ANNULER le contrat de vente intervenu entre les parties le 3 novembre 2003

6.

de l'automobile de marque Ford Focus 2002, numéro d'identification VL2MP4321J1875492, ;

7.

DONNER ACTE de l'offre de la demanderesse de remettre ce véhicule au défendeur;

8.

CONDAMNER le défendeur à payer à la demanderesse

9.

la somme de 9 917 \$ avec intérêts au taux légal ainsi que l'indemnité additionnelle prévue par la loi

10.

à compter du 28 novembre 2003;

11.

LE TOUT avec dépens.

Qualité de l'expression écrite

12.

DOSSIER 2 (45 POINTS)

QUESTION 2 (5 points)

Louise Lajoie est-elle justifiée de retenir la somme de 10 000 \$?

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

Oui, art. 2123 *C.c.Q.*

13.

QUESTION 3 (5 points)

Louise Lajoie peut-elle obtenir cette radiation sans s'adresser au tribunal?

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

Oui, art. 3061 al. 1 *C.c.Q.*

14.

QUESTION 4 (5 points)

L'hypothèque de Léon Cyr prend-elle rang avant celle de *Banque Financière*?

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

Oui, art. 2948 al. 1 *C.c.Q.*

(L'hypothèque du vendeur créée dans l'acte de vente prend rang avant celle de la banque.)

15.

QUESTION 5 (5 points)

En date d'aujourd'hui, le 10 décembre 2003, Léon Cyr peut-il changer la nature du droit hypothécaire qu'il entend exercer?

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

- a) Non, parce que son choix a déjà été fait dans le préavis.
- b) Oui, uniquement en obtenant l'accord écrit de Louise Lajoie.
- c) Non, parce que le délai de 60 jours n'est pas expiré.
- d) Oui, en faisant signifier et en inscrivant au registre foncier un nouveau préavis.

Réponse : d) Oui, en faisant signifier et en inscrivant au registre foncier un nouveau préavis.

16.

QUESTION 6 (5 points)

Banque Financière recevra-t-elle de l'Officier de la publicité des droits un avis de l'inscription au registre foncier de l'acte de servitude publié le 13 novembre 2002?

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

Non, art. 3017 *C.c.Q.*

17.

QUESTION 7 (5 points)

La créance de 500 \$ de Louise Lajoie est-elle prioritaire? Dites pourquoi.

Non, en remettant la broche, Louise a perdu son droit de rétention.
(art. 2651 par. 3 *C.c.Q.*)

18.

QUESTION 8 (5 points)

En tenant pour acquis que la vente du camion par *Messagerie M.C. inc.* n'a pas été faite dans le cours des activités de l'entreprise, Louise Lajoie détient-elle encore une hypothèque valide sur le camion?

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

Oui, art. 2700 *C.c.Q.*

(L'hypothèque qui grève le camion est inscrite sur une fiche établie sous la description de celle-ci; il n'est donc pas nécessaire d'inscrire un avis de conservation.)

19.

QUESTION 9 (5 points)

En tenant pour acquis que Louise Lajoie détient une hypothèque valide sur le camion, à qui doit-elle faire signifier un préavis d'exercice d'un droit hypothécaire?

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

- a) *Messagerie M.C. inc.*
- b) *Les Olympides ltée*
- c) *Messagerie M.C. inc.* et *Les Olympides ltée*
- d) *Messagerie M.C. inc.*, *Les Olympides ltée* et Georges Lemaire
- e) *Messagerie M.C. inc.* et Georges Lemaire

Réponse : c) *Messagerie M.C. inc.* et *Les Olympides ltée*

20.

QUESTION 10 (5 points)

Maurice Croteau a-t-il raison de prétendre que Louise Lajoie doit d'abord faire vendre les biens de *Messagerie M.C. inc.* avant de lui exiger paiement à titre de caution?

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

Non, art. 2352 *C.c.Q.*

(Maurice Croteau est caution solidaire et ne peut plus invoquer le bénéfice de discussion.)

21.

DOSSIER 3 (40 POINTS)

QUESTION 11 (5 points)

La Québécoise, compagnie d'assurances peut-elle réclamer à Olivier Létourneau le remboursement de l'indemnité d'assurance versée à son assuré?

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

Non, art. 2474, al. 2 *C.c.Q.*

22.

QUESTION 12 (5 points)

En date d'aujourd'hui, Solange Rousseau peut-elle revendiquer, à titre de vendeur impayé, les appareils qu'elle a vendus à *Boutique Presse du Quartier inc.* et qui ont été saisis par *Éditions Médiatéc ltée* ? Dites pourquoi.

Non, parce que la vente comportait un terme.

23.

QUESTION 13 (5 points)

Michel Therrien peut-il reprendre possession de l'appartement loué en date du 1^{er} juin 2004?

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

- a) Oui, parce que le terme du bail sera alors expiré.
- b) Non, parce que l'avis de reprise de possession a été donné dans un délai insuffisant.
- c) Oui, parce que Michel Therrien subvient aux besoins de la fille de sa conjointe.
- d) Non, parce qu'il n'y a pas de lien de filiation entre Michel Therrien et Marie-Ève Joncas.
- e) Non, parce que moins du tiers de la superficie est utilisé pour les fins de l'exploitation d'une entreprise.

Réponse : a) Oui, parce que le terme du bail sera alors expiré.

24.

QUESTION 14 (5 points)

Solange Rousseau peut-elle demander une réduction du prix payé pour les contenants de teinture?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, autres que les articles 1590 et 1604 C.c.Q.

Oui, art. 1737 al. 1 OU 1720 *C.c.Q.*

25.

QUESTION 15 (5 points)

Dans l'hypothèse où Solange Rousseau disposerait d'un droit d'action valable contre *Disques CD inc.*, peut-elle intenter son recours dans le district de Montréal? Dites pourquoi.

Oui, parce qu'il s'agit d'un contrat de consommation conclu à distance qui est réputé être conclu à l'adresse du consommateur.
(art. 20 et 21 *L.p.c.*).

26.

QUESTION 16 (5 points)

Robert Létourneau est-il tenu de payer la somme de 5 000 \$ que lui réclame Albert Thibodeau?

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

Non, art. 2365 *C.c.Q.*

(Albert l'empêche d'exercer son recours contre Joannie en raison de la mainlevée accordée sur l'immeuble hypothéqué.)

27.

QUESTION 17 (5 points)

Robert Létourneau peut-il, en exécution du jugement rendu le 3 mars 2003, saisir aujourd'hui le produit de l'assurance-vie versé par *La Protection, compagnie d'assurances* à Roxanne Létourneau?

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

Non, art. 2455 *C.c.Q.*

28.

QUESTION 18 (5 points)

Solange Rousseau peut-elle contraindre Jean-Pierre Sansfaçon à lui vendre son immeuble au prix de 400 000 \$ ou de lui verser des dommages-intérêts? Dites pourquoi.

Non, l'entente ne contient qu'un pacte de préférence

OU

Non, il ne s'agit pas d'une promesse de vente.

29.