



# FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

## EXAMINATION BOOKLET

### CIVIL II SUPPLEMENTAL EXAMINATION

**May 24, 2001**

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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 **14** pages (including this page) and that your answer booklet contains **9** 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<sup>c</sup> Germain Côté, meets with you today and provides you with the notes (reproduced hereinbelow) he took during a meeting this morning with Réjean Glavine, president and principal shareholder of his client *Centre du Camion National inc.*

**NOTES FROM THE MEETING OF MAY 24, 2001 WITH RÉJEAN GLAVINE**

- *Centre du Camion National inc.* (« *Centre* ») : business specializing in sale and distribution of truck parts and operates 15 truck repair shops in Quebec.
- *Centre* is an authorized mandatary of the S.A.A.Q. (Société de l'assurance automobile du Québec) for purposes of carrying out obligatory truck inspections.
- 12 Oct. 00 : *Centre* signed a contract in Drummondville with *Batteries Drummondville inc.*, a manufacturer and distributor of truck and automobile batteries; *Batteries Drummondville inc.* must provide *Centre* with 4,500 batteries.
- Batteries will be sold exclusively by *Centre*, in its various establishments, under the trade-mark « National », which is proprietary mark owned by *Centre*.
- Cost of the contract: \$ 336,448.12, namely 4,500 batteries X \$ 65 each = \$ 292,500 + taxes (\$ 20,475 GST + \$ 23,473.12 QST).
- Delivery of batteries scheduled for 15 Dec. 00.
- Batteries payable 15 Jan. 01.
- *Batteries Drummondville inc.* and *Centre* have been doing business together for more than 10 years. *Centre* always satisfied with products bought.
- The batteries were manufactured by a subcontractor of *Batteries Drummondville inc.*; subcontractor is now bankrupt.
- 1<sup>st</sup> time that *Centre* buys this model of battery, based upon the representations of salesman of *Batteries Drummondville inc.*, Jacques Boucher, who tells *Centre* that profit margin on these batteries is greater than the profit margin on the models manufactured at the Drummondville plant which *Centre* used to buy.
- Batteries delivered and paid for within timeframe mentioned in the contract.
- Towards end of Jan. 01, *Centre* notices that batteries sold by *Batteries Drummondville inc.* are of poor quality.
- *Centre's* customers experience problems with the batteries.

- When subjected to vibrations, the plastic case of the batteries loses its seal, so that the liquid contained in the batteries leaks out, thereby making the batteries totally unusable.
- *Centre* must refund all the batteries sold to date to its own customers.
- In previous years only 1 % to 2 % of batteries bought from *Batteries Drummondville inc.* were defective.
- 9 Feb. 01 : faced with dissatisfaction of its customers, *Centre* suspends the sale of these batteries and, that same day, telephones *Batteries Drummondville inc.* to obtain an explanation for the highly unusual defects of the batteries.
- 13 Feb. 01 : Serge Rousseau, technical advisor of *Batteries Drummondville inc.*, goes to the head office of *Centre* to examine the defective batteries and the new batteries which are still in inventory.
- Rousseau cannot explain the problem and takes some batteries with him to perform a more in-depth examination at the plant.
- 6 March 01 : Given that *Centre* has not heard anything from *Batteries Drummondville inc.*, it sends a letter to *Batteries Drummondville inc.* restating the problems experienced with the batteries and asking it to act as soon as possible.
- 10 April 01 : Bernard Chaput, president of *Batteries Drummondville inc.*, sends letter to *Centre* in which he denies all liability, alleging that the damage to the battery cases is the result of faulty installation by *Centre's* personnel.
- 12 Apr. 01 : Réjean Glavine writes to Chaput, stating that he rejects this argument and that his employees are all competent.
- *Centre* has the batteries examined by experts.
- Report dated 4 May 01, prepared by *Bureau d'ingénierie appliquée inc.*, concludes that « the leaks are the result of the manufacturer's use of an inadequate process for sealing the plastic battery cases and the use of very poor quality plastic. However, these defects could not have been detected through a mere visual inspection... ».
- *Centre* incurred expenses for the handling and transportation of the batteries: \$ 4,340.
- *Centre* also had to store the 4,500 batteries with a third party; cost of storage: \$ 6,500.
- Loss of profits on the batteries: \$ 90,000.
- Réjean Glavine confirms that the batteries are unsalable.

- 8 May 01 : given the report, *Centre* puts *Batteries Drummondville inc.* in default and demands that, within 10 days after the letter, it retake possession of the batteries, refund the price to it and indemnify it for its losses and damages which total \$ 437,288.12.
- No response to demand letter.
- Mandate from client : institute appropriate legal proceedings for the demands set forth in the letter dated 8 May 2001.
- Addresses :
  - Head office and principal place of business of *Centre* : 1264 de l'Avenir Blvd., Salaberry-de-Valleyfield, district of Beauharnois, J6T 2J2.
  - Head office and principal place of business of *Batteries Drummondville inc.* : 8088 Industriel Blvd., Drummondville, district of Drummond, J2C 2G3.
  - *Bureau d'ingénierie appliquée inc.* : 2524 Anjou Blvd., Châteauguay, district of Beauharnois, J6J 5W6.
  - Jacques Boucher, domiciled and residing at 2240 Lemire Blvd., Drummondville, district of Drummond, J2V 7K2.
- Documents received from client :
  - Contract dated 12 Oct. 00 between *Centre* and *Batteries Drummondville inc.* signed in Drummondville.
  - Letter dated 12 Apr. 01 from Réjean Glavine to Bernard Chaput and proof of service.
  - Certificate dated 18 Jul. 00 from the S.A.A.Q. evidencing that *Centre* is a mandatory authorized to inspect trucks.
  - Brochure and price list for « National »-brand batteries published and distributed by *Centre*.
  - Cheque for \$ 336,448.12 dated 15 Jan. 01 issued by *Centre* in favour of *Batteries Drummondville inc.*
  - Letter dated 10 April 01 from Bernard Chaput, president of *Batteries Drummondville inc.*, to *Centre*.
  - Letter dated 6 March 01 from *Centre* to *Batteries Drummondville inc.*
  - Invoices for sale of the batteries that *Centre* had to refund or exchange (bundle).
  - Expert report of *Bureau d'ingénierie appliquée inc.* dated 4 May 01.
  - Letter dated 8 May 01 from *Centre* to *Batteries Drummondville inc.*

### QUESTION 1 (40 marks)

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

<b>FILE 2 (20 MARKS)</b>
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Andrée Lemieux is a businesswoman from the Victoriaville area. She consults you today, May 24, 2001, regarding four problems with which she has to deal.

<b>PROBLEM 1</b>
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On March 15, 2001, Andrée Lemieux purchases from *Investissements Laurier inc.* an immovable located at 350 Principale Street in Victoriaville.

The ground floor premises are occupied by Bernard Métayer, who operates a photocopying business there, pursuant to a lease entered into between him and *Investissements Laurier inc.* This commercial lease has a term of five years, namely, from June 1, 1999 to May 31, 2004, and it was duly published at the time of its signing in May of 1999.

On March 20, 2001, Andrée Lemieux sends Bernard Métayer a letter in which she informs him that she acquired the immovable and will retake possession of the ground floor premises on July 1, 2001 in order to operate a catering service there.

Bernard Métayer refuses to leave the premises and informs Andrée Lemieux that he will contest any application for eviction. Nevertheless, Bernard Métayer does not dismiss the possibility that the new owner of the immovable may be able to force him to leave the premises. Therefore, he agrees to meet with Andrée Lemieux on April 2, 2001 in order to find a middle ground allowing them to avoid litigation before the courts.

After their discussion, the following document is signed :

<b>AGREEMENT</b>
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In order to settle a dispute and avoid a trial, the parties agree as follows :

1. Bernard Métayer shall leave the commercial premises located on the ground floor at 350 Principale Street, Victoriaville no later than July 1, 2001.
2. In consideration therefor, at the time of his move, Andrée Lemieux shall pay him a lump sum of \$ 3,500 as compensation.
3. The parties renounce all recourses relating to the lease for the said premises.

Victoriaville, April 2, 2001

Bernard Métayer

Bernard Métayer

Andrée Lemieux

Andrée Lemieux

At the time this document was signed, Bernard Métayer knew that his lease had been published in May of 1999, but he did not know that this publication protected the lessee in the event of a voluntary alienation of the immovable.

Since then, Bernard Métayer has learned that the publication of the lease allowed him to occupy the leased premises until May 31, 2004. Therefore, Bernard Métayer informs Andrée Lemieux that the agreement signed on April 2, 2001 is null.

#### **QUESTION 2 (5 marks)**

- **Can the agreement dated April 2, 2001 be annulled merely because Bernard Métayer was unaware of the effect of the publication of the lease?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

#### **PROBLEM 2**

On June 15, 1997, Andrée Lemieux lends \$ 8,000 to her two sisters-in-law, Rolande and Gilberte Désormeaux, so that they can make urgent repairs to the business operated by them. The loan does not bear interest and is repayable in full on June 15, 1999.

When Robert Désormeaux and Andrée Lemieux divorce, the relationship between Andrée Lemieux and her sisters-in-law deteriorates such that the loan is not reimbursed on its due date.

On August 1, 1999, Andrée Lemieux sends a demand letter to Rolande and Gilberte Désormeaux claiming repayment of the loan. This letter is unanswered.

At that same time, Andrée Lemieux learns that Gilberte Désormeaux is experiencing financial difficulties. Therefore, for the time being, she decides not to institute judicial proceedings against her.

On September 15, 1999, Andrée Lemieux institutes an action against Rolande Désormeaux based on the loan of June 15, 1997 in which she claims an amount of \$ 4,000. On March 15, 2000, a judgment allows the action against Rolande Désormeaux who pays the full amount of the judgment on April 14, 2000.

In April of 2001, Andrée Lemieux learns that Gilberte Désormeaux has become insolvent.

#### **QUESTION 3 (5 marks)**

- **Can Andrée Lemieux claim the balance of the loan from Rolande Désormeaux?**
- **Justify your answer by referring to one or more specific and relevant provisions of the Civil Code of Québec.**

**PROBLEM 3**

Andrée Lemieux's daughter, Karine Lemieux-Désormeaux, is registered as a full-time student at the *École de tourisme de la Capitale inc.*, a college-level private educational institution recognized by the Ministère de l'Éducation du Québec.

The director of the institution, Louise Gauthier, owns the neighbouring immovable built in 1999 which she uses as a principal residence. Louise Gauthier leases the two rooms located on the top floor of the immovable to female students. The lessees access their rooms through the main entrance to the immovable and share the use of the sole bathroom with Louise Gauthier. Each room is equipped with a table, a small refrigerator, a microwave oven and a separate telephone line.

On August 5, 2000, Karine Lemieux-Désormeaux signs a lease for the purpose of leasing one of these rooms. The term of the lease is one year, from September 1, 2000 to August 31, 2001.

On March 15, 2001, Louise Gauthier gives a written notice to Karine Lemieux-Désormeaux, informing her that she will retake possession of the leased room upon the expiry of the lease on August 31, 2001, as a dwelling for her best friend.

Karine Lemieux-Désormeaux wants to continue to occupy this room until she completes her studies on August 31, 2002.

**QUESTION 4 (5 marks)**

**Is Karine Lemieux-Désormeaux entitled to the renewal of her lease on August 31, 2001? Select the correct answer from among the answers set forth hereinbelow and write it in the answer booklet.**

- **Yes, she has a personal right to remain in the premises.**
- **No, because the immovable was built in 1999.**
- **Yes, because she is still registered as a full-time student in an educational institution.**
- **No, because Louise Gauthier is entitled to refuse to renew the lease.**
- **None of the above.**

**PROBLEM 4**

Andrée Lemieux owns a chalet located at 254 des Tilleuls Road, in Saint-Paul-du-Lac and wishes to fence in her land.

On May 5, 2001, she speaks by telephone with a representative of the company *Clôture Saint-Jérôme inc.*, a local firm, to obtain information regarding their modular fences. During their conversation, the representative opens a file and informs her of the approximate cost, but he asks her to carefully measure the land before placing an order.

On May 6, 2001, Andrée Lemieux calls *Clôture Saint-Jérôme inc.* again to place an order. At that time she specifies the colour and the model as well as the number of linear metres required to fence in her land. The representative tells her that the sale price is \$ 1,360 (including taxes) and informs her of the available financing options. He also tells her that the sale is final and that the company does not accept exchanges or refunds.

Given that Andrée Lemieux does not have a lot of cash available, she chooses to pay \$ 200 upon delivery and the balance, as well as the credit expenses at a rate of 10 % per year, by means of four monthly instalments.

On May 23, 2001, an employee of *Clôture Saint-Jérôme inc.* delivers the fence. He has Andrée Lemieux sign the contract and provides her with a copy thereof. All legal requirements regarding the validity of the contract are fulfilled. Andrée Lemieux then makes the first payment of \$ 200 stipulated in the contract.

Andrée Lemieux's neighbour is a municipal inspector for the municipality of Saint-Paul-du-Lac. He helps her unpack the fence and immediately notices that its height does not comply with the requirements of the municipal by-law in force.

Andrée Lemieux therefore decides not to install the fence. She wants to return the fence, terminate her obligations and obtain a refund of the initial \$ 200 payment.

That same day, namely, May 23, 2001, Andrée Lemieux speaks by telephone with a representative of *Clôture Saint-Jérôme inc.* who tells her that the sale is final.

**QUESTION 5 (5 marks)**

- **Can Andrée Lemieux cancel the contract entered into with *Clôture Saint-Jérôme inc.*?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**



<b>FILE 3 (40 MARKS)</b>
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**The situation described in File 3 is an evolving one : all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.**

Jacques Martin, the manager of *Banque du Peuple*, meets with you for the first time on March 15, 2001 regarding a hypothecary loan charged against a family residence located at 6080 Sainte-Marie Street in Prévost, which residence is owned by Paul Jobin. He relates the following facts to you, facts that he learned during a recent meeting with the debtor Paul Jobin :

- In January of 2001, Paul Jobin and his spouse decide to renovate the hypothecated residence in order to add a living room.
- For the performance of the work, on January 12, 2001 Paul Jobin enters into a contract for an amount of \$ 50,000 with *Constructions des Laurentides inc.* of which the sole shareholder and director is Éric Richard. This contract, duly signed by Éric Richard and Paul Jobin, includes all the work and materials provided for in the plans and specifications, except the painting and floor-finishing.
- On January 15, 2001, *Constructions des Laurentides inc.* signs the following two contracts regarding the work to be carried out at Paul Jobin's home :
  - \$ 10,000 contract with *Fenêtres Commerciales inc.* for the supply of doors and windows;
  - \$ 5,000 contract with *Claude Michon inc.* for the supply and installation of the lighting and electric heating.
- On January 18, 2001, Paul Jobin receives a letter from *Claude Michon inc.* informing him of the contract signed with *Constructions des Laurentides inc.* The letter specifies that *Claude Michon inc.* will register a legal hypothec if the amount of the contract, namely \$ 5,000, is not paid by *Constructions des Laurentides inc.*
- The work begins on January 22, 2001.
- *Fenêtres Commerciales inc.* delivers part of the order on January 23, 2001.
- On January 24, 2001, the president of *Fenêtres Commerciales inc.* telephones Paul Jobin and informs him that the company signed a \$ 10,000 contract with *Constructions des Laurentides inc.* for the supply of the doors and windows and that he will register a legal hypothec if *Constructions des Laurentides inc.* does not pay him. He specifies that the doors delivered the previous day have a value of \$ 4,000 and that the windows, having a value of \$ 6,000, will be delivered on February 6, 2001.
- On February 6, 2001, all the windows are delivered.

- On February 15, 2001, Paul Jobin receives a letter from *Fenêtres Commerciales inc.* informing him of the contract signed with *Constructions des Laurentides inc.* The letter specifies that *Fenêtres Commerciales inc.* will register a legal hypothec if the amount of the contract, namely \$ 10,000, is not paid by *Constructions des Laurentides inc.*
- All the work of *Constructions des Laurentides inc.* and *Claude Michon inc.* is completed on February 20, 2001.
- Due to financial difficulties which appear to be temporary, Paul Jobin is unable to pay *Constructions des Laurentides inc.*
- On February 20, 2001, Paul Jobin telephones *Peintres Experts inc.* and retains its services for the painting which is carried out between February 21, 2001 and February 24, 2001. No contract is signed, but at the end of its work on February 24, 2001, *Peintres Experts inc.* gives Paul Jobin its invoice. The invoice, for an amount of \$ 3,000, includes the cost of the materials, labour at \$ 35 an hour and taxes.
- On February 26, 2001, Paul Jobin signs a \$ 7,000 contract with *Plancher Universel inc.* for the supply and installation of a hardwood floor. The work is carried out between February 26, 2001 and March 1, 2001.
- The renovation work, which is completed on March 1, 2001, increases the value of the immovable by \$ 60,000.
- On March 2, 2001, Paul Jobin is served with the following documents :
  - notice of preservation of a legal hypothec by *Fenêtres Commerciales inc.*;
  - notice of preservation of a legal hypothec by *Claude Michon inc.*;
  - notice of preservation of a legal hypothec by *Constructions des Laurentides inc.*
- A few days later, a quarrel breaks out between Paul Jobin and his spouse Manon Lafrance. The spouses decide to separate and, on March 6, 2001, Manon Lafrance leaves the residence for good.
- On March 7, 2001, Paul Jobin is served with a notice of legal hypothec in favour of the Minister of Revenue of Quebec for arrears of income taxes amounting to \$ 14,000.
- Due to his financial difficulties, Paul Jobin goes back to live with his parents and leases out his residence to a work colleague, Charles Henry. The lease for the residence has a term of three years beginning on March 10, 2001 and the rent is at the market price. Since March 10, 2001, the residence has in fact been occupied by Charles Henry and his family.

Paul Jobin has the following debts :

- balance of the hypothecary loan granted by *Banque du Peuple*, namely, \$ 89,000. The monthly instalments provided for in the loan agreement have not been paid since January 1, 2001;
- amount owed pursuant to the contract entered into with *Constructions des Laurentides inc.*, namely, \$ 50,000;
- amount owed to *Peintres Experts inc.*, namely, \$ 3,000;
- amount owed to *Plancher Universel inc.*, namely, \$ 7,000;
- arrears of real estate taxes for the year 2001 owed to the municipality of Prévost, namely, \$ 1,200;
- arrears of income taxes owed to the Minister of Revenue of Quebec, namely, \$ 14,000.

At the end of the meeting on March 15, 2001, Jacques Martin gives you the mandate to send Paul Jobin a prior notice of the exercise of a hypothecary right of taking in payment.

#### **QUESTION 6 (5 marks)**

**Indicate the only person or persons upon whom the prior notice of the exercise of a hypothecary right must be served. Explain your answer.**

<b>SUPPLEMENTARY FACTS</b>
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Today, May 24, 2001, you once again meet with Jacques Martin and discuss the various entries appearing in the index of immovables (reproduced hereinbelow) which you sent him yesterday after having obtained it from the registry office.

Jacques Martin informs you that he checked with the various interested parties and that all the claims appearing in the index of immovables are unpaid.

He has learned that the construction agreement entered into on January 12, 2001 between Paul Jobin and *Constructions des Laurentides inc.* includes the following provision : « *Constructions des Laurentides inc.* renounces all legal hypothecs for construction which exist or may exist in its favour or in favour of its subcontractors ».

He has also learned that on March 23, 2001, the following notices were served on Paul Jobin :

- notice of preservation of a legal hypothec by *Peintres Experts inc.*
- notice of preservation of a legal hypothec by *Plancher Universel inc.*



**QUESTION 7 (5 marks)**

**Did the registrar have the obligation to notify Manon Lafrance of the registration of the prior notice of the exercise of a hypothecary right given that she had published a declaration of family residence? Explain your answer.**

**QUESTION 8 (15 marks)**

**a) As at May 24, 2001, does *Fenêtres Commerciales inc.* hold a legal hypothec for construction? If so, indicate the exact amount of the claim which is secured by this legal hypothec. If not, explain your answer.**

**b) As at May 24, 2001, does *Claude Michon inc.* hold a legal hypothec for construction? Select the correct answer from among the answers set forth hereinbelow and write it in the answer booklet.**

- **Yes, because it gave a written declaration of its contract before performing its work and it registered a notice of preservation within 30 days of the completion of the work.**
- **No, because of the renunciation set forth in the contract dated January 12, 2001.**
- **Yes, because the party involved in the construction always has a legal hypothec to secure payment of its claim if the claim does not exceed the increase in value resulting from the work.**
- **No, because the notice of preservation of the legal hypothec for construction was not published within the prescribed period.**
- **None of the above.**

**c) As at May 24, 2001, does *Peintres Experts inc.* hold a legal hypothec for construction? Select the correct answer from among the answers set forth hereinbelow and write it in the answer booklet.**

- **Yes, because it registered a notice of preservation within 30 days of the completion of the work.**
- **No, because no contract was signed with respect to its work and the work was invoiced on the basis of labour and materials.**
- **Yes, because the party involved in the construction always has a legal hypothec to secure payment of its claim if the claim does not exceed the increase in value resulting from the work.**
- **No, because the notice of preservation of the legal hypothec for construction was not published within the prescribed period.**
- **None of the above.**

**QUESTION 9 (15 marks)**

- a) Assuming that on July 13, 2001 *Banque du Peuple* were to register a judgment of surrender for taking in payment issued in its favour, would it take the immovable subject to the hypothec of *Plancher Universel inc.*, despite the fact that the notice of preservation was published after the prior notice of the exercise of a hypothecary right? Explain your answer.
- Assume that *Plancher Universel inc.* would still be unpaid on July 13, 2001.
- b) Assuming that on July 13, 2001 *Banque du Peuple* were to register a judgment of surrender for taking in payment issued in its favour, would the municipality of Prévost preserve its prior claim for the unpaid real estate taxes?
- Assume that the municipality of Prévost would still be unpaid on July 13, 2001.
  - Justify your answer by referring to one or more specific and relevant provisions of any legislation.
- c) Assuming that on July 13, 2001 *Banque du Peuple* were to register a judgment of surrender for taking in payment issued in its favour, would it be required to respect Charles Henry's lease until the expiry of the term?
- Justify your answer by referring to one or more specific and relevant provisions of any legislation.

**GUIDE DE CORRECTION**  
**CIVIL II - EXAMEN DE REPRISE**  
 24 mai 2001

**DOSSIER 1 (40 POINTS)**

**QUESTION 1 (40 points)**

Rédigez en entier (en-tête, titre, adresse, allégations et conclusions) l'acte de procédure approprié aux fins d'exécuter le mandat. 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 DRUMMOND

COUR SUPÉRIEURE

1.  1

NO :

CENTRE DU CAMION NATIONAL INC., personne morale légalement constituée ayant son siège au 1264, boulevard de l'Avenir, Salaberry-de-Valleyfield, J6T 2J2, (district de Beauharnois).

demanderesse

2.  1

c.

BATTERIES DRUMMONDVILLE INC., personne morale légalement constituée ayant son principal établissement au 8088, boulevard Industriel, Drummondville, J2C 2G3, (district de Drummond).

défenderesse

*Description complète des parties*

3.  1

DÉCLARATION

4.  1

AU SOUTIEN DE SON ACTION, LA DEMANDERESSE ALLÈGUE :

- (1. La demanderesse est une entreprise spécialisée dans la vente et la distribution de pièces de rechange pour camions et exploite quinze ateliers de réparation de camions au Québec;)
- (2. Pour sa part, la défenderesse est une entreprise spécialisée dans la fabrication et la distribution de batteries pour camions et automobiles;)
3. Le 12 octobre 2000, la demanderesse achète de la défenderesse 4 500 batteries de camion pour un montant total de 336 448,12 \$, taxes incluses, tel qu'il appert du contrat de vente, pièce P-1;
4. Conformément aux termes du contrat de vente, pièce P-1, les 4 500 batteries sont livrées le 15 décembre 2000 et payées le 15 janvier 2001;
5. Vers la fin du mois de janvier 2001, la demanderesse constate que les batteries vendues par la défenderesse sont de mauvaise qualité;
6. En effet, le boîtier de plastique des batteries vendues par la défenderesse n'est pas étanche, ce qui rend les batteries impropres à leur usage;

5.  1

6.  1

7.  1

8.  1

7. Ces batteries sont affectées de vices cachés en raison d'un procédé de scellement inadéquat de leur boîtier de plastique et de l'utilisation de matière plastique de piètre qualité; 9. 1
8. Le 6 mars 2001, la demanderesse dénonce à la défenderesse le vice qui affecte les batteries, tel qu'il appert d'une lettre, pièce P-2; 10. 1
- (9. Le 10 avril 2001, la défenderesse nie toute responsabilité, tel qu'il appert d'une lettre de Bernard Chaput, président de la défenderesse, pièce P-3;)
10. La demanderesse a dû rembourser toutes les batteries vendues à ses clients; 11. 1
11. Les batteries, toujours en possession de la demanderesse, sont invendables; 12. 1
12. La demanderesse est bien fondée à réclamer à la défenderesse la somme de 437 288,12 \$, laquelle se détaille comme suit :
- a) remboursement pour les 4 500 batteries : 336 448,12 \$ 13. 1
- b) frais de manutention et de transport des batteries : 4 340 \$ 14. 1
- c) entreposage des batteries : 6 500 \$ 15. 1
- d) perte de profits : 90 000 \$; 16. 1
13. Par lettre datée du 8 mai 2001, la demanderesse met la défenderesse en demeure de reprendre possession des batteries, de lui en rembourser le prix et de l'indemniser pour ses pertes et dommages, tel qu'il appert de cette lettre, pièce P-4; 17. 1
14. À ce jour, la défenderesse est toujours en défaut d'obtempérer à cette lettre de mise en demeure; 18. 1
- (15. La demanderesse réitère l'offre formulée dans la lettre datée du 8 mai 2001, pièce P-4.)

POUR CES MOTIFS, PLAISE AU TRIBUNAL :

DONNER ACTE de l'offre de la demanderesse de remettre à la défenderesse les 4 500 batteries ayant fait l'objet de la vente du 12 octobre 2000. 19. 1

RÉSoudre la vente intervenue entre la demanderesse et la défenderesse le 12 octobre 2000. 20. 2

CONDAMNER la défenderesse à payer à la demanderesse 21. 1

la somme de 437 288,12 \$ 22. 1

avec intérêts au taux légal et l'indemnité additionnelle prévue par la loi 23. 1

à compter du 19 mai 2001. 24. 1

Le tout avec dépens.

Salaberry-de-Valleyfield, le 24 mai 2001.

\_\_\_\_\_  
 PROCUREURS DE LA DEMANDERESSE





DOSSIER 2 (20 POINTS)

QUESTION 2 (5 points)

- L'entente du 2 avril 2001 peut-elle être annulée au seul motif que Bernard Métayer ignorait l'effet de la publication du bail?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Non, art. 2634 C.c.Q.

32.

QUESTION 3 (5 points)

- Andrée Lemieux peut-elle réclamer le solde du prêt à Rolande Désormeaux?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code civil du Québec.

Non, (art. 1525 C.c.Q. et) art. 1535 C.c.Q.

33.

QUESTION 4 (5 points)

Karine Lemieux-Désormeaux a-t-elle droit à la reconduction de son bail le 31 août 2001? Choisissez la bonne réponse parmi celles énoncées ci-dessous et inscrivez-la dans le cahier de réponses.

- Oui, elle a un droit personnel au maintien dans les lieux.
- Non, parce que l'immeuble a été construit en 1999.
- Oui, parce qu'elle est toujours inscrite à temps plein dans un établissement d'enseignement.
- Non, parce que Louise Gauthier a le droit de refuser de reconduire le bail.
- Aucune de ces réponses.

Non, parce que Louise Gauthier a le droit de refuser de reconduire le bail.

34.

QUESTION 5 (5 points)

- Andrée Lemieux peut-elle résoudre le contrat conclu avec *Clôture Saint-Jérôme inc.*?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Oui, art. 73 *L.p.c.*

35.

## DOSSIER 3 (40 POINTS)

## QUESTION 6 (5 points)

Indiquez la ou les seules personnes à qui le préavis d'exercice d'un droit hypothécaire doit être signifié. Dites pourquoi.

Paul Jobin, débiteur et constituant de l'hypothèque, qui est la seule personne contre qui le droit hypothécaire sera exercé.

36. 

## QUESTION 7 (5 points)

L'officier de la publicité des droits avait-il l'obligation d'aviser Manon Lafrance de l'inscription du préavis d'exercice d'un droit hypothécaire compte tenu qu'elle a fait publier une déclaration de résidence familiale? Dites pourquoi.

Non, parce qu'elle n'a pas publié d'avis d'adresse.

37. 

## QUESTION 8 (15 points)

a) En date du 24 mai 2001, *Fenêtres Commerciales inc.* détient-elle une hypothèque légale de construction? Si oui, indiquez le montant exact de la créance qui est garanti par cette hypothèque légale. Si non, dites pourquoi.

Non, parce que tous les matériaux ont été fournis avant la dénonciation écrite.

38. 

b) En date du 24 mai 2001, *Claude Michon inc.* détient-elle une hypothèque légale de construction? Choisissez la bonne réponse parmi celles énoncées ci-dessous et inscrivez-la dans le cahier de réponses.

- Oui, parce qu'elle a dénoncé par écrit son contrat avant d'exécuter ses travaux et qu'elle a inscrit un avis de conservation dans les 30 jours de la fin des travaux.
- Non, en raison de la renonciation contenue au contrat du 12 janvier 2001.
- Oui, parce que l'intervenant de la construction bénéficie toujours d'une hypothèque légale pour garantir le paiement de sa créance lorsque celle-ci n'excède pas la plus-value résultant des travaux.
- Non, parce que l'avis de conservation de l'hypothèque légale de la construction n'a pas été publié dans le délai prescrit.
- Aucune de ces réponses.

Oui, parce qu'elle a dénoncé par écrit son contrat avant d'exécuter ses travaux et qu'elle a inscrit un avis de conservation dans les 30 jours de la fin des travaux.

39. 

c) En date du 24 mai 2001, *Peintres Experts inc.* détient-elle une hypothèque légale de construction? Choisissez la bonne réponse parmi celles énoncées ci-dessous et inscrivez-la dans le cahier de réponses.

- Oui, parce qu'elle a inscrit un avis de conservation dans les 30 jours de la fin des travaux.
- Non, parce qu'aucun contrat n'a été signé relativement à ses travaux et qu'ils ont été facturés sur une base de main-d'oeuvre et de matériaux.
- Oui, parce que l'intervenant de la construction bénéficie toujours d'une hypothèque légale pour garantir le paiement de sa créance lorsque celle-ci n'excède pas la plus-value résultant des travaux.
- Non, parce que l'avis de conservation de l'hypothèque légale de la construction n'a pas été publié dans le délai prescrit.
- Aucune de ces réponses.

Oui, parce qu'elle a inscrit un avis de conservation dans les 30 jours de la fin des travaux.

40.

**QUESTION 9 (15 points)**

a) Dans l'hypothèse où *Banque du Peuple* inscrirait, le 13 juillet 2001, un jugement en délaissement pour prise en paiement prononcé en sa faveur, prendrait-elle l'immeuble à charge de l'hypothèque de *Plancher Universel inc.* en dépit du fait que l'avis de conservation a été publié après le préavis d'exercice d'un droit hypothécaire? Dites pourquoi.

- Tenez pour acquis que *Plancher Universel inc.* serait toujours impayée en date du 13 juillet 2001.

Oui, parce que l'hypothèque légale (de *Plancher Universel inc.*) a été créée avant la publication du préavis, soit le 25 février 2001 lors de la conclusion du contrat.

41.

b) Dans l'hypothèse où *Banque du Peuple* inscrirait, le 13 juillet 2001, un jugement en délaissement pour prise en paiement prononcé en sa faveur, la municipalité de Prévost conserverait-elle sa priorité pour les taxes foncières impayées?

- Tenez pour acquis que la municipalité de Prévost serait toujours impayée en date du 13 juillet 2001.
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Oui, art. 2654.1 C.c.Q.

42.

c) Dans l'hypothèse où *Banque du Peuple* inscrirait, le 13 juillet 2001, un jugement en délaissement pour prise en paiement prononcé en sa faveur, serait-elle tenue de respecter le bail de Charles Henry jusqu'à l'arrivée du terme?

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

Oui, art. 1937 C.c.Q.

43.