



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

CIVIL II

SUPPLEMENTAL EXAMINATION

May 23, 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)

You are the articling student for M^e Jocelyn Lavigne. He provides you with the following notes taken during a meeting with Gilles Guimond, the director of the claims department of his client, *Assurex inc.*

**NOTES FROM THE MEETING OF MAY 17, 2002
WITH GILLES GUIMOND**

- *Assurex inc.* : insurance company.
- *Info-Serveur inc.* (« *Info* ») : firm specializing in the hosting of computer network servers.
- 2 March 01 : issuance of insurance policy no. AX277248 in favour of *Info*.
- Term of policy : 2 March 01 to 1 March 02.
- Policy covers all damage which may occur to the immovable located in St-Jean, housing the head office and sole place of business of *Info*, for up to \$250,000.
- Policy also covers all damage to *Info*'s equipment, for up to \$500,000.
- Policy does not include any indemnity for loss of income by *Info* or loss of clients resulting from the inability to use the computer equipment.
- Annual premium : \$7,582.77
- Deductible provided for in the policy : \$5,000 / loss.
- 12 Sep. 01, at approximately 1:00 p.m. : fire breaks out in *Info*'s immovable.
- St-Jean fire fighters intervene and quickly get the fire under control.
- Investigation shows that fire resulted from a fault in the execution of work to repair the electric system.
- Work carried out on morning of 12 Sep. 01 by *Viau Électrique inc.* (« *Viau* »).
- Fire damages *Info*'s internal communications system which allows the transfer of data between servers and network users.
- Principal client of *Info* : national chain of pharmacies, *Groupe pharmaceutique T.D.R. inc.* (« *TDR* »).
- *Info*'s clients deprived of their computer networks for 48 hours.

- 13 Sep. 01 : *Assurex inc.* informed of the loss by *Info's* broker, *Agence Iberville inc.* (« *Agence* »).
- 30 Oct. 01 : *Assurex inc.* receives *Info's* proof of loss form totalling \$77,500.
- Particulars of the claim :
 - \$27,500 to repair building and damaged equipment;
 - \$50,000 for lost income and compensation paid by *Info* to its clients for service interruption.
- After examining claim, *Assurex inc.* denies coverage for part of amount claimed, namely \$50,000 for lost income and compensation, because not covered by the insurance policy.
- 15 Feb. 02 : after drawn out negotiations, *Assurex inc.* pays the total indemnity it was required to pay under the policy, namely \$22,500.
- Same day, Frédéric Mailloux, president of *Info*, signs an acquittance as full and final settlement of *Info's* claim relating to the loss of 12 Sept. 01, in virtue of insurance contract no. AX277248.
- 25 March 02 : letter from *Assurex inc.* to *Viau* putting *Viau* in default to reimburse *Assurex inc.* the amount of \$22,500 paid by *Assurex inc.* to its insured as a result of the loss of 12 Sept. 01, the whole no later than 25 Apr. 02.
- 23 Apr. 02 : *Assurex inc.* receives letter from M^e Chantale Gagnon, lawyer for *Viau*, dated 19 Apr. 02, informing it that her client has been sued by *Info* with respect to this fire in case no. 755-05-008245-012 of the Superior Court of the District of Iberville.
- This letter also states that amount sought in proceedings is \$77,500, including the \$22,500 claimed by *Assurex inc.*

On May 21, 2002, your articling supervisor, M^e Jocelyn Lavigne, consulted the court record and noted that the insured did indeed institute an action for \$77,500 against *Viau Électrique inc.* which was served on December 14, 2001.

On January 31, 2002, M^e Chantale Gagnon filed a defence on behalf of her client, *Viau Électrique inc.*, and the action was inscribed on March 20, 2002.

On May 21 and 22, 2002, M^e Jocelyn Lavigne unsuccessfully attempted to reach M^e Gérald Moquin, the lawyer for *Info-Serveur inc.*, in order to obtain an explanation.

Today, May 23, 2002, Gilles Guimond gives M^e Lavigne the mandate to intervene in the case in order to assert the rights of *Assurex inc.* in case number 755-05-008245-012 and to obtain the reimbursement of the amount paid to *Info-Serveur inc.*

Documents in the file :

- Insurance policy no. AX277248.
- Fire report from the Saint-Jean-sur-Richelieu fire department dated September 13, 2001.
- Proof of loss form dated October 26, 2001.
- Invoice for \$23,500, including taxes, from *Câblage et fibre optique du Québec inc.*, dated September 14, 2001, for repairs to *Info-Serveur inc.*'s communications system.
- Invoice for \$4,000, including taxes, from *Rénovations après sinistres inc.*, dated September 17, 2002, for restoration of *Info-Serveur inc.*'s premises.
- Series of 24 photographs taken on September 14, 2001 by Armand Samson, claims adjuster.
- Cashed cheque from *Assurex inc.*, for an amount of \$22,500, payable to *Info-Serveur inc.*, dated February 15, 2002.
- Acquittance dated February 15, 2002.
- Demand letter from *Assurex inc.* to *Viau Électrique inc.* dated March 25, 2002.
- Letter from M^e Chantale Gagnon dated April 19, 2002.

Addresses :

- *Assurex inc.* : 4422 Sherbrooke Street West, Montreal, District of Montreal, H5W 1H7 (head office and place of business).
- *Info-Serveur inc.* : 628 du Séminaire Blvd., Saint-Jean-sur-Richelieu, District of Iberville, J3A 1S7 (head office and place of business).
- Frédéric Mailloux : 236 Jacques-Cartier Street, Saint-Jean-sur-Richelieu, District of Iberville, J3B 1S8 (domicile and residence).
- *Groupe pharmaceutique T.D.R. inc.* : 7883 Chabanel Street, Montreal, District of Montreal, H2W 1M0 (head office and place of business).
- *Viau Électrique inc.* : 893 Saint-Georges Street, Saint-Jean-sur-Richelieu, District of Iberville, J4C 1A9 (head office and place of business).
- *Agence Iberville inc.* : 54 1st Street, Saint-Jean-sur-Richelieu, District of Iberville, J4A 2Z6 (head office and place of business).

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

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

FILE 2 (30 MARKS)

The situation described in 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.

Anne-Sophie Monet has operated a flower shop on Île-des-Soeurs since August 1, 1999 and she assumed the following obligations in order to operate her business :

- August 2, 1999 : loan of \$15,000 from *Centre d'aide au démarrage d'entreprise de Montréal*. The repayment of this loan is secured by a floating hypothec on the accounts receivable of the borrower. This hypothec was duly published on the same day.
- August 3, 1999 : loan of \$30,000 from *Caisse populaire Saint-Laurent*. The repayment of this loan is secured by a movable hypothec without delivery on the following property of the borrower: the universality of the equipment and property in stock of the flower shop, as well as the accounts receivable. This hypothec was duly published on the same day.
- August 16, 1999 : purchase on credit of two cash registers. The contract of sale states that the items sold are hypothecated in favour of the vendor, *Caisses expert inc.*, in order to secure the payment of the balance of the price, namely \$8,000. This hypothec was published on August 20, 1999 and the two cash registers were delivered to Anne-Sophie on September 1, 1999.
- September 30, 1999 : interest-free hypothecary loan for \$10,000 from her uncle, Claude Monet. Repayment of this loan is exigible on September 30, 2000 and is secured by a movable hypothec without delivery charging the borrower's mobile home installed on a leased parcel of land at *Camping Bon Repos* in Mont-Tremblant. The hypothec was published on October 1, 1999.

Anne-Sophie is experiencing financial difficulties. Today, May 23, 2002, she consults you because she wants to negotiate additional loans and she needs to know what payment guarantees she can offer. She informs you of the following :

- The accounts receivable owed to her total \$8,000.
- She still owns the mobile home located at *Camping Bon Repos* in Mont-Tremblant which she uses for recreational purposes on the weekends.
- She owns a bracelet made by the famous jeweller Timothé Goyer, having a value of \$15,000.
- She did not repay the loan granted by her uncle Claude Monet because he never insisted on being paid. She provides you with a copy of the deed of hypothecary loan dated September 30, 1999 (not reproduced) and form RH (reproduced on the following page).
- She has always performed her obligations under the contracts entered into with *Centre d'aide au démarrage d'entreprise de Montréal*, *Caisse populaire Saint-Laurent* and *Caisses expert inc.* However, to date, none of these three creditors has been paid in full.
- No other registration regarding her or her property has been made in the land register or in the register of personal and movable real rights.



NATURE	1- Cocher une seule case a <input checked="" type="checkbox"/> Hypothèque conventionnelle sans dépossession b <input type="checkbox"/> Hypothèque conventionnelle avec dépossession (gage) c <input type="checkbox"/> Hypothèque ouverte d <input type="checkbox"/> Hypothèque légale de l'État ou d'une personne morale de droit public e <input type="checkbox"/> Hypothèque légale résultant d'un jugement f <input type="checkbox"/> Renouvellement de la publicité d'une hypothèque		g <input type="checkbox"/> Renouvellement sur un meuble nouveau h <input type="checkbox"/> Renouvellement sur de nouvelles actions i <input type="checkbox"/> Report sur le bien offert ou consigné j <input type="checkbox"/> Report sur le bien acquis en remplacement k <input type="checkbox"/> Affectation d'un bien à une hypothèque légale	
	D.E.E. 2- DATE EXTRÊME D'EFFET DE L'INSCRIPTION <i>Note: L'inscription pourra être radiée le lendemain de cette date sans présentation d'une réquisition à cet effet</i> <input type="text" value="2001-09-30"/> <small>Année Mois Jour</small>			
PARTIES	1- TITULAIRE <i>Consulter les directives</i> 4- Nom <input type="text" value="YONET"/> 5- Prénom <input type="text" value="CLAUDE"/> 7- Nom de l'organisme <input type="text"/>		3- Numéro d'avis d'adresse <input type="text"/> 6- Date de naissance <input type="text" value="1952-06-28"/> <small>Année Mois Jour</small>	
	8- Adresse (numéro, rue, ville, province) <input type="text"/> <i>Au besoin, utiliser les annexes AP ou AD</i>		9- Code postal <input type="text"/>	
	2- CONSTITUANT <i>Consulter les directives</i> 10- Nom <input type="text" value="YONET"/> 11- Prénom <input type="text" value="ANNE-SOPHIE"/> 13- Nom de l'organisme <input type="text"/>		12- Date de naissance <input type="text" value="1975-03-30"/> <small>Année Mois Jour</small>	
14- Adresse (numéro, rue, ville, province) <input type="text"/> <i>Au besoin, utiliser les annexes AP ou AD</i>		15- Code postal <input type="text"/> <i>S'il y a lieu, cocher <input type="checkbox"/> état certifié des droits, expédié aussi par <input type="checkbox"/> télécopieur <input type="checkbox"/> messagerie électronique</i>		
BIENS	VÉHICULE ROUTIER <i>Consulter les directives</i> 16- Catégorie <input type="text"/> 17- Numéro d'identification <input type="text"/> 18- Année <input type="text"/> 19- Description <input type="text"/> <i>Au besoin, utiliser l'annexe AV</i> <i>S'il y a lieu, cocher <input type="checkbox"/> état certifié des droits, expédié aussi par <input type="checkbox"/> télécopieur <input type="checkbox"/> messagerie électronique</i>			
	20- AUTRES BIENS <input type="text" value="Maison mobile de marque NORSUD modèle 1990 numéro de série : 1278AA"/> <i>Au besoin, utiliser l'annexe AG</i>			
MENTIONS	21- Somme de l'hypothèque <i>Consulter les directives</i> <input type="text" value="10 000 \$ sans intérêt"/>			
	22- Référence à la loi créant l'hypothèque <input type="text"/>		23- Cause de la créance <input type="text"/>	
	RÉFÉRENCE À L'INSCRIPTION VISÉE AU REGISTRE DES DROITS PERSONNELS ET RÉELS MOBILIERS 24- Numéro <input type="text"/> <i>Au besoin, utiliser l'annexe AI</i>			
	25- S'il y a lieu, cocher une case a <input type="checkbox"/> L'hypothèque est consentie pour garantir le paiement d'obligations ou autres titres d'emprunt (article 2692 C.c.Q.) b <input type="checkbox"/> L'hypothèque est consentie en garantie d'un droit viager			
	RÉFÉRENCE À L'ACTE CONSTITUTIF 26- Forme de l'acte <i>Cocher une seule case</i> a <input checked="" type="checkbox"/> Sous seing privé b <input type="checkbox"/> Notarié en minute c <input type="checkbox"/> Notarié en brevet d <input type="checkbox"/> Jugement			
27- Date <input type="text" value="1999-09-30"/> <small>Année Mois Jour</small>		28- Lieu ou district judiciaire <input type="text" value="MONTREAL"/>		
29- N° de minute ou de dossier <input type="text"/>		30- Nom et prénom du notaire ou tribunal <input type="text"/>		
31- AUTRES MENTIONS <input type="text"/> <i>Au besoin, utiliser l'annexe AG</i>				
SIGNATURE	Le signataire requiert l'inscription du présent avis.			
	32- Nom du signataire <input type="text" value="CLAUDE YONET"/> 33- X <input type="text" value="Claude Yonet"/> <small>Signature</small>			

QUESTION 2 (5 marks)

As at May 23, 2002, can Anne-Sophie Monet grant *Caisse populaire Saint-Laurent* a movable hypothec without delivery on her mobile home and, if so, what would be the rank of this hypothec?

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

- a) Yes, it will be a second-ranking hypothec because Claude Monet's hypothec was published on October 1, 1999.
- b) No, because Anne-Sophie Monet does not own the parcel of land on which the mobile home is installed.
- c) Yes, it will be a first-ranking hypothec because Claude Monet's hypothec can no longer be set up against *Caisse populaire Saint-Laurent*.
- d) No, because the mobile home is not used for the operation of Anne-Sophie Monet's business.
- e) None of the above.

QUESTION 3 (5 marks)

As at May 23, 2002, can Anne-Sophie Monet hypothecate her bracelet made by the jeweller Timothé Goyer? If so, indicate how she can grant this hypothec. If not, explain your answer.

QUESTION 4 (5 marks)

Are the cash registers hypothecated in favour of *Caisse populaire Saint-Laurent*? If so, indicate the rank of this hypothec and justify your answer by referring to one or more specific and relevant provisions of any legislation. If not, explain your answer.

QUESTION 5 (5 marks)

As at May 23, 2002, does the hypothec on the accounts receivable granted in favour of *Centre d'aide au démarrage d'entreprise de Montréal* rank before or after the hypothec of *Caisse populaire Saint-Laurent*?

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

SUPPLEMENTARY FACTS

During the same meeting on May 23, 2002, Anne-Sophie informs you of the following :

- On September 24, 2001, she bought a used Dodge Caravan truck from one of her employees, Luc Gendron, at a price of \$8,000 paid for in cash.
- On January 31, 2002, due to her financial difficulties, she laid off Luc Gendron.
- Yesterday, she received a letter from *Auto Bon Prix inc.* informing her that the truck belongs to it and that it intends to take the truck back for the following reasons :
 - On September 30, 1999, *Auto Bon Prix inc.* sold the truck to John Smith under an instalment sales contract;
 - On July 24, 2000, John Smith sold the truck to Luc Gendron. As of that date, Luc Gendron paid *Auto Bon Prix inc.* the monthly instalments provided for in the instalment sales contract;
 - The instalments due since February 1, 2002 have not been paid and a balance of \$6,000 is still owed to *Auto Bon Prix inc.* under the instalment sales contract.

In reviewing the documents attached to *Auto Bon Prix inc.*'s letter, you note that the instalment sales contract dated September 30, 1999 complies with all the legal requirements and that the reservation of ownership was published in the register of personal and movable real rights on November 15, 1999.

QUESTION 6 (5 marks)

As at May 23, 2002, can the reservation of ownership on the Dodge Caravan truck be set up against Anne-Sophie Monet given that it was published more than 15 days after the sale? Explain your answer.

SUPPLEMENTARY FACTS

During the same meeting on May 23, 2002, Anne-Sophie informs you of the following :

- She owns a single-family dwelling in Verdun, located at 300 des Promenades Boulevard, which she bought in 1995. This immovable has a market value of \$155,000 and is charged with a first-ranking hypothec in favour of *Banque du Québec* securing the repayment of a loan with a current balance of \$120,000.
- She failed to perform the obligations set forth in the hypothecary loan agreement relating to her residence in Verdun and on May 1, 2002 she was served by *Banque du Québec* with a prior notice of the exercise of a hypothecary right of sale by judicial authority.
- She has learned that *Banque du Québec* will offer \$125,000 at the sale by judicial authority and that this offer will allow it to receive \$100,000 upon the distribution of the proceeds of sale, after the legal costs and the unpaid real estate taxes.

QUESTION 7 (5 marks)

Under this hypothesis, after the distribution of the proceeds of sale, would Anne-Sophie Monet be held personally liable for payment of the balance of the loan to *Banque du Québec*?

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

FILE 3 (30 MARKS)

Jeannine Tremblay, a businesswoman, consults you during the year with respect to five problems.

Problem 1

Catherine Landry, one of Jeannine's old friends, operates a retail business selling decorative items. On January 19, 2001, *Banque de développement* grants an \$80,000 line of credit to Catherine. Repayment of the amounts owed under the line of credit is secured by a movable hypothec without delivery charged against the universality of the equipment and property in stock of Catherine's business. Her friend Jeannine intervenes in the deed of loan under the following terms : « The intervenor agrees to be solidarily liable, as surety, for the obligations of Catherine Landry, up to an amount of \$40,000. »

In the winter of 2002, Catherine experiences financial difficulties and informs Jeannine that she will cease operating her business because it is not profitable. On February 11, 2002, *Banque de développement* sends a letter in which it asks Catherine and Jeannine to repay the balance owed under the line of credit, namely \$80,000. On February 15, 2002, Jeannine consults you as regards this letter and you recommend to her that she pay \$40,000 to *Banque de développement*.

On February 22, 2002, Jeannine pays \$40,000 to *Banque de développement*. That day, you publish in the appropriate register the subrogation by operation of law to which Jeannine is entitled and all the formalities provided for in article 3004 of the *Civil Code of Québec* are duly fulfilled.

On April 15, 2002, *Banque de développement* obtains a judgment ordering the forced surrender for sale by judicial authority of the property hypothecated in its favour by Catherine. All the formalities relating to the exercise of the hypothecary recourse are fulfilled and the sale by judicial authority carried out on May 10, 2002 brings in \$25,000.

Following the sale, the scheme of collocation is prepared today, May 23, 2002, as follows :

- all interested parties duly assert their rights;
- no one alleges the insolvency of Catherine Landry;
- the legal costs as well as the other expenses incurred in the common interest total \$1,000;
- Catherine Landry's only two debts are the following :
 - *Banque de développement* (balance of the line of credit) : \$40,000
 - Jeannine Tremblay (recourse in subrogation of the surety) : \$40,000

QUESTION 8 (5 marks)

Will Jeannine Tremblay receive an amount upon the distribution of the proceeds of sale and, if so, how much will she receive?

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

Problem 2

During the meeting on May 23, 2002, Jeannine informs you that she owns a residential immovable located on 1st Avenue in Montreal. The immovable includes one underground parking space, but none of her lessees were interested in paying an additional amount to use it. Therefore, Jeannine decided to put the space up for rent. Alberte Chiasson, who lived in the neighbourhood, saw Jeannine's advertisement and leased the parking space. The lease, which has a term of one year, from March 1, 2002 to February 28, 2003, provides for a rent of \$100 per month.

Alberte Chiasson died on April 12, 2002. On April 29, 2002, the liquidator of the succession informed Jeannine of his intention to terminate the garage lease by giving her a prior notice of three months and paying the rent for the duration of the prior notice. Jeannine informs you that it will be difficult for her to re-lease the garage before next winter.

QUESTION 9 (5 marks)

Can the liquidator of Alberte Chiasson's succession terminate the lease by giving Jeannine Tremblay a prior notice of three months and paying her the rent for the duration of the prior notice?

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

Problem 3

Problem 3 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.

Jeannine owns a fruit store in a shopping centre in downtown Montreal. She is currently negotiating the terms of a large supply contract with a hotel chain. The contract would have a duration of two years and would provide for the sale and delivery by Jeannine of 200 fruit baskets every Saturday between 8:00 a.m. and 9:00 a.m. The negotiations are going well and the hotel chain has made significant compromises on several terms of the contract. Nonetheless, Jeannine is worried about the following clause which the hotel chain wishes to include in the contract :

The purchaser may obtain the resiliation of the contract if the vendor fails to perform any of her obligations without justification and the vendor shall be in default by the terms of the contract itself.

QUESTION 10 (5 marks)

Assuming that an unjustified failure to perform were a minor and isolated event, would this clause allow the hotel chain to obtain the resiliation of the contract?

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

SUPPLEMENTARY FACTS

Jeannine asks for your opinion regarding the validity of the following clause which she wishes to include in the said contract :

If the vendor is required to hire a lawyer in order to be paid the amounts owed to her, the purchaser shall refund to her all of the lawyer's fees which are justified and have been incurred by reason of the purchaser's default.

QUESTION 11 (5 marks)

Is this clause valid?

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

Problem 4

On May 1, 2002, Roger Lessard, a representative of *Sécuri Pro ltée*, comes to Jeannine's fruit store and offers to sell her the latest model of counterfeit bill detector machine on the market. After a convincing demonstration, Jeannine signs a purchase agreement and pays the price of \$1,800 in cash. The machine is delivered and installed in the fruit store that day.

Jeannine regrets having made this purchase. She contacts the Office de la protection du consommateur and is told that Roger Lessard and *Sécuri Pro ltée* have never held an itinerant merchant's permit.

QUESTION 12 (5 marks)

As at May 23, 2002, can Jeannine Tremblay avail herself of the right of cancellation provided for in section 59 of the *Consumer Protection Act*? If so, indicate all the required formalities. If not, explain your answer.

Problem 5

During the same meeting on May 23, 2002, Jeannine relates the following facts to you.

On February 28, 2002, Raymond Durand, a retired public servant, sold an antique china cabinet to *Antiquités De l'Île ltée* at a price of \$8,600. *Antiquités De l'Île ltée* made an initial payment of \$2,600 at the time of the sale. The balance of \$6,000 was payable on April 30, 2002.

On April 12, 2002, Jeannine purchased this china cabinet from *Antiquités De l'Île ltée* at a price of \$9,500. The china cabinet was delivered to her home and paid for in cash that day.

On April 30, 2002, *Antiquités De l'Île ltée* ceased its operations and failed to pay Raymond Durand. After taking certain steps, Raymond Durand learned that the china cabinet is currently located in Jeannine's home.

On May 6, 2002, Raymond Durand contacted Jeannine. He informed her that he had not been paid by *Antiquités De l'Île ltée* and that he intended to revendicate the china cabinet.

QUESTION 13 (5 marks)

Can Raymond Durand revendicate the antique china cabinet?

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

- a) **Yes, if Raymond Durand pays Jeannine Tremblay \$9,500 because *Antiquités De l'Île ltée* sold the china cabinet to her in the ordinary course of business of its enterprise.**
- b) **Yes, and Raymond Durand is not required to pay anything whatsoever to Jeannine Tremblay because he did not sell the china cabinet to *Antiquités De l'Île ltée* in the ordinary course of business of an enterprise.**
- c) **No, because section 36 of the *Consumer Protection Act* requires that the merchant free the items sold to a consumer from every charge or encumbrance in favour of a third person.**
- d) **No, because Raymond Durand has no right to the china cabinet and the sale to Jeannine Tremblay can be set up against him.**
- e) **None of the above.**

CORRIGÉ
CIVIL II - EXAMEN DE REPRISE
 23 mai 2002

DOSSIER 1 (40 POINTS)

QUESTION 1 (40 points)

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

CANADA

PROVINCE DE QUÉBEC
 DISTRICT D'IBERVILLE

C O U R S U P É R I E U R E

1. 1

NO : 755-05-008245-012

INFO-SERVEUR INC.

demanderesse

c.

VIAU ÉLECTRIQUE INC.

défenderesse 2. 2

et

ASSUREX INC., personne morale légalement constituée ayant son siège au 4422, rue Sherbrooke Ouest, Montréal, district de Montréal, H5W 1H7.

intervenante

Description complète de l'intervenante 3. 2

Absence de description complète des autres parties 4. 1

Aucune autre partie ajoutée 5. 1

DÉCLARATION D'INTERVENTION 6. 2

AU SOUTIEN DE SA DÉCLARATION, L'INTERVENANTE EXPOSE : 7. 1

1. Du 2 mars 2001 au 1^{er} mars 2002, l'intervenante assurait, contre les dommages, l'immeuble de la demanderesse situé au 628, boul. du Séminaire, Saint-Jean-sur-Richelieu et ses équipements, tel qu'il appert de la police d'assurance portant le no AX277248, pièce IN-1; 8. 1

2. Le 12 septembre 2001, la demanderesse a subi des dommages évalués à 77 500 \$, en raison d'un incendie survenu dans son immeuble; 9. 1

(3. La police d'assurance, pièce IN-1, ne couvre qu'une partie des dommages subis;)

4. Le 15 février 2002, l'intervenante a indemnisé la demanderesse, son assurée, pour la perte couverte, soit 22 500 \$ (tel qu'il appert du chèque, pièce IN-2); 10. 1

(5. L'intervenante est subrogée dans les droits de la demanderesse contre la défenderesse, jusqu'à concurrence de cette somme;)

6. Cet incendie résulte d'une faute de la défenderesse dans l'exécution de travaux de réparation du système électrique de l'immeuble de la demanderesse, effectués le 12 septembre 2001; 11.
7. La demanderesse poursuit la défenderesse pour un montant de 77 500 \$, soit la totalité de la perte subie, tel qu'il appert du dossier de la cour; 12.
8. Seule l'intervenante a l'intérêt pour réclamer la somme de 22 500 \$ déjà versée à la demanderesse; 13.
9. La défenderesse néglige de payer à l'intervenante la somme de 22 500 \$, bien qu'elle ait été dûment mise en demeure de le faire par lettre du 25 mars 2002, tel qu'il appert de cette lettre, pièce IN-3; 14.

POUR CES MOTIFS, PLAISE AU TRIBUNAL :

RECEVOIR la présente intervention; 15.

CONDAMNER la défenderesse à payer à l'intervenante 16.

la somme de 22 500 \$ avec intérêts au taux légal et l'indemnité additionnelle prévue par la loi 17.

à compter du 26 avril 2002; 18.

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"/>	2 points	21. <input type="text" value="2"/>
	Une conclusion	<input type="radio"/>	1 point	
	Deux conclusions	<input type="radio"/>	0 point	
Référence aux pièces pertinentes			2 / 2	
	• Police d'assurance n° AX277248	<input type="radio"/>		22. <input type="text" value="1"/>
	• Chèque encaissé de Assurex inc. d'une somme de 22 500 \$)	<input type="radio"/>		
	• Lettre de mise en demeure du 25 mars 2002	<input type="radio"/>		
Aucune référence à une pièce non pertinente				23. <input type="text" value="1"/>
Cote des pièces : IN				24. <input type="text" value="1"/>
Qualité de l'expression écrite :				
utilisation du langage juridique approprié; la concision				
et la précision des allégations; l'absence de confusion ou de contradiction				
dans les allégations; des phrases complètes; un style non télégraphique;				
	Aucun manquement	<input type="radio"/>	5 points	25. <input type="text" value="5"/>
	Un manquement	<input type="radio"/>	4 points	
	Deux manquements	<input type="radio"/>	3 points	
	Trois manquements	<input type="radio"/>	2 points	
	Quatre manquements	<input type="radio"/>	1 point	
	Cinq manquements	<input type="radio"/>	0 point	

DOSSIER 2 (30 POINTS)

QUESTION 2 (5 points)

En date du 23 mai 2002, Anne-Sophie Monet peut-elle consentir à *Caisse populaire Saint-Laurent* une hypothèque mobilière sans dépossession sur sa maison mobile et quel serait le rang de cette hypothèque, le cas échéant?

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

- a) Oui, il s'agira d'une hypothèque de deuxième rang parce que l'hypothèque de Claude Monet a été publiée le 1er octobre 1999.
- b) Non, parce qu'Anne-Sophie Monet n'est pas propriétaire du terrain sur lequel est installée la maison mobile.
- c) Oui, il s'agira d'une hypothèque de premier rang parce que l'hypothèque de Claude Monet n'est plus opposable à *Caisse populaire Saint-Laurent*.
- d) Non, parce que la maison mobile ne sert pas à l'exploitation de l'entreprise d'Anne-Sophie Monet.
- e) Aucune de ces réponses.

Réponse : c)

26.

(Art. 2683 et 3058 C.c.Q. et art. 15.01 et 15.02 du *Règlement sur le registre du RDPRM*)

QUESTION 3 (5 points)

En date du 23 mai 2002, Anne-Sophie Monet peut-elle hypothéquer son bracelet fait par le joaillier Timothé Goyer? Si oui, indiquez comment elle peut constituer cette hypothèque. Si non, dites pourquoi.

Oui, en remettant la possession du bracelet au créancier (art. 2702 C.c.Q.).

OU

Oui, en constituant une hypothèque avec dépossession (art. 2702 C.c.Q.).

27.

QUESTION 4 (5 points)

Les caisses enregistreuses sont-elles hypothéquées en faveur de *Caisse populaire Saint-Laurent*? Si oui, indiquez le rang de cette hypothèque et appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi. Si non, dites pourquoi.

Oui, deuxième rang, art. 2954 C.c.Q.

OU compte tenu que la trame factuelle ne précise pas que l'hypothèque grève l'universalité de biens futurs, la réponse suivante est aussi acceptée:

Non, parce que les caisses enregistreuses ont été achetées après le 3 août 1999

28.

QUESTION 5 (5 points)

En date du 23 mai 2002, l'hypothèque sur les comptes à recevoir consentie en faveur de *Centre d'aide au démarrage d'entreprise de Montréal* prend-elle rang avant ou après celle de *Caisse populaire Saint-Laurent*?

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

Après, art. 2716 C.c.Q. OU art. 2715 C.c.Q. OU art. 2955 C.c.Q.

29.

QUESTION 6 (5 points)

En date du 23 mai 2002, la réserve de propriété du camion Dodge Caravan est-elle opposable à Anne-Sophie Monet compte tenu qu'elle a été publiée plus de 15 jours après la vente? Dites pourquoi.

1. Oui, la réserve de propriété a été publiée antérieurement à la vente à tempérament par l'acheteur immédiat, John Smith (principe de l'art. 1749 al. 3 C.c.Q.) 1. 5 points

OU

OU

30.

2. Oui, la réserve de propriété a été publiée en temps utile.

2. 3 points

QUESTION 7 (5 points)

Dans cette hypothèse, après la distribution du produit de la vente, Anne-Sophie Monet serait-elle tenue personnellement de payer le solde du prêt à Banque du Québec?

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

Non, art. 1695 al. 1 C.c.Q.

31.

DOSSIER 3 (30 POINTS)

QUESTION 8 (5 points)

Jeannine Tremblay recevra-t-elle un montant lors de la distribution du produit de la vente, et dans l'affirmative combien recevra-t-elle?

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

Non, art. 1658 al. 1 C.c.Q.

32.

QUESTION 9 (5 points)

Le liquidateur de la succession d'Alberte Chiasson peut-il mettre fin au bail en donnant un préavis de trois mois à Jeannine Tremblay et en lui payant le loyer pour la durée du préavis?

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

Non, art. 1884 C.c.Q.

33.

QUESTION 10 (5 points)

Dans l'hypothèse où une inexécution injustifiée serait mineure et isolée, cette clause permettrait-elle à la chaîne hôtelière d'obtenir la résiliation du contrat?

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

Non, art. 1604 al. 2 C.c.Q.

34.

QUESTION 11 (5 points)

Cette clause est-elle valide?

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

Oui, art. 1617 al. 3 C.c.Q.

OU compte tenu d'une autre interprétation possible de cette clause, la réponse suivante est aussi acceptée :

Non, art. 1373 al.2 C.c.Q. parce que l'obligation n'est pas déterminée, ni déterminable

35.

QUESTION 12 (5 points)

En date du 23 mai 2002, Jeannine Tremblay peut-elle se prévaloir du droit de résolution prévu à l'article 59 de la *Loi sur la protection du consommateur*? Si oui, indiquez toutes les formalités requises. Si non, dites pourquoi.

Non, le contrat n'est pas assujéti à la *L.p.c.* puisque l'appareil a été acheté par Jeannine Tremblay pour les fins de son commerce.

36.

QUESTION 13 (5 points)

Raymond Durand peut-il revendiquer le vaisselier antique?

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

- a) Oui, si Raymond Durand paie la somme de 9 500 \$ à Jeannine Tremblay parce qu'*Antiquités De l'Île ltée* a vendu le vaisselier à cette dernière dans le cours des activités de son entreprise.
- b) Oui et Raymond Durand n'est pas tenu de payer quoi que ce soit à Jeannine Tremblay parce qu'il n'a pas vendu le vaisselier à *Antiquités De l'Île ltée* dans le cours des activités d'une entreprise.
- c) Non, parce que l'article 36 de la *Loi sur la protection du consommateur* exige que le commerçant libère le bien vendu à un consommateur de tout droit appartenant à un tiers.
- d) Non, parce que Raymond Durand n'a aucun droit dans le vaisselier et que la vente à Jeannine Tremblay lui est opposable.
- e) Aucune de ces réponses.

Réponse : d)

37.