



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

CIVIL II

SUPPLEMENTAL EXAMINATION

May 15, 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 **8** 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.

• You may assume that the provisions of *An Act to reform the Code of Civil Procedure* do not apply to this examination. However, all answers given under the new *Code of Civil Procedure* will be accepted.

FILE 1 (40 MARKS)

You are an articling student at the firm Gagnon Bélair. M^c Yvon Gagnon provides you with the file for his client, *La Confiante, compagnie d'assurances* (hereinafter referred to as "*Confiante*"), with respect to Serge Laberge's claim. Among other things found in the file, you find the notes taken during a meeting held on January 7, 2003 with Gérald Claveau, *Confiante*'s claims manager.

**SUMMARY OF NOTES TAKEN AT A MEETING HELD ON JANUARY 7, 2003
WITH GÉRALD CLAVEAU**

- 4 Feb. 02: *Confiante* issues fire, theft and civil liability insurance policy (no. AC-7747) to *Gestion Laurentienne inc.* ("*Gestion*") for the immovable located at 3346 Chemin du Lac, Ste-Adèle; term of contract: 4 Feb. 02 to 4 Feb. 03.
- *Confiante* agreed to insure *Gestion* on the basis of the following information:
 - policy issued as replacement for *La Protectrice* policy;
 - *Gestion* declared to *Confiante* that it has been operating *Le Petit Bedon*, a family-type restaurant, in the immovable for over 10 years;
 - *Gestion* also confirmed that it had not been the subject of a claim over the last 5 years and that none of its insurance policies had been annulled or resiliated or had its renewal refused.
- 4 Nov. 02: *Confiante* receives demand letter dated 1 Nov. 02 from Serge Laberge's lawyer.
- Demand letter claims payment of an amount of \$43,787 from *Confiante* for bodily injuries suffered by Serge Laberge on 17 May 02 during a fall in a staircase leading from the basement to the ground floor of the immovable owed by *Gestion* and insured by *Confiante*.
- According to demand letter, staircase dangerous and poorly lit.
- *Confiante* immediately mandates a claims adjuster, Richard Maheu, to investigate this matter.
- After investigating, claims adjuster sends *Confiante* his report dated 4 Dec. 02 which reveals:
 - in Nov. 01, *Gestion* had opened a bar in the basement of the restaurant *Le Petit Bedon* whose revenues had been decreasing for several months;
 - Jan. 02: *La Protectrice* refuses to renew *Gestion*'s insurance policy terminating on 4 Feb. 02 because it has been informed of the opening of the bar;

- André Poliquin, president and sole shareholder of *Gestion*, questioned by claims adjuster, provides the following information:
 - he witnessed Serge Laberge's fall;
 - Serge Laberge, being intoxicated, lost his balance in the staircase when shoving his two friends who were helping him leave the bar;
 - staircase in good condition, properly maintained and lit;
 - 25 Oct. 02: Serge Laberge meets with him at the bar, informs him for the first time that he holds him liable for his accident; André Poliquin then gives him a copy of his insurance policy and tells him to settle the whole matter directly with *Confiante*.
- 10 Dec. 02: notice from *Confiante* to *Gestion*: annulment of policy given misrepresentations regarding refusal of former insurer to renew its policy and failure to disclose operation of a bar in the insured immovable; notice is accompanied by a \$3,692 cheque refunding the premium (copies of notice and cheque in our file); cheque never cashed by *Gestion*.
- Notice also states that *Confiante* would have refused to insure if it had known of the existence of the bar, because it never insures this kind of establishment.
- 10 Dec. 02: letter from *Confiante* to Serge Laberge's lawyer informing him of the nullity of the insurance policy.
- 20 Dec. 02: service upon *Gestion* of an action for annulment of insurance policy no. AC-7747 instituted by *Confiante* in case no. 700-05-008417-022, together with the certificate of judicial deposit dated 20 December 2002 for tender and deposit in an amount of \$3,692 (**neither reproduced**).
- 30 Dec. 02: service upon *Confiante* of an action instituted by Serge Laberge claiming an amount of \$43,787.

The file also contains the following documents:

- declaration (**reproduced on pages 4 and 5**), notice to defendant, Exhibits P-1 and P-2 and expert's report from Doctor Sandrine Tremblay (**not reproduced**);
- report of the claims adjuster, Richard Maheu, dated December 4, 2002 (**not reproduced**);
- expert's report from Doctor Jérôme Dagenais, orthopedic surgeon, dated May 2, 2003, prepared at the request of *Confiante* (**not reproduced**);
- copy of the declaration (**not reproduced**) for the action to annul insurance policy no. AC-7747 instituted by *Confiante*, served upon *Gestion Laurentienne inc.* on December 20, 2002 in case no. 700-05-008417-022 of the Superior Court of the District of Terrebonne;
- certificate of judicial deposit dated December 20, 2002 for tender and deposit in an amount of \$3,692 (**not reproduced**) in case no. 700-05-008417-022 of the Superior Court of the District of Terrebonne.

CANADA

PROVINCE OF QUEBEC
DISTRICT OF TERREBONNE

Simplified Procedure
C O U R T O F Q U É B E C
(Civil Division)

NO.: 700-22-009844-022

SERGE LABERGE, domiciled and residing at
623 Montreux Street, Sainte-Adèle, Province
of Quebec, District of Terrebonne, J8B 1R6

Plaintiff

v.

LA CONFIANTE, COMPAGNIE
D'ASSURANCES, a lawfully constituted
legal person having its head office at
1250 René-Lévesque Boulevard West,
Suite 200, Montreal, Province of Quebec,
District of Montreal, H3A 3G5

Defendant

DECLARATION

IN SUPPORT OF HIS ACTION, THE PLAINTIFF STATES AS FOLLOWS:

1. On May 17, 2002, Gestion Laurentienne inc. was the owner of an immovable located at 3346 Chemin du Lac in Sainte-Adèle, in the basement of which it operated a bar;
2. From February 4, 2002 to February 4, 2003, the Defendant insured Gestion Laurentienne inc. for its civil liability, as appears from a copy of the insurance policy bearing number AC-7747, Exhibit P-1;
3. On May 17, 2002, the Plaintiff was in the bar operated by Gestion Laurentienne inc.;
4. At approximately 10:00 p.m., as he was about to leave the premises, the Plaintiff fell in the staircase leading from the basement to the ground floor;
5. As a direct consequence of this fall, the Plaintiff suffered a fracture to his right leg;
6. Because of this fracture, the Plaintiff had to undergo surgery;
7. Consequently, the Plaintiff was unable to work for a period of thirteen weeks;
8. Gestion Laurentienne inc. is fully and solely responsible for the accident suffered by the Plaintiff and for the injuries resulting therefrom, in particular because:
 - (a) as owner, it had the obligation to ensure the safety of its patrons;
 - (b) the staircase was dangerous because the steps were not covered by an anti-skid material;
 - (c) the stairwell was lit with only one low intensity red lightbulb;

9. As a result of this accident, the Plaintiff suffered serious bodily, moral and material injuries and the damage suffered amounts to \$43,787, the details of which are as follows:

- | | |
|---|----------|
| (a) permanent partial disability: | \$25,000 |
| (b) temporary total disability: | \$9,100 |
| (c) medical expenses and disbursements: | \$1,687 |
| (d) non-pecuniary losses: | \$7,000 |
| (e) expert costs: | \$1,000 |

10. The Defendant has refused or neglected to pay the sum of \$43,787 to the Plaintiff, despite the fact that the Defendant was required to do so by means of a demand letter dated November 1, 2002, as it appears from a copy of the said letter, Exhibit P-2;

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

ORDER the Defendant to pay to the Plaintiff the amount of \$43,787 with interest at the legal rate as well as the additional indemnity provided for by law as of November 11, 2002;

THE WHOLE with costs.

SAINTE-ADÈLE, December 27, 2002

(s) RAYMOND LANDRY
Attorney for the Plaintiff

True copy

Raymond Landry
Attorney for the Plaintiff

On January 8, 2003, M^e Yvon Gagnon appears on behalf of the defendant, *La Confiante, compagnie d'assurances*. Upon agreement of the attorneys for Serge Laberge and *La Confiante, compagnie d'assurances*, it is agreed that the defendant will have until May 20, 2003 to file its defence.

Today, May 15, 2003, your articling supervisor asks you to draft the defence to Serge Laberge's action.

He also draws your attention to the findings in Doctor Jérôme Dagenais' report which states, among other things, that Serge Laberge will not suffer any permanent partial disability as a result of his fracture.

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 (25 MARKS)

You are the lawyer for Martin Fillion who consulted you during the year with respect to four problems.

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.

In November of 2002, Martin purchased a property in the countryside which included a residence and a stable. The negotiations for the purchase of the property were carried out with *Agence immobilière sans Frontières* which acted as the authorized representative of the vendor, André Cotnoir. André Cotnoir worked outside Quebec and could not return to Quebec due to his professional commitments. At the time of the purchase, Martin informed the vendor's representative that the stable was a major factor in his choice of the property, because he owned a horse named Betty which he bought in order to go horseback riding in his spare time.

The stable was built in October of 2001 by the then owner, Gabrielle Cotnoir, André's aunt. When Gabrielle died in February of 2002, André inherited the property as legatee by particular title.

In April of 2003, a municipal inspector informed Martin that the stable had to be moved, because its current location was in breach of the zoning by-law which has been in force since 1998. The problem was not apparent at the time of the purchase.

At the time he inherited the property, André was already working outside Quebec and was never informed of any zoning problems until Martin informed him in writing, in April of 2003.

Martin must relocate the stable in order to comply with the municipal by-laws. The work will cost \$7,000. Furthermore, Martin will have to pay \$1,800 in order to have his horse kept in an equestrian centre while the work is being performed. He wishes to keep the property, but wants to be compensated for the harm suffered as a result of this problem.

QUESTION 2 (5 marks)

Can Martin Fillion claim an amount from André Cotnoir? Explain your answer and, if he may claim an amount, state how much he can claim from André Cotnoir.

SUPPLEMENTARY FACTS

While the stable relocation work was being performed, Martin entrusted his horse Betty to *Centre équestre Roy inc.* in consideration for boarding fees of \$1,800. Martin provided the feed to *Centre équestre Roy inc.* and gave written instructions regarding the daily ration required for Betty. Clause 4 of the contract for services stated: “When necessary, *Centre équestre Roy inc.* may temporarily entrust Betty to *Pension Leduc inc.*”

Ten days after Betty’s arrival, *Centre équestre Roy inc.* had to carry out the periodic maintenance of certain stalls and therefore entrusted Betty to *Pension Leduc inc.* for a period of 48 hours. *Centre équestre Roy inc.* provided *Pension Leduc inc.* with the feed supplied by Martin as well as the written instructions regarding Betty’s daily ration.

Upon her return to *Centre équestre Roy inc.*, Betty suffered from gastric problems. *Centre équestre Roy inc.* contacted Martin, who sent over Doctor Roger Lauzon, a veterinarian. The veterinarian concluded that Betty’s problems were due to overfeeding during the past 48 hours. The costs assumed by Martin for Doctor Lauzon’s services amounted to \$500.

The representative of *Centre équestre Roy inc.* explained to Martin that the overfeeding was caused by communication problems between the employees of *Pension Leduc inc.*, that these problems were totally unforeseeable by *Centre équestre Roy inc.* and that his company had no control over the behaviour of the employees of *Pension Leduc inc.* Therefore, *Centre équestre Roy inc.* refuses to pay any compensation whatsoever with respect to this incident.

Moreover, Martin learns that *Pension Leduc inc.* is insolvent and is about to shut down its business.

QUESTION 3 (5 marks)

Can Martin Fillion claim from *Centre équestre Roy inc.* the amount of \$500 for the veterinary fees required by Betty’s condition?

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

- (a) Yes, because clause 4 of the contract is abusive.**
- (b) Yes, in virtue of the rules of contractual liability.**
- (c) No, because *Centre équestre Roy inc.* did not commit any fault.**
- (d) No, because *Centre équestre Roy inc.* is not the employer or principal of *Pension Leduc inc.*’s employees.**
- (e) No, because the veterinary fees are not direct damages.**

Problem 2

At the beginning of May of 2003, Martin began negotiations with *Auto d'occasion Bellevue inc.* for the lease of a vehicle that he intended to use for personal purposes. During the negotiations, Martin mentioned that he had hesitated over leasing a vehicle because his former neighbour had intended to sell him her automobile. Martin had had to change his plans when his former neighbour informed him that she preferred to sell her automobile to one of her grandsons.

On May 14, 2003, Martin signed a contract of lease with *Auto d'occasion Bellevue inc.* for the lease of a used Wildstar 2001 vehicle for a period of 36 months at a competitive financing rate. The contract, a copy of which was provided to him, includes a guaranteed residual value. Martin immediately took possession of the vehicle.

Today, May 15, 2003, Martin receives a letter from his former neighbour which was mailed on May 13, 2003. In the letter, she informs him that her grandson no longer wants to purchase the vehicle and that she is therefore willing to sell it to him at a very good price. If he had known that his former neighbour was going to change her mind, Martin would never have leased the Wildstar 2001.

QUESTION 4 (5 marks)

As at today's date, can Martin Fillion obtain the annulment or cancellation of the contract entered into with *Auto d'occasion Bellevue inc.* without being required to pay costs, penalties or damages?

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

Problem 3

On March 10, 2003, Martin sold his portable computer to a neighbour, Luc Drouin, who bought it for recreational purposes. The contract provided that the selling price of \$1,500 was payable on April 10, 2003.

On April 10, 2003, Luc requested an additional period of one month to make the payment because he lost his job. Martin agreed.

On May 14, 2003, the selling price still had not been paid. That same day, Luc informed Martin that the computer had been stolen on May 1, 2003. Moreover, he says to Martin : "My insurer, *Compagnie d'assurance en Sécurité inc.*, will indemnify me within a few weeks".

Martin is worried that he will never be paid by Luc.

QUESTION 5 (5 marks)

Can Martin Fillion address himself to *Compagnie d'assurance en Sécurité inc.* directly to obtain the insurance indemnity to which Luc Drouin is entitled as a result of the theft of the computer?

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

Problem 4

Martin owns a residential immovable. In the fall of 2002, he signed a lease with Josée Laflamme for the period from October 1, 2002 to September 30, 2003.

Josée did not pay the rent owed on May 1, 2003. On May 5, 2003, after having attempted to contact her unsuccessfully, Martin went to Josée's apartment and noticed that she had vacated the premises and taken all her possessions. Martin is convinced that Josée's financial difficulties are the sole cause of her departure because Josée had never reported any problems regarding the dwelling.

QUESTION 6 (5 marks)

Can Martin Fillion immediately re-lease the dwelling?

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

- (a) No, because the lease of an immovable cannot be resiliated of right even if the debtor is in default.**
- (b) No, because payment of the rent is not late by more than three weeks.**
- (c) No, because there has not been substantial nonperformance by Josée Laflamme of her obligations.**
- (d) Yes, because Josée Laflamme vacated the dwelling and took all her possessions.**
- (e) Yes, because Josée Laflamme did not pay the rent for the month of May of 2003.**

FILE 3 (35 MARKS)

You are the lawyer for *Caisse Populaire St-Honoré* and its manager, Robert Duquette, consults you today with respect to five problems.

Problem 1

On June 14, 2002, *Caisse Populaire St-Honoré* granted a hypothecary loan of \$100,000 to Édouard Gagnon to finance the acquisition of his home. The hypothec was duly published on June 17, 2002. As at today's date, the balance of the loan is \$95,000.

On May 14, 2003, *Caisse Populaire St-Honoré* was notified by the registrar that on May 12, 2003, *Constructions générales inc.* registered a prior notice of the exercise of a hypothecary right of sale by judicial authority.

The investigation reveals the following:

- Édouard had the residence renovated by *Constructions générales inc.* during the summer of 2002;
- the work was completed on August 30, 2002;
- on September 25, 2002, given Édouard's failure to pay, *Constructions générales inc.* published and served a notice of preservation of a legal hypothec;
- since September 25, 2002, there have been no entries in the land register with respect to the hypothecated immovable;
- the total cost of the work is \$35,000, but the increase in value resulting therefrom is only \$25,000.

QUESTION 7 (5 marks)

In the event of collocation of the proceeds of sale of the immovable, will *Constructions générales inc.*'s claim rank before *Caisse Populaire St-Honoré*'s claim? Explain your answer and, if applicable, indicate up to what amount.

Problem 2

On May 14, 2003, *Caisse Populaire St-Honoré* was informed that the immovable hypothecated in its favour by Johanne Langelier had been seized on May 12, 2003 by the Deputy Minister of Revenue of Quebec for a claim of \$14,000 for unpaid taxes. Johanne had purchased the immovable from Raoul Thivierge.

Today, at your client's request, you consult the land register with respect to the immovable and notice the following:

- June 3, 2002: registration of a conventional hypothec granted that same day by Johanne Langelier in favour of *Caisse Populaire St-Honoré* for an amount of \$125,000;
- June 6, 2002: registration of a legal hypothec by Gilles Viens under article 2730 of the *Civil Code of Québec* pursuant to a judgment rendered on April 5, 2002 which ordered Raoul Thivierge to pay him \$10,500;
- June 7, 2002: registration of the sale entered into on June 5, 2002 between Raoul Thivierge and Johanne Langelier. The deed of sale includes a hypothec in favour of Raoul Thivierge for an amount of \$50,000 in order to guarantee the payment of the balance of the selling price.

QUESTION 8 (15 marks)

- (a) **In the event of collocation of the proceeds of sale of the immovable, will *Caisse Populaire St-Honoré's* claim rank before the Deputy Minister of Revenue's claim? Explain your answer.**
- (b) **In the event of collocation of the proceeds of sale of the immovable, will *Caisse Populaire St-Honoré's* claim rank before Gilles Viens' claim? Explain your answer.**
- (c) **In the event of collocation of the proceeds of sale of the immovable, will *Caisse Populaire St-Honoré's* claim rank before Raoul Thivierge's claim? Explain your answer.**

Problem 3

On 4 February 2001, *Caisse Populaire St-Honoré* lent \$100,000 to *Restaurant La Bouffe ltée* of which Pierre Gendron is the sole shareholder and director. The loan was repayable on February 4, 2003.

On February 4, 2001, Pierre Gendron granted a hypothec on his personal residence in favour of *Caisse Populaire St-Honoré*. The deed contained the following clause, among others: "In order to guarantee the repayment of the loan granted this day to *Restaurant La Bouffe ltée*, Pierre Gendron hypothecates, in favour of *Caisse Populaire St-Honoré*, for an amount of up to \$100,000, the immovable known and designated as being lot 1234456 of the cadastre of Quebec." The hypothec was duly published on February 5, 2001.

Restaurant La Bouffe ltée failed to repay the loan due on February 4, 2003, despite the fact that it had been put in default to do so.

On May 1, 2003, *Caisse Populaire St-Honoré* served and published a prior notice of the exercise of a hypothecary right of sale by judicial authority with respect to the hypothecated immovable. All the formalities required for the validity of the prior notice were satisfied.

The investigation reveals the following:

- the market value of the hypothecated immovable is \$60,000 as at today's date;
- *Restaurant La Bouffe ltée* has no assets and is insolvent;
- Pierre Gendron is solvent and has assets valued at \$1,000,000.

QUESTION 9 (5 marks)

As at today's date, can *Caisse Populaire St-Honoré* institute a personal action against Pierre Gendron? Explain your answer.

Problem 4

On November 1, 2002, *Caisse Populaire St-Honoré* granted *Mille fleurs inc.* a demand loan of \$15,000 with interest at a rate of 7% per year. The contract provided that the borrower was required to pay the interest on the first day of each month. The repayment of the loan is secured by a movable hypothec without delivery charged against the universality of the current and future inventory of *Mille fleurs inc.*'s business. This hypothec was duly published the same day.

As of February 1, 2003, *Mille fleurs inc.* failed to pay the instalments of interest due.

On March 14, 2003, *Caisse Populaire St-Honoré* put *Mille fleurs inc.* in default to pay to it, within a period of 30 days, the full balance of the loan in capital and interest, namely the amount of \$15,262.50.

On April 22, 2003, you served *Mille fleurs inc.* with a prior notice of the exercise of a hypothecary recourse of taking in payment which stated the following, among other things: "You have failed to pay the instalments of interest on February 1, 2003, March 1, 2003 and April 1, 2003; furthermore, you have failed to repay the loan as required in a demand letter dated March 14, 2003."

Several days after the expiry of the deadline in the prior notice, *Mille fleurs inc.* offered to pay *Caisse Populaire St-Honoré* all of the instalments of interest that had come due up to that date as well as all the costs incurred, the whole for the purpose of defeating the exercise of the hypothecary recourse.

QUESTION 10 (5 marks)

Is *Caisse Populaire St-Honoré* required to accept this offer? Explain your answer.

Problem 5

On May 14, 2003, *Caisse Populaire St-Honoré* was served with a motion for cancellation under article 804 of the *Code of Civil Procedure*. This motion, by Yvon Ouellet, alleged the following, among other things:

- On January 5, 1999, *Caisse Populaire St-Honoré* granted *Gestion Ouellet inc.* a loan of \$25,000 bearing interest at a rate of 7% per year;
- The contract did not provide for any monthly instalments, because the borrower's obligation was fully exigible on January 5, 2000;
- In order to guarantee the repayment of the loan, *Gestion Ouellet inc.* hypothecated, in favour of *Caisse Populaire St-Honoré*, by way of deed published on January 5, 1999, a parcel of land known and designated as being lot 1000042 of the cadastre of Quebec;
- *Gestion Ouellet inc.* has not made any payments to *Caisse Populaire St-Honoré*;
- On April 1, 2003, *Gestion Ouellet inc.* sold the hypothecated immovable to Yvon Ouellet;
- *Gestion Ouellet inc.*'s debt is prescribed and Yvon Ouellet is entitled to apply for the cancellation of the hypothec.

Robert Duquette confirms to you that *Gestion Ouellet inc.* never paid anything whatsoever to *Caisse Populaire St-Honoré*. Indeed, when the loan came due, on January 5, 2000, *Caisse Populaire St-Honoré* agreed to leave the file pending while awaiting the outcome of proceedings by *Gestion Ouellet inc.* against *Gestion Ouellet inc.*'s insurer.

QUESTION 11 (5 marks)

Is the motion for cancellation well founded?

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

- (a) **Yes, because article 2925 of the *Civil Code of Québec* provides that *Caisse Populaire St-Honoré*'s claim is prescribed by three years.**
- (b) **Yes, because article 1723 of the *Civil Code of Québec* provides that the seller is bound to discharge the hypothecs that encumber the property.**
- (c) **No, because article 2923 of the *Civil Code of Québec* provides that actions to enforce immovable real rights are prescribed by ten years.**
- (d) **No, because article 2799 of the *Civil Code of Québec* provides that an immovable hypothec is extinguished not later than 30 years after the date of its registration.**

CORRIGÉ
CIVIL II - EXAMEN DE REPRISE
 15 mai 2003

DOSSIER 1 (40 POINTS)

QUESTION 1 (40 points)

Contenu juridique : 25 points

Techniques de rédaction : 15 points

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

CANADA

PROVINCE DE QUÉBEC

DISTRICT DE TERREBONNE

Procédure allégée

C O U R D U Q U É B E C 1. 2

(Chambre civile)

NO : 700-22-009844-022

SERGE LABERGE

demandeur

c. 2. 2

LA CONFIANTE, COMPAGNIE
 D'ASSURANCES

défenderesse

Absence de description complète des parties 3. 1

Aucune autre partie ajoutée 4. 1

DÉFENSE

EN DÉFENSE À L'ACTION DU DEMANDEUR, LA DÉFENDERESSE EXPOSE : 5. 1

1. Elle admet le paragraphe 1 de la déclaration ; 6. 1

2. Elle nie le paragraphe 2 de la déclaration ; 7. 1

3. Elle ignore le paragraphe 3 de la déclaration ; 8. 1

4. Elle nie le paragraphe 4 de la déclaration ; 9. 1

5. Elle nie les paragraphes 5, 6 et 7 de la déclaration ; 10. 1

6. Elle nie les paragraphes 8 et 9 de la déclaration ; 11. 1

7. Quant au paragraphe 10, elle admet avoir reçu la lettre de mise en demeure, pièce P-2, mais elle nie devoir quoi que ce soit au demandeur ; 12. 1

ET RÉTABLISSANT LES FAITS, ELLE AJOUTE :

8. Le contrat d'assurance constaté par la police, pièce P-1, est nul pour les motifs suivants ; 13. 1

9. Gestion Laurentienne inc., préalablement à la délivrance de la police, a faussement déclaré qu'aucune de ses polices d'assurance précédentes n'avait été annulée, résiliée ou n'avait fait l'objet d'un refus de renouvellement ; 14. 1

10. Or, en janvier 2002, La Protectrice, a refusé de renouveler la police d'assurance de Gestion Laurentienne inc. qui venait à échéance le 4 février 2002 ; 15. 1
11. Gestion Laurentienne inc. a également omis de déclarer qu'en plus d'un restaurant, elle exploitait, depuis le mois de novembre 2001, un bar au sous-sol de l'immeuble qu'elle désirait assurer ; 16. 1
12. N'eût été de ces déclarations inexactes et mensongères, la défenderesse aurait refusé de conclure le contrat d'assurance, parce qu'elle n'assure jamais ce type d'établissement ; 17. 1
- (13. Le 10 décembre 2002, la défenderesse a transmis à Gestion Laurentienne inc. un avis d'annulation de la police, pièce P-1, pour les motifs mentionnés aux paragraphes précédents, accompagné d'un chèque 3 692 \$ en remboursement de la prime tel qu'il appert de copies de l'avis et du chèque, pièce D-1 ;)
14. La défenderesse a intenté une action en annulation de la police d'assurance n° AC-7747 (et a consigné à cette fin la somme de 3 692 \$ au greffe de la cour), tel qu'il appert d'une copie de la déclaration dans le dossier numéro 700-05-08417-022 de la Cour supérieure du district de Terrebonne, pièce D-2 . 18. 1
15. Le demandeur a été l'artisan de son propre malheur puisqu'il était en état d'ébriété et qu'il a perdu l'équilibre dans l'escalier alors qu'il bousculait ses deux amis qui l'aidaient à sortir du bar ; 19. 1
16. Les dommages réclamés ne sont pas dus ou ils sont à tout le moins exagérés ; 20. 1
- POUR CES MOTIFS, PLAISE AU TRIBUNAL :
- REJETER l'action du demandeur. 21. 3
- Le tout avec dépens.

TECHNIQUES DE RÉDACTION (15 points)

Allégation de plus d'un fait par paragraphe :

Aucune allégation	<input type="radio"/>	1 point	22. <input type="text" value="1"/>
Une allégation	<input type="radio"/>	0 point	

Allégation non pertinente ou erronée :

Aucune allégation	<input type="radio"/>	4 points	23. <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	24. <input type="text" value="2"/>
Une conclusion	<input type="radio"/>	1 point	
Deux conclusions	<input type="radio"/>	0 point	

Référence aux pièces pertinentes

- Avis et chèque)
- Déclaration

25.

Aucune référence à une pièce non pertinente

26.

Cote des pièces : D

27.

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	28. <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 (25 POINTS)

QUESTION 2 (5 points)

Martin Fillion peut-il réclamer un montant à André Cotnoir? Dites pourquoi et, le cas échéant, dites combien il peut lui réclamer.

Oui, parce que l'immeuble viole une limitation de droit public (principe de l'article 1725 *C.c.Q.*), il peut lui réclamer la totalité des dommages, soit 8 800 \$.

QUESTION 3 (5 points)

Martin Fillion peut-il réclamer à *Centre équestre Roy inc.* le montant de 500 \$ pour les frais de vétérinaire requis par l'état de Betty?

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

- a) Oui, parce que la clause 4 du contrat est abusive.
- b) Oui, en vertu des règles de la responsabilité contractuelle.
- c) Non, parce que *Centre équestre Roy inc.* n'a commis aucune faute.
- d) Non, parce que *Centre équestre Roy inc.* n'est ni l'employeur ni le commettant des employés de *Pension Leduc inc.*
- e) Non, parce que les frais de vétérinaire ne sont pas des dommages directs.

Réponse : b) Oui, en vertu des règles de la responsabilité contractuelle.

QUESTION 4 (5 points)

En date d'aujourd'hui, Martin Fillion peut-il obtenir l'annulation ou résoudre le contrat intervenu avec *Auto d'occasion Bellevue inc.* sans être tenu au paiement de frais, de pénalités ou de dommages-intérêts?

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

Oui, art. 150.23 (et 75 à 77 et 79) *L.p.c.*

QUESTION 5 (5 points)

Martin Fillion peut-il s'adresser directement à *Compagnie d'assurance en Sécurité inc.* pour obtenir l'indemnité d'assurance à laquelle Luc Drouin a droit à la suite du vol de l'ordinateur?

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

Oui, art. 2497 al. 1 (et art. 2651 par. 2°) *C.c.Q.*

QUESTION 6 (5 points)

Martin Fillion peut-il relouer immédiatement le logement ?

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

- a) Non, parce qu'il ne peut y avoir de résiliation de plein droit d'un bail immobilier même si le débiteur est en demeure.
- b) Non, parce que le paiement du loyer n'est pas en retard de plus de trois semaines.
- c) Non, parce qu'il n'y a pas d'inexécution substantielle des obligations de Josée Laflamme.
- d) Oui, parce que Josée Laflamme a quitté le logement en emportant tous ses biens.
- e) Oui, parce que Josée Laflamme n'a pas payé le loyer du mois de mai 2003.

Réponse : d) Oui, parce que Josée Laflamme a quitté le logement en emportant tous ses biens. (Principe de l'article 1975 *C.c.Q.*)

QUESTION 7 (5 points)

En cas de collocation du produit de la vente de l'immeuble, la créance de *Constructions générales inc.* prend-elle rang avant celle de *Caisse Populaire St-Honoré*? Dites pourquoi et, le cas échéant, indiquez jusqu'à concurrence de quel montant.

Non, *Constructions générales inc.* est créancière ordinaire parce que son hypothèque légale s'est éteinte, vu le défaut de publication d'une action ou d'un préavis d'exercice d'un droit hypothécaire dans les six mois de la fin des travaux (principe de l'article 2727 *C.c.Q.*). 34.

QUESTION 8 (15 points)

a) En cas de collocation du produit de la vente de l'immeuble, la créance de la *Caisse Populaire St-Honoré* prend-elle rang avant celle du sous-ministre du Revenu? Dites pourquoi.

Oui, parce qu'il s'agit d'une créance hypothécaire et que la créance du sous-ministre du Revenu est une créance ordinaire (principe de l'article 2653 *C.c.Q.*). 35.

b) En cas de collocation du produit de la vente de l'immeuble, la créance de la *Caisse Populaire St-Honoré* prend-elle rang avant celle de Gilles Viens? Dites pourquoi.

Non, parce que l'hypothèque du 3 juin 2002 de la *Caisse Populaire St-Honoré* ne grève l'immeuble qu'à compter de l'inscription de la vente, soit le 7 juin 2002, alors que l'hypothèque de Gilles Viens a été publiée le 6 juin 2002 (principe de l'article 2670 *C.c.Q.*). 36.

c) En cas de collocation du produit de la vente de l'immeuble, la créance de la *Caisse Populaire St-Honoré* prend-elle rang avant celle de Raoul Thivierge? Dites pourquoi.

Non, parce que l'hypothèque immobilière de *Caisse Populaire St-Honoré* ne prend rang qu'à compter de l'inscription du titre de Johanne Langelier, mais après l'hypothèque du vendeur Raoul Thivierge créée dans l'acte de vente (principe de l'article 2948 *C.c.Q.*). 37.

QUESTION 9 (5 points)

En date d'aujourd'hui, *Caisse Populaire St-Honoré* peut-elle entreprendre une action personnelle contre Pierre Gendron? Dites pourquoi.

Non, parce que Pierre ne s'est pas engagé à titre personnel (mais uniquement à titre de caution réelle, principe de l'article 2681 *C.c.Q.*). 38.

QUESTION 10 (5 points)

***Caisse Populaire St-Honoré* est-elle tenue d'accepter cette offre? Dites pourquoi.**

Non, parce que l'offre ne permet pas de remédier à tous les défauts allégués au préavis (L'offre doit également inclure le remboursement du solde du prêt devenu exigible en raison de la demande de paiement). 39.

QUESTION 11 (5 points)

La requête en radiation est-elle bien fondée?

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

a) Oui, parce que l'article 2925 du *Code civil du Québec* prévoit que la créance de *Caisse Populaire St-Honoré* se prescrit par trois ans.

b) Oui, parce que l'article 1723 du *Code civil du Québec* prévoit que le vendeur est tenu de purger les hypothèques qui grèvent le bien.

c) Non, parce que l'article 2923 du *Code civil du Québec* prévoit que les actions qui visent à faire valoir un droit réel immobilier se prescrivent par dix ans.

d) Non, parce que l'article 2799 du *Code civil du Québec* prévoit que l'hypothèque immobilière s'éteint au plus tard 30 ans après son inscription.

Réponse : a) Oui, parce que l'article 2925 du *Code civil du Québec* prévoit que la créance de *Caisse Populaire St-Honoré* se prescrit par trois ans. 40.