



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

CIVIL II

SUPPLEMENTAL EXAMINATION

May 17, 2004

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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 **16** pages (including this page) and that your answer booklet contains **6** pages.

FILE 1 (15 MARKS)

M^e Yves Gosselin, your articling supervisor, provides you with the file for his client, Rolande Sirois, who is retired.

NOTES FROM AN INTERVIEW WITH ROLANDE SIROIS

- On May 5, 2003, Rolande sells to *Les Entreprises Saint-Marc inc.* all the assets of the convenience store operated by her at 1836 Boileau Street, in Montreal, H3Y 4M8. That same day, the contract under private signature is signed in Laval by both parties as well as by Robert Laliberté who agrees to act as solidary surety for the obligations of *Les Entreprises Saint-Marc inc.*
- *Les Entreprises Saint-Marc inc.* was incorporated for the sole purpose of acquiring the assets of Rolande's convenience store.
- The sale is made for an amount of \$200,000 payable as follows: \$150,000 upon the signing of the contract and \$50,000 on May 5, 2004. The balance owing of \$50,000 bears interest at a rate of 5% per year as of the signing of the deed of sale and the interest is payable at the same time as the principal amount.
- In accordance with the contract, *Les Entreprises Saint-Marc inc.* pays the amount of \$150,000 to Rolande on May 5, 2003.
- In May of 2003, as soon as he takes possession of the premises, Robert closes the convenience store in order to carry out major renovations, in particular the addition of a donut and coffee counter.
- On June 2, 2003, the convenience store opens for business after the completion of the work and Robert distributes flyers in the neighbourhood.
- On May 13, 2004, Rolande speaks to Robert on the telephone to claim the payment of \$50,000 and the interest owed. During this conversation, Robert informs her of the following facts:
 - In the fall of 2003, Xavier Tanguay, a local business owner, informed Robert of the upcoming arrival of a convenience store affiliated with a well-known chain, *Provimoderne inc.*, which would be opening for business in 2004. This information had been circulating within the local association of merchants since the beginning of 2003.
 - Indeed, on January 5, 2004, a convenience store announced it would be opening in premises located just across from Robert's convenience store.

- The arrival of this competitor caused a substantial decrease in the revenues of *Les Entreprises Saint-Marc inc.*
- Robert accuses Rolande of having concealed the opening of the competing convenience store and holds her liable for his business's decreased revenues.
- He tells her that he does not intend to pay her and that she will never recover the amount of \$50,000 or the interest.
- He adds that he has sold all his personal property and that he is currently liquidating the assets of *Les Entreprises Saint-Marc inc.* in order to settle permanently in Costa Rica.
- On May 14, 2004, Rolande informs M^e Gosselin of what she has just learned and gives him the mandate to institute the appropriate legal proceedings to collect the principal amount and interest owed to her from all persons liable to pay.
- M^e Gosselin suggests to her that she attach to her legal proceedings a seizure before judgment under article 733 of the *Code of Civil Procedure*, and Rolande agrees.

Document in the file:

- Deed of sale dated May 5, 2003

Addresses:

- Rolande Sirois (domicile and residence): 2574 Sainte-Hélène Street, Longueuil, district of Longueuil, Québec, J4H 2B9
- *Les Entreprises Saint-Marc inc.* (head office and principal place of business): 5679 Cyr Street, Laval, district of Laval, Québec, H7T 7N9
- Robert Laliberté (domicile and residence): 5679 Cyr Street, Laval, district of Laval, Québec, H7T 7N9
- Xavier Tanguay, president of *Photocopies Tanguay inc.* (head office and place of business): 1888 Boileau Street, Montreal, district of Montreal, Québec, H3Y 4M8
- *Provimoderne inc.* (head office and place of business): 1839 Boileau Street, Montreal, district of Montreal, Québec, H3Y 4M8

QUESTION 1 (15 marks)

Draft the HEADING and the CONCLUSIONS of the motion to institute proceedings. In order to protect your anonymity, do not sign the written proceeding.

FILE 2 (43 MARKS)

Problem 1

On April 2, 2004, you obtain a judgment by default for your client, Benoît Dereste, ordering Josée Tourigny to pay him an amount of \$16,750 with interest, the additional indemnity and the costs.

Within the statutory deadlines, you proceed with the examination of Josée under article 543 of the *Code of Civil Procedure* and you learn the following.

- Josée graduated in political science from Concordia University and has decided to take a few months of vacation to tour Canada. She is scheduled to leave in July of 2004.
- On February 2, 2004, Josée borrowed \$10,000 from her mother, Carole Desbiens, in order to finance her trip. This amount was remitted to her that same day. The loan is repayable on December 1, 2005. In order to guarantee the loan, Josée granted Carole a hypothec, evidenced in writing, on the motor home she wanted to purchase from her uncle, Paul Durivage, who is retired.
- On February 13, 2004, in preparation for her trip, she purchased a “Birkins” motor home from Paul at a price of \$30,000 and took possession thereof that same day. You obtain a copy of that contract.

CONTRACT OF SALE

Paul Durivage sells Josée Tourigny the following item:

- “Birkins” motor home, identification number 18769WUH881234568, year 1999.

The selling price is \$30,000 payable on or before February 13, 2005 at an interest rate of 10% per year as of the date hereof.

Montreal, February 13, 2004

Paul Durivage

Paul Durivage, vendor
1234 Fermont Street
Montreal, Québec
H3B 3C2

Josée Tourigny

Josée Tourigny, purchaser
6789 Dupont Street
Montreal, Québec
H5B 2R1

- On February 25, 2004, Paul tells Josée that he is worried about the payment of the selling price for the motor home. In order to reassure him, that same day Josée grants him, in writing, a hypothec on the motor home.

- In the spring of 2004, Josée decides to have certain renovation work carried out on the motor home. Josée gives a contract to *Plomberie Jeté inc.* to redo all the plumbing. The work begins on April 19, 2004 and is entirely completed on April 21, 2004. The amount of the contract is \$3,500, including the materials and labour. This work increases the value of the motor home by \$3,500.
- Since February 24, 2004, Josée's motor home has been parked in the rear court of the building in which she lives as a tenant.
- To date, Josée has not paid *Plomberie Jeté inc.*

Following the examination, you check the Register of personal and movable real rights and learn the following.

- On February 3, 2004, the hypothec granted to Carole was duly published. All the required formalities were fulfilled.
- On February 26, 2004, the hypothec granted to Paul was duly published. All the required formalities were fulfilled.

Today, May 17, 2004, you meet with your client, Benoît Dereste, who wants to proceed with the seizure and judicial sale of the motor home.

For question 2, assume the following:

- **the motor home will be sold in a judicial sale today at the request of Benoît Dereste;**
- **all interested parties will duly assert their rights;**
- **no one will allege the insolvency of Josée Tourigny.**

QUESTION 2 (10 marks)

- (a) Name the creditors who have one or more legal causes of preference as regards the distribution of the proceeds of sale.**

For each creditor, name the legal cause or causes of preference.

- (b) Name the creditor who will be collocated immediately after the legal costs and expenses incurred in the common interest. Explain your answer.**

Problem 2

The situation described in problem 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.

Julie Lamoureux is the sole shareholder and director of *La Frite du Nord inc.* which operates a snack bar in Val-David in the Laurentians.

On May 5, 2004, *La Frite du Nord inc.* purchases a “Patato” deep fryer, serial number 2004-03, from *Friteuses 2003 inc.* at a price of \$12,000. The contract dated May 5, 2004 provides for an initial payment of \$3,000, with the balance being payable in nine equal and consecutive monthly instalments of \$1,000 each, payable the first of each month as of June 1, 2004.

In the contract of sale, in order to guarantee the payment of the balance owing on the selling price, *La Frite du Nord inc.* grants a hypothec on the deep fryer to *Friteuses 2003 inc.*

On May 16, 2004, Sam Larouche, a representative of *Friteuses 2003 inc.*, consults you in order to publish the hypothec granted by *La Frite du Nord inc.*

You check the Register of personal and movable real rights which contains only one entry, namely that of *Banque du Jour* which, on May 3, 2004, duly published a hypothec for \$3,000 on the “Patato” deep fryer, serial number 2004-03.

Today, May 17, 2004, you have the hypothec granted by *La Frite du Nord inc.* to *Friteuses 2003 inc.* published in the appropriate register.

QUESTION 3 (4 marks)

Does the hypothec of *Friteuses 2003 inc.* rank before or after that of *Banque du Jour*?

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

SUPPLEMENTARY FACTS

Sam, the representative of *Friteuses 2003 inc.*, informs you that, in her spare time, Julie Lamoureux invented a machine that cuts potatoes into fine strips. In fact, Julie has held a patent on this machine for a few months. Julie does not have the desire, time or means to exploit this invention.

In order to obtain new restaurant equipment for *La Frite du Nord inc.*, Julie proposes to grant *Friteuses 2003 inc.* a movable hypothec without delivery on her patent.

QUESTION 4 (5 marks)

Under the circumstances, can Julie Lamoureux grant *Friteuses 2003 inc.* a movable hypothec without delivery on her patent? If so, state the required formalities. If not, explain your answer.

Problem 3

Jean-Charles Poudrier consults you today and tells you the following:

- On May 5, 1994, Jean-Charles lent \$60,000 to Gino Lorenzo;
- that same day, in order to guarantee the repayment of the loan, Gino hypothecated his immovable located at 370 bord du Lac in St-Joseph-du-Lac in favour of Jean-Charles;
- Gino, who is experiencing financial difficulties, has stopped making the hypothecary payments since February 1, 2004;
- as at February 1, 2004, the balance on the hypothecary loan was \$25,000 in capital and interest;
- Gino has not paid the municipality of St-Joseph-du-Lac the municipal taxes on the immovable for the year 2003;
- on April 1, 2004, Jean-Charles served and published a prior notice of the exercise of a hypothecary right of taking in payment;
- furthermore, Jean-Charles has learned that on February 9, 2004, *Banque du Lac* obtained a judgment ordering Gino, personally, to pay it an amount of \$30,000 with interest and costs. On February 23, 2004, *Banque du Lac* registered a legal hypothec against the immovable located at 370 bord du Lac for the claim resulting from the judgment. All the formalities required for the validity of the hypothec were satisfied;
- on April 6, 2004, *Banque du Lac* seized the immovable located at 370 bord du Lac;
- the current market value of the immovable is \$100,000.

Jean-Charles gives you the mandate to institute, upon the expiry of the statutory deadlines, the appropriate recourse to assert his rights.

QUESTION 5 (5 marks)

Can Jean-Charles Poudrier exercise a recourse of taking in payment in light of the balance owing in capital and interest?

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

- (a) Yes, because the hypothec was granted more than ten years ago.**
- (b) Yes, he can exercise the recourse of taking in payment if he obtains the authorization of the court.**
- (c) No, because the balance owing is less than 50% of the amount of the obligation covered by the hypothec.**
- (d) No, because the recourse is prescribed.**

QUESTION 6 (4 marks)

Assuming that Jean-Charles Poudrier were to institute a recourse of forced surrender and taking in payment, could the municipality of St-Joseph-du-Lac require the abandonment of that recourse? Explain your answer.

QUESTION 7 (5 marks)

Was *Banque du Lac* entitled to carry out the seizure of the immovable located at 370 bord du Lac without first registering a prior notice of the exercise of a hypothecary right? Explain your answer.

QUESTION 8 (5 marks)

Assuming that Jean-Charles Poudrier were to obtain a judgment in his favour ordering the forced surrender and the taking in payment, what would be the effect of this judgment on the seizure carried out by *Banque du Lac*? Explain your answer.

QUESTION 9 (5 marks)

Assuming that Jean-Charles Poudrier were to obtain a judgment in his favour ordering the forced surrender and the taking in payment and assuming that he had paid the municipal taxes for the year 2003, could he require Gino Lorenzo to repay these taxes?

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

FILE 3 (42 MARKS)

Patrice Dupont consults you today, May 17, 2004, regarding various problems with which he has to deal.

Situation 1

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

Patrice Dupont had a successful career as a model. He is now a successful businessman who owns several businesses in the fashion, clothing and public relations fields. He lives in Sainte-Catherine-de-Hatley, in the Eastern Townships, but spends a lot of time in Montreal for professional and personal reasons.

Gisèle Béjart, a former colleague, is the lessee of a loft located at 50 Saint-Paul Street West in Montreal pursuant to a lease entered into with *Société immobilière Saint-Paul inc.*

- The lease is for a term of 3 years, from July 1, 2003 to June 30, 2006.
- The total area of the leased premises is 200 m². The loft includes a classroom of 140 m², a kitchen of 20 m² and an enclosed bedroom of 40 m².
- Article 6 of the lease reads as follows: “The lessee waives her right to publish this lease in the land register.”

In February of 2004, Gisèle obtains a position as fashion director for a Parisian magazine. In March of 2004, she offers to assign her lease to Patrice as of May 15, 2004.

On March 29, 2004, Patrice, acting through one of his businesses, *Avancement de soi inc.*, accepts this offer. He intends to use the loft to give personal relationship and self-development courses. Moreover, he will use the bedroom and the kitchen as his pied-à-terre during his frequent stops in Montreal.

On April 15, 2004, Gisèle sends a notice to *Société immobilière Saint-Paul inc.* to inform it of the assignment of lease entered into with *Avancement de soi inc.* and provide it with all the relevant information.

As of today’s date, Gisèle has still not received an answer on this matter.

Patrice has heard rumours to the effect that *Société immobilière Saint-Paul inc.* is preparing to sell the immovable to *Investissements métropolitains inc.* and that this firm would like to repossess various leased premises, including the loft occupied by *Avancement de soi inc.*. He wants to publish the lease in the land register in order to prevent the sale of the immovable from giving rise to the termination of the lease.

QUESTION 10 (5 marks)

Can *Avancement de soi inc.* publish the lease in the land register in order to protect its rights in the event *Investissements métropolitains inc.* were to acquire the immovable in a few weeks?

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

- (a) No, *Avancement de soi inc.* does not have the right to publish the lease in the land register because the assignee cannot have more rights than the assignor.
- (b) Yes, because the lessor cannot prevent the publication of the lease in the land register. Such publication would prevent *Investissements métropolitains inc.* from resiliating the lease after having acquired the immovable.
- (c) Yes, given that clause 6 is prohibited by the relevant provisions of the *Civil Code of Québec* regarding the lease of dwellings because it is abusive. However, the publication of the lease is unnecessary because the sale of the immovable does not allow the purchaser to resiliate the lease of the dwelling.
- (d) No, given that *Avancement de soi inc.* does not have a legal interest to publish the lease because *Société immobilière Saint-Paul inc.* is presumed to have refused the request for the assignment of lease presented by Gisèle Béjart.

SUPPLEMENTARY FACTS

Avancement de soi inc. will offer private personal relationship and self-development courses in its new loft, beginning in the fall of 2004. Patrice gives you a draft contract that *Avancement de soi inc.* intends to have the students sign, which contract contains the following clauses, among others:

- Each weekly lesson lasts 2 hours.
- The total duration of the contract is 15 weeks.
- The total cost of the contract is \$750 plus taxes.
- The contract includes a clause giving the student a period of two weeks within which to resiliate the contract without penalty. If the student resiliates the contract after the two-week period, the student will be required to pay a penalty of \$75 or 10% of the price of the lessons not yet given, whichever is higher.

QUESTION 11 (5 marks)

Is the clause relating to the penalty applicable in case of resiliation legal?

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

SUPPLEMENTARY FACTS

On April 13, 2004, *Avancement de soi inc.* purchases blank videocassettes from *Films vidéo inc.* in order to sell them to the students who will be taking its courses as of September of 2004. During the courses, the performance of the students will be recorded on video tapes for self-evaluation purposes. The order, for an amount of \$2,000 plus taxes, is paid for that same day. The delivery, the cost of which is included in the selling price, is scheduled for May 19, 2004.

On May 14, 2004, Patrice learns that a neighbourhood firm sells videocassettes of a similar quality at much better prices. He therefore abandons his plan to sell this type of product.

That same day, Patrice contacts *Films vidéo inc.* to cancel the order and request a refund of the price paid. The person in charge of *Films vidéo inc.* refuses to cancel the order because the sale is final. He adds that the delivery man for *Films vidéo inc.* will go to 50 Saint-Paul Street West as scheduled on May 19, 2004 to deliver the merchandise sold.

Patrice states that he will refuse any delivery when the delivery man comes. The person in charge of *Films vidéo inc.* then states that, as of May 19, 2004, storage charges will be added to the purchase price until delivery of the order is accepted. The contract of sale entered into between *Avancement de soi inc.* and *Films vidéo inc.* does not mention anything regarding storage charges.

QUESTION 12 (4 marks)

Will *Avancement de soi inc.* be required to pay the storage charges imposed by *Films vidéo inc.*?

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

Situation 2

On December 10, 2002, Patrice Dupont purchases a *Baby Grand* piano from a former work colleague, Michel Drapeau. The written contract states only that the purchase price, namely \$12,000 including taxes, is payable in three equal and consecutive annual instalments of \$4,000 on December 10, 2002, 2003 and 2004.

Patrice makes the payments exigible in December of 2002 and December of 2003, in accordance with the contract.

In April of 2004, after having accepted the assignment of lease from Gisèle Béjard, Patrice decides to dispose of his *Baby Grand* piano in order to purchase a new and larger model. On April 5, 2004, he sells his *Baby Grand* piano to one of his students, Sophie Hudon, at a price of \$13,000, including taxes. On April 8, 2004, Sophie pays the selling price in cash and takes possession of the piano.

In the following days, Michel learns of the sale of the *Baby Grand* piano. He then contacts Patrice to claim the payment of the last instalment on the ground that Patrice did not have the right to sell the piano without his authorization because Patrice would only become its owner once the selling price was paid in full. Consequently, Michel demands the immediate payment of the \$4,000 balance payable on December 10, 2004.

QUESTION 13 (5 marks)

Is Michel Drapeau well founded in demanding the immediate payment of the balance of the selling price on the sole ground that Patrice Dupont is not the owner of the piano? Explain your answer.

Situation 3

In December of 2001, Patrice Dupont submits a proposal to Roger Bourque, a producer of television series, for a documentary series devoted to self-development, which series is to be recorded on videocassette and DVD.

On December 15, 2001, Patrice and Roger obtain an interest-free personal loan of \$60,000 from *Mécénat contemporain inc.*, a non-profit organization that finances activities of all sorts. According to the contract, the loan is repayable in whole on December 15, 2003, failing which interest at an annual rate of 10% will apply as of the due date.

Since then, Patrice and Roger's project has experienced major difficulties because the series produced was not as successful as expected. Indeed, this has resulted in a significant deterioration in the relationship between the two businessmen, to the point that they are no longer on speaking terms.

On December 10, 2003, Patrice goes to the place of business of *Mécénat contemporain inc.* and makes a payment of \$30,000 by certified cheque, stressing the fact that this is the payment of his share of the debt. The authorized representative of *Mécénat contemporain inc.* gives him a receipt with the following written on it: "in payment of the share of Mr. Patrice Dupont for loan no. 01-357 contracted on December 15, 2001 and coming due on December 15, 2003."

In March of 2004, *Mécénat contemporain inc.* has still not received anything from Roger and sends him a demand letter. It then learns that Roger has become insolvent as a result of the difficulties experienced in several of his projects.

On May 12, 2004, Patrice receives a demand letter in which *Mécénat contemporain inc.* claims from him the payment of the balance owing on the loan, namely \$30,000 plus the interest.

QUESTION 14 (5 marks)

Is Patrice Dupont required to pay the balance owing on the loan?

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

Situation 4

In December of 2001, Patrice Dupont and Roger Bourque subscribed for an insurance policy with *L'Essentielle, compagnie d'assurances*, in order to cover the equipment purchased by them for the proposed documentary series.

The insurance policy, issued in the names of Patrice Dupont and Roger Bourque, provides coverage of \$30,000 against theft and vandalism for all the equipment. It is in effect for a period of 12 months as of December 15, 2001 and is renewed for an identical period on December 15, 2002.

The professional equipment covered by Patrice and Roger's insurance policy is the following:

- 4 video cameras
- 8 spotlights
- 2 recording heads
- 2 videocassette recorders

During the night of November 8, 2003, part of the equipment is stolen from Roger's place of business, namely:

- 2 video cameras
- 4 spotlights

Roger immediately contacts *L'Essentielle, compagnie d'assurances* to report the theft. Without informing Patrice of the theft, Roger takes all the necessary steps with the insurer in order to obtain payment.

During his meeting with the claims adjuster sent by the insurer, Roger declares that the thieves stole all of the insured professional equipment. In doing so, he hopes to collect a larger insurance indemnity.

The insurer investigates the circumstances of the loss without ever contacting Patrice. After having completed its investigation, *L'Essentielle, compagnie d'assurances* informs the two insured parties, Patrice and Roger, that it refuses to pay the insurance indemnity because of the deceitful representation made when the claim was filed. It is only upon his receipt of this letter that Patrice learns that he was the victim of a theft on November 8, 2003.

QUESTION 15 (5 marks)

Is *L'Essentielle, compagnie d'assurances* justified in refusing to pay the insurance indemnity to Patrice Dupont?

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

- (a) Yes, because Patrice Dupont and Roger Bourque are co-owners of the property to which the deceitful representation relates.
- (b) No, because the forfeiture of the right to an indemnity is incurred only with respect to the class of property to which the deceitful representation relates.
- (c) No, because Patrice Dupont is not the person who made the deceitful representation.
- (d) Yes, because Patrice Dupont and Roger Bourque are named as co-insured parties in the insurance policy and the deceitful representation can be set up against the insured parties.

Situation 5

Patrice likes to garden at his country house in his spare time. In the spring of 2004, he decides to set up a vegetable garden to grow biological vegetables for his own consumption.

In order to do so, on April 30, 2004, he goes to *Loue-tout Magog inc.* in order to lease a roto spader. During the negotiations preceding the signing of the leasing agreement, Patrice informs the manager that the leasing costs charged by *Loue-tout Magog inc.* are higher than those charged by competitors in the area. The manager therefore agrees to supply the fuel and add a free day to the two days already provided for in the lease.

Satisfied with the concessions he has obtained from the manager, Patrice signs the leasing agreement which contains the following clause, among others:

Clause 8.2

The lessee shall comply with the instructions set out in the <i>Guide Loue-tout Magog inc.</i> The lessee shall be liable for all damage resulting from failure to comply with these instructions.
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The *Guide Loue-tout Magog inc.* is a document that informs clients of *Loue-tout Magog inc.* of the principal use, maintenance and safety measures relating to the items leased. However, due to the large number of customers at *Loue-tout Magog inc.*, the manager forgets to give Patrice the guide.

On the second day of use of the roto spader, the machine suddenly stops working. Patrice immediately brings it back to *Loue-tout Magog inc.*

The manager informs him that the defect is due to the fact that he did not add oil to the machine's reservoir, contrary to the instructions in the *Guide Loue-tout Magog inc.* Consequently, he informs Patrice that he is responsible for paying the cost of repairing the roto spader. Patrice categorically refuses to pay anything whatsoever.

QUESTION 16 (5 marks)

Is *Loue-tout Magog inc.* well founded in claiming payment of the cost of repairing the roto spader from Patrice Dupont by relying on clause 8.2 of the leasing agreement?

Justify your answer by referring to one or more specific and relevant provisions of the *Civil Code of Québec*.

Situation 6

On July 1, 2003, Thérèse Lavoie, Patrice's mother, moves into a dwelling on Rose de Lima Street in Montreal.

At the end of March of 2004, Thérèse discovers that her dwelling is infested with vermin and rodents. Furthermore, she notes that mildew has spread all around the windows, making the ambient air hard to breathe.

On March 31, 2004, on Patrice's advice, Thérèse leaves the dwelling. The next day, she notifies the lessor, Sylvio Desormeaux, of the situation. Thérèse and Sylvio agree to meet at the dwelling later that day in order to discuss the matter. Once on the premises, Sylvio notices that this situation results from a large crack in the foundation of the immovable. Sylvio undertakes in favour of Thérèse to perform the necessary work, which work should take approximately four weeks. Thérèse then provides Sylvio with the contact information for her son Patrice, indicating to Sylvio that her son has been kind enough to provide her with a place to live at no cost while the work is performed.

On April 30, 2004, Sylvio informs Thérèse that the work is finished and that she can return to her dwelling; Thérèse does so the following morning.

On May 1, 2004, in the afternoon, Sylvio goes to Thérèse's dwelling, as he does at the beginning of each month, to obtain the payment of the rent for the month of May of 2004. At the same time, he asks her to pay the rent for April of 2004 which remains unpaid.

Thérèse objects and refuses to pay the rent for the month of April of 2004. Sylvio reminds her that she did not incur any lodging costs during the performance of the work because she stayed with her son at no cost. Sylvio adds that he took care of her furniture while the work was being performed and did a major clean-up of the dwelling, all at a significant cost to him.

Thérèse informs Patrice of Sylvio's demand. Patrice consults you on this matter.

QUESTION 17 (4 marks)

Can Thérèse Lavoie refuse to pay the rent for the month of April of 2004 claimed by Sylvio Desormeaux, without any other formality?

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

Situation 7

Stéphane Dupont, Patrice's brother, is a film producer. In December of 2001, Stéphane takes out an accident and health insurance policy with *La Mutuelle des Cinéastes du Québec*. During his initial meeting with Jean Lepage, a representative of *La Mutuelle des Cinéastes du Québec*, he declares that he is in excellent health. In particular, in the insurance proposal, he indicates that he does not suffer from back pain.

In reality, Stéphane has been undergoing treatment by a chiropractor on a regular basis for more than eight months for persistent back pain. However, he does not mention this fact because he is worried that a restriction will be imposed in his insurance policy excluding claims related to this disease or ailment. Stéphane does not want such an exclusion in his insurance policy because if his back pain were to prevent him from working, he would like to collect insurance benefits in order to provide for his needs.

On December 18, 2001, *La Mutuelle des Cinéastes du Québec* issues an insurance policy in favour of Stéphane. The policy includes, among the standard exclusions, the following clause: "This policy excludes any disease or ailment not declared in the insurance proposal".

On January 5, 2004, while moving a cabinet, Stéphane significantly aggravates his back injury, making him unable to work. The following day, he contacts his insurer to inform it of his situation. On January 14, 2004, a claims investigator from the insurance company meets with Stéphane to take down his statement of the events. At the same time, he obtains Stéphane's authorization to consult his medical record.

During the investigation, the insurer discovers that Stéphane had already been receiving chiropractic treatments for over eight months before signing the insurance proposal.

On February 13, 2004, *La Mutuelle des Cinéastes du Québec* notifies Stéphane in writing that it will not pay him any insurance benefits. The insurer bases its refusal on the general exclusion contained in the policy because Stéphane suffers from back pain and this disease or ailment was not declared in the insurance proposal.

Stéphane, who is still incapacitated, informs Patrice of his problems with the insurer. Patrice consults you on this matter.

QUESTION 18 (4 marks)

Is *La Mutuelle des Cinéastes du Québec* well founded in relying on the general exclusion contained in the insurance policy in order to refuse paying the insurance benefit to Stéphane Dupont?

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

CORRIGÉ
CIVIL II - EXAMEN DE REPRISE
17 mai 2004

DOSSIER 1 (15 POINTS)

QUESTION 1 (15 points)

Rédigez l'EN-TÊTE et les CONCLUSIONS de la requête introductive d'instance. Ne signez pas l'acte de procédure pour assurer votre anonymat.

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE LAVAL

COUR DU QUÉBEC
_____(Chambre civile)_____

1.

NO:

ROLANDE SIROIS, domiciliée et résidant au 2574,
rue Sainte-Hélène, Longueuil, district de Longueuil,
province de Québec, J4H 2B9

2.

demanderesse

c.

LES ENTREPRISES SAINT-MARC INC., personne
morale légalement constituée, ayant son principal
établissement au 5679, rue Cyr, Laval, district de Laval,
Québec, H7T 7N9

3.

défenderesse

et

ROBERT LALIBERTÉ, résidant au 5679, rue Cyr,
Laval, district de Laval, Québec, H7T 7N9

4.

défendeur

Description complète des parties

5.

CONDAMNER solidairement les défendeurs ou la défenderesse et le défendeur à payer à la demanderesse

6.

la somme de 50 000 \$ avec intérêts au taux de 5 % l'an et l'indemnité additionnelle prévue par la loi

7.

à compter du 5 mai 2003;

8.

DÉCLARER valable la saisie avant jugement pratiquée en l'instance;

9.

LE TOUT avec dépens.

DOSSIER 2 (43 POINTS)

QUESTION 2 (10 points)

- a) **Nommez les créanciers qui bénéficient d'une ou de plus d'une cause légitime de préférence sur la distribution du produit de vente**

Pour chacun des créanciers, nommez la ou les causes légitimes de préférence.

Paul Durivage détient une priorité de vendeur impayé d'un bien meuble
(principes des articles 2647, 2650 et 2651 (2) C.c.Q.)

10.

Paul Durivage détient une hypothèque mobilière conventionnelle sans dépossession
(principes des articles 2647 et 2660 C.c.Q.)

11.

Carole Desbiens détient une hypothèque mobilière conventionnelle sans dépossession
(principes des articles 2647 et 2660 C.c.Q.)

12.

Aucun autre créancier ajouté

13.

- b) **Nommez le créancier qui sera colloqué immédiatement après les frais de justice et dépenses faites dans l'intérêt commun ? Dites pourquoi.**

Paul Durivage sera colloqué au deuxième rang parce que sa créance prioritaire (prend rang avant l'hypothèque.)
(principes des articles 2657 et 2650 C.c.Q.)

14.

QUESTION 3 (4 points)

L'hypothèque de *Friteuses 2003 inc.* prend-elle rang avant ou après celle de *Banque du Jour*?

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

Avant, art. 2954 C.c.Q.

15.

QUESTION 4 (5 points)

Dans ces circonstances, Julie Lamoureux peut-elle consentir à *Friteuses 2003 inc.* une hypothèque mobilière sans dépossession sur son brevet? Si oui, énoncez les formalités requises. Si non, dites pourquoi.

Non, Julie est une personne physique qui n'exploite pas d'entreprise (principe de l'art. 2683 C.c.Q.)

16.

QUESTION 5 (5 points)

Jean-Charles Poudrier peut-il exercer un recours en prise en paiement vu le solde dû en capital et intérêts?

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

- a) **Oui, parce que l'hypothèque a été consentie il y a plus de dix ans.**
- b) **Oui, il peut exercer le recours de prise en paiement s'il obtient l'autorisation du tribunal.**
- c) **Non, parce que le solde dû est inférieur à 50 % du montant de l'obligation garantie par hypothèque.**
- d) **Non, parce que le recours est prescrit.**

Réponse : b) (principe de l'art. 2778 C.c.Q.)

17.

QUESTION 6 (4 points)

Dans l'hypothèse où Jean-Charles Poudrier intenterait un recours en délaissement forcé et en prise en paiement, la municipalité de St-Joseph-du-Lac pourrait-elle demander l'abandon de ce recours? Dites pourquoi.

Non, seuls les créanciers hypothécaires subséquents ou le débiteur peuvent demander l'abandon du recours de prise en paiement. 18.

(art. 2779 C.c.Q. a contrario)

QUESTION 7 (5 points)

Banque du Lac pouvait-elle procéder à la saisie de l'immeuble situé au 370, bord du Lac sans inscrire au préalable un préavis d'exercice d'un droit hypothécaire? Dites pourquoi.

Oui, parce que *Banque du Lac* détient un jugement dans une action personnelle et elle peut choisir tous les modes d'exécution.

OU

19.

Oui, parce que la saisie n'est pas l'exercice d'un droit hypothécaire.

(art. 2748 C.c.Q.)

QUESTION 8 (5 points)

Dans l'hypothèse où Jean-Charles Poudrier obtiendrait en sa faveur un jugement qui ordonne le délaissement forcé et la prise en paiement, quel serait l'effet de ce jugement sur la saisie pratiquée par *Banque du Lac*? Dites pourquoi.

Le jugement (a un effet rétroactif) qui anéantit la saisie de *Banque du Lac* pratiquée postérieurement à l'inscription du préavis.

OU

20.

Le jugement anéantit la saisie de *Banque du Lac* parce que le bien est sorti du patrimoine.

QUESTION 9 (5 points)

Dans l'hypothèse où Jean-Charles Poudrier obtiendrait en sa faveur un jugement qui ordonne le délaissement forcé et la prise en paiement et qu'il aurait payé les taxes municipales pour l'année 2003, pourrait-il exiger de Gino Lorenzo le remboursement de ces taxes?

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

Non, art. 2782 al. 2 C.c.Q.

21.

DOSSIER 3 (42 POINTS)

QUESTION 10 (5 points)

Avancement de soi inc. peut-elle faire publier le bail au registre foncier afin de protéger ses droits dans l'éventualité où *Investissements métropolitains inc.* ferait l'acquisition de l'immeuble dans quelques semaines?

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

- a) Non, *Avancement de soi inc.* n'a pas le droit de faire publier le bail au registre foncier parce que le cessionnaire ne peut avoir plus de droits que le cédant.
- b) Oui, car le locateur ne peut empêcher la publication du bail au registre foncier. Une telle publication empêcherait *Investissements métropolitains inc.* de mettre fin au bail après avoir fait l'acquisition de l'immeuble.
- c) Oui, car la clause 6 est interdite en vertu des dispositions pertinentes du *Code civil du Québec* en matière de louage de logement parce qu'elle est abusive. Toutefois, la publication du bail est inutile puisque la vente de l'immeuble ne permet pas à l'acquéreur de mettre fin au bail de logement.
- d) Non, car *Avancement de soi inc.* n'a aucun intérêt juridique à faire publier le bail parce que *Société immobilière Saint-Paul inc.* est présumée avoir refusé la demande de cession de bail présentée par Gisèle Béjart.

Réponse : b)

22.

QUESTION 11 (5 points)

La clause relative à la pénalité applicable en cas de résiliation est-elle légale?

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

Non, art. 195 b) *L.p.c.*

23.

QUESTION 12 (4 points)

Avancement de soi inc. sera-t-elle tenue au paiement des frais d'entreposage imposés par *Films vidéo inc.* ?

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

Oui, art. 1581 al. 1 OU 1582 (et 1580) *C.c.Q.*

24.

QUESTION 13 (5 points)

Michel Drapeau est-il bien fondé d'exiger le paiement immédiat du solde du prix de vente au seul motif que Patrice Dupont n'est pas propriétaire du piano? Dites pourquoi.

Non, parce que Patrice est devenu propriétaire du piano lors de l'achat, le 10 décembre 2002 (et le dernier versement n'est dû que le 10 décembre 2004).

25.

QUESTION 14 (5 points)

Patrice Dupont est-il tenu de payer le solde du prêt ?

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

Non, l'art. 1533 *C.c.Q.*

26.

QUESTION 15 (5 points)

L'Essentielle, compagnie d'assurances est-elle justifiée de refuser de verser l'indemnité d'assurance à Patrice Dupont?

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

- a) Oui, parce que Patrice Dupont et Roger Bourque sont copropriétaires des biens sur lesquels porte la déclaration mensongère.
- b) Non, car la déchéance du droit à l'indemnisation ne vaut qu'à l'égard de la catégorie de biens à laquelle se rattache la déclaration mensongère.
- c) Non, parce que Patrice Dupont n'est pas l'auteur de la déclaration mensongère.
- d) Oui, parce que Patrice Dupont et Roger Bourque sont coassurés nommés dans la police d'assurance et que la déclaration mensongère est opposable aux assurés.

Réponse : c)

27.

(Principe de l'article 2472 al. 1 C.c.Q.)

QUESTION 16 (5 points)

Loue-Tout Magog inc. est-elle bien fondée de réclamer à Patrice Dupont le paiement du coût de réparation du rotoculteur en invoquant la clause 8.2 du contrat de location ?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du *Code civil du Québec*.

Non, art. 1435 al. 2 (et 1384) C.c.Q.

28.

QUESTION 17 (4 points)

Thérèse Lavoie peut-elle, sans autre formalité, refuser de payer le loyer du mois d'avril 2004 réclamé par Sylvio Desormeaux?

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

Oui, art. 1915 al.2 C.c.Q.

29.

QUESTION 18 (4 points)

La Mutuelle des Cinéastes du Québec est-elle bien fondée d'invoquer l'exclusion générale contenue dans la police d'assurance pour refuser de verser la prestation d'assurance à Stéphane Dupont?

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

Oui, art. 2417 al. 2 C.c.Q. (parce qu'il y a eu fraude.)

30.