



**FORMATION PROFESSIONNELLE DU
BARREAU DU QUÉBEC**

EXAMINATION BOOKLET

Droit pénal

April 18, 2001

- 1) The examination in the DROIT PÉNAL section is intended to determine the extent to which you have met the ultimate goals set forth in the document entitled « Préambule Droit Pénal ».
- 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 section :
 - Droit pénal
- 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 **10** pages (including this page) and that your answer booklet contains **5** pages.

FILE 1 (53 MARKS)

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

On February 10, 2001, at approximately 2:00 a.m., Jérôme Lemire is returning home after having spent the evening in a bar with his friends from the office. While getting out of his car, he notices a stranger coming out of his home and leaving in a vehicle.

Jérôme is surprised by what he has just seen and runs into his home where he finds his wife, Madeleine Lemire, in a nightgown, lying down comfortably in the living room. Besides himself with anger, Jérôme accuses his wife of having cheated on him and slaps her. She responds by screaming, while trying to explain the stranger's visit and stating that she is not to blame. Jérôme, who is drunk and angry, goes to the bedroom located on the second floor and grabs the firearm he keeps loaded in his bedside table. He comes back to the living room, continues to accuse his wife of having cheated on him and points the firearm in her direction. Frightened, Madeleine shouts again, louder than ever, and a shot rings out. She then slumps over, with a wound to the abdomen.

Jean Dupré, a next-door neighbour, was awoken by the shouting of Jérôme and Madeleine whose voices he recognizes. As soon as he hears the shot and ensuing scream of pain, he calls « 911 » to report the incident and relates his observations. It is then 2:10 a.m.

Having arrived at the scene of the incident, police officers St-Pierre and Dubeau enter Jérôme Lemire's home through the door previously left open by Jérôme.

They find Jérôme there; he is drunk and kneeling near his wife Madeleine who is lying unconscious on the floor of the living room in a pool of blood.

Jérôme tells the police officers that he found his wife in this condition when he arrived and he shows them the firearm which is lying on the floor of the living room.

While the ambulance attendants are bringing Madeleine to the *Hôpital du Bon Pasteur*, police officers St-Pierre and Dubeau, who are not satisfied with Jérôme's explanations, proceed to arrest him for attempted murder. Jérôme is brought to the police station and placed in a cell after having had his fingerprints taken, and he is put into contact with his lawyer who informs him of his right to silence. Thereafter, Jérôme is questioned by detective sergeant Noiseux and, in a statement, relates all of the above-mentioned facts and adds the following : « All I wanted was to frighten her, I didn't want to kill her, the gun went off on its own. »

A few hours later, his wife, who was seriously wounded, dies because she did not receive the appropriate care in time due to overcrowding at the emergency unit of the *Hôpital du Bon Pasteur*.

The file is assigned to M^e Gaston Plourde, the Crown prosecutor. He analyzes the police file which contains all the above-mentioned elements. M^e Plourde wonders whether he can lay a charge of murder in the second degree against Jérôme.

QUESTION 1 (8 marks)

- a) **Does the fact that Madeleine Lemire died because she did not receive the appropriate care in time due to overcrowding of the emergency unit of the *Hôpital du Bon Pasteur* preclude a charge of murder in the second degree?**
- **Justify your answer by referring to one or more specific and relevant provisions of the Criminal Code.**
- b) **Convinced that the jury will not believe Jérôme Lemire's contradictory statements, on which principle will the Crown prosecutor, M^e Gaston Plourde, rely in order to show the intent to kill?**

SUPPLEMENTARY FACTS

Charged with murder in the second degree, Jérôme, who is being held in custody, appears before a justice of the peace. He is then released from custody by a judge of the Superior Court, Criminal Division, subject to a substantial bond and certain conditions, including that of respecting a curfew from 9:00 p.m. to 7 a.m. and of not communicating with the witness Jean Dupré.

Between Jérôme's release from custody and his preliminary inquiry, police officer St-Pierre informs the Crown prosecutor that Jérôme Lemire went to see his neighbour Jean Dupré, in order to induce him to change his version of the facts, and Jean Dupré refused to do so. Jérôme is arrested following this incident. The Crown prosecutor considers that Jérôme should not be released.

QUESTION 2 (4 marks)

- **Can the Crown prosecutor, M^e Gaston Plourde, obtain the cancellation of the undertaking entered into by Jérôme Lemire? If so, before which court? If not, explain your answer.**
- **Justify your answer by referring to one or more specific and relevant provisions of the Criminal Code.**

SUPPLEMENTARY FACTS

Jérôme consults M^e Hélène Miller to defend him. She has already obtained full communication of the Crown's evidence which contains all of the above-mentioned facts. Jérôme asks her to obtain his acquittal on the charge of murder in the second degree brought against him and states that he reacted because he felt insulted and didn't have time to regain his composure. He adds that before going home, he had consumed many drinks of Scotch with his colleagues from work, from 8 p.m. to 1:45 a.m. He therefore claims that he was in an advanced state of drunkenness at the time of the fight with his wife and states that he barely remembers the events.

QUESTION 3 (12 marks)

State three different possible defences that M^e Hélène Miller can envisage and, in addition to a verdict of not guilty of murder in the second degree, name the verdict which would result from each of the defences if they were accepted.

ONLY THE FIRST THREE DEFENCES AND THE FIRST VERDICT RELATING TO EACH DEFENCE WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

SUPPLEMENTARY FACTS

Before Jérôme's preliminary inquiry on the count of murder in the second degree, M^e Hélène Miller wonders about the risk of her client being committed to trial on a charge of murder in the first degree, if the above-mentioned facts are proven.

QUESTION 4 (4 marks)

Would the evidence allow the justice of the peace at the preliminary inquiry to commit Jérôme Lemire to trial for murder in the first degree? Explain your answer.

SUPPLEMENTARY FACTS

At Jérôme's trial before judge and jury, M^e Gaston Plourde, the Crown prosecutor, calls Jérôme's neighbour as a witness and the neighbour explains the reason for his call to « 911 ». Then he calls as witnesses police officers St-Pierre and Dubeau who describe the circumstances under which they entered the home and found Jérôme with his wife Madeleine who was seriously wounded and lay near the weapon that had caused her injuries. The Crown prosecutor, M^e Gaston Plourde, then announces a voir-dire in order to introduce into evidence the first statement made by Jérôme to police officers St-Pierre and Dubeau to the effect that he had found his wife in this condition when he arrived.

At the end of the voir-dire, the lawyer for the defence, M^e Hélène Miller, objects to the introduction into evidence of the first statement on two grounds : first, the police officers' entry into Jérôme's home was illegal and, second, her client was not informed of his right to a lawyer before making the statement.

QUESTION 5 (8 marks)

What argument of law can the Crown prosecutor, M^e Gaston Plourde, rely on to ask the court to dismiss each of the grounds raised by M^e Hélène Miller?

ONLY THE FIRST ARGUMENT FOR EACH OF THE GROUNDS WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

SUPPLEMENTARY FACTS

The trial continues and the Crown prosecutor, M^e Gaston Plourde, then asks police officer St-Pierre to describe the circumstances under which, together with his fellow police officer Dubeau, he discovered the firearm used to cause the death of Madeleine. He describes how the accused drew his attention to the weapon and the procedure he followed after having taken possession thereof. When questioned on the subsequent steps he took with respect to the weapon, he shows a report signed by a colleague specializing in fingerprints who was asked to examine the weapon seized. This report had been

provided to the defence. M^e Gaston Plourde asks the witness to file the report into evidence, without any other formality. The lawyer for the defence, M^e H el ene Miller, objects to the filing of the report.

QUESTION 6 (4 marks)

State one ground of law in support of the objection raised by the lawyer for the defence, M^e H el ene Miller.

ONLY THE FIRST GROUND WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

SUPPLEMENTARY FACTS

During a voir-dire, M^e Gaston Plourde calls as a witness Gilles Lamothe for the purpose of having the admissibility of his testimony determined. He is a friend of the Lemire couple. With this testimony the Crown prosecutor is trying to show that the couple had been going through a difficult period for a few months and that J er ome occasionally assaulted his spouse in Gilles Lamothe's presence and had an impulsive and aggressive nature. The lawyer for the defence, M^e H el ene Miller, objects to this evidence.

QUESTION 7 (9 marks)

State three grounds of law in support of the objection of the lawyer for the defence, M^e H el ene Miller, to prevent the jury from hearing this evidence.

ONLY THE FIRST THREE GROUNDS WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

SUPPLEMENTARY FACTS

One of the witnesses presented by the defence acknowledges having previously been convicted of fraud. In his instructions to the jury, the judge presiding over J er ome's trial asks the jury to disregard the testimony of this witness because of his previous conviction. M^e H el ene Miller, the lawyer for the defence, is dissatisfied with this instruction and contemplates raising this fact before the Court of Appeal if her client is found guilty.

QUESTION 8 (4 marks)

State the principle of law on which M^e H el ene Miller could rely to show to the Court of Appeal that this instruction was illegal.

ONLY THE FIRST PRINCIPLE OF LAW WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

FILE 2 (47 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.

On September 12, 2000, at approximately 9 o'clock in the evening, Gisèle Latour makes her way to the automatic teller machine to deposit the cash collected from her business. As she is walking on the sidewalk, she notices two individuals following her. One of them approaches her rapidly and stabs her in the thigh while attempting to grab the bag containing the deposit. She defends herself as best as she can by scratching the individual's face. The two individuals hear the siren of a police car approaching at great speed and they flee without being able to get their hands on the deposit bag. They run in opposite directions and disappear before the police officers can catch them.

The knife is found at the scene. Wounded in the thigh, Gisèle is immediately brought to the *Hôpital Saint-Siméon* where she is provided with emergency care. Doctor Marquis collects human tissue from under Gisèle's nails; the police officers believe this tissue comes from the attacker.

Gisèle provides a general description of the two individuals who fled after the attack. However, she is unable to identify them. The police investigation carried out by detective sergeants Lajoie and Gendron reveals that Pierre Martel, a well-known criminal, was seen examining the surroundings of the automatic teller machine, near the location of the attack, a few hours before the incident. Moreover, Pierre Martel corresponds to the general description given by Gisèle of one of the two individuals. Detective sergeants Lajoie and Gendron do not have sufficient reasonable grounds to obtain an arrest warrant for Pierre Martel, but they nevertheless decide to follow him for a few days in order to determine whether the company he keeps and his comings and goings might provide them with new clues as to his participation in the crime perpetrated against Gisèle.

Two days later, detective sergeants Lajoie and Gendron observe Pierre Martel wandering along Saint-Denis Street in Montreal. They see him speak to Jean Poirier, an individual known to their police department, and see him give Jean Poirier a small plastic bag containing white powder in exchange for a \$20 bill. Convinced that they have just witnessed an exchange of drugs, detective sergeants Lajoie and Gendron immediately intervene and arrest the two individuals for trafficking of narcotics. While searching Jean Poirier, they find a small bag containing 1/4 of a gram of white powder, which will prove to be cocaine. A search of Pierre Martel allows them to seize four similar bags which also contain cocaine.

QUESTION 9 (4 marks)

- **Did detective sergeants Lajoie and Gendron have the power to proceed to arrest Pierre Martel for trafficking of narcotics?**
- **Justify your answer by referring to one or more specific and relevant provisions of the Criminal Code.**

SUPPLEMENTARY FACTS

Jean Poirier corresponds to the general description given by Gisèle of the second individual. Pierre Martel and Jean Poirier are brought to the police station where they are advised of their constitutional rights with respect to the offences relating to narcotics, as well that of the armed attack against Gisèle for which they are both suspects. Pierre Martel invokes his right to silence. When questioned by the investigating officers, despite the advice given to Jean Poirier by his lawyer, he makes a statement and incriminates Pierre Martel as Gisèle's attacker; he also admits having been at the scene.

The police science laboratory expert informs detective sergeant Gendron that due to an overload of work, he will not be able to analyze the substance seized from under the victim's nails for several weeks and, consequently, he cannot assert that he will be able to determine the genetic print of this substance. Nevertheless, wishing to save time, detective sergeant Gendron goes to the Crown prosecutors' office to consult M^e Émilie Larouche. He asks her if there are any judicial measures available to him to obtain samples of bodily substances from Pierre Martel, for the purpose of eventually comparing them with the substances collected from under Gisèle's nails. M^e Émilie Larouche answers that there is a judicial measure but that, under the circumstances, she cannot proceed therewith.

QUESTION 10 (8 marks)

- a) **Indicate the judicial measure which would allow the samples in question to be obtained.**
- **Justify your answer by referring to one or more specific and relevant provisions of the Criminal Code.**

ONLY THE FIRST JUDICIAL MEASURE WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

- b) **Is the Crown prosecutor, M^e Émilie Larouche, correct in claiming that, under the circumstances, she cannot proceed with this measure?**
- **Justify your answer by referring to one or more specific and relevant provisions of the Criminal Code.**

QUESTION 11 (4 marks)

- **What charge could be brought against Jean Poirier with respect to the drugs seized?**
- **Justify your answer by referring to one or more specific and relevant provisions of the Criminal Code or the related legislation.**

SUPPLEMENTARY FACTS

On May 1, 2001, Pierre Martel and Jean Poirier jointly stand trial on the charge of having caused bodily injuries to Gisèle with the intent to steal from her, thereby committing a robbery contrary to sections 343 and 344 of the Criminal Code.

After having heard the Crown's evidence, M^e Michel Lachance, the lawyer for Jean Poirier, calls his client as a witness for the defence. Jean Poirier states that he is innocent because he was merely a spectator. He declares that he was surprised when Pierre Martel attacked Gisèle with a knife. As soon as he saw the police vehicle, he ran away from the scene, because, as a result of previous events, he was afraid of the police officers' reaction.

At the end of the Crown's cross-examination, M^e Catherine Blain, the lawyer for Pierre Martel, cross-examines Jean Poirier and asks him whether it is true that he is awaiting trial on another charge of robbery. M^e Michel Lachance, the lawyer for Jean Poirier, immediately raises an objection, claiming that his client cannot be forced to answer this question.

QUESTION 12 (5 marks)

Is the objection raised by M^e Michel Lachance well founded? If so, state the ground for the objection. If not, explain your answer.

SUPPLEMENTARY FACTS

Both parties have declared that they have finished presenting their evidence. The evidence has established the above-mentioned facts. M^e Émilie Larouche, the Crown prosecutor, addresses Judge Jeanne Paquette and argues that Jean Poirier must also be convicted of the robbery because he participated in the crime in question.

QUESTION 13 (4 marks)

M^e Michel Lachance, the lawyer for Jean Poirier, asserts the following four arguments in response to the Crown prosecutor. Which of these four arguments is not valid? Write it in your answer booklet.

- **He did not contribute in any manner to the perpetration of the crime.**
- **There was no aiding and abetting pursuant to section 21 of the Criminal Code.**
- **There is no evidence of an agreement to commit a robbery.**
- **Mere presence at the scene of the crime does not constitute participation in the crime.**

SUPPLEMENTARY FACTS

At the end of the trial, Pierre Martel is convicted and ordered to serve a term of imprisonment of 23 months. The court is satisfied that Pierre Martel does not represent a danger to society, given that he successfully completed a disintoxication program, and it orders him to serve the sentence in the community. Judge Jeanne Paquette attaches several conditions to the conditional sentence order. She first imposes on him the obligation to respect the conditions imposed by the law. She also orders him to abstain from using drugs or consuming alcohol, to be at his home every evening between 10 p.m. and 7 a.m. and to perform 200 hours of community service.

Six months later, Pierre Martel's behaviour is still exemplary. He has performed all his community work and has found permanent work which now requires him to work night shifts.

QUESTION 14 (10 marks)

- **Indicate the two legal measures available to Pierre Martel so that he can obtain permission to go outside his home at night in order to work at his new job.**
- **Justify your answer by referring to one or more specific and relevant provisions of the Criminal Code.**

ONLY THE FIRST TWO LEGAL MEASURES WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

SUPPLEMENTARY FACTS

Six months later, a police officer stops Pierre Martel's car for the offence of driving above the legal speed limit in virtue of the Highway Safety Code. It is then midnight. At the police officer's request, Pierre, who is at the wheel, gives him his driver's licence as well as the other documents requested. The police officer checks with the QPIC (Quebec Police Information Centre) and notices that Pierre is subject to a court-imposed condition which requires him to stay at home from 10 p.m. to 7 a.m., except for purposes of his work. The police officer asks Pierre where he's coming from and Pierre answers that because he was on holiday, he spent the evening at his friends' place. The police officer proceeds to arrest him.

QUESTION 15 (4 marks)

- **Is Pierre Martel's arrest legal?**
- **Justify your answer by referring to one or more specific and relevant provisions of the Criminal Code.**

SUPPLEMENTARY FACTS

Pierre appears before a justice of the peace for having breached one of the conditions of his conditional sentence order, namely the condition relating to the curfew.

QUESTION 16 (4 marks)

- **As between the Crown and the defence, who will have the burden of proof at the hearing on the release from custody?**

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

SUPPLEMENTARY FACTS

Six months later, Pierre Martel is convicted of trafficking in cocaine for having sold this substance to Jean Poirier on September 14, 2000. The judge commits him to custody for 30 days.

QUESTION 17 (4 marks)

- **Will this custodial period be deducted from the duration of the conditional sentence order?**

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

CORRIGÉ
DROIT PÉNAL - EXAMEN RÉGULIER
 18 avril 2001

DOSSIER 1 (53 POINTS)

QUESTION 1 (8 points)

a) **Le fait que Madeleine Lemire soit décédée faute d'avoir reçu à temps les soins appropriés en raison d'un engorgement de l'urgence de l'Hôpital du Bon Pasteur peut-il faire échec à une accusation de meurtre au deuxième degré?**

- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code criminel.

Non, art. 224 C.cr. ou art. 225 C.cr.

1. 4

b) **Convaincu que le jury ne croira pas les déclarations contradictoires de Jérôme Lemire, sur quel principe le procureur de la Couronne, M^e Gaston Plourde, s'appuiera-t-il pour démontrer l'intention de tuer?**

(Sur la règle du bon sens, qui veut que) toute personne est censée rechercher les conséquences naturelles de ses actes.

2. 4

QUESTION 2 (4 points)

• **Le procureur de la Couronne, M^e Gaston Plourde, peut-il obtenir l'annulation de l'engagement qu'avait contracté Jérôme Lemire? Si oui, devant quelle cour peut-il le faire? Si non, dites pourquoi.**

- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code criminel.

Oui, devant la Cour supérieure, art. 524 (4) a) ou 524 (3) a) C. cr.

3. 4

QUESTION 3 (12 points)

Énoncez trois différentes défenses possibles que M^e Hélène Miller peut envisager et nommez, outre le verdict de non-culpabilité de meurtre au deuxième degré, le verdict qui découlerait de chacune de ces défenses si elles étaient retenues.

SEULS LES TROIS PREMIÈRES DÉFENSES ET LE PREMIER VERDICT RELATIF À CHAQUE DÉFENSE INSCRITS AU CAHIER DE RÉPONSES SERONT CORRIGÉS.

3 / 6

4 pts / bulle

4. 12

DÉFENSES	VERDICTS
1. Provocation	Coupable d'homicide involontaire
2. Intoxication volontaire	Coupable d'homicide involontaire
3. Accident	Coupable d'homicide involontaire
4. Responsabilité diminuée	Coupable d'homicide involontaire
5. Combinaison des moyens de défense	Coupable d'homicide involontaire
6. Absence d'intention de tuer	Coupable d'homicide involontaire

1.

2.

3.

4.

5.

6.

QUESTION 4 (4 points)

La preuve permettrait-elle au juge de paix à l'enquête préliminaire de citer Jérôme Lemire à son procès pour meurtre au premier degré? Dites pourquoi.

Non, la preuve ne révèle pas la préméditation ou les propos délibérés.

OU

Oui (art. 231 (6) C.cr.), car le meurtre a été commis lors de la commission d'une infraction à l'art. 264 C. cr. ou lors d'un harcèlement criminel.

5. 4

QUESTION 5 (8 points)

Quel argument de droit le procureur de la Couronne, M^e Gaston Plourde, peut-il invoquer pour demander au tribunal de rejeter chacun des motifs formulés par M^e Hélène Miller?

SEUL LE PREMIER ARGUMENT POUR CHACUN DES MOTIFS INSCRIT AU CAHIER DE RÉPONSES SERA CORRIGÉ.

Argument de droit pour contrer le premier motif :

Les policiers pouvaient entrer en vertu de la common law qui leur accorde les pouvoirs nécessaires à l'accomplissement de leur devoir de porter secours **OU** Arrêt Godoy.

OU

Les policiers pouvaient entrer d'urgence pour éviter à une personne des lésions corporelles ou la mort. (art. 529.3 C. cr.)

6.

Argument de droit pour contrer le deuxième motif :

Jérôme Lemire n'était (ni arrêté) ni détenu au moment où il a prononcé ces paroles.

(Les exigences de la Charte ne sont pas applicables et le droit à l'avocat n'est pas pertinent. (art. 10(b) de la Charte)).

7.

QUESTION 6 (4 points)

Énoncez un motif de droit au soutien de l'objection soulevée par la procureure de la défense, M^e Hélène Miller.

SEUL LE PREMIER MOTIF INSCRIT AU CAHIER DE RÉPONSES SERA CORRIGÉ.

Les formalités de l'article 657.3 C.cr. n'ont pas été respectées.

OU

La défense n'y a pas consenti.

OU

Il s'agit de oui-dire.

8.

QUESTION 7 (9 points)

Énoncez trois motifs de droit à l'appui de l'objection de la procureure de la défense, M^e Hélène Miller, pour empêcher le jury d'entendre une telle preuve.

SEULS LES TROIS PREMIERS MOTIFS INSCRITS AU CAHIER DE RÉPONSES SERONT CORRIGÉS.

3 / 5
3 pts / bulle

1. (Preuve inadmissible) d'un trait de personnalité de l'accusé **ou** de propension.

1.

9.

2. (Preuve inadmissible) de mauvaise réputation **ou** de mauvais caractère.

2.

3. (Preuve inadmissible) car on ne peut faire la preuve d'infractions commises par l'accusé dont il n'a pas été reconnu coupable.

3.

4. (Preuve inadmissible) dont l'effet préjudiciable dépasse largement sa valeur probante.

4.

5. (Preuve inadmissible) car il n'y a pas de pertinence légale.

5.

QUESTION 8 (4 points)

Énoncez le principe de droit sur lequel M^e Hélène Miller pourrait s'appuyer pour démontrer à la Cour d'appel que cette directive était illégale.

SEUL LE PREMIER PRINCIPE DE DROIT INSCRIT AU CAHIER DE RÉPONSES SERA CORRIGÉ.

Les antécédents judiciaires ne servent qu'à attaquer la crédibilité.

OU

C'est le jury qui est maître des faits.

10.

DOSSIER 2 (47 POINTS)

QUESTION 9 (4 points)

- Les sergents-détectives Lajoie et Gendron avaient-ils le pouvoir de procéder à l'arrestation de Pierre Martel pour trafic de stupéfiants?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code criminel.

Oui, article 495 (1) a) ou 495 (1) b) ou 494 (1) a) C.cr.

11.

QUESTION 10 (8 points)

- a) Indiquez la démarche judiciaire qui permettrait d'obtenir les échantillons recherchés.
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code criminel.

SEULE LA PREMIÈRE DÉMARCHE JUDICIAIRE INSCRITE AU CAHIER DE RÉPONSES SERA CORRIGÉE.

Demande d'émission de mandat de prélèvement des échantillons de substances corporelles, art. 487.05 C.cr.

12.

- b) La procureure de la Couronne, M^e Émilie Larouche, a-t-elle raison de prétendre que, dans les circonstances, elle ne peut faire cette démarche?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code criminel.

Oui, 487.05 (1) d) C.cr.

13.

QUESTION 11 (4 points)

- Quelle est l'accusation qui pourrait être portée contre Jean Poirier relativement à la drogue saisie?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code criminel ou des lois connexes.

Possession simple de cocaïne ou de drogue ou de substance indiquée à l'Annexe 1 ou de stupéfiant, art. 4 (1) (3) a) L.R.C.D.A.S.

14.

QUESTION 12 (5 points)

L'objection formulée par M^e Michel Lachance est-elle bien fondée? Si oui, énoncez le motif de l'objection. Si non, dites pourquoi.

Non, Jean Poirier est un témoin ordinaire à l'égard de Pierre Martel.

15.

QUESTION 13 (4 points)

M^e Michel Lachance, procureur de Jean Poirier, fait valoir les quatre arguments suivants en réponse à la procureure de la Couronne. Lequel de ces quatre arguments n'est pas valable? Inscrivez-le dans votre cahier de réponses.

- Il n'a contribué d'aucune façon à la perpétration du crime.
- Il n'y a pas eu de complicité en vertu de l'article 21 du Code criminel.
- Il y a absence de preuve d'entente pour commettre un vol qualifié.
- La simple présence sur les lieux du crime ne constitue pas une participation au crime.

Il y a absence de preuve d'entente pour commettre un vol qualifié.

16.

QUESTION 14 (10 points)

- **Indiquez les deux démarches légales mises à la disposition de Pierre Martel pour qu'il obtienne la permission de circuler hors de son domicile pendant la nuit afin d'accomplir son nouveau travail.**
- **Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code criminel.**

SEULES LES DEUX PREMIÈRES DÉMARCHES LÉGALES INSCRITES AU CAHIER DE RÉPONSES SERONT CORRIGÉES.

1. Formuler une demande à son agent de surveillance pour qu'il suggère des modifications aux conditions de l'ordonnance de sursis et qu'il les notifie, accompagnées des motifs à leur appui, au délinquant, au poursuivant et au tribunal. Art. 742.4 (1) C.cr. **17.**
2. Faire une demande pour obtenir une modification d'une des conditions de l'ordonnance de sursis, art. 742.4 (5) C.cr. **18.**

QUESTION 15 (4 points)

- **L'arrestation de Pierre Martel est-elle légale?**
- **Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code criminel.**

Oui, art. 742.6 (1) b) (et 495 (1) C. cr.)

19.

QUESTION 16 (4 points)

- **Qui, de la Couronne ou de la défense, aura le fardeau de la preuve lors de l'enquête pour mise en liberté?**
- **Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code criminel.**

La défense, art. 742.6 (2) C. cr. **ou** art. 515 (6) C. cr.

20.

QUESTION 17 (4 points)

- **Cette période de détention sera-t-elle déduite de la durée de l'ordonnance de sursis?**
- **Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code criminel.**

Non, art. 742.7 C. cr.

21.

CORRIGÉ
DROIT PÉNAL - EXAMEN RÉGULIER
 18 avril 2001

DOSSIER 1 (53 POINTS)

QUESTION 1 (8 points)

a) **Le fait que Madeleine Lemire soit décédée faute d'avoir reçu à temps les soins appropriés en raison d'un engorgement de l'urgence de l'Hôpital du Bon Pasteur peut-il faire échec à une accusation de meurtre au deuxième degré?**

- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code criminel.

Non, art. 224 C.cr. ou art. 225 C.cr.

1. 4

b) **Convaincu que le jury ne croira pas les déclarations contradictoires de Jérôme Lemire, sur quel principe le procureur de la Couronne, M^e Gaston Plourde, s'appuiera-t-il pour démontrer l'intention de tuer?**

(Sur la règle du bon sens, qui veut que) toute personne est censée rechercher les conséquences naturelles de ses actes.

2. 4

QUESTION 2 (4 points)

• **Le procureur de la Couronne, M^e Gaston Plourde, peut-il obtenir l'annulation de l'engagement qu'avait contracté Jérôme Lemire? Si oui, devant quelle cour peut-il le faire? Si non, dites pourquoi.**

- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code criminel.

Oui, devant la Cour supérieure, art. 524 (4) a) ou 524 (3) a) C. cr.

3. 4

QUESTION 3 (12 points)

Énoncez trois différentes défenses possibles que M^e Hélène Miller peut envisager et nommez, outre le verdict de non-culpabilité de meurtre au deuxième degré, le verdict qui découlerait de chacune de ces défenses si elles étaient retenues.

SEULS LES TROIS PREMIÈRES DÉFENSES ET LE PREMIER VERDICT RELATIF À CHAQUE DÉFENSE INSCRITS AU CAHIER DE RÉPONSES SERONT CORRIGÉS.

3 / 6

4 pts / bulle

4. 12

DÉFENSES	VERDICTS	
1. Provocation	Coupable d'homicide involontaire	1. <input type="radio"/>
2. Intoxication volontaire	Coupable d'homicide involontaire	2. <input type="radio"/>
3. Accident	Coupable d'homicide involontaire	3. <input type="radio"/>
4. Responsabilité diminuée	Coupable d'homicide involontaire	4. <input type="radio"/>
5. Combinaison des moyens de défense	Coupable d'homicide involontaire	5. <input type="radio"/>
6. Absence d'intention de tuer	Coupable d'homicide involontaire	6. <input type="radio"/>

QUESTION 4 (4 points)

La preuve permettrait-elle au juge de paix à l'enquête préliminaire de citer Jérôme Lemire à son procès pour meurtre au premier degré? Dites pourquoi.

Non, la preuve ne révèle pas la préméditation ou les propos délibérés.

OU

Oui (art. 231 (6) C.cr.), car le meurtre a été commis lors de la commission d'une infraction à l'art. 264 C. cr. ou lors d'un harcèlement criminel.

5. 4

QUESTION 5 (8 points)

Quel argument de droit le procureur de la Couronne, M^e Gaston Plourde, peut-il invoquer pour demander au tribunal de rejeter chacun des motifs formulés par M^e Hélène Miller?

SEUL LE PREMIER ARGUMENT POUR CHACUN DES MOTIFS INSCRIT AU CAHIER DE RÉPONSES SERA CORRIGÉ.

Argument de droit pour contrer le premier motif :

Les policiers pouvaient entrer en vertu de la common law qui leur accorde les pouvoirs nécessaires à l'accomplissement de leur devoir de porter secours **OU** Arrêt Godoy.

OU

Les policiers pouvaient entrer d'urgence pour éviter à une personne des lésions corporelles ou la mort. (art. 529.3 C. cr.)

6.

Argument de droit pour contrer le deuxième motif :

Jérôme Lemire n'était (ni arrêté) ni détenu au moment où il a prononcé ces paroles.

(Les exigences de la Charte ne sont pas applicables et le droit à l'avocat n'est pas pertinent. (art. 10(b) de la Charte)).

7.

QUESTION 6 (4 points)

Énoncez un motif de droit au soutien de l'objection soulevée par la procureure de la défense, M^e Hélène Miller.

SEUL LE PREMIER MOTIF INSCRIT AU CAHIER DE RÉPONSES SERA CORRIGÉ.

Les formalités de l'article 657.3 C.cr. n'ont pas été respectées.

OU

La défense n'y a pas consenti.

OU

Il s'agit de oui-dire.

8.

QUESTION 7 (9 points)

Énoncez trois motifs de droit à l'appui de l'objection de la procureure de la défense, M^e Hélène Miller, pour empêcher le jury d'entendre une telle preuve.

SEULS LES TROIS PREMIERS MOTIFS INSCRITS AU CAHIER DE RÉPONSES SERONT CORRIGÉS.

3 / 5
3 pts / bulle

1. (Preuve inadmissible) d'un trait de personnalité de l'accusé **ou** de propension.

1.

9.

2. (Preuve inadmissible) de mauvaise réputation **ou** de mauvais caractère.

2.

3. (Preuve inadmissible) car on ne peut faire la preuve d'infractions commises par l'accusé dont il n'a pas été reconnu coupable.

3.

4. (Preuve inadmissible) dont l'effet préjudiciable dépasse largement sa valeur probante.

4.

5. (Preuve inadmissible) car il n'y a pas de pertinence légale.

5.

QUESTION 8 (4 points)

Énoncez le principe de droit sur lequel M^e Hélène Miller pourrait s'appuyer pour démontrer à la Cour d'appel que cette directive était illégale.

SEUL LE PREMIER PRINCIPE DE DROIT INSCRIT AU CAHIER DE RÉPONSES SERA CORRIGÉ.

Les antécédents judiciaires ne servent qu'à attaquer la crédibilité.

OU

C'est le jury qui est maître des faits.

10.

DOSSIER 2 (47 POINTS)

QUESTION 9 (4 points)

- Les sergents-détectives Lajoie et Gendron avaient-ils le pouvoir de procéder à l'arrestation de Pierre Martel pour trafic de stupéfiants?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code criminel.

Oui, article 495 (1) a) ou 495 (1) b) ou 494 (1) a) C.cr.

11.

QUESTION 10 (8 points)

- a) Indiquez la démarche judiciaire qui permettrait d'obtenir les échantillons recherchés.
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code criminel.

SEULE LA PREMIÈRE DÉMARCHE JUDICIAIRE INSCRITE AU CAHIER DE RÉPONSES SERA CORRIGÉE.

Demande d'émission de mandat de prélèvement des échantillons de substances corporelles, art. 487.05 C.cr.

12.

- b) La procureure de la Couronne, M^e Émilie Larouche, a-t-elle raison de prétendre que, dans les circonstances, elle ne peut faire cette démarche?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code criminel.

Oui, 487.05 (1) d) C.cr.

13.

QUESTION 11 (4 points)

- Quelle est l'accusation qui pourrait être portée contre Jean Poirier relativement à la drogue saisie?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code criminel ou des lois connexes.

Possession simple de cocaïne ou de drogue ou de substance indiquée à l'Annexe 1 ou de stupéfiant, art. 4 (1) (3) a) L.R.C.D.A.S.

14.

QUESTION 12 (5 points)

L'objection formulée par M^e Michel Lachance est-elle bien fondée? Si oui, énoncez le motif de l'objection. Si non, dites pourquoi.

Non, Jean Poirier est un témoin ordinaire à l'égard de Pierre Martel.

15.

QUESTION 13 (4 points)

M^e Michel Lachance, procureur de Jean Poirier, fait valoir les quatre arguments suivants en réponse à la procureure de la Couronne. Lequel de ces quatre arguments n'est pas valable? Inscrivez-le dans votre cahier de réponses.

- Il n'a contribué d'aucune façon à la perpétration du crime.
- Il n'y a pas eu de complicité en vertu de l'article 21 du Code criminel.
- Il y a absence de preuve d'entente pour commettre un vol qualifié.
- La simple présence sur les lieux du crime ne constitue pas une participation au crime.

Il y a absence de preuve d'entente pour commettre un vol qualifié.

16.

QUESTION 14 (10 points)

- **Indiquez les deux démarches légales mises à la disposition de Pierre Martel pour qu'il obtienne la permission de circuler hors de son domicile pendant la nuit afin d'accomplir son nouveau travail.**
- **Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code criminel.**

SEULES LES DEUX PREMIÈRES DÉMARCHES LÉGALES INSCRITES AU CAHIER DE RÉPONSES SERONT CORRIGÉES.

1. Formuler une demande à son agent de surveillance pour qu'il suggère des modifications aux conditions de l'ordonnance de sursis et qu'il les notifie, accompagnées des motifs à leur appui, au délinquant, au poursuivant et au tribunal. Art. 742.4 (1) C.cr. **17.**
2. Faire une demande pour obtenir une modification d'une des conditions de l'ordonnance de sursis, art. 742.4 (5) C.cr. **18.**

QUESTION 15 (4 points)

- **L'arrestation de Pierre Martel est-elle légale?**
- **Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code criminel.**

Oui, art. 742.6 (1) b) (et 495 (1) C. cr.)

19.

QUESTION 16 (4 points)

- **Qui, de la Couronne ou de la défense, aura le fardeau de la preuve lors de l'enquête pour mise en liberté?**
- **Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code criminel.**

La défense, art. 742.6 (2) C. cr. **ou** art. 515 (6) C. cr.

20.

QUESTION 17 (4 points)

- **Cette période de détention sera-t-elle déduite de la durée de l'ordonnance de sursis?**
- **Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code criminel.**

Non, art. 742.7 C. cr.

21.