



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

Preuve et procédure

October 6, 1999

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- 1) The examination in the PREUVE ET PROCÉDURE section is intended to determine the extent to which you have met the ultimate goals set forth in the document entitled “Préambule Preuve et Procédure”.
 - 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:
 - Preuve et procédure
 - Rédaction
 - Le Barreau et la pratique professionnelle
 - 4) The questions total 100 marks. You must obtain a grade 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 **7** pages.

N.B.: You may assume that the Civil Code of Québec and Titles II and III of *An Act respecting the implementation of the reform of the Civil Code*, S.Q. 1992, c. 57 apply. Do not take the transitional provisions into account, except those relating to the publication of rights.

FILE 1 (45 MARKS)

M^e Jacques Vaillant, a lawyer in the firm in which you are working meets with you today.

He mentions to you that he has just finished meeting with Gérald Lacombe who claims to have suffered serious harm as a result of a defamatory letter. M^e Vaillant is of the opinion that Gérald Lacombe is entitled to institute a suit for slander.

M^e Vaillant gives you the notes he took during his meeting with Gérald Lacombe (reproduced hereinbelow). In accordance with the mandate entrusted to the firm by Gérald Lacombe, he asks you to draft the appropriate written proceeding.

Notes taken at the meeting held October 6, 1999 with Gérald Lacombe.

- **client:** Gérald Lacombe, domicile: 138 Fouquette Street, Laval, District of Laval, H7C 2L1
- **opposing party:** Roger Roy, 184 Alexandre Street, Apt. 101, Longueuil, District of Longueuil, J3G 1C5
- Since May 1, 99, Lacombe managed building with 48 dwellings at 184 Alexandre Street, Longueuil, pursuant to management agreement:
 - dated April, 12, 99;
 - entered into with *Immeuble 184 Alexandre inc.*, owner;
 - three year term as of May 1, 99;
 - section 4.2 of the agreement: "... owner may terminate the agreement for any reason, upon written notice of at least 30 days, without penalty or liability for damages ...";
 - fees for management and leasing: \$2,000/month;
 - Lacombe must lease out dwellings, sign and renew leases, maintain building, supervise, hire and dismiss staff, collect rents and deposit rent in a bank account opened in the name of "Gérald Lacombe - 184 Alexandre", etc.
- Roger Roy, superintendent of the building since 97; lives there in apt. 101;
- August 2, 99, Lacombe dismisses Roger Roy; must leave the dwelling Nov. 30, 99;
- reasons for dismissal: incompetence (common areas dirty, accumulation of newspapers and fliers in building's lobby, lawn not maintained, rudeness towards tenants, etc.);
- on August 10, 99, *Immeuble 184 Alexandre inc.* receives letter from Roger Roy (dated the same day) which states, among other things:
 - unjust dismissal, pretext to hire Lacombe's friend, work always well done;
 - Lacombe has some tenants of the building pay rent in cash, embezzles some of the rent for himself and requires suppliers to pay him kickbacks;
 - Lacombe is the cover person for a group of bikers involved in criminal activities;
- on August 10, 99, same letter distributed by Roger to all tenants of 184 Alexandre Street in Longueuil and posted in certain common areas of the building;
- on August 30, 99, notice from owner; resiliates the management agreement with Gérald Lacombe,

- effective Sep. 30, 99; only reason mentioned: doubts raised by the letter dated August 10, 99;
 - Gérald Lacombe denies contents of letter dated August 10, 99;
 - as a result of such allegations:
 - his physician recommends that he stops his activities for at least 3 months - actually stops working on Sep. 15, 99;
 - Gérald Lacombe greatly affected;
 - Gérald's banker wants to meet with him to verify truth of allegations;
 - receives phone calls from clients who ask questions regarding rumours circulating about him and say they will re-evaluate their business dealings with him;
 - damages:
 - loss of profits re: management fees - \$18,422;
 - reputation - \$50,000;
 - pain, suffering and inconvenience - \$25,000;
 - proceedings must claim all these damages and ask for a final order against opposing party to send a written document signed by Roger Roy stating "contents of letter dated August 10, 99 are false" to:
 - Gérald Lacombe;
 - tenants of building;
 - owner of building;
 - demand letter, Sep. 17, 99: claiming the said amounts and asking for this written document - no reaction or answer;
 - documents provided by client:
 - letter from his physician, Sep. 14, 99;
 - notice of resiliation dated August 30, 99;
 - letter of dismissal dated August 2, 99;
 - 26 copies of receipts provided to tenants for rent paid in cash;
 - demand letter dated Sep. 17, 99;
 - letter dated August 10, 99;
 - Gérald Lacombe's income tax returns for the years 96, 97 and 98;
 - bank statements for the account "Gérald Lacombe - 184 Alexandre", for May to August 99;
 - management agreement dated April 12, 99;
 - photographs of the lobby with letter dated August 10th on the wall.

QUESTION 1 (45 marks)

Complete the drafting of the motion for damages for injury to reputation and for a final order (heading, 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 motion.

FILE 2 (55 MARKS)

The situation described 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 April 16, 1980, Luc Pion purchased a wooded lot in St-Michel, judicial district of Joliette, on which he built a secondary residence for himself.

On December 1, 1997, Luc Pion put this immovable (the wooded lot and the secondary residence) up for sale and Pierre Lévesque, who was interested in purchasing it, visited the immovable on December 30, 1997.

During this visit, Pierre Lévesque could not go up on the roof to inspect it, because the roof was covered with snow. However, Luc Pion told him that the roof had been redone like new at the beginning of 1997.

On January 2, 1998, Pierre Lévesque made a written offer to purchase the immovable for an amount of \$60,000. The offer provided that the sale would take place on June 1, 1998. That same day, Luc Pion accepted the offer in writing and sent this acceptance to Pierre Lévesque.

On January 20, 1998, Pierre Lévesque learned that Luc Pion was preparing to cut down 50 mature maple trees located on the land. The market value of the maples was at least \$8,000.

On January 22, 1998, Pierre Lévesque informed Luc Pion in writing that he opposed any cutting down of the trees and that he intended to have a logging engineer prepare an inventory of the trees currently found on the land.

On January 25, 1998, Pierre Lévesque received a letter from Luc Pion, dated the same day, which set forth the following, among other things:

"Please be informed that, for safety reasons, I will soon have to cut down certain sick maples located on the land which you promised to purchase. However, contrary to what you have maliciously suggested in your letter dated January 22, 1998, I have no intention of cutting down any other trees.

I find your insinuations to be insulting and I object to having you or one of your representatives visit my land in order to prepare an inventory of the trees currently found there.

May I remind you that the notarial deed of sale is to be signed on June 1, 1998; if you do not comply with this deadline, I will consult a lawyer in order to enforce my rights."

On February 9, 1998, Pierre Lévesque consulted you. He mentioned to you that it would be necessary to have an inventory of the trees prepared immediately in order to prove, if necessary, the number of trees which Luc Pion might cut down as well as the current condition of those trees.

QUESTION 2 (5 marks)

What judicial recourse can Pierre Lévesque use to ask that a logging engineer be authorized to examine Luc Pion's land in order to prepare an inventory of the trees currently found there?

JUSTIFY YOUR ANSWER BY REFERRING TO A SPECIFIC AND RELEVANT PROVISION OF ANY LEGISLATION, REGULATIONS OR RULES OF PRACTICE, OR, FAILING SAME, TO RELEVANT JURISPRUDENCE.

SUPPLEMENTARY FACTS

On June 1, 1998, Luc Pion and Pierre Lévesque signed a notarial contract of sale at the office of notary Gilles Séguin, in Joliette. The contract contained the following provisions, among others:

- *The vendor warrants that the immovable is not in breach of any municipal by-laws.*
- *Prior to today's date, the purchaser has visited and inspected the building erected on the immovable being sold hereby, including the foundations, framing and roof, all of which are in good condition and to his entire satisfaction.*

While leaving the notary's office, Luc Pion offered to sell to Pierre Lévesque, for a purchase price of \$1,400, his used tractor which had been left on the premises just sold.

Pierre Lévesque, who had seen the tractor during his visit on December 30, 1997, was interested in purchasing it. However, hoping to pay lower taxes for the transfer of registration of the tractor, he suggested to Luc Pion that the contract of sale set forth a price below the actual price, namely, \$500 rather than \$1,400; Luc Pion agreed.

Luc Pion and Pierre Lévesque signed the contract of sale of the tractor, dated June 1, 1998, and Pierre Lévesque immediately paid Luc Pion \$1,400 in cash.

The next day, Pierre Lévesque left the country on a business trip. When he returned on June 14, 1998, he went to the immovable for the first time since he had visited it on December 30, 1997.

On that day, he noticed many problems:

- The concrete floor was cracked.
- The roof was leaking.
- The tractor was not working.

On June 15, 1998, Pierre Lévesque asked a mechanic, Philippe Legrand, to repair his tractor, but, after having examined it, the mechanic informed Pierre Lévesque that it would be necessary to install a new motor at a price of \$4,000. Consequently, Pierre Lévesque decided not to have the tractor repaired.

That same day, Pierre Lévesque contacted an engineer, René Côté, who inspected the building and informed him of the following:

- The roof of the building was almost 20 years old and would have to be entirely redone at a price of \$6,000.
- The floor was cracked because the concrete was not poured onto crushed rock, but rather onto a dirt surface, contrary to trade practices. The floor would have to be entirely redone at a price of \$7,000.
- The exterior siding was not fireproof, contrary to the requirements of the municipal construction by-law in force since 1979. According to René Côté, Pierre Lévesque would have to pay between \$1,000 and \$2,000 to remedy the situation.

On June 20, 1998, Pierre Lévesque reported all of these problems in writing to Luc Pion.

On July 2, 1998, Pierre Lévesque received a letter dated June 26, 1998 in which Luc Pion denied all responsibility.

On August 1, 1998, at the request of your client, Pierre Lévesque, you sent a demand letter to Luc Pion.

On August 5, 1998, Luc Pion contacted you by telephone and asked for permission to go visit the building in order to see its condition. Luc Pion wanted to be accompanied by his brother, Jean Pion, who is a mechanic and would be able to examine the tractor while Luc Pion examined the building.

Your client agreed to this visit which took place on August 8, 1998. Thereafter, Luc Pion did not make any offer of settlement.

On Tuesday, September 1, 1998, you served a declaration (reproduced hereinbelow) on Luc Pion, together with the following documents annexed thereto: P-3 and P-5 (reproduced hereinbelow) as well as P-1, P-2, P-4, P-6 (not reproduced), the expert report of the mechanic, Philippe Legrand, the expert report of the engineer, René Côté, and the notice to the defendant (none of which are reproduced).

<p>C A N A D A PROVINCE OF QUEBEC DISTRICT OF JOLIETTE NO: 705-22-003456-991</p>	<p style="text-align: center;">SIMPLIFIED PROCEDURE C O U R T O F Q U E B E C (Civil Division)</p> <hr/> <p style="text-align: center;">PIERRE LÉVESQUE, domiciled and residing at 1100 Central Blvd., in Montreal, in the District of Montreal, H3P 2Z1</p> <p style="text-align: center;">Plaintiff</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">LUC PION, residing at 55 Principale Street, in Joliette, in the District of Joliette, G6K 6X2</p> <p style="text-align: center;">Defendant</p> <hr/>
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DECLARATION

THE PLAINTIFF STATES THE FOLLOWING:

1. On June 1, 1998, he purchased from the Defendant an immovable designated as lot FOURTEEN of the cadastre of the Parish of St-Michel, registration division of Joliette, with the building erected thereon, as appears from the authentic copy of the contract of sale, Exhibit P-1;
2. On June 14, 1998, the Plaintiff noticed cracks in the concrete floor of the building which had been sold;
3. The Plaintiff did not see the cracks in the floor when he visited the building before buying it, because the floor was covered by a carpet;
4. The floor must be redone entirely, because the concrete was poured onto a dirt surface rather than onto crushed rock, contrary to trade practices;
5. On June 14, 1998, the Plaintiff also noticed that the roof of the building which had been sold was leaking;
6. During the visit which preceded the sale, on December 30, 1997, he did not inspect the roof, because it was covered with snow;
7. Moreover, during the said visit, the Defendant stated to him that the roof had been redone like new at the beginning of 1997;
8. The roof is almost 20 years old and must be redone entirely;
9. The municipality in which the immovable sold is located requires that the exterior siding of all buildings be fireproof, as appears from a certified true copy of the municipal construction by-law, Exhibit P-2;
10. On June 15, 1998, the Plaintiff learned that the exterior siding of the building was in breach of the municipal construction by-law, Exhibit P-2, because it is not fireproof;
11. As appears from Exhibit P-1, the Defendant warranted that the building erected on the immovable sold complied with municipal by-laws;
12. On June 1, 1998, the Defendant also sold a tractor to the Plaintiff, as appears from the contract of sale, Exhibit P-3;
13. The contract, Exhibit P-3, sets forth a purchase price of \$500, although the actual purchase price was \$1,400;
14. At the time of this sale, the tractor was unusable, because its motor had to be replaced;

15. On June 20, 1998, the Plaintiff complained of the aforementioned problems to the Defendant, as appears from the letter, Exhibit P-4;
16. On July 2, 1998, he received a letter dated June 26, 1998 in which the Defendant denied all responsibility, as appears from the letter, Exhibit P-5;
17. The cost of the work required on the building sold is distributed as follows:
- | | |
|--------------------------------|---------------------------|
| repair the floor: | \$7,000 |
| repair the roof: | \$6,000 |
| fireproof the exterior siding: | \$1,000 |
| | (for a total of \$14,000) |
18. As regards the tractor, the Plaintiff hereby offers to return the item sold in order to obtain reimbursement of the purchase price paid by him, namely, \$1,400;
19. The Defendant has refused or neglected to pay to the Plaintiff the amount of \$15,400, although he was duly requested to do so by a letter of demand from the undersigned attorney dated August 1, 1998, as appears from a copy of the said letter, Exhibit P-6;

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GIVE EFFECT to the Plaintiff's offer to return the used Platon-make, model 520 tractor to the Defendant in exchange for reimbursement of the purchase price paid, namely, \$1,400;

RESOLVE the contract of sale of the said tractor entered into between the parties on June 1, 1998;

ORDER the Defendant to pay to the Plaintiff the amount of \$15,400 together with interest at the legal rate and the additional indemnity provided for by law as of August 1, 1998.

The whole with costs.

JOLIETTE, September 1, 1998.



ATTORNEY FOR THE PLAINTIFF

EXHIBIT P-3:

Joliette, June 1, 1998

Luc Pion sells to Pierre Lévesque a used Platon-make, model 520 tractor, for an amount of FIVE HUNDRED DOLLARS (\$500) paid in cash on the date hereof.

Luc Pion

Luc Pion

Pierre Lévesque

Pierre Lévesque

EXHIBIT P-5:

Joliette, June 26, 1998

Mr. Pierre Lévesque
1100 Central Blvd.
Montreal, Quebec
H3P 2Z1

Dear Sir:

I acknowledge receipt of your letter dated June 20, 1998 and I deny any responsibility with respect to the problems mentioned therein.

If you had looked under the carpet during your visit on December 30, 1997, you would have noticed that the floor was cracked; therefore, this is an apparent defect.

I don't understand why you are complaining about the condition of the roof, because you did not even climb up on the roof to examine it during your visit on December 30, 1997 and you never came back to see it at a later date.

To my knowledge, when the building was erected, there was no municipal by-law requiring that the exterior siding be fireproof.

The tractor had always worked properly; if it is broken, no doubt it's because you used it improperly.

Luc Pion

Luc Pion

On September 4, 1998, Luc Pion met with M^e Lise Bourbeau in order to give her the mandate to represent him. M^e Bourbeau was interested in the mandate and asked for a \$3,000 advance on her fees. Luc Pion pulled out a wad of money from his pocket and placed \$6,000, all in \$20 bills, on her desk. He asked her to deposit \$6,000 in her trust account, to keep \$3,000 as an advance on her fees and to give him a cheque for \$3,000.

M^e Bourbeau was surprised and asked him where this money came from. After having ensured that his answer would be protected by the attorney-client privilege, Luc Pion informed her that the money came from the drug trade. M^e Bourbeau told him that she wanted to think about it before accepting this money.

QUESTION 3 (3 marks)

Can M^e Bourbeau legally accept Luc Pion's request to deposit \$6,000 in her trust account and give him a cheque for \$3,000?

JUSTIFY YOUR ANSWER BY REFERRING TO A SPECIFIC AND RELEVANT PROVISION OF THE *ACT RESPECTING THE BARREAU DU QUÉBEC* OR THE CODE OF ETHICS OF ADVOCATES OR TO RELEVANT JURISPRUDENCE.

SUPPLEMENTARY FACTS

Before making a decision, M^e Bourbeau dies in a car accident.

Luc Pion consults a new lawyer, M^e Isabelle Laramée. On September 9, 1998, she files an appearance on his behalf in the court record.

On November 20, 1998, M^e Laramée serves the defence (reproduced hereinbelow) to which Exhibit D-1 (reproduced hereinbelow) is annexed. That same day, she serves a notice pursuant to article 402.1 C.C.P. (not reproduced) together with an expert report signed by Jean Pion (reproduced hereinbelow).

	SIMPLIFIED PROCEDURE
C A N A D A	C O U R T O F Q U E B E C
PROVINCE OF QUEBEC	(Civil Division)
DISTRICT OF JOLIETTE	
NO: 705-22-003456-991	
PIERRE LÉVESQUE, Plaintiff v. LUC PION, Defendant	

D E F E N C E

THE DEFENDANT STATES THE FOLLOWING:

1. He admits the allegation set forth in paragraph 1 of the declaration;
2. He denies the allegations set forth in paragraphs 2 to 10 of the declaration;
3. As regards the allegation set forth in paragraph 11 of the declaration, he refers to Exhibit P-1 and denies all that is not in compliance therewith;
4. He admits the allegation set forth in paragraph 12 of the declaration;
5. He denies the allegations set forth in paragraphs 13 and 14 of the declaration;
6. As regards the allegation set forth in paragraph 15 of the declaration, he admits having received the letter, Exhibit P-4;
7. As regards the allegation set forth in paragraph 16 of the declaration, he admits having sent the letter, Exhibit P-5, to the Plaintiff;
8. He denies the allegations set forth in paragraphs 17 and 18 of the declaration;
9. As regards the allegation set forth in paragraph 19 of the declaration, he admits having received the demand letter, Exhibit P-6, but denies owing any amount whatsoever to the Plaintiff;

AND IN ORDER TO RE-ESTABLISH THE FACTS, HE ADDS THE FOLLOWING:

10. The condition of the roof was apparent and known to the Plaintiff at the time of the sale;
11. The concrete floor of the building was poured onto crushed rock, as indicated in the contract entered into on June 28, 1980 between the Defendant and *Maçonnerie Dupont inc.*, Exhibit D-1;
12. The tractor which was sold can be repaired for an amount of \$25;

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

DISMISS the Plaintiff's action;

The whole with costs.

JOLIETTE, November 20, 1998

Isabelle Laramée

M^e Isabelle Laramée,
ATTORNEY FOR THE DEFENDANT

EXHIBIT D-1:**MAÇONNERIE DUPONT INC.**

Range 8
St-Michel, Quebec
G2R 2S5

CONCRETE SPECIALISTS

CLIENT: Mr. Luc Pion
55 Principale Street
Joliette, Quebec
G6K 6X2

DESCRIPTION OF WORK:

Contract to provide a 20' X 20' concrete floor on a site located on lot 14 of the cadastre of the Parish of St-Michel. *Maçonnerie Dupont inc.* will lay a 6-inch deep layer of crushed rock and pour a 4-inch concrete floor on top of the crushed rock.

The work will be done for a total amount of THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500) payable upon completion of the work.

Signed on June 28, 1980

Marcel Dupont
Marcel Dupont, President of *Maçonnerie Dupont inc.*

Luc Pion

Luc Pion

The work was carried out, complies
with this contract and was accepted by Luc Pion on July 10, 1980

Marcel Dupont
Marcel Dupont, President of *Maçonnerie Dupont inc.*

Luc Pion
Luc Pion

**EXPERT REPORT COMMUNICATED
ON NOVEMBER 20, 1998 WITH THE NOTICE
PURSUANT TO ARTICLE 402.1 C.C.P.:**

Joliette, August 9, 1998

To Whom It May Concern:

I am a mechanic and, yesterday, I inspected the tractor sold by my brother, Luc Pion, to Mr. Pierre Lévesque. This tractor is in perfect condition and can be repaired for an amount of \$25 by changing a battery lead which is cut.

Jean Pion

Jean Pion

No other written proceeding was filed and the case was inscribed for proof and hearing on November 27, 1998.

The hearing takes place on May 25, 1999. At the very start of the hearing, you file, as Exhibit P-2, a certified true copy of the municipal construction by-law of the Municipality of Saint-Michel. M^e Laramée raises the following objection:

M^e Laramée:

Objection! Since the municipal by-law was never the subject of a notice to admit the genuineness and correctness thereof pursuant to article 403 C.C.P., the clerk of the Municipality is the only competent witness who can file it.

QUESTION 4 (5 marks)

Is this objection legally well-founded?

JUSTIFY YOUR ANSWER BY REFERRING TO A SPECIFIC AND RELEVANT PROVISION OF ANY LEGISLATION, REGULATIONS OR RULES OF PRACTICE, OR, FAILING SAME, TO RELEVANT JURISPRUDENCE.

SUPPLEMENTARY FACTS

You call your first witness, the Plaintiff, Pierre Lévesque. You ask him the following question:

- | | |
|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Q. | What was the condition of the building's roof when you visited it on December 30, 1997? |
| R. | I don't know, because I did not inspect it during my visit on December 30, 1997, given that the roof was covered with snow, and because I never returned to the site before June 14, 1998. |

M^e Laramée:

Objection! The witness's answer contradicts the provision in the contract of sale, P-1, in which he states that he inspected the roof. Therefore, this answer is illegal for two reasons. Firstly, the contract, P-1, is an authentic deed and the Plaintiff did not follow the procedure for improbation. Secondly, the witness cannot contradict the terms of the written contract of sale.

QUESTION 5 (10 marks)

- a) Is M^e Laramée's first ground for objection legally well-founded?**

JUSTIFY YOUR ANSWER BY REFERRING TO A SPECIFIC AND RELEVANT PROVISION OF ANY LEGISLATION, REGULATIONS OR RULES OF PRACTICE, OR, FAILING SAME, TO RELEVANT JURISPRUDENCE.

- b) Is M^e Laramée's second ground for objection legally well-founded?**

JUSTIFY YOUR ANSWER BY REFERRING TO A SPECIFIC AND RELEVANT PROVISION OF ANY LEGISLATION, REGULATIONS OR RULES OF PRACTICE, OR, FAILING SAME, TO RELEVANT JURISPRUDENCE.

AND

STATE A SPECIFIC AND RELEVANT FACT.

SUPPLEMENTARY FACTS

You continue your examination of Pierre Lévesque as follows:

- | | |
|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Q. | How much would it cost to fireproof the building's exterior siding? |
| R. | In his report, the engineer, René Côté, gave me an approximate price. I found a contractor specializing in this type of work only one week ago. He came to see the building yesterday evening and I signed a contract with him for a total amount of \$1,300, including taxes, for all the work required to fireproof the exterior siding. Unfortunately, I don't have the contract with me today, because I forgot my copy at home. |

M^e Laramée:

Objection! The contents of the contract signed by Mr. Lévesque yesterday evening cannot be proven by a witness. The written document must be filed.

QUESTION 6 (5 marks)

Is M^e Laramée's objection legally well-founded?

JUSTIFY YOUR ANSWER BY REFERRING TO A SPECIFIC AND RELEVANT PROVISION OF ANY LEGISLATION, REGULATIONS OR RULES OF PRACTICE, OR, FAILING SAME, TO RELEVANT JURISPRUDENCE.

SUPPLEMENTARY FACTS

You continue your examination of Pierre Lévesque as follows:

Q. Did you buy anything else from Mr. Pion?

R. Yes, a tractor, for a price of \$1,400; I was never able to use it, because the motor has to be replaced.

M^e Laramée:

Objection! The price set forth in Exhibit P-3 is \$500 and Mr. Lévesque cannot testify that the tractor was sold for a higher price.

QUESTION 7 (5 marks)

Is M^e Laramée's objection legally well-founded?

JUSTIFY YOUR ANSWER BY REFERRING TO A SPECIFIC AND RELEVANT PROVISION OF ANY LEGISLATION, REGULATIONS OR RULES OF PRACTICE, OR, FAILING SAME, TO RELEVANT JURISPRUDENCE.

SUPPLEMENTARY FACTS

You continue your examination of Pierre Lévesque as follows:

Q. Can you tell the Court what is under the concrete floor?

R. I lifted up pieces in several areas and I could see that the concrete of the floor was poured directly onto a dirt surface.

M^e Laramée:

Objection! The Plaintiff cannot, through his testimony, contradict the written contract, Exhibit D-1, which clearly states that the concrete was poured onto crushed rock.

QUESTION 8 (5 marks)

Is M^e Laramée's objection legally well-founded?

JUSTIFY YOUR ANSWER BY REFERRING TO A SPECIFIC AND RELEVANT PROVISION OF ANY LEGISLATION, REGULATIONS OR RULES OF PRACTICE, OR, FAILING SAME, TO RELEVANT JURISPRUDENCE.

SUPPLEMENTARY FACTS

Before the noon-time adjournment, you announce that the next witness for the Plaintiff will be the Defendant, Luc Pion.

During the adjournment, M^e Laramée meets with her client, Luc Pion, in order to prepare him to testify. When she discusses the sale of the tractor with him, he informs her for the very first time that he did in fact receive \$1,400 for the sale of his tractor. However, he says it's Lévesque's word against his, and if he is asked the question in the judge's presence, he nevertheless intends to continue to state that the sale was made for \$500, as set forth in the contract, P-3. He asks her for her opinion on this matter.

QUESTION 9 (4 marks)

What advice must M^e Laramée legally give to her client as regards the content of his testimony if he is asked the question in the judge's presence?

JUSTIFY YOUR ANSWER BY REFERRING TO A SPECIFIC AND RELEVANT PROVISION OF THE *ACT RESPECTING THE BARREAU DU QUÉBEC* OR THE CODE OF ETHICS OF ADVOCATES.

SUPPLEMENTARY FACTS

The first witness for the defence is Jean Pion. After having established his skill and experience as a mechanic, but before asking the court to recognize him as an expert witness, M^e Laramée asks him the following additional question:

Q.1 What is your relationship with the defendant?

R. He's my brother.

QUESTION 10 (5 marks)

Can you legally raise an objection against the court authorizing Jean Pion to testify as an expert, solely on the ground that he is the Defendant's brother?

JUSTIFY YOUR ANSWER BY REFERRING TO A SPECIFIC AND RELEVANT PROVISION OF ANY LEGISLATION, REGULATIONS OR RULES OF PRACTICE, OR, FAILING SAME, TO RELEVANT JURISPRUDENCE.

SUPPLEMENTARY FACTS

On May 26, 1999, the witnesses finish testifying at 3:00 p.m. The judge calls an adjournment until 9:30 a.m. the following day at which time the pleadings will be heard.

That evening, while completing her research of jurisprudence in order to prepare the final draft of her pleading, M^e Laramée discovers that that very morning, the Supreme Court of Canada issued a clear and unequivocal landmark ruling contrary to her position regarding one of the main issues in dispute.

On May 27, 1999, in your pleading on behalf of the Plaintiff, you did not mention this ruling to the trial judge, because you were unaware of its existence.

QUESTION 11 (3 marks)

During her pleading on behalf of the defence, does M^e Laramée legally have to mention this ruling to the judge hearing the case?

JUSTIFY YOUR ANSWER BY REFERRING TO A SPECIFIC AND RELEVANT PROVISION OF THE *ACT RESPECTING THE BARREAU DU QUÉBEC* OR THE CODE OF ETHICS OF ADVOCATES.

SUPPLEMENTARY FACTS

The court takes the case under advisement. On August 24, 1999, the final judgment is rendered ordering the Defendant to pay \$12,000 to the Plaintiff, together with interest, the additional indemnity and costs.

That same day, namely, August 24, 1999, M^e Laramée obtains a copy of the judgment which she delivers directly to her client, Luc Pion.

Your client, Pierre Lévesque, meets with you again today, October 6, 1999, because he has not received the amount to which he is entitled pursuant to the judgment. He learned a few days ago that Luc Pion left for Florida and will not be back before the springtime.

The residence in which Luc Pion lives as well as the furniture therein belong to his wife.

Your client knows that Luc Pion owns securities in Quebec and has bank accounts in Quebec, but he does not know the names of the financial institutions with which Luc Pion does business. Your client knows that Charles Pion, Luc Pion's son, manages his father's affairs in his father's absence.

QUESTION 12 (5 marks)

Can you legally force Charles Pion to communicate the names and addresses of the financial institutions with which Luc Pion does business?

JUSTIFY YOUR ANSWER BY REFERRING TO A SPECIFIC AND RELEVANT PROVISION OF ANY LEGISLATION, REGULATIONS OR RULES OF PRACTICE, OR, FAILING SAME, TO RELEVANT JURISPRUDENCE.

CORRIGÉ
Examen régulier - Preuve et procédure
Le 6 octobre 1999

DOSSIER 1

QUESTION 1 (45 points)

(Techniques de rédaction : 15 points Contenu juridique : 30 points)

Complétez la rédaction de la requête en dommages et intérêts pour atteinte à la réputation et ordonnance définitive (en-tête, allégations et conclusions). Ne rédigez ni l'affidavit ni l'avis de présentation, le cas échéant. Ne signez pas la requête pour assurer votre anonymat.

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE LONGUEUIL

NO :

C O U R S U P É R I E U R E

GÉRALD LACOMBE, domicilié et résidant au 138, rue Fouquette, Laval, Québec, H7C 2L1, district de Laval

Requérant

c.

ROGER ROY résidant au 184, rue Alexandre, appartement 101, Longueuil, J3G 1C5, district de Longueuil

Intimé

1 1

**REQUÊTE EN DOMMAGES ET INTÉRÊTS
POUR ATTEINTE À LA RÉPUTATION ET ORDONNANCE DÉFINITIVE**
(art. 762, al. 2 b) C.p.c.)

AU SOUTIEN DE SA REQUÊTE, LE REQUÉRANT EXPOSE :

1. Le requérant a conclu avec *Immeuble 184 Alexandre inc.* un contrat de gestion daté du 12 avril 1999 concernant l'immeuble de cette dernière sis au 184, rue Alexandre, Longueuil, pour un terme de trois ans commençant le 1^{er} mai 1999 et moyennant un honoraire mensuel de 2 000 \$, tel qu'il appert de ce contrat, pièce R-1;

2. Le 2 août 1999, le requérant congédiait l'intimé, qui était alors concierge de cet immeuble;

3. Le 10 août 1999, l'intimé a transmis au propriétaire et a distribué à tous les locataires de l'immeuble une lettre datée du même jour qui allègue entre autres que :

4. a) son congédiement est injustifié et n'est qu'un prétexte invoqué par le requérant pour remplacer l'intimé par l'un de ses amis;

5. b) le requérant fait payer des loyers en argent comptant par certains locataires de l'immeuble, en détourne une partie à son bénéfice et exige que des ristournes lui soient payées par des fournisseurs;

6. c) le requérant est un prête-nom pour un groupe de motards criminalisés;

7. tel qu'il appert de cette lettre, pièce R-2;

8. 4. Le 10 août 1999, la même lettre a été affichée dans certaines aires communes de l'immeuble;

9. 5. Les affirmations contenues dans la lettre du 10 août 1999 sont diffamatoires;

10. 6. Le 30 août 1999, le propriétaire de l'immeuble résilait le contrat, pièce R-1, en invoquant un seul motif, soit les doutes soulevés par la lettre du 10 août 1999, pièce R-2;

11. 7. À la suite de ces affirmations de l'intimé :

12. a) conformément à la recommandation de son médecin traitant, le requérant a cessé ses activités depuis le 15 septembre 1999, pour une période de trois mois;

13. b) l'institution bancaire du requérant désire le rencontrer pour vérifier la véracité de ces allégations;

c) le requérant a reçu des appels de clients qui lui ont posé des questions au sujet des rumeurs qui circulent sur son compte et lui ont affirmé réévaluer leur relation d'affaires avec lui;

2 1

3 2

4 1

5 1

6 1

7 1

8 1

9 2

10 2

11 1

12 1

13 1

8. Le requérant a subi des dommages évalués à un montant total de 93 422 \$ qui se détaille comme suit :

- a) 50 000 \$ pour atteinte à sa réputation; 14 1
- b) 25 000 \$ pour douleurs, souffrances et inconvénients; 15 1
- c) 18 422 \$ pour perte de profits; 16 1

(9. Le requérant demande qu'il soit ordonné à l'intimé de transmettre au requérant, à tous les locataires et au propriétaire de l'immeuble un écrit signé par lui selon lequel le contenu de la lettre du 10 août 1999, pièce R-2, est faux;)

10. Bien que dûment mis en demeure de le faire par lettre du 17 septembre 1999, pièce R-3, l'intimé refuse de payer ces sommes

et de transmettre cet écrit. 17 1

POUR CES MOTIFS, PLAISE AU TRIBUNAL :

CONDAMNER l'intimé à payer au requérant la somme de 93 422 \$ 19 1

avec intérêts au taux légal 20 1

de même que l'indemnité additionnelle prévue par la loi 21 1

à compter du 10 août 1999 OU du 17 septembre 1999 OU de la date d'assignation; 22 1

ORDONNER à l'intimé de transmettre au requérant, 23 1

à tous les locataires de l'immeuble sis au 184, rue Alexandre, à Longueuil 24 1

et à *Immeuble 184 Alexandre inc.*, 25 1

dans les cinq OU X jours de la signification du jugement à intervenir, 26 1

un écrit signé par lui selon lequel le contenu de la lettre du 10 août 1999 est faux; 27 1

Le tout avec dépens.

LONGUEUIL, le 6 octobre 1999

PROCUREUR DU REQUÉRANT

TECHNIQUES DE RÉDACTION

Allégation de plus d'un fait par paragraphe : Aucune allégation
Une allégation

- 1 point 28 1
 0 point

Allégation non pertinente ou erronée :

- Aucune allégation 4 points
- Une allégation 3 points
- Deux allégations 2 points
- Trois allégations 1 point
- Quatre allégations 0 point

- 29 4

Conclusion non pertinente	Aucune allégation	<input type="radio"/> 2 points
OU non fondée	Une allégation	<input type="radio"/> 1 point
	Deux allégations	<input type="radio"/> 0 point

- 30 2

Référence aux pièces pertinentes (-Contrat)	2/2
-Lettre du 10 août 1999	<input type="radio"/>
-Lettre de mise en demeure	<input type="radio"/>

- 31 1

Aucune référence à une pièce non pertinente

- 32 1

Cote des pièces: R

- 33 1

Qualité de l'expression écrite :

- 34 5

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 |
| 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**QUESTION 2 (5 points)**

Par quel recours judiciaire Pierre Lévesque peut-il demander qu'un ingénieur forestier soit autorisé à procéder à l'examen du terrain de Luc Pion dans le but de dresser l'inventaire des arbres qui s'y trouvent actuellement?

APPUYEZ VOTRE RÉPONSE EN FAISANT RÉFÉRENCE À UNE DISPOSITION PRÉCISE ET PERTINENTE DE TOUT TEXTE DE LOI, DE RÈGLEMENTS, DE RÈGLES DE PRATIQUE OU, À DÉFAUT, À LA JURISPRUDENCE PERTINENTE.

Requête OU Demande (d'autorisation d'examen d'un immeuble), art. 438 C.p.c.

35 5

QUESTION 3 (3 points)

M^e Bourbeau peut-elle légalement accepter la demande de Luc Pion de déposer 6 000 \$ dans son compte en fidéicommis et de lui remettre un chèque de 3 000 \$?

APPUYEZ VOTRE RÉPONSE EN FAISANT RÉFÉRENCE À UNE DISPOSITION PRÉCISE ET PERTINENTE DE LA LOI SUR LE BARREAU OU DU CODE DE DÉONTOLOGIE DES AVOCATS OU À LA JURISPRUDENCE PERTINENTE.

Non, art. 2 de la *Loi sur le Barreau* OU art. 2.03 OU art. 2.06 OU 3.02.01 OU 3.03.04 c) OU 4.02.01 g) du Code de déontologie OU R. c. *Joubert*, (1992), 69 C.C.C. (3d) 553.

36 3

QUESTION 4 (5 points)

Cette objection est-elle légalement bien fondée?

APPUYEZ VOTRE RÉPONSE EN FAISANT RÉFÉRENCE À UNE DISPOSITION PRÉCISE ET PERTINENTE DE TOUT TEXTE DE LOI, DE RÈGLEMENTS, DE RÈGLES DE PRATIQUE OU, À DÉFAUT, À LA JURISPRUDENCE PERTINENTE.

Non, art. 2814 C.c.Q. OU 2820 C.c.Q. OU 2815 C.c.Q. OU 2813 C.c.Q

37 5

(Le règlement municipal est un acte authentique qui peut être mis en preuve sans formalité.)

QUESTION 5 (10 points)

a) Le premier motif de l'objection de M^e Laramée est-il légalement bien fondé?

APPUYEZ VOTRE RÉPONSE EN FAISANT RÉFÉRENCE À UNE DISPOSITION PRÉCISE ET PERTINENTE DE TOUT TEXTE DE LOI, DE RÈGLEMENTS, DE RÈGLES DE PRATIQUE OU, À DÉFAUT, À LA JURISPRUDENCE PERTINENTE.

Non, art. 2821 C.c.Q. (Il ne s'agit pas d'un fait que le notaire a mission de constater.)

38 5

b) Le deuxième motif de l'objection de M^e Laramée est-il légalement bien fondé?

APPUYEZ VOTRE RÉPONSE EN FAISANT RÉFÉRENCE À UNE DISPOSITION PRÉCISE ET PERTINENTE DE TOUT TEXTE DE LOI, DE RÈGLEMENTS, DE RÈGLES DE PRATIQUE OU, À DÉFAUT, À LA JURISPRUDENCE PERTINENTE.

ET

ÉNONCEZ UN FAIT PRÉCIS ET PERTINENT.

Non, art. 2863 C.c.Q. OU Non, art. 2865 C.c.Q.

39 3

(Le contrat peut être contredit par témoin parce qu'il y a un commencement de preuve).

(À l'allégation 7 de la défense,) le défendeur admet avoir envoyé la lettre P-5 au demandeur.

40 2

QUESTION 6 (5 points)

L'objection de M^e Laramée est-elle légalement bien fondée?

APPUYEZ VOTRE RÉPONSE EN FAISANT RÉFÉRENCE À UNE DISPOSITION PRÉCISE ET PERTINENTE DE TOUT TEXTE DE LOI, DE RÈGLEMENTS, DE RÈGLES DE PRATIQUE OU, À DÉFAUT, À LA JURISPRUDENCE PERTINENTE.

Oui, art. 2860 C.c.Q.

41 5

(parce qu'il y a un écrit qui constate l'acte juridique et même si le montant est inférieur à 1 500 \$, la règle de la meilleure preuve nécessite la production de l'écrit)

QUESTION 7 (5 points)

L'objection de M^e Laramée est-elle légalement bien fondée?

APPUYEZ VOTRE RÉPONSE EN FAISANT RÉFÉRENCE À UNE DISPOSITION PRÉCISE ET PERTINENTE DE TOUT TEXTE DE LOI, DE RÈGLEMENTS, DE RÈGLES DE PRATIQUE OU, À DÉFAUT, À LA JURISPRUDENCE PERTINENTE.

Oui, art. 2863 C.c.Q.

42 [5]

QUESTION 8 (5 points)

L'objection de M^e Laramée est-elle légalement bien fondée?

APPUYEZ VOTRE RÉPONSE EN FAISANT RÉFÉRENCE À UNE DISPOSITION PRÉCISE ET PERTINENTE DE TOUT TEXTE DE LOI, DE RÈGLEMENTS, DE RÈGLES DE PRATIQUE OU, À DÉFAUT, À LA JURISPRUDENCE PERTINENTE.

Non, art. 2863 C.c.Q., (parce que le demandeur, Pierre Lévesque, n'est pas partie au contrat D-1 **OU** parce que l'article 2863 C.c.Q. ne s'applique qu'aux parties à l'acte.)

OU

Non, art. 1440 C.c.Q. **OU** 2829 C.c.Q.

43 [5]

QUESTION 9 (4 points)

Quel conseil M^e Laramée doit-elle légalement donner à son client quant à la teneur du témoignage à rendre si la question lui est posée devant le juge?

APPUYEZ VOTRE RÉPONSE EN FAISANT RÉFÉRENCE À UNE DISPOSITION PRÉCISE ET PERTINENTE DE LA LOI SUR LE BARREAU OU DU CODE DE DÉONTOLOGIE DES AVOCATS.

Dire la vérité, art. 2 de la *Loi sur le Barreau* **OU** art. 2.06 **OU** 3.02.01 (3.02.01 a) **ou** c) **ou** d) **ou** e)) **OU** 4.02.01 c) **ou** e) **ou** g) du Code de déontologie des avocats.

44 [4]

QUESTION 10 (5 points)

Pouvez-vous légalement formuler une objection à ce que le tribunal autorise Jean Pion à témoigner à titre d'expert, au seul motif qu'il est le frère du défendeur?

APPUYEZ VOTRE RÉPONSE EN FAISANT RÉFÉRENCE À UNE DISPOSITION PRÉCISE ET PERTINENTE DE TOUT TEXTE DE LOI, DE RÈGLEMENTS, DE RÈGLES DE PRATIQUE OU, À DÉFAUT, À LA JURISPRUDENCE PERTINENTE.

Non, art. 295 C.p.c. **OU** 2845 C.c.Q.

45 [5]

QUESTION 11 (3 points)

Lors de sa plaidoirie en défense, M^e Laramée doit-elle légalement faire mention de cet arrêt au juge qui entend la cause?

APPUYEZ VOTRE RÉPONSE EN FAISANT RÉFÉRENCE À UNE DISPOSITION PRÉCISE ET PERTINENTE DE LA LOI SUR LE BARREAU OU DU CODE DE DÉONTOLOGIE DES AVOCATS.

Oui, art. 2 de la *Loi sur le Barreau* **OU** art. 2.03 **OU** 2.06 **OU** 3.02.01 (3.02.01 c)) **OU** 4.02.01 c) **ou** f) du Code **46 [3]** de déontologie.

QUESTION 12 (5 points)

Pouvez-vous légalement contraindre Charles Pion à communiquer les noms et les adresses des institutions financières avec lesquelles Luc Pion fait affaires?

APPUYEZ VOTRE RÉPONSE EN FAISANT RÉFÉRENCE À UNE DISPOSITION PRÉCISE ET PERTINENTE DE TOUT TEXTE DE LOI, DE RÈGLEMENTS, DE RÈGLES DE PRATIQUE OU, À DÉFAUT, À LA JURISPRUDENCE PERTINENTE.

Oui, art. 544 C.p.c.

47 [5]