



# FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

## EXAMINATION BOOKLET

### PREUVE ET PROCÉDURE

October 4, 2000

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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 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 12 pages (including this page) and that your answer booklet contains 10 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.

<b>FILE 1 (45 marks)</b>
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This morning, you attended a meeting between M<sup>e</sup> Catherine Chouinard, your articling supervisor, and her client, Josée Denis, at which you took the following notes.

**NOTES TAKEN AT THE MEETING HELD  
OCTOBER 4, 2000 WITH JOSÉE DENIS**

- client's address (domicile) : 28 Dufault Street, Boucherville, district of Longueuil, J4B 3T8;
- in a promise to purchase dated 1 March 00, client promises to purchase two lots from *Placements Richer inc.* (« *Richer* »), namely, lot 1234567, cadastre of Québec, registration division of Terrebonne, including building 1269 du Moulin Street, Terrebonne, for \$300,000, and lot 1234568, adjacent to lot 1234567 and vacant, area 1,800 m<sup>2</sup>, for \$28.75 per m<sup>2</sup>, namely, \$51,750;
- promise to purchase stipulates that vendor must have certificate of location prepared by land surveyor duly entered on the roll of that professional order describing current condition of each lot;
- promise also stipulates that vendor must correct, at its own cost, all problems affecting title to the immovables;
- 28 March 00, client receives certificate of location prepared by *Lanthier Ladouceur*, land surveyors, dated that same day;
- the certificate indicates that reservoir erected on concrete base on lot 1234567 encroaches on neighbouring lot 1234566;
- the certificate also indicates that the other land contemplated in the offer to promise, lot 1234568, has an area of 1,622 m<sup>2</sup> and not 1,800 m<sup>2</sup>;
- according to promise to purchase, signing of deed of sale on 1 June 00, because client must absolutely occupy on this date in order to operate her business there;
- 31 March 00, letter from client to vendor: move reservoir at vendor's expense + reduce price by \$5,117.50, namely  $(1,800 \text{ m}^2 - 1,622 \text{ m}^2) \times \$28.75$ ;
- reservoir was inspected by Ministère de l'Environnement du Québec a few months earlier;
- 3 April 00, Simon Demers, president of *Richer*, confirms verbally to client that *Richer* will have reservoir moved without delay and at its expense, and will have another land surveyor, François Champagne, do another survey + O.K. to reduce price, if applicable;
- sale effected through Pierre Gendron of Immeubles Gendron inc., broker;

- 1 June 00, signing of deed of sale. Given that encroachment not corrected and survey not completed, written agreement same day: Notary Réal Lacasse keeps \$25,000 in trust from purchase price in order to guarantee performance by *Richer* of its undertakings in capital, interest and costs;
- Notary Lacasse: not linked to either of the parties;
- 22 June 00, *Richer* notifies client in writing: refuses to correct encroachment + reduce price even if new surveyor concluded area is 1,622 m<sup>2</sup>. See certificate dated 16-06-00 prepared by land surveyor François Champagne;
- according to estimate of *Construction Labadie enr.*, will cost \$14,845.78 to move reservoir;
- 21 August 00, letter from Notary Lacasse in which he agrees to keep said amount of \$25,000 in trust until dispute fully settled;
- *Richer* refuses to pay \$5,117.50 + \$14,845.78 despite letter from client dated 14-09-00;
- addresses:
  - *Richer*: 167 de la Garde Road, Montreal, district of Montreal, H6G 6C9 (principal place of business);
  - Notary Lacasse: 662 Dorion Road, Dorion, district of Beauharnois, J0L 1X0 (office);
  - *Immeubles Gendron inc.*: 2153 Cousineau Blvd., Mascouche, district of Joliette, J7B 4A4 (head office);
  - *Construction Labadie enr.*: 4278 Labadie Blvd., Laval, district of Laval, H7C 2N1 (principal place of business);
  - *Lanthier Ladouceur*, land surveyors: 8 René-Gaultier Blvd., Verchères, district of Richelieu, J4V 1K8 (principal place of business);
  - François Champagne, land surveyor: 10,132 Route 157, Ville des Laurentides, district of Joliette, J9Z 4P1 (principal place of business);

- documents received from client :
  - photographs of reservoir on concrete base;
  - in trust receipt from Notary Lacasse, dated 1 June 2000;
  - certificate of conformity issued by the Minister of the Environment of Quebec on 15 February 2000;
  - deed of sale dated 1 June 2000 executed before M<sup>e</sup> Réal Lacasse, notary, published at the registry office for the registration division of Terrebonne under number 872,236;
  - promise to purchase dated 1 March 2000;
  - true certified extracts of the land register of Terrebonne for lots 1234566, 1234567 and 1234568 for the period from 1 January 2000 to 31 August 2000;
  - estimate of *Construction Labadie enr.* in the amount of \$14,845.78 dated 18 August 2000;
  - certificate of location dated 28 March 2000 from *Lanthier Ladouceur*;
  - certificate of location dated 16 June 2000 from François Champagne;
  - letter of putting in default dated 14 September 2000;
  - letters dated 31 March, 22 June and 21 August 2000;
  - trust agreement dated 1 June 2000.

M<sup>e</sup> Catherine Chouinard asks you to draft the appropriate written proceeding in order to claim, on behalf of her client, the cost of moving the reservoir and the reduction in price due to the difference in the area of lot 1234568 as stated in the promise to purchase and as indicated in the land surveyors' certificates. She also wants to have this written proceeding oblige the notary to remit to Josée Denis, from the sums held in his trust account, the amounts claimed in the written proceeding.

#### **QUESTION 1 (45 marks)**

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

<b>FILE 2 (43 marks)</b>
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**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.**

Louis Talbot, residing at 14 Grand-Allée Road, in Rimouski, district of Rimouski, meets with you for the first time on October 13, 1999 and relates the following facts to you.

Louis Talbot and his brother, Claude Talbot, always got along very well with their uncle, Henri Talbot, when he was a bachelor. When they were teenagers, Louis and Claude Talbot would spend the major portion of their summer holidays on their uncle's boat which was anchored at the Rimouski marina.

In 1994, Henri Talbot retired. He planned to move from Rimouski to Montreal and, therefore, offered to sell his boat to his nephews, Louis Talbot, who was 21 years old, and Claude Talbot, who was 24 years old. They accepted, and the following contract was signed on June 1, 1994:

Rimouski, June 1, 1994

Henri Talbot, 235 Principale Road, Rimouski, hereby sells to Louis Talbot and Claude Talbot, domiciled at 14 Grande-Allée Road, in Rimouski, his boat located at the Rimouski marina, the whole for an amount of \$12,000 payable on June 1, 1996.

Louis Talbot

Claude Talbot

Henri Talbot

Louis Talbot

Claude Talbot

Henri Talbot

In January of 1996, Claude Talbot found a job in New York and, shortly thereafter, left Rimouski permanently in order to live in the United States. For this reason, on January 19, 1996, Louis and Claude Talbot sold the boat to *Centre du Plein Air inc.* The boat was sold for \$8,000, given that it had been damaged in an accident the previous summer.

On January 20, 1996, Louis and Claude Talbot met with their Uncle Henri who was then living in Montreal.

During this meeting, they explained that Claude would soon have to leave the country permanently, that they had sold the boat for only \$8,000 and that they were both having financial difficulties. They proposed to their uncle to pay him \$8,000 as final payment of the purchase price agreed upon in the contract of sale dated June 1, 1994. Given his great affection for his nephews, he agreed. No written document was prepared in order to evidence the agreement; Louis and Claude Talbot merely endorsed the \$8,000 cheque they had received the previous day from *Centre du Plein Air inc.* and gave the cheque to their uncle.

No one kept a photocopy of the said cheque which was drawn on the account of *Centre du Plein Air inc.* at the Rimouski branch of *Banque Industrielle*.

By chance, in January of 1998, Henri Talbot met Nicole Drapeau. As time went on, Henri Talbot fell in love with Nicole Drapeau, and she moved in with him a few months later.

On August 4, 1999, Henri Talbot passed away. His will named Nicole Drapeau as his sole heir, and she accepted the succession on September 1, 1999.

A short time after Henri Talbot's death, Nicole Drapeau found the contract dated June 1, 1994 among his papers, and she made a written request to Louis and Claude Talbot for payment of the amount of \$12,000 plus interest as of June 1, 1994.

After receiving Nicole Drapeau's letter, Louis Talbot called her to inform her that neither he nor his brother owed her anything whatsoever. Nicole Drapeau insisted on being paid. Louis Talbot then told her that he would soon be seeing his brother Claude in Montreal at the wedding of their younger sister, which was to take place at the Montreal Courthouse at 11:00 a.m. on Saturday, October 9, 1999. Louis Talbot told Nicole Drapeau that he and his brother would take the opportunity to visit her on Sunday, October 10, 1999 in order to explain to her, in person, the reasons for their refusal to pay her.

On Saturday, October 9, 1999, at 10:45 a.m., a bailiff served the following declaration personally upon Louis Talbot and Claude Talbot on the public sidewalk in front of the Montreal Courthouse.

<p>CANADA</p> <p>PROVINCE OF QUEBEC DISTRICT OF RIMOUSKI NO: 100-22-008154-997</p>	<p><b>SIMPLIFIED PROCEDURE</b> <b>COURT OF QUÉBEC</b></p> <p><b>NICOLE DRAPEAU</b> domiciled and residing at 5560 King Street, Montreal, district of Montreal, province of Quebec, H3B 2V5</p> <p style="text-align: right;">Plaintiff</p> <p>v.</p> <p><b>LOUIS TALBOT</b>, residing at 14 Grande- Allée Road, Rimouski, district of Rimouski, province of Quebec, G5M 3T6</p> <p style="text-align: center;">- and -</p> <p><b>CLAUDE TALBOT</b>, residing at 5560 East Drive, New York, State of New York, United States of America</p> <p style="text-align: right;">Defendants</p>
<p><b><u>DECLARATION</u></b></p>	
<p>THE PLAINTIFF STATES AS FOLLOWS :</p>	
<p>1. Henri Talbot died on August 4, 1999, as it appears from the death certificate, Exhibit P-1;</p>	

2. The Plaintiff is the universal legatee in the succession of the late Henri Talbot, as it appears from the will, Exhibit P-2;
3. She has accepted the succession of the late Henri Talbot;
4. On June 1, 1994, the Defendants agreed to pay Henri Talbot an amount of \$12,000 on June 1, 1996, as it appears from the contract, Exhibit P-3;
5. When the contract, Exhibit P-3, was signed, it was specifically agreed that the amount of \$12,000 would bear interest at a rate of 2% per year as of June 1, 1994;
6. On December 25, 1995, the Defendants told H el ene Drapeau that they were very lucky that their uncle had accepted an interest rate of 2% per year on the purchase price of the boat, because a bank would have asked for a rate of at least four times as much;
7. On May 15, 1999, the Defendants met Henri Talbot in the Plaintiff's presence, at which time they acknowledged that they still owed him the price of \$12,000 stipulated in the contract, Exhibit P-3, as well as the interest on this amount;
8. The Defendants have refused to pay the Plaintiff the amount claimed, namely, \$12,000 in capital plus \$1,280 in interest, for a total of \$13,280, despite the fact that the Defendants were duly put in default by means of a letter dated September 3, 1999, as it appears from a copy of the said letter, Exhibit P-4;

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**ORDER** the Defendants to pay to the Plaintiff the amount of \$13,280, together with interest on the amount of \$12,000 at a rate of 2% per year and the additional indemnity provided for by law as of September 3, 1999;

The whole with costs.

MONTREAL, October 8, 1999

LISE BONIN,  
Attorney for the Plaintiff

Louis Talbot believed it would be preferable for him and his brother to meet with Nicole Drapeau on October 10, 1999, as agreed, in order to reason with her, but Claude was so angry that he refused.

The two brothers had a disagreement when Claude told Louis that he would not hire a lawyer to defend himself given that he was no longer living in Canada and no longer had any assets there.

During his meeting with you, and after having related the foregoing facts to you, Louis Talbot asks you to tell him whether the action was instituted in due time.

After reading articles 2898, 2903 and 2925 of the Civil Code of Québec, you explain to your client that the late Henri Talbot's claim is a personal right which is subject to an extinctive prescription period of three years commencing as of the June 1, 1996 due date and that the claim would have been prescribed if the prescription period had not been interrupted as a result of the facts alleged in paragraph 7 of the declaration.

Louis Talbot then informs you that the allegation set forth in paragraph 7 of the declaration is totally false and that he can easily prove that Henri Talbot was travelling in Russia during the entire month of May of 1999, such that he and his brother could not possibly have met with Henri Talbot on May 15, 1999. He also thinks he can find a postcard sent to him by his uncle while he was in Moscow, in which his uncle wrote that he would spend the entire month of May touring Russia.

In accordance with Louis Talbot's instructions, you file an appearance on his behalf.

### **QUESTION 2 (4 marks)**

**Assuming that you can prove to the court that there could not have been a meeting between Henri Talbot and the defendants in the month of May of 1999, can you have the action dismissed by means of an exception to dismiss? Explain your answer.**

<b>SUPPLEMENTARY FACTS</b>
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After some thought, you decide not to plead an exception to dismiss, but, instead, to prepare a defence in which the defendant, Louis Talbot, states the following :

- He admits paragraphs 1, 2, 3, 4 and 8 of the declaration;
- He denies paragraph 5, 6, and 7 of the declaration;
- On January 20, 1996, Henri Talbot accepted to reduce his claim to an amount of \$8,000, which amount was paid the same day;
- The claim is prescribed.

When consulting the court record, you notice that the defendant Claude Talbot filed an appearance on his own behalf which he mailed to the Rimouski Courthouse and which was filed in the court record. The appearance gives Claude Talbot's address in the United States as well as his fax number.

### **QUESTION 3 (8 marks)**

**Upon whom must Louis Talbot's defence be served, and can it be served by fax without any authorization? Explain your answer.**



<b>SUPPLEMENTARY FACTS</b>
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M<sup>c</sup> Lise Bonin, the plaintiff's attorney, serves an answer which states the following, among other things :

- Henri Talbot did not receive anything from the defendants and did not enter into any agreement to reduce his claim;
- Moreover, until his death, he included this claim as part of his assets each time he applied for a credit card, as it appears from his two credit card applications, Exhibit P-5.

At the same time as the answer is served, M<sup>c</sup> Bonin also serves you with a notice pursuant to article 403 C.C.P., to which notice is attached a copy of Exhibit P-5.

You notice that the two credit card applications, Exhibit P-5, were duly signed by Henri Talbot, were made after January of 1996, and both indicate that, among other things, the applicant has a claim against his two nephews, Louis and Claude Talbot, for an amount of \$12,000 plus interest.

Your client confirms that he recognizes his uncle's hand-writing on both documents, Exhibit P-5, and you agree with your client not to contest their correctness or genuineness.

**QUESTION 4 (4 marks)**

- **Although you have not contested the genuineness or correctness of Exhibit P-5, will you nevertheless be able to object to the filing of Exhibit P-5 at trial? If yes, indicate the ground for the objection. If not, explain your answer.**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

<b>SUPPLEMENTARY FACTS</b>
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The case is inscribed and the trial takes place on June 20, 2000. M<sup>c</sup> Lise Bonin calls H el ene Drapeau, the plaintiff's daughter, as her first witness and asks her the following questions :

Q.	Do you know Louis and Claude Talbot?
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A.	Yes, very well. I went out with Claude Talbot for a few months in 1995 and he had invited me to spend Christmas Day with his family.
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**Q.** Do you recall a particular event which took place that day regarding the dispute between your mother and the two defendants?

**A.** Claude introduced me to his brother Louis and told me that they were both co-owners of a boat purchased from their Uncle Henri. I teased them by saying that I didn't know they were so wealthy. Claude then told me that their uncle had agreed to give them credit and that, at the time of the sale, it had been agreed that the purchase price would bear interest at a low rate of only 2% per year. Louis added that any bank would have asked for a rate of at least four times as much. We then began to talk about other things.

#### QUESTION 5 (6 marks)

**Can you object to evidence of the admission regarding the interest, as related by H el ene Drapeau in her last answer? Explain your answer.**

#### SUPPLEMENTARY FACTS

The trial continues and, after M<sup>e</sup> Lise Bonin declares that she has finished presenting the plaintiff's evidence, you call your first witness.

Your first witness is your client, Louis Talbot, to whom you ask the following questions :

**Q.** What did you do after selling the boat you had purchased from your uncle?

**A.** My brother and I went to meet my Uncle Henri in Montreal in order to propose an agreement which he accepted.

**Q.** What was this agreement?

**A.** He accepted \$8,000 as final payment, rather than the total amount stipulated in the contract.

**M<sup>e</sup> Lise Bonin:**

I object to the last answer because the reduction of the purchase price to \$8,000 can only be proved by means of a writing.

#### QUESTION 6 (4 marks)

- **Is M<sup>e</sup> Bonin's objection well founded?**
- **Justify your answer by referring to one or more specific and relevant provisions of the Civil Code of Qu ebec.**

#### SUPPLEMENTARY FACTS

You call your second witness, Jean Martin, who is the manager of the Rimouski branch of *Banque Industrielle* and who was duly summoned. You ask him the following questions :

- Q.** Has *Banque Industrielle* had business dealings with *Centre du Plein Air inc.*?
- A.** Yes, they were one of our customers. Unfortunately, they went bankrupt in June of 1998.
- Q.** Did you bring the cheque in the amount of \$8,000 dated January 19, 1996 which was payable to Louis and Claude Talbot, as required in the writ of subpoena which was served on you?
- A.** Yes.
- Q.** Would you file this cheque in the court record as Exhibit D-1?

**M<sup>e</sup> Lise Bonin:**

I object to the filing of the cheque on two grounds: first, the cheque was not mentioned in the defence. Second, the cheque was never communicated before today, contrary to the requirements of article 331.8 C.C.P.

#### QUESTION 7 (8 marks)

- Are these two grounds well founded?
- **For each ground**: If yes, explain your answer. If not, formulate the arguments with which you will reply.

#### SUPPLEMENTARY FACTS

The judgement rendered on August 4, 2000 dismisses Nicole Drapeau's action with costs.

On September 11, 2000, the costs are duly taxed at an amount of \$1,722.14.

Today, October 4, 2000, given Nicole Drapeau's failure to pay the costs which she was ordered to pay, you examined her in accordance with the provisions of article 543 C.C.P.

The examination revealed the following, among other things:

- As a result of a serious accident, Nicole Drapeau is not working and is receiving disability insurance benefits of \$800 per month.
- Nicole Drapeau owns the single-family dwelling in which she lives.
- Nicole Drapeau holds \$50,000 in Quebec Savings Bonds which she inherited from her mother who passed away on August 10, 2000 without having left a will.

#### QUESTION 8 (9 marks)

As regards each of the following items of property, can it be seized in execution of the order to pay costs rendered against Nicole Drapeau? For each item, explain your answer.

- The disability insurance benefits
- The single family dwelling
- The Quebec Savings Bonds

<b>FILE 3 (12 marks)</b>
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<b>FIRST PROBLEM</b>
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M<sup>e</sup> Charles Dubois represents Pierre Poirier, a defendant in a \$22,000 action for latent defects. Given that Pierre Poirier is currently living on income-security benefits, M<sup>e</sup> Dubois has accepted to represent him pursuant to a legal aid mandate.

On May 31, 2000, the action is dismissed with costs after M<sup>e</sup> Dubois files an exception to dismiss pursuant to article 165 C.C.P.

**QUESTION 9 (6 marks)**

- a) What fees is M<sup>e</sup> Dubois entitled to receive pursuant to the *Tariff of judicial fees of advocates*?
- Justify your answer by referring to one or more specific and relevant provisions of the *Tariff of judicial fees of advocates*.
- b) What fees is M<sup>e</sup> Dubois entitled to receive pursuant to the *Tariff of fees of advocates for the purposes of the Legal Aid Act*?
- Justify your answer by referring to one or more specific and relevant provisions of the *Tariff of fees of advocates for the purposes of the Legal Aid Act*.
- c) What maximum amount of fees is M<sup>e</sup> Dubois entitled to receive? Explain your answer.

<b>SECOND PROBLEM</b>
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**QUESTION 10 (6 marks)**

Answer True or False to the following sub-questions and, for each sub-question, justify your answer by referring to one or more specific and relevant provisions of the *Professional Code*, *An Act respecting the Barreau du Québec*, the regulations adopted under the *Professional Code*, or the regulations adopted under *An Act respecting the Barreau du Québec*.

- a) A client sends you a letter in which she thanks you and praises the quality of your services. You can use this letter in your advertising.
- b) The syndic of the Barreau du Québec informs you that one of your clients has filed a complaint against you and that an inquiry is underway. You can communicate with the client in order to explain your position.
- c) The fax number which appears on your business card can be the fax number of the photocopying centre located near your office.

**CORRIGÉ**  
**EXAMEN RÉGULIER - PREUVE ET PROCÉDURE**  
 Le 4 octobre 2000

**DOSSIER 1**

**QUESTION 1 (45 points)**

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

CANADA

PROVINCE DE QUÉBEC  
 DISTRICT DE MONTRÉAL  
 OU  
 DISTRICT DE BEAUHARNOIS  
 NO

PROCÉDURE ALLÉGÉE  
 C O U R   D U   Q U É B E C  
 (Chambre civile)

1.

JOSÉE DENIS, domiciliée et résidant au 28, rue Dufault,  
 Boucherville, (district de Longueuil), J4B 3T8

demanderesse

c.

PLACEMENTS RICHER INC., personne morale légale-  
 ment constituée ayant son principal établissement au 167,  
 chemin de la Garde, Montréal, (district de Montréal), H6G  
 6C9

2.

défenderesse

et

RÉAL LACASSE, exerçant sa profession au 662, chemin  
 Dorion, Dorion, (district de Beauharnois), JOL 1X0

mis en cause

*Description complète des parties:*

3.

DÉCLARATION

4.

AU SOUTIEN DE SON ACTION, LA DEMANDERESSE DÉCLARE :

5.

1. Aux termes d'une promesse d'achat datée du 1<sup>er</sup> mars 2000, pièce P-1, la demanderesse s'est engagée à acheter de la défenderesse deux lots, soit :

6.

a) le lot numéro 1 234 567 du cadastre du Québec, circonscription foncière de Terrebonne, avec la bâtisse y érigée portant le numéro civique 1269, rue du Moulin à Terrebonne, pour une somme de 300 000 \$;

7.

b) le lot vacant adjacent décrit à la promesse d'achat comme ayant une superficie de 1800 mètres carrés, numéro 1 234 568 du cadastre du Québec, circonscription foncière de Terrebonne, au prix de 28,75 \$ le mètre carré, pour une somme totale de 51 750 \$;

8.

(2. La promesse d'achat, pièce P-1, prévoit que l'acte de vente doit être signé le 1er juin 2000, date à laquelle la demanderesse doit absolument prendre possession des lieux pour y exploiter son entreprise;)

3. Comme il était requis à la promesse, pièce P-1, la défenderesse a fourni à la demanderesse, le 28 mars 2000, un certificat de localisation daté du même jour décrivant l'état actuel des deux lots, (pièce P-2), qui démontre que :

9.

a) l'immeuble décrit au paragraphe 1 a) des présentes comporte un réservoir érigé sur support de béton qui empiète sur le lot voisin, numéro 1 234 566 du cadastre du Québec, circonscription foncière de Terrebonne;

10.

- b) l'immeuble décrit au paragraphe 1 b) des présentes n'a qu'une superficie de 1 622 mètres carrés, contrairement à ce qui est mentionné à la promesse d'achat, pièce P-1; 11.
4. Par lettre du 31 mars 2000, la demanderesse a exigé de la défenderesse qu'elle déplace à ses frais le réservoir et qu'elle réduise le prix de vente d'une somme de 5 117,50 \$ en raison du défaut de contenance, tel qu'il appert de cette lettre, pièce P-3; 12.
5. Le 3 avril 2000, Simon Demers, président de la défenderesse, confirmait verbalement à la demanderesse que la défenderesse verrait à déplacer le réservoir sans délai et à ses frais,<sup>(14)</sup> qu'elle ferait arpenter de nouveau le terrain par un autre arpenteur-géomètre et qu'elle consentirait une réduction du prix de vente, le cas échéant; 13.   
14.
6. Le 1<sup>er</sup> juin 2000, la demanderesse et la défenderesse ont signé l'acte de vente des deux immeubles devant le mis en cause, tel qu'il appert de cet acte, pièce P-4; 15.
7. Le problème d'empiètement n'étant alors pas réglé et l'arpentage n'étant pas terminé, la demanderesse et la défenderesse ont convenu par écrit, le même jour, que le mis en cause conserverait en fidéicommiss une partie du prix de vente, soit 25 000 \$, afin de garantir l'exécution par la défenderesse de ses engagements en capital, intérêts et frais, tel qu'il appert de cette entente, pièce P-5; 16.   
17.   
18.
8. Par lettre du 22 juin 2000, pièce P-6, la défenderesse avisait la demanderesse qu'elle refusait maintenant de régulariser le problème d'empiètement et de réduire le prix de vente malgré les conclusions de son arpenteur-géomètre confirmant la superficie de 1 622 mètres carrés; 19.
9. La demanderesse devra engager des frais de 14 845,78 \$ afin de déplacer le réservoir; 20.
10. La défenderesse refuse de payer les sommes de 5 117,50 \$ et de 14 845,78 \$, bien que dûment requise de le faire par lettre du 14 septembre 2000, pièce P-7; 21.

POUR CES MOTIFS, PLAISE AU TRIBUNAL :

- CONDAMNER la défenderesse à payer à la demanderesse 22.
- la somme de 19 963,28 \$ 23.
- avec intérêts au taux légal de même que l'indemnité additionnelle prévue par la loi 24.
- à compter du 22 juin 2000 OU du 14 septembre 2000 OU de la date d'assignation, et les dépens; 25.
- ORDONNER au mis en cause de remettre à la demanderesse, 26.
- (à l'acquit de la défenderesse,) à même les sommes détenues en fidéicommiss, 27.
- dans les 30 jours OU tout autre délai (de la signification) OU tout autre délai du jugement à intervenir, 28.
- la somme de 19 963,28 \$ avec intérêts au taux légal de même que l'indemnité additionnelle prévue par la loi à compter du 22 juin 2000 et les dépens; 29.

TECHNIQUES DE RÉDACTION

Numérotation consécutive des paragraphes 30.

Allégation de plus d'un fait par paragraphe : 31.

	Aucune allégation	<input type="radio"/>	1 point	
	Une allégation	<input type="radio"/>	0 point	

Allégation non pertinente ou erronée : 32.

	Aucune allégation	<input type="radio"/>	3 points	
	Une allégation	<input type="radio"/>	2 points	
	Deux allégations	<input type="radio"/>	1 point	
	Trois allégations	<input type="radio"/>	0 point	

Conclusion non pertinente OU non fondée 33.

	Aucune allégation	<input type="radio"/>	1 point	
	Une allégation	<input type="radio"/>	0 point	

Référence aux pièces pertinentes 34.

• Promesse d'achat du 1 <sup>er</sup> mars 2000	<input type="radio"/>			
• (Certificat de localisation)				
• Lettre du 31 mars 2000	<input type="radio"/>			
• Acte de vente du 1 <sup>er</sup> juin 2000	<input type="radio"/>	6/6		
• Entente	<input type="radio"/>			
• Lettre du 22 juin 2000	<input type="radio"/>			
• Lettre du 14 septembre 2000	<input type="radio"/>			

Aucune référence à une pièce non pertinente 35.

Cote des pièces : P 36.

Qualité de l'expression écrite :  
 utilisation du langage juridique approprié; la concision  
 et la précision des allégations; l'absence de confusion ou de contradiction  
 dans les allégations; des phrases complètes; un style non télégraphique;

	Aucun manquement	<input type="radio"/>	6 points	
	Un manquement	<input type="radio"/>	5 points	
	Deux manquements	<input type="radio"/>	4 points	
	Trois manquements	<input type="radio"/>	3 points	
	Quatre manquements	<input type="radio"/>	2 points	
	Cinq manquements	<input type="radio"/>	1 point	
	Six manquements	<input type="radio"/>	0 point	

37.

## DOSSIER 2

**QUESTION 2 ( 4 points)**

**Dans l'hypothèse où vous pouvez établir devant le tribunal qu'il ne peut pas y avoir eu de rencontre entre Henri Talbot et les défendeurs au mois de mai 1999, pouvez-vous obtenir le rejet de la demande par un moyen de non-recevabilité? Dites pourquoi.**

Non, parce que (dans le cadre de l'audition d'un moyen de non-recevabilité,) les faits allégués dans la déclaration doivent être tenus pour avérés.

38. **QUESTION 3 (8 points)**

**À qui la défense doit-elle être signifiée et peut-elle, sans autorisation, être signifiée par télécopieur? Dites pourquoi.**

La défense doit être signifiée à M<sup>e</sup> Lise Bonin, parce qu'elle est procureure de la demanderesse et non à Nicole Drapeau <sup>(39)</sup>, ainsi qu'à Claude Talbot parce qu'il n'est pas représenté par procureur <sup>(40)</sup> (art. 78 C.p.c.).

39. 40. 

Quant au mode de signification, la défense peut être signifiée par télécopieur à M<sup>e</sup> Lise Bonin <sup>(41)</sup> et ne peut pas être signifiée par télécopieur à Claude Talbot puisque ce mode de signification n'est autorisé que pour la signification à procureur. <sup>(42)</sup> (art. 140.1 C.p.c et non 82.1 C.p.c.).

41. 42. **QUESTION 4 ( 4 points)**

- **Bien que vous n'ayez pas contesté la véracité et l'exactitude de la pièce P-5, pourrez-vous quand même, lors du procès, formuler une objection à sa production? Si oui, énoncez le motif de l'objection. Si non, dites pourquoi.**
- **Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.**

Oui, il s'agit d'un simple écrit qui est irrecevable en preuve pour établir qu'Henri Talbot était encore créancier de Louis et de Claude Talbot après janvier 1996, art. 2832 C.c.Q.

**OU**

Oui, il s'agit d'un témoignage écrit qui est prohibé, à moins d'obtenir l'autorisation en vertu de l'article 2870 C.c.Q. et que les critères de nécessité et de fiabilité soient rencontrés.

43. **QUESTION 5 (6 points)**

**Pouvez-vous formuler une objection à la preuve de l'aveu portant sur les intérêts, relaté par Hélène Drapeau dans sa dernière réponse? Dites pourquoi.**

- Oui, on ne peut pas prouver par témoin que le prix porte intérêt parce que cela contredit le contrat écrit (art. 2863 C.c.Q.).

**OU**

- Oui, la preuve testimoniale d'un aveu extrajudiciaire concernant le paiement d'intérêts n'est donc pas permise, (article 2867 C.c.Q.).

44.



**QUESTION 6 (4 points)**

- **L'objection de Me Bonin est-elle bien fondée?**
- **Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code civil du Québec.**

Oui, art. 2862 C.c.Q.

(parce que le témoin tente de faire la preuve d'une entente qui est a une valeur de plus de 1 500 \$.)

45.

**QUESTION 7 (8 points)**

- **Ces deux motifs sont-ils bien fondés?**
- **Pour chaque motif : Si oui, dites pourquoi. Si non, formulez les arguments que vous exposerez en réplique.**

**Premier motif:**

Non, le chèque est un moyen de preuve.

**OU**

Non, seuls les faits doivent être allégués dans les procédures.

46.

**Deuxième motif:**

Non, l'article 331.8 C.p.c. vise seulement les pièces décrites à l'article 331.1 C.p.c., soit celles qui sont en possession de la partie qui entend les utiliser.

47.

**QUESTION 8 (9 points)**

**Chacun des biens suivants peut-il être saisi en exécution de la condamnation aux dépens prononcée contre Nicole Drapeau? Dans chaque cas, dites pourquoi.**

- **La prestation d'assurance-invalidité**

Non, parce qu'il s'agit d'une prestation périodique d'invalidité non saisissable suivant le code (art. 553 (8) C.p.c.)

48.

- **La maison unifamiliale**

Non, parce qu'elle est insaisissable puisque la créance est inférieure à 10 000 \$ (art. 553.2 C.p.c.)

49.

- **Les obligations d'épargne du Québec**

Oui, parce que tout bien est saisissable à moins d'être déclaré insaisissable par la loi.

50.

DOSSIER 3

QUESTION 9 ( 6 points)

- a) À quel montant d'honoraires Me Dubois a-t-il droit en vertu du Tarif des honoraires judiciaires des avocats?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Tarif des honoraires judiciaires des avocats.

450 \$, art. 24 du Tarif des honoraires judiciaires des avocats

51.

- b) À quel montant d'honoraires Me Dubois a-t-il droit en vertu du Tarif des honoraires des avocats aux fins de la Loi sur l'aide juridique?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Tarif des honoraires des avocats aux fins de la Loi sur l'aide juridique.

540 \$, art. 29 du Tarif des honoraires des avocats aux fins de la Loi sur l'aide juridique

52.

- c) Quel est le montant maximum d'honoraires auquel Me Dubois a droit? Dites pourquoi.

540 \$, car Me Dubois a droit à un seul des deux honoraires. (L'avocat qui exécute un mandat confié par un organisme d'aide juridique et qui obtient un jugement avec dépens contre la partie adverse doit faire le choix d'exécuter son mémoire de frais contre cette partie ou de percevoir de l'aide juridique les honoraires. ( art. T-12 de L'entente...))

53.

QUESTION 10 (6 POINTS)

Répondez Vrai ou Faux aux sous-questions suivantes et, pour chaque sous-question. Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes soit du Code des professions, soit de la Loi sur le Barreau , soit de leurs règlements.

- a) Une cliente vous envoie une lettre dans laquelle elle vous remercie et vante la qualité de vos services. Cette lettre peut être utilisée dans votre publicité.

Faux, art. 5.06 Code de déontologie des avocats

54.

- b) Le syndic du Barreau du Québec vous informe que vous êtes l'objet d'une plainte de la part d'un de vos clients et qu'une enquête est en cours. Vous pouvez communiquer avec le client pour vous expliquer.

Faux, art. 4.02.01 r) Code de déontologie des avocats

55.

- c) Le numéro de télécopieur qui paraît sur votre carte d'affaires peut être celui du centre de photocopie situé près de votre bureau.

Faux, art. 15 Règlement sur les normes de tenue des dossiers et de bureau des avocats

OU

Faux, art. 3.06.03, du Code de déontologie des avocats

OU

Faux, art. 131 de la Loi sur le Barreau

OU

Faux, art. 60.4 du Code des professions

56.