

GRADED EVALUATION 2
EXAMPLES OF QUESTIONS

Caution : please note that the fact patterns in this document have not been updated. Consequently, the answers provided in the answer key are based on the legislation and regulation in force at the time the questions were written.

FILE 1 (9 MARKS)

Example taken from Graded Evaluation 2 (winter 2009).

Your articling supervisor meets with you today and provides you with the notes (reproduced hereinbelow) he took during a meeting this morning with Valérie Vachon, president and sole shareholder of his client, Les Galeries de L'Estuaire inc.

NOTES FROM THE MEETING WITH VALÉRIE VACHON

- Les Galeries de L'Estuaire inc. ("Galeries"): owner of a shopping centre located in Québec City.
- Galeries purchased the shopping centre from Propriété Bijoux Itée; deed of sale published 28 Feb. 08 registered at the Québec City registry office under no. 949264.
- Tabagie Moderne inc.: lessee of shopping centre, premises no. 48; lease signed with Propriété Bijoux for a ten-year term, as of March 1, 2004.
- Deed of sale no. 949264 states: vendor assigns to purchaser all its rights, and purchaser assumes all of vendor's obligations in all the leases of the shopping centre being sold.
- Lease contains no provisions regarding right to sublet the leased premises or to assign the lease.
- 29 August 08, assignment of lease signed between Tabagie Moderne, Simone Ferland and Jean-Yves Roy, agreement states only:
 - s. 1: assignment of all the lessee's rights in the lease to Simone Ferland and Jean-Yves Roy;
 - s. 2: undertaking of the assignees to respect all the lessee's obligations under the lease;
 - s. 3: if the lease is resiliated due to the failure of the assignees to perform their obligations, the assignees undertake to pay to the lessor, in addition to all other amounts then owed, \$16,800 (6 months of rent) as an indemnity for re-leasing the premises;
 - s. 4: the lessor intervenes in the assignment only to state its consent thereto.
- Defaults under the lease:
 - unpaid rent: \$2,800 / month x 7 months = \$19,600 as at today's date;
 - sells magazines and newspapers, which the lease specifically prohibits due to exclusivities granted to other lessees who could resiliate their leases in the event of a breach and institute proceedings against owner;
 - does not operate the store at all times on "Business Days" (term defined in the lease). Lease stipulates penalty \$100 / day of default: 5 days of default (from March 9 to 13, 2009, inclusively); therefore, \$500 currently owed;
 - the leased premises are dirty and poorly maintained (see photos) contrary to a specific provision of the lease (s. 16.19 of the lease).
- Demand letter served on all interested parties on March 16, 2009 giving them until March 19, 2009, inclusively, to remedy the defaults.

- Mandate to institute the appropriate legal proceedings to seek:
 - the resiliation of the lease;
 - eviction from the premises;
 - an order, against all those required to pay to the lessor:
 - the arrears of rent;
 - the penalty; and
 - damages for early termination of the lease (6 months of rent at \$2,800 / per month).

Addresses:

- Head office of Galeries de L'Estuaire inc.: 162 42nd Avenue, Suite 100, Québec City, Québec, G1V 2V2.
- Head office of Tabagie Moderne inc.: 28 Ballantyne Street, Québec City, Québec, G1X 2X2.
- Residence of Simone Ferland and Jean-Yves Roy: 1450 Grande Vallée Street, Québec City, Québec, G1X 5H7.

Documents received from the client:

- lease between Propriété Bijoux Itée and Tabagie Moderne inc. for premises no. 48;
- deed of sale of the shopping centre published under number 949264;
- assignment of lease dated August 29, 2008;
- photographs showing the condition of the premises;
- letter dated March 6, 2009 from Joey Falcone, the lessee of premises no. 44 in the shopping centre Les Galeries de L'Estuaire inc., complaining about the dirty and decrepit condition of premises no. 48;
- a few copies of magazines and newspapers illegally offered for sale in premises no. 48 since March 1, 2009;
- letter dated March 20, 2009 from another shopping centre lessee, Librairie Presse mondiale inc., complaining about the said sale of newspapers and magazines and referring to its exclusivity

QUESTION 1

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

Please note that 3 marks out of 9 will be allocated for drafting techniques, namely, compliance with the rule of relevancy, as well as the quality of your written expression which includes, in particular, the logical order of allegations, accuracy, the absence of confusion, appropriate legal language and an adequate reference to exhibits.

More precisely, 2 marks out of 3 aim the drafting techniques of the allegations while 1 mark out of 3 aims the drafting techniques of the conclusions.

FILE 2 (6 MARKS)

Problem 1

Example taken from Final Evaluation 2 (winter 2008).

The situation described in Problem 1 of File 2 is an evolving one: all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.

At the end of the year 2005, Adrien, Brigitte and Charles Martimbault inherit property from their mother, Simone Tardif, in equal shares. The most significant asset in the succession is a parcel of land having an area of five acres and located along the shore of a lake, in the Laurentians. None of them wishes to construct a building thereon, particularly since they all live in the Québec City region and hold very demanding jobs there. Nonetheless, they believe the land could be sold at a good price, sometime in the future, when the real estate market is more active. Since the parcel of land requires a great deal of levelling, they borrow an amount of \$15,000 from their uncle Yvan Tardif, Simone's brother, in order to finance the work.

The loan is granted on May 16, 2006. According to the contract, the principal amount is repayable on May 16, 2008, without interest. There is no clause dealing with prepayment. The contract provides that the balance will be payable on its due date, without any other formality. It also stipulates that Adrien, Brigitte and Charles will be solidarily liable for the repayment of the loan.

At the beginning of 2007, Adrien has at his disposal a considerable sum of money from an investment that was more profitable than expected. He considers repaying the entire amount of the loan immediately, notwithstanding the term provided for in the contract, and is willing, himself, to collect the amount owed by his brother and sister on the due date.

QUESTION 2

As of April 16, 2007, can Yvan Tardif refuse Adrien Martimbault's reimbursement of the loan granted on May 16, 2006? Give reasons for your answer and refer to the specific facts contained in the fact pattern as well as to one or more specific and relevant legislative provisions.

SUPPLEMENTARY FACTS

Adrien changes his mind shortly thereafter and decides not to offer to prepay the loan when he learns, in the spring of 2007, that he will owe a significant amount to the tax authorities, as a result of his recent investment income and an audit of his income tax returns of the last few years.

Brigitte, who works as an architect, draws up plans for the expansion of Yvan's residence in the fall of 2007. These services are offered at a preferred rate, namely \$7,000, including taxes. This amount, owed on April 1, 2008, has still not been paid by Yvan.

On May 15, 2008, Yvan contacts Adrien, Brigitte and Charles by phone to ask each of them to repay the entire amount owed under the loan granted two years earlier.

Adrien tells Yvan that he is short of cash, but that he will be in a position to pay him in a few weeks, thanks to fees from government contracts.

Brigitte tells Yvan that she will not pay him, because the amount due for the plans to expand his residence has still not been paid.

Charles answers that he is not in a position to pay the entire amount owed and, at the very most, only has \$6,000 at his disposal. Yvan, who is in need of cash, agrees to receive this amount, which Charles pays to him that same day.

At the beginning of June 2008, Yvan learns that Adrien has just received his fees for the government contracts whose payment he was awaiting in March. He therefore wishes to obtain payment from Adrien.

QUESTION 3

In the circumstances, without taking interest, if any, into account, how much can Yvan Tardif claim from Adrien Martimbault? Give reasons for your answer and refer to the specific facts contained in the fact pattern as well as to one or more specific and relevant legislative provisions.

Problem 2

Example taken from Final Evaluation 2 (winter 2008).

For about 10 years, Gilbert Côté has owned a recreational vehicle which he uses from time to time. When he does not expect to use it for a few months, he leases it to vacationers who use it to travel in Québec or elsewhere in Canada and the United States.

On November 15, 2007, Gilbert leases his vehicle to Jean Roy and Madeleine Perreault, a retired couple who intends to use the vehicle to travel to Florida in the winter. The lease is for a period of 6 months, namely, until May 14, 2008, and the lessees agree to contact Gilbert upon their return to Québec, at the beginning of May 2008, to determine the terms and conditions for returning the vehicle. At the time the lease is signed, Jean and Madeleine ask Gilbert whether an extension of the lease is possible, if they decide they like using a recreational vehicle; Gilbert answers that he has not yet decided what he will do with his vehicle after mid-May 2008.

Jean and Madeleine pay a deposit of \$1,000 equal to two months of rent and the contract stipulates that this amount will be credited to them at the end of the lease, if the vehicle is in good condition. The rent of \$500 is payable monthly, by way of cheque mailed to Gilbert before the 15th day of each month.

On May 14, 2008, Jean and Madeleine have still not contacted Gilbert to discuss the terms and conditions for returning the vehicle. Gilbert, who had not been concerned about this matter until now, because he was busy preparing for his daughter's wedding, begins to wonder when he will be able to take back his vehicle. He already entered into a lease with another lessee for the period from May 18 to August 18, 2008, for a total lease of \$2,100.

For their part, Jean and Madeleine interpreted Gilbert Côté's silence as an acceptance of the request they had made in November 2007, namely, to extend the term of the vehicle's lease. At the beginning of May 2008, they are in Québec for three days, but they leave once again in order to travel a few months in Western Canada. During their stay in Québec, they try, without success, to phone Gilbert. Afterwards, they leave a message on his answering machine saying that everything is fine and that they are leaving with the vehicle until July 14, 2008 as discussed in last November. They also mention that when they return, they will pay the due amount.

QUESTION 4

Can Jean Roy and Madeleine Perreault consider themselves lessees of the vehicle until July 14, 2008? Give reasons for your answer and refer to the specific facts contained in the fact pattern as well as to one or more specific and relevant legislative provisions.