

FINAL EVALUATION (DAY 1)

EXAMPLES OF QUESTIONS

Caution: please note that the fact patterns and the marks allocated to the files in this document have not been updated. 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 (20 MARKS)

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

In June 2019, Luc Fafard, the lessee, signs a lease with Charles Taillon, the lessor, for the lease of a furnished country house on the site of the Bromont outdoor recreation centre for a period of five months, from July 1, 2019 to November 30, 2019, in order to take advantage of the centre's summer activities. Since the lease for the dwelling where he lives in Longueuil ends on October 31, 2019, Luc decides to live full-time at the country house for the time being and to store his furniture in the meantime.

On November 15, 2019, Luc buys a house in Longueuil from Léane Dupuis, with the legal warranties. He intends to live in the house and to set up premises in it for a business selling electronics. He has not mentioned his intentions to Léane, who has lived in the house for the past three years. He will have work done on the house which will make it impossible to live in the house until February 29, 2020. On November 20, 2019, Luc contacts Charles, who lives in Sherbrooke, to ask him to extend the lease for the country house until February 29, 2020. Charles refuses, stating that he wants to retake possession of his country house as of December 1, as he does every year for the ski season. Luc replies that he is entitled to maintain occupancy in the country house and that Charles did not send him a notice of repossession.

QUESTION 1

Is Luc Fafard entitled to remain in the country house after November 30, 2019 notwithstanding the lessor's opposition? Give reasons for your answer and refer to one or more specific and relevant legislative or regulatory provisions.

SUPPLEMENTARY FACTS

On November 22, 2019, Luc learns that the zoning by-law for the City of Longueuil prohibits the commercial use he is planning.

Luc wants to resolve the contract of sale of the house. After searching the Internet, he concludes that he can obtain the resolution of the contract of sale based on the legal warranty to which Léane is bound. He contacts Léane, who refuses to resolve the sale.

QUESTION 2

Can Luc Fafard obtain the resolution of the contract of sale by invoking a legal warranty? Give reasons for your answer and refer to one or more specific and relevant legislative or regulatory provisions.

SUPPLEMENTARY FACTS

Luc decides to modify his project and accept a proposal from Marie Anderson and Frédéric Miron. They all become the three shareholders and directors of Vente et réparation d'équipements inc. (hereinafter "VRE"). Each of them holds 100 shares of this business corporation. On November 29, 2019, at Marie's home, VRE signs a lease as lessee of commercial premises located in Longueuil and owned by Jacob Wilson inc., the lessor. The lease, which has a term of five years, begins on December 1, 2019 and ends on November 30, 2024, with a monthly rent of \$9,000, including all taxes, payable on the first day of every month. The lessor requires all the directors to act as solidary sureties among themselves and with VRE of the latter's obligations under the lease. The three directors accept and sign the lease in that capacity.

On January 28, 2020, VRE signs a contract for the lease of a computerized copying system to Copie Vite inc., a document reproduction business, for a period of two years, in consideration for a monthly rent of \$350 payable on the first day of every month, beginning on February 1, 2020. On March 2, 2020, this contract is registered in the register of personal and movable real rights (hereinafter the "RPMRR"). As of April 1, 2020, the lessee fails to pay the rent to VRE. On April 27, 2020, Copie Vite inc.'s representative presents to VRE's representative a prior notice of the exercise of a hypothecary right of taking in payment that has just been served on it by its hypothecary creditor, Finance commerciale ltée. Finance commerciale ltée has a valid hypothec, constituted by Copie Vite inc., charged against various pieces of equipment of the business, including the computerized copying system leased from VRE. The deed of hypothec was signed and registered in the RPMRR on February 3, 2020.

QUESTION 3

Can Vente et réparation d'équipements inc. repossess its computerized copying system free and clear of Finance commerciale ltée's hypothec? Give reasons for your answer and refer to one or more specific and relevant legislative or regulatory provisions.

SUPPLEMENTARY FACTS

On May 5, 2020, VRE provides a written estimate to Construction DEF inc. for the repair and modification of the latter's computer system. The estimate describes the work to be done and indicates its cost, namely, \$2,000 plus taxes. Construction DEF inc. entrusts the work to VRE. On May 25, 2020, VRE sends an invoice for \$2,500 plus taxes to Construction DEF inc. for its services. Construction DEF inc.'s representative calls Luc who explains that VRE made a mistake when preparing the estimate: it forgot to include the cost of a part for which VRE paid \$500. Construction DEF inc. refuses to pay more than \$2,000 plus taxes.

QUESTION 4

Is Construction DEF inc. required to pay \$2,500 plus taxes? Give reasons for your answer and refer to one or more specific and relevant legislative or regulatory provisions.

SUPPLEMENTARY FACTS

On May 12, 2020, Martine Boulay, the director general of Boutique Martine inc., goes to VRE's store with a defective cash register. She asks Luc to repair it as quickly as possible because her business needs it. On May 16, 2020, Martine goes to VRE's store to take back the repaired cash register, but she does not have the \$450 invoiced for the repair. Luc has heard that the boutique's business is not doing very well. He tells Martine that he will return the cash register to her when she pays the amount of the invoice for the repair. Martine is outraged and threatens to claim damages, including the cost of renting another cash register, if she cannot take back her cash register immediately.

QUESTION 5

Assuming that Boutique Martine inc. were to rent another cash register, could Vente et réparation d'équipements inc. be required to pay the rental cost? Give reasons for your answer and refer to one or more specific and relevant legislative or regulatory provisions.

SUPPLEMENTARY FACTS

On June 8, 2020, VRE signs a contract pursuant to which it sells a computer system to Distribution Piché inc., a distributor of various products, for an amount of \$40,000. The selling price is payable to VRE 30 days after the installation of the system by VRE. The delivery and installation are to be carried out on June 25, 2020.

On June 23, 2020, Luc informs Réal Piché, the president of Distribution Piché inc., that he will not be able to deliver on June 25, 2020 as scheduled, because his supplier will only receive the system components on June 30, 2020. The supplier has assured Luc that he will receive everything on July 2, 2020. Réal answers that he will consider the sale to be resolved if the system is not delivered on July 2, 2020.

On July 2, 2020, VRE has not yet received the system. Its supplier informs it that the system will be held up at customs for another few days.

QUESTION 6

As at July 2, 2020, is Distribution Piché inc. entitled to consider the sale resolved? Give reasons for your answer and refer to one or more specific and relevant legislative or regulatory provisions.

SUPPLEMENTARY FACTS

On August 3, 2020, Luc, who needs funds for the business, turns to his mother, Nicole Fafard. She has no money to lend him, but she owns a very valuable painting by the artist Riopelle. She promises Luc that she will give it to him when she moves into the seniors' residence to which she has made an application. She thinks her move will take place in September 2020, but she is still waiting for confirmation that an apartment is available.

On August 18, 2020, before having received this confirmation, Nicole dies suddenly of cardiac arrest. Lyne Fafard, Luc's sister and the liquidator of their mother's succession, does not agree with their mother's decision and refuses to give the painting to Luc.

QUESTION 7

Is Luc Fafard entitled to compel Nicole Fafard's succession to give him the painting? Give reasons for your answer and refer to one or more specific and relevant legislative or regulatory provisions.

SUPPLEMENTARY FACTS

On September 6, 2020, Luc sells Sophia Roy an antique armoire that he has owned for several years, for an amount of \$5,000. The contract of sale signed by them provides that payment will be made when the armoire is delivered to Sophia, after Luc has had the armoire's handle repaired by an expert.

On September 8, 2020, Luc brings the armoire to Georges Lemire, an antique dealer and cabinetmaker, to have it repaired. Georges is very impressed with the armoire, which is a rare model, and offers to purchase it from Luc immediately for \$7,000. Luc, who has not told Georges about the sale to Sophia, agrees to sell the armoire to him and receives the amount of \$7,000.

QUESTION 8

As at September 8, 2020, who owns the armoire? Give reasons for your answer and refer to one or more specific and relevant legislative or regulatory provisions.

SUPPLEMENTARY FACTS

The \$9,000 monthly rent for the premises leased by VRE remains unpaid for the months of October and November 2020. The three shareholders agree to advance additional funds to VRE. However, Frédéric cannot find the necessary funds and, on November 6, 2020, he signs a contract of sale of his shares in VRE to Luc and Marie, who thereby each purchase 50 shares for \$5,000 each. In the contract, Luc and Marie release Frédéric from all liability for any sums owed by VRE. That same day, Frédéric resigns as a director of the business corporation.

QUESTION 9

As at November 7, 2020, is Jacob Wilson inc. entitled to claim an amount of \$18,000 from Frédéric Miron for the unpaid rent? Give reasons for your answer and refer to one or more specific and relevant legislative or regulatory provisions.

SUPPLEMENTARY FACTS

On November 13, 2020, VRE finally pays an amount of \$18,000 to Jacob Wilson inc. for the unpaid rent for October and November 2020. Luc tells the president of Jacob Wilson inc. that VRE's business has improved and that the rent will be paid on time in the future.

On the morning of January 15, 2021, during a period of particularly mild weather, Luc notices, upon arriving at the office, that water has seeped in through the ceiling of the building during the night and spilled onto some of VRE's computer equipment. In order to protect the equipment on the premises and prevent it from being damaged by water, Luc immediately covers it with large tarps.

That same day, Luc sends an email to the lessor to inform it of the situation and ask it to make the necessary and urgent repairs to the roof of the building to eliminate the water infiltration and allow VRE to continue its activities. On January 18, 2021, Luc receives a reply from Jacob Wilson inc. informing him that the lessor refuses to make any repairs and that it is up to VRE to take care of it.

That same day, Domi Weber, a representative of Urgence Toiture inc., who has been summoned to the site by Luc, performs a complete inspection of the roof of the building and provides the following report:

EVALUATION – WORK AND COSTS

I inspected both the exterior and interior of the roof. In addition to the fact that the exterior sheathing has to be replaced because it is dilapidated, I noticed that the inner frame is seriously damaged by water. In addition, the majority of the plywood panels under the roof sheathing must be replaced. All of this replacement and repair work must be undertaken over the next few months, if you want to avoid a complete breakdown of the building's roof. I estimate the cost of this work at \$39,500, including taxes.

While waiting for this work to be completed, I can immediately do temporary emergency work on the ceiling and panelling to protect your equipment and allow you to continue your activities in the meantime. I estimate the cost of this emergency work at \$3,500, including taxes.


on behalf of Urgence Toiture inc.

After discussing the matter with Marie, Luc awards Urgence Toiture inc. a contract for the temporary emergency work. The work begins the next day, January 19, and is completed on January 22, 2021. Upon receipt of the invoice from Urgence Toiture inc. VRE pays the amount of \$3,500.

On January 25, 2021, VRE notifies a formal notice to Jacob Wilson inc. by bailiff. In addition to the reimbursement of the amount of \$3,500, VRE demands that Jacob Wilson inc. begin the full performance of the roof repair work no later than February 8, 2021. Failing that, it will ask a court to authorize it to have the work performed at the lessor's expense. Urgence Toiture inc.'s written estimate is attached to the formal notice.

The officers of VRE consult you today, February 24, 2021. They have received no response from Jacob Wilson inc.

They give you the mandate to institute the appropriate proceedings to enforce VRE's rights with respect to the reimbursement of the amount paid and with respect to the authorization to carry out the work in question. Moreover, VRE's officers would like the work to begin as soon as the judgment is obtained.

QUESTION 10

Draft the conclusions of the originating application you will serve on Jacob Wilson inc.

Please note that 1 mark out of 5 will be allocated to drafting techniques, namely: compliance with the rule of relevancy, as well as the quality of your written expression which includes, in particular, accuracy, absence of confusion and appropriate legal language.

FILE 2 (20 MARKS)

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

Brittany Arsenault, a resident of Rivière-du-Loup, consults you today regarding two business corporations of which she is a shareholder: Climatisation 7Froid7 inc. (hereinafter “7Froid7”) and Consultants Énerlis inc. (hereinafter “Énerlis”).

7Froid7 is a corporation incorporated under the *Canada Business Corporations Act*. This corporation has always had the benefit of the private issuer exemption for purposes of the *Securities Act* and has always filed all the declarations and reports required under *An Act respecting the legal publicity of enterprises* and the *Canada Business Corporations Act*.

The corporation’s principal activity is the design, manufacture and distribution of air conditioning equipment.

The share capital of the corporation is comprised of three classes of shares with only the following rights, privileges, conditions and restrictions:

- an unlimited number of class “A” shares conferring upon the holders thereof the rights set forth in subsection 24 (3) of the *Canada Business Corporations Act*;
- 50,000 class “B” non-voting shares conferring the right to dividends and, upon the liquidation of the corporation, conferring upon the holders thereof the right, in preference to the class “A” shares, to receive the amount paid into the stated capital account maintained for said class “B” shares at the time of their issuance;
- an unlimited number of class “C” non-voting shares conferring upon the holders thereof the right, in preference to the class “A” shares and class “B” shares, to receive a fixed dividend at a rate equal to 8% per annum of the redemption value of the class “C” shares. These shares also confer the right, upon the liquidation of the corporation and in preference to the other classes of shares, to receive an amount equal to their redemption value. These shares do not otherwise participate in the dividends or remaining property. The class “C” shares are redeemable at the request of the holders thereof for a redemption value equal to the amount paid into the stated capital account maintained for said shares, plus a premium of \$10 per share.

The issued shares are held by the following persons who paid the corporation the amounts set forth hereinbelow when the shares were issued:

Shareholder	Number and class of shares issued	Amount paid
Brittany Arsenault	750 class "A" shares	\$750
William O'Kelly	150 class "A" shares	\$150
Margaret O'Kelly	100 class "A" shares	\$100
Xavier Arsenault	5,000 class "B" shares	\$5,000
Joanne O'Kelly	5,000 class "B" shares	\$5,000
Axoma Capital de risque	15,000 class "C" shares	\$150,000

The directors of the corporation are Brittany Arsenault, William O'Kelly, Margaret O'Kelly and the representative of Axoma Capital de risque, Martin Davies.

Furthermore, 7Froid7 declared its most recent dividend on December 31, 2018. All dividends then due were declared and paid.

February 24, 2021, the board of directors of 7Froid7 is meeting to adopt the following resolutions:

1. Declare and pay a cash dividend of \$105,000 today to the shareholders;
2. Accept the request made by Axoma Capital de risque for the redemption of 7,500 class "C" shares for the amount provided for in the articles, namely, \$150,000;
3. Convert all the issued class "B" shares into class "D" shares, a class to be created, which shares will confer upon the holders thereof the same rights, privileges, conditions and restrictions as those attaching to the class "B" shares, except as follows:
 - a) the class "D" shares will confer the right to a fixed and non-cumulative dividend at a rate of 10% per annum, in preference to the class "A" shares, class "B" shares and class "C" shares;
 - b) 7Froid7 will have the right to unilaterally redeem these shares for a redemption value equal to the amount paid into the stated capital account maintained for said shares at the time of their issuance.

QUESTION 11

Assuming the declaration and payment of the \$105,000 cash dividend have been carried out legally, indicate what dividend amount will be paid to the class "A" shares, the class "B" shares and the class "C" shares. Show all your calculations.

SUPPLEMENTARY FACTS

Following the payment of the \$105,000 cash dividend, the balance sheet of 7Froid7 is as follows:

Climatisation 7Froid7 inc. BALANCE SHEET as at February 24, 2021			
ASSETS		LIABILITIES	
Current assets	\$400,000	Current liabilities	\$250,000
Fixed assets	\$1,000,000	Long-term liabilities	\$400,000
		SHAREHOLDERS' EQUITY	
		Share capital	
		1,000 class "A" shares	\$1,000
		10,000 class "B" shares	\$10,000
		15,000 class "C" shares	\$150,000
		Retained earnings	\$589,000
Total assets	\$1,400,000	Total liabilities and shareholders' equity	\$1,400,000

The realizable value of the assets is \$1,500,000.

In order to answer the following question, you may assume that following the payment mentioned in the question, Climatisation 7Froid7 inc. will be able to pay its liabilities as they come due.

QUESTION 12

Does Climatisation 7Froid7 inc. have the obligation to pay Axoma Capital de risque the amount of \$150,000 requested for the redemption of the 7,500 class "C" shares? Show all your calculations and refer to one or more specific and relevant legislative or regulatory provisions.

QUESTION 13

Indicate TEN corporate formalities required in order to convert the issued class "B" shares into class "D" shares, a class to be created. In all cases, refer to one or more specific and relevant legislative or regulatory provisions.

You may assume that no resolution in lieu of a meeting will be signed by all of the directors or shareholders of Climatisation 7Froid7 inc.

SUPPLEMENTARY FACTS

Brittany is also a director and shareholder of Énerlis, a business corporation governed by the *Business Corporations Act*. This corporation, which specializes in energy efficiency and the installation of solar systems, operates several branches throughout Québec and has always had the benefit of the private issuer exemption for purposes of the *Securities Act*.

On January 22, 2021, Énerlis entered into an amalgamation agreement with AN2K Services environnementaux inc. (hereinafter "AN2K"), a competitor whose head office is located in Québec City. AN2K, a corporation governed by the *Business Corporations Act*, has always had the benefit of the private issuer exemption for purposes of the *Securities Act*.

As at today's date, February 24, 2021, Énerlis and AN2K have filed all the declarations required under the *Act respecting the legal publicity of enterprises*.

The amalgamation agreement provides as follows, among other things:

- the name of the amalgamated corporation will be AN2K Services environnementaux inc.;
- the amalgamation will take effect on March 5, 2021 at 1 minute past midnight.

In order to answer the following question, you may assume that Consultants Énerlis inc. and AN2K Services environnementaux inc. have approved the amalgamation agreement and that articles of amalgamation are to be prepared and sent to the enterprise registrar.

QUESTION 14

Must a declaration with respect to the name be filed with the articles of amalgamation that will be sent to the enterprise registrar? Give reasons for your answer and refer to one or more specific and relevant legislative or regulatory provisions.

In order to answer the following question, you may assume that the enterprise registrar issued the certificate of amalgamation dated March 5, 2021.

QUESTION 15

Following the issuance of the certificate of amalgamation, indicate the declaration or declarations that must be filed with the enterprise registrar, specifying the business corporation or corporations that have to file the declaration or declarations. Give reasons for your answer and refer to one or more specific and relevant legislative or regulatory provisions.