

## FINAL EVALUATION (DAY 2)

### 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.

<b>FILE 1 (17 MARKS)</b>
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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.

You are an articling student at the firm Tessier, Doré and Tassé. Your articling supervisor, M<sup>e</sup> Émile Tassé, provides you with the file for one of the firm's clients, Christian Bleau, which contains a motion to institute proceedings and his meeting notes.

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

NO: 500-17-900121-041

SUPERIOR COURT

\_\_\_\_\_  
JEAN DESGENS, 123 de Vinny Street, Montreal,  
district of Montreal, province of Québec, H1H 1H1

Plaintiff

v.

CHRISTIAN BLEAU, carrying on business under the  
name Les Eaux Douces, domiciled and residing at 69  
Gouin Blvd., Montreal, district of Montreal, province  
of Québec, H2H 2H2

Defendant  
\_\_\_\_\_

**MOTION TO INSTITUTE PROCEEDINGS**

**IN SUPPORT OF HIS ACTION, THE PLAINTIFF STATES AS FOLLOWS:**

- 1- The Defendant operates a holistic health and relaxation centre on the shores of the Rivière du Nord, in the region of Saint-Adèle, under the name Les Eaux Douces;
- 2- Between January 12 and 16, 2004, the Plaintiff stayed at the Les Eaux Douces centre as part of his winter holidays;
- 3- In consideration for a payment, the Plaintiff was entitled to a personalized relaxation and healing program and use of the site and its various facilities;
- 4- The personalized program included stays in the sauna, massages and baths in the icy waters of the Rivière du Nord;

- 5- The facilities of the relaxation centre Les Eaux Douces include two saunas, one indoor salt-water swimming pool, massage rooms and a site to access the Rivière du Nord for the ice-water baths;
- 6- On the last day of his stay, the Plaintiff began his day with a twenty-minute session in the sauna, in accordance with the Defendant's recommendations;
- 7- When exiting the sauna, the Plaintiff put on his bathrobe and took the staircase to go to the specially designed and built basin in the Rivière du Nord;
- 8- At the bottom of the staircase, near the basin, the Plaintiff slipped and fractured his leg;
- 9- The accident is entirely due to the fault of the Defendant because the design and construction of the staircase is deficient;
- 10- Following the accident, the Plaintiff was brought to the hospital in Saint-Adèle by ambulance;
- 11- Given the severity of his injuries, he stayed there for two weeks;
- 12- He was unable to work for three months;
- 13- As a result of the injury sustained, he will suffer a permanent limp because his left leg will remain shorter than his right leg;
- 14- The damages suffered by the Plaintiff are as follows:
- |                                             |                    |
|---------------------------------------------|--------------------|
| Temporary total disability of 15 weeks:     | \$10,000.00        |
| Permanent partial disability of 5%:         | \$50,000.00        |
| Ambulance fees:                             | \$300.00           |
| Cost of medications and rental of crutches: | \$834.55           |
| Cost of physiotherapy:                      | \$4,200.00         |
| Pain and inconvenience:                     | <u>\$25,000.00</u> |
| <b>Total</b>                                | <b>\$90,334.55</b> |
- 15- The Defendant has refused or neglected to pay the amount claimed, despite the fact that the Defendant was duly put in default to do so by means of a letter from the undersigned lawyer dated July 25, 2004, as appears from a copy of the said letter, Exhibit P-1

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

**ORDER** the Defendant to pay to the Plaintiff the amount of \$90,334.55 with interest at the legal rate and the additional indemnity provided for by law as of August 5, 2004;

**THE WHOLE** with costs.

MONTREAL, September 8, 2004.



HELIOS & STITCHMAN  
attorneys for the Plaintiff

**Notes from the initial meeting of September 14, 2004 between Christian Bleau and M<sup>e</sup> Tassé**

- The motion to institute proceedings was served on Christian Bleau on September 9, 2004.
- The relaxation centre "Les Eaux Douces", owned by Christian Bleau, was designed and built by specialists who are highly renowned because they have built several health centres of the same type in North America. As such, according to your client, the work cannot have been performed improperly.
- Upon his arrival at the relaxation centre, Jean Desgens began to criticize the facilities and the care, despite all attempts to satisfy him. Among other things, he told the defendant that, as a construction specialist, he had noted that Québec's construction standards had not been respected as regards the facilities, particularly with respect to the staircase leading to the Rivière du Nord. He worked in the construction field, as a maintenance carpenter and general contractor, for a period of 40 years and is now the author of technical school manuals, primarily in the field of construction.
- It seems that at the time of his fall, Jean Desgens was not wearing his glasses or the anti-skid shoes provided to him by the relaxation centre. These facts were reported by Geneviève Gravel, a client of the relaxation centre, who was near the plaintiff when he fell.
- Furthermore, Jean Desgens had used this staircase on several occasions during his stay because he had done all the activities provided for in his personalized program, including the stays in the sauna and the ice-water baths.
- Christian Bleau did indeed receive the demand letter from Jean Desgens, but he did not respond, because he felt it was completely outlandish.

The motion to institute proceedings was served on your client with the following documents:

1. a notice to defendant (**not reproduced**);
2. a copy of exhibit P-1 (**not reproduced**);
3. a deficiency report prepared and signed by Robert Veilleux, an engineer, which sets out the deficiencies in the construction of the staircase where the accident occurred, and a notice in accordance with article 402.1 of the *Code of Civil Procedure* (**not reproduced**).
4. an expert report from Doctor Mireille Ladouceur, an orthopedist, regarding the injuries suffered by the plaintiff, and a notice in accordance with article 402.1 of the *Code of Civil Procedure* (**not reproduced**).

The motion to institute proceedings was presentable on October 12, 2004. On September 17, 2004, your firm filed an appearance on behalf of the defendant in the court record.

According to the notes in the file, your firm agreed with the lawyer for the plaintiff, M<sup>e</sup> Pierre Helios, on a timetable for the proceeding, which timetable was duly filed at the office of the court before the date of presentation. The timetable for the proceeding provides as follows, among other things:

- The plaintiff will be examined by the defendant's expert, Doctor Nelson Piedmont, an orthopedist, no later than November 17, 2004;
- The defendant will serve his defence and communicate his exhibits in support thereof no later than December 17, 2004.

M<sup>e</sup> Tassé informs you that the medical examination of the plaintiff by Doctor Piedmont is scheduled on November 12, 2004, at 10:00 a.m. It was very difficult for him to obtain this appointment, which is the result of a cancellation, because Doctor Piedmont had no availability for the next six months.

In order to ensure the presence of the plaintiff on that date, M<sup>e</sup> Tassé served the plaintiff with a summons to appear which orders him to be present at Doctor Piedmont's office on the date and at the time indicated.

The firm's bailiff brought back the original of the summons to appear with the following return of service:

RETURN OF SERVICE																
CANADA DISTRICT OF QUÉBEC SUPERIOR COURT  500-17-900121-041  Jean Desgens Plaintiff  v.  Christian Bleau Defendant	The undersigned, ARSÈNE LUPIEN, COURT BAILIFF for Québec, having an office at 800 des Prés Blvd., Montreal, certify under my oath of office that I served this summons to appear on November 5, 2005, at 4:00 p.m., upon Jean Desgens, at his workplace at 9842 Industriel Blvd., Montreal, by leaving with Natacha Lapierre, a receptionist at his workplace, an envelope containing a copy of this summons to appear, after having noted the date and time of service on the back thereof.  I further certify that the authorized distance for service of the present document is 14 kilometres.	Montreal, November 5, 2005   <hr/> Arsène Lupien Court bailiff 800 des Prés Blvd. Montreal, Québec H2X 2G7 (514) 727-9881														
<table> <tr> <td>Service</td> <td style="text-align: right;">\$7.00</td> </tr> <tr> <td>14 kilometres</td> <td style="text-align: right;">\$18.90</td> </tr> <tr> <td>Bids</td> <td></td> </tr> <tr> <td>Subtotal</td> <td style="text-align: right;"><u>\$25.90</u></td> </tr> <tr> <td>GST</td> <td style="text-align: right;">\$0.00</td> </tr> <tr> <td>QST</td> <td style="text-align: right;"><u>\$0.00</u></td> </tr> <tr> <td><b>TOTAL</b></td> <td style="text-align: right;"><b>\$25.90</b></td> </tr> </table>	Service	\$7.00	14 kilometres	\$18.90	Bids		Subtotal	<u>\$25.90</u>	GST	\$0.00	QST	<u>\$0.00</u>	<b>TOTAL</b>	<b>\$25.90</b>		
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QST	<u>\$0.00</u>															
<b>TOTAL</b>	<b>\$25.90</b>															

No other document was delivered at that time and no other steps were taken.

#### QUESTION 1

State SIX irregularities in the summons to appear and in its service. For each irregularity, justify your answer by referring to the specific facts contained in the fact pattern and to one or more specific and relevant legislative provisions.

Please note that 1 mark out of X (marks allocated to this question) will be awarded to students who have not added any irrelevant or incorrect irregularity.

## SUPPLEMENTARY FACTS

You may assume that the medical examination of the plaintiff took place within the time limits stipulated in the timetable.

Thereafter, in compliance with the stipulated time limits, M<sup>e</sup> Tassé filed a defence and cross-demand on behalf of his client.

In addition to denying paragraphs 9 to 15, indicating no awareness of paragraphs 6 to 8, and admitting the rest, it is alleged that the fault was entirely the plaintiff's who was negligent and was very familiar with the layout of the site, as he repeated to the defendant throughout his stay; furthermore, it is alleged that the damages are grossly exaggerated.

Moreover, in the defence, the defendant filed a cross-demand claiming an amount of \$25,000 for abuse of rights and injury to his reputation. Indeed, following the incident, the plaintiff wrote letters to the editor in numerous publications in the region of Saint-Adèle, notifying people of the risks of going to the health centre Les Eaux Douces, due to danger from substandard facilities. The defendant does not think he lost any clients, but he considers this to be an abuse of rights by the plaintiff and, as such, he claimed an amount of \$25,000.

No examination on discovery was held. All of the plaintiff's exhibits and expert reports were communicated and filed within the time limits agreed upon in the timetable.

M<sup>e</sup> Tassé also communicated and filed all his exhibits and evidence in accordance with the said timetable. Furthermore, he communicated and filed the report of Doctor Nelson Piedmont under article 294.1 of the *Code of Civil Procedure*. In this report, Doctor Piedmont concludes that the plaintiff will not suffer any impairment and that moreover, with the exception of his two-week hospitalization, he was not unable to work, given the nature of the injury and the fact that he is a writer.

M<sup>e</sup> Tassé communicated and filed, in accordance with article 294.1 *C.C.P.*, a letter signed by Chantal Chung, CEO of *Éditions Pro-scolaires inc.*, in which she states that Jean Desgens is the author of many school manuals published by her publishing firm. These manuals are intended for students of high schools that offer vocational training and for students who take certain technical programs at the college level. She also indicates that the authors must send in their updated manuals twice a year, in October and June, delivery dates which Jean Desgens met during the past ten years without fail, including the years 2003-2004 and 2004-2005.

The case is inscribed within the time limits and the clerk has not yet issued an attestation that the record is complete.

On August 8, 2005, M<sup>e</sup> Tassé meets with his client to prepare for the trial and he asks you to attend the meeting. You learn from Christian Bleau that the plaintiff told his wife at the time, Maureen Morris, that he would make a lot of money by suing Christian Bleau and that the experience would allow him to write a book on the subject. This statement was made in March of 2004. Since June 2005, Maureen Morris has left Jean Desgens and has instituted proceedings for separation in the Superior Court. Your client, the defendant, met her by chance at the Festival des Gourmands d'Asbestos, at the beginning of August 2005, at which time Maureen Morris told him about this statement.

### QUESTION 2

Can Maureen Morris' statement be introduced into evidence at the trial? If so, state how and justify your answer by referring to the specific facts contained in the fact pattern as well as to one or more specific and relevant legislative provisions. If not, explain your answer.

### QUESTION 3

What facts will have to be introduced into evidence, at the trial, to prove that the plaintiff's fall was due to his own negligence?

### SUPPLEMENTARY FACTS

In connection with his defence, M<sup>e</sup> Tassé also want to prove that the plaintiff injured the defendant's reputation with his comments, by proving the following fact: "Jean Desgens published numerous opinion letters in local newspapers."

#### QUESTION 4

For this fact, indicate the evidence (E) and the process and procedure for the production of the evidence (P), and determine the probative force (F).

### SUPPLEMENTARY FACTS

The trial begins on December 21, 2005, before Judge Louis Labelle. You accompany your articling supervisor in order to assist him. The plaintiff produces his evidence. In the middle of the afternoon, the plaintiff has finished presenting his evidence and M<sup>e</sup> Tassé begins to present the evidence for the defence.

At the outset, M<sup>e</sup> Tassé indicates to the judge that he will only be calling two witnesses, namely the defendant and Maureen Morris, the plaintiff's ex-wife, given that the defence's other evidence has already been legally filed in the court record.

M<sup>e</sup> Helios, the attorney for the plaintiff, immediately rises and indicates to Judge Labelle that he objects to the court taking the following evidence into consideration:

- (a) the report of the physician, Doctor Nelson Piedmont, because the physician is not present and an expert must testify in order to support his written opinion.
- (b) the letter from Chantal Chung, CEO of Éditions Pro-scolaires, because the witness is absent and this constitutes hearsay.
- (c) the testimony of Maureen Morris, because the testimony constitutes a privileged communication between spouses and is therefore inadmissible as evidence.

M<sup>e</sup> Tassé asks Judge Labelle for a brief adjournment in order to answer M<sup>e</sup> Helios' objections. Mr. Justice Labelle grants an adjournment until the following morning.

#### QUESTION 5

What would be your reply to each of M<sup>e</sup> Henry Helios' objections? Justify each of your answers 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

The following day, after having heard the replies of the attorney for the defence, Mr. Justice Labelle takes the objections under reserve. M<sup>e</sup> Tassé calls his witnesses and finishes presenting his evidence. Once both parties having finished presenting their evidence, the judge hears their closing arguments. He then takes the case under advisement.

The judgment is rendered on March 3, 2006 and sent to the parties' lawyers that same day. In his judgment, the judge has apportioned liability and has found that the defendant must assume part of the liability for the damages suffered by the plaintiff. He has also concluded that the plaintiff is largely responsible for his misfortune.

The judge therefore orders the defendant to pay to the plaintiff an amount of \$12,000, with interest, because he considers that the defendant did not take adequate measures to reduce the risks of a fall, and this negligence results in liability for 25% of the damages suffered, which damages were established at \$48,000 by the evidence. The judge dismisses the defendant's cross-demand on the ground that there was no evidence of harm.

#### QUESTION 6

On March 30, 2006, assuming that there are sufficient grounds for an appeal, could the parties appeal this judgment? If so, state how, within what time limit and justify your answer by referring to the specific facts contained in the fact pattern as well as to one or more specific and relevant legislative provisions. If not, explain your answer.

FILE 2 (15 MARKS)
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André Huet, an optician, consults you today regarding several problematic situations he is currently dealing with.

André lives in Granby and wants to purchase a building which is located at 1234 Blais Street, in Sherbrooke, and was built in 1990. André wants to purchase this building in particular because his daughter, Françoise Huet, began to study at the Université de Sherbrooke in August of 2005. Françoise wishes to move closer to the university in order to reduce her travelling time. Furthermore, she works near Blais Street on the weekend.

The building is owned by Benoit Groulx and Céline Jobin who purchased it on June 30, 2003. Since their acquisition, Benoit and Céline have lived in the dwelling located on the second floor of the building and have operated a shoe store on the ground floor.

On May 27, 2005, Benoit and Céline leased their dwelling to Denis Maheu. They signed a lease with an indefinite term as of July 1, 2005 on a Régie du logement form, to which they added the following special clause:

Clause 17.3 The lessee acknowledges having been informed by the lessors of their intention to sell the building. The lessee acknowledges that the lease will terminate 30 days after receipt of a notice to that effect sent by a purchaser who wishes to repossess the dwelling. The lessee shall vacate the leased premises upon the expiry of that period of time.

On August 31, 2005, Benoit and Céline closed their store and retired.

On September 8, 2005, while visiting the building, André went to the basement to examine the furnace and the oil tank. André asked Benoit, who was present, about the condition of the heating system. Benoit told him that the heating system was new and functioned very well. André therefore did not carry out a more in-depth examination of the heating system.

On September 15, 2005, André signed the following lease with Émilie Nantel and Richard Sirois for the lease of the commercial premises.

LEASE

André Huet, hereinafter referred to as the lessor, leases to Émilie Nantel and Richard Sirois, hereinafter referred to as the lessees, for a period of five years beginning on October 1, 2005, the premises located at 1234 Blais Street, in Sherbrooke, for the operation of a restaurant, in consideration for a monthly rent of \$1,000 payable on the first day of each month as of October 1, 2005.

This lease is conditional upon the signing of the contract of sale of the building to André Huet before October 1, 2005.

The lessees may renew the lease for a further period of five years, at a rent to be negotiated between the parties, provided they give a written notice to the lessor before July 1, 2010.

Signed in Sherbrooke on September 15, 2005

  
 \_\_\_\_\_  
 ANDRÉ HUET, lessor

  
 \_\_\_\_\_  
 ÉMILIE NANTEL, lessee

  
 \_\_\_\_\_  
 RICHARD SIROIS, lessee

On September 30, 2005, by way of notarial deed, André purchases the building from Benoit Groulx and Céline Jobin, who are undivided co-owners. The \$150,000 selling price corresponds to the market value. It is paid in full by André who has just inherited a significant sum following the death of his father.

That same day, André contacts the insurance company La Sérénité in order to ensure the building against fire, as of that date, for a period of one year. The representative for the insurance company asks him the nature of the business operated in the commercial premises, indicating that La Sérénité does not insure buildings in which certain businesses, such as bars, performance halls and restaurants, are operated. André tells himself that the insurance company will not do an on-site check and therefore answers that there will be a shoe store. The insurance premium is paid in full and the policy is issued.

#### As regards the furnace

On October 6, 2005, André contacts a plumber from Sherbrooke, Gilbert Pion, to ask him to tune up the oil furnace located in the building's basement before winter.

On October 14, 2005, after having inspected the furnace, Gilbert Pion calls André to tell him that the furnace and the oil tank are certainly as old as the house. The plumber adds that the oil tank and the furnace were recently repainted.

That same day, André calls Céline to notify her that he has just learned that the furnace and the oil tank have been repainted and are not new. She tells him that she will speak to her husband, Benoit, who will contact him.

On October 16, 2005, given that André has not heard from Céline or Benoit, he writes to them demanding that they replace the furnace and the oil tank.

On October 24, 2005, André Huet receives a letter signed by Benoit Groulx and Céline Jobin in which they deny any responsibility as regards the furnace and the oil tank. The letter states that they never changed anything on the furnace or the oil tank since the purchase of the building and that everything always worked well.

That same day, André goes to Sherbrooke to see the condition of the furnace and to meet with Gilbert Pion. At that time, André signs a contract, at a price of \$8,500, with Gilbert Pion for the purchase and installation of a furnace and oil tank which are to be delivered and installed on November 2, 2005.

On November 2, 2005, Gilbert Pion installs the furnace and oil tank.

#### QUESTION 7

Can André Huet ask from Céline Jodoin and Benoît Groulx the reimbursement of the amount of 8 500 \$? Justify 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.

As regards the lease for the 2 <sup>nd</sup> floor
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On October 5, 2005, André sends a letter to his lessee, Denis Maheu, informing him of his purchase of the building and asking him to henceforth make all subsequent rent payments to him. In this letter, which is sent by registered mail, he also notifies Denis Maheu of his intention to repossess the dwelling for his daughter Françoise and, accordingly, he asks him to vacate the dwelling on November 30, 2005. This letter is received by Denis on October 6, 2005.

On October 13, 2005, André receives the rent cheque for October, without any comment from Denis, as well as a cheque dated November 1, 2005 for the November rent.

On November 30, 2005, André receives a cheque for the December rent from Denis together with a letter in which the lessee indicates that he does not intend to vacate his dwelling on November 30, 2005. Denis also complains about the odours emanating from the restaurant on the ground floor.

#### QUESTION 8

As of today's date, December 22, 2005, can André Huet evict Denis Maheu from the second floor dwelling? If so, explain how. If not, state on what date and to what condition he will be able to do so. In any case, justify 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.

As regards the lease for the ground floor
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On October, 15 2005, Émilie Nantel and Richard Sirois open the restaurant on the ground floor of the building and pay the October rent.

On October 31, 2005, Émilie calls André and tells him that they incurred a lot of expenses following the opening of the restaurant and that their working capital is all used up. She asks him whether she can delay payment of the rent until November 15<sup>th</sup>. André accepts.

On November 16, 2005, given that André has not received payment of the November rent, he calls Émilie who tells him that the restaurant is not working out as expected and that they have found someone who has agreed to sublease the premises. As regards the November rent, she offers to pay her half, adding that she is not responsible for the other half which should be paid by Richard.

André does not agree that she is responsible for only half and he insists that she pay the November rent in full. He knows quite well that Richard is insolvent, unlike Émilie. As for the sublease, he tells Émilie that he will have to obtain the name of the sublessee and information regarding his creditworthiness. Émilie answers that they do not need his authorization for the sublease because the lease does not mention anything on this subject.

To date, only the October rent has been paid.

#### QUESTION 9

- a) Can André Huet require payment of the entire amount of the November rent from Émilie Nantel? Justify 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.
  
- b) Is Émilie Nantel right to pretend that André Huet's authorization is not required as regards the sublease because the lease does not mention anything on this subject? Justify 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.

**As regards the insurance policy**

On October 24, 2005, André contacts the insurance company La Sérénité to find out if it has any specific requirements regarding the new heating system to be installed in the building. When speaking with the representative, he explains that a spill of heating oil could have an adverse effect on the clientele of the restaurant operated in the building. The insurer's representative asks him for details about the business, because the file mentions a shoe store. André explains that the nature of the business changed and that there has been a restaurant since October 15, 2005.

The representative of the insurance company asks him to send him a copy of the lease and adds that he will submit this information to his supervisor. That same day, André faxes him a copy of the lease for the commercial premises.

On November 2, 2005, André receives a letter from the insurance company La Sérénité with a cheque for \$1,452. The insurer notifies him that it is cancelling the insurance policy for the building and reimbursing the amount of the premium, because he failed to declare the genuine nature of the business operated in the building in his declaration dated September 28, 2005.

André tries to insure the building with another company. When he states the reasons for the refusal by La Sérénité, in answer to a question from the other insurer's representative, he is informed that his application has been refused.

He contacts an insurance broker who tells him that he can find an insurer, but that the premium will be much higher than that set by the insurance company La Sérénité.

André has not yet cashed the cheque from La Sérénité and does not understand why an insurer can unilaterally cancel an insurance policy that has been issued and is still in effect.

**QUESTION 10**

Can La Sérénité unilaterally cancel André Huet's insurance policy? Justify 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.

FILE 3 (4 MARKS)
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You have been practicing law for several years in a firm specializing in administrative and disciplinary law. M<sup>e</sup> François Murat consults you and explains the professional situation in which he finds himself.

M<sup>e</sup> Murat was notified by the syndic of the Barreau du Québec that he was the subject of an inquiry regarding certain aspects of his professional practice. In connection with the inquiry, the syndic asked him on several occasions to contact him in order to provide certain information and documents required for an analysis of the file. Furthermore, M<sup>e</sup> Murat was called to appear at the office of the syndic, but he never did so.

M<sup>e</sup> Murat, who states that he is an experienced lawyer, is unclear about the inquiry of which he is the subject and wants your help and advice.

M<sup>e</sup> Murat tells you that, for several years, he has redirected his practice in order to develop a field of practice that brings him substantial fees.

With the help of his brother, who is a genealogist, M<sup>e</sup> Murat finds the heirs of vacant or unclaimed successions. He then contacts the potential heirs and informs them that if they retain his professional services, they could inherit substantial amounts, upon the payment of fees which he has established at 45% of the amount collected. He tells them that, if required, he will draft the necessary legal proceedings to establish their rights.

M<sup>e</sup> Murat tells you that he pays his brother an amount equal to 15% of the fees collected by him in connection with these types of files.

He also tells you that, on at least three occasions, he borrowed from the heirs amounts of money that he had collected for them, but he assures you that he paid them interest equivalent to that paid by the banks.

Finally, M<sup>e</sup> Murat informs you that he has still not replied to the syndic's requests because he does not see the urgency of doing so.

M<sup>e</sup> Murat wants your opinion regarding his professional conduct in light of the facts and behaviour he has related to you.

#### QUESTION 11

State FIVE breaches of the rules of ethics and professional practice committed by M<sup>e</sup> François Murat. For each breach, justify your answer by referring:

- (a) to the specific facts contained in the fact pattern;
- (b) to one or more specific and relevant legislative or regulatory provisions.

Please note that 1 mark out of 4 marks will be awarded to students who have not added any irrelevant or incorrect breach.