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**CERTIFIED PUBLIC ACCOUNTANT  
FOUNDATION LEVEL 1 EXAMINATIONS  
F1.2: INTRODUCTION TO LAW  
DATE: WEDNESDAY 28, FEBRUARY 2024  
MARKING GUIDE AND MODEL ANSWERS**

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## QUESTION ONE

### Marking Guide

SN	Distribution of Marks	Marks
(a)	Award 1 mark for identifying the issue, 1 mark for its influence to the formation of law and 1 mark for its relationship with the formal sources	3
(b)	Award 1 mark for explaining how social contract led to the formation of government, 1 mark for explaining how the government works and 1 mark on how the formal sources are all anchored in the government	3
(c)	Award 1 for explaining what is material source and 2 marks each for any 4 material sources well explained	9
(d)	Award 1 mark each for any 3 values well explained and 1 mark each for any 2 examples of material sources	5
	<b>Total</b>	<b>20</b>

### Model Answers

#### a) The candidate is expected to demonstrate knowledge and understanding of the material sources of law in Rwanda

- The case is scenario is about a social contract which is regarded as the mind behind the creation of governments as they exist today;
- Social contract is one of the material sources of law which is considered to having great influence on the very origin of law as the state of nature provided both opportunities and equally challenges of the common will of people which was not fettered;
- The social contract demonstrated that people can be united against a common thread but cooperation becomes very difficult when self-interest is involved hence the desire for a standard norm to regulate and control social behavior;
- Social contract is believed to having contributed to the formation of a government to which the people donated their powers to safeguard the general interest of the society my adopting and defending people's rights through an organized entity called the government;
- In the very process of government formation there was a realization that men and women must enter into a binding agreement and a adopt a common document (constitution) which shall order the entire society and to which each person must be bound;
- The very constitution created the government (Legislature, Executive and Judiciary) national armed forces, national police and other institutions to regulate behavior in the society.

**b) The candidate is expected to demonstrate knowledge and understanding of social standard (social contract) a material source of law**

- The social contract demonstrated that people can be united against a common thread but cooperation becomes very difficult when self-interest is involved hence the desire for a standard norm to regulate and control social behavior;
- Social contract is believed to having contributed to the formation of a government to which the people donated their powers to safeguard the general interest of the society by adopting and defending people’s rights through an organized entity called the government;
- In the very process of government formation there was a realization that men and women must enter into a binding agreement and a adopt a common document (constitution) which shall order the entire society and to which each person must be bound;
- The very constitution created the government (Legislature, Executive and Judiciary) national armed forces, national police and other institutions to regulate behavior in the society.

**c) The candidate is expected to demonstrate knowledge and understanding on the various material sources**

**Social Standards**

- The social contract demonstrated that people can be united against a common thread but cooperation becomes very difficult when self-interest is involved hence the desire for a standard norm to regulate and control social behavior;
- Social contract is believed to having contributed to the formation of a government to which the people donated their powers to safeguard the general interest of the society my adopting and defending people’s rights through an organized entity;
- The ‘right’ very often endeavors to re transcribe social rules to transform them into legal provisions. Example: the question of the homosexual couples and its legal recognition: gradually society admits the existence of the homosexual couples and more and more reserves a legal framework for them i.e. today, the PACS (Civil Pact of Solidarity);
- Of course, the right is not always in phase with society, there can sometimes be a rather long time between the evolution of manners and the evolution of the laws (e.g. 1975 only: lifting of the prohibition of abortion).

**The Economic Theory**

- More and more economic science takes importance in our society and more and more the right takes as a starting point the economic theory;
- The aspect of equal distribution of the natural resources of the society lead to taxation law which is trying to redistribute the resources in the society equitably;
- All commercial taxes which are levied and collected in various sectors owe their existence on the economic theory.

## Religions

- Religion in all its manifestation inspired to a great extent the formation of law in the society;
- The ten commandments in the Christian religion accelerated the thinking why such set of rules more especially those that can be implemented be considered law and such laws like don't steal, don't kill became part of law which is enforceable allover;
- Equally the sharia law among the Muslim world was adopted and now form a complete legal norm governing the Muslim world, so as to Jews religion and the Hindu religion among many more others;
- They play a rather weak and indirect role, but its influence as a material source of law cannot be underestimated.

### **d) The candidate is expected to demonstrate knowledge and understanding on the value of the material sources of law in Rwanda**

- The material source supplies the substance of the rule to which the formal source gives the force and nature of law;
- The formal sources confer upon the rules an obligatory character, while the material sources comprise the actual content of the rule;
- Social contract for instance inspired the society from thinking on how to move out of the state of nature and have a society in which the rights of the people are assured
- The value that the material source has is that it led to the formation of a government which is today the embodiment of the formal sources of law;
- The law and economics movement applies economic theory and method to the practice of law;
- Economic theory asserts that the tools of economic reasoning offer the best possibility for justified and consistent legal practice;
- The law and economics movement offers a general theory of law as well as conceptual tools for the clarification and improvement of its practices;
- Thus, the value of the economic theory is that is led to the development of all commercial legal frameworks;
- Religion has played a significant role in shaping legal systems throughout history;
- In many cultures, religious beliefs and teachings have been incorporated into legal codes and practices, providing a framework for moral behavior and social order;
- The use of religious sources as a basis for law is known as "religious law," and it can be found in various forms in different societies;
- One of the most well-known examples of religious law is Shariah, the Islamic legal system derived from the Quran and the teachings of the Prophet Muhammad. Shariah governs many aspects of Muslim life, including family law, inheritance, and criminal justice;
- Similarly, Jewish law, or Halakha, is based on the Torah and Talmud, and has been used to guide Jewish communities in matters of ritual, morality, and civil law.

- In addition to these specific examples, religious principles have also influenced legal systems in broader ways;
- For example, the Ten Commandments in the Christian and Jewish faiths have been used as a basis for Western legal systems, and many legal codes include prohibitions against murder, theft, and perjury that can be traced back to religious teachings.

## QUESTION TWO

### Marking Guide

S/N	Distribution of Marks	Marks
(a) i	Award 1 mark each for the 2 issues arising from the case scenario	2
ii	Award 1 mark for affirmation and 1 mark for justification	2
(b) i	Award 1 mark for identifying the text and 1 mark for showing how it is a source of law	2
ii	Award 1 mark for any 2 well explained position of the document identified from the scenario	2
iii	Award 2 marks each for the other two sources following the source identified from the scenario	4
(c) i	Award 1 mark for identifying the means of administration and 1 mark for explaining it	2
ii	Award 2 marks for any two means of administration well explained	6
	<b>TOTAL</b>	<b>20</b>

### Model Answers

**(a)(i) The candidate is expected to demonstrate knowledge and understanding on the major legal families of the world**

- The first is about the Muslim legal system which make use of the Sharia law as a law governing the state;
- The second issue is whether the common law prevailing in Rwanda can be applicable in Saudi Arabia;
- The Sharia law prevails and that Harrison Rurangirwa was expected to know that the common law reasoning does not apply in the Muslim world.

**(ii) The candidate is expected to demonstrate knowledge and understanding on the**

#### **Muslim legal system**

- Yes, Harrison did break the Sharia law governing Saudi Arabia;
- Kissing of a girl/lady before marriage is prohibited by the Sharia law which only allows that to happen in a marriage relationship and there is no racial prejudice as alleged by Harrison.

**(b)(i) The candidate is expected to demonstrate knowledge and understanding of the formal sources of law in Rwanda**

- The text is the preamble to the Rwandan constitution of 2003 as it was revised in 2015;
- The constitution is the supreme law of the country and hence the first among the formal sources of law in Rwanda.

**(ii) The candidate is expected to demonstrate knowledge and understanding of the constitution as the basic source of law in Rwanda**

- The constitution is the supreme law of the country and hence the first among the formal sources of law in Rwanda;
- A constitution is a set of rules that guides how a country, state, or other political organization works;
- The constitution may tell what the branches of the government are, what powers they have, and how they work. It may also state the rights of citizens;
- Constitutional law is a branch of public law establishing the norms that govern the political structure of a country, including its head of state, its legislative mechanisms and its judiciary;
- Within the hierarchy of legislation, constitutional law normally takes precedence over other forms of domestic legislation and for this reason it is also sometimes referred to as "Fundamental Law";
- All the laws of the country must be in conformity with the constitution otherwise they shall be declared null and void;

**(iii) The candidate should demonstrate knowledge and understanding of the formal sources of law in Rwanda**

**Organic Law**

- Organic laws are those designated as such and empowered by the Constitution to regulate other key matters in the place of the Constitution;
- Some matters are devolved to the Organic laws by the Constitution such as elections, adding or removing an official language, Rwandan nationality, establishment and functioning of political organizations, the conduct of their leaders Functioning of the Chamber of Deputies, functioning of the Senate, benefits of the President and former Heads of the State, benefits of Cabinet members, procedures by which the Parliament obtains information and conduct oversight over the Government, general provisions of the public institutions and establishment or removal of a specialized court.

**International treaties and agreements ratified by Rwanda**

- Organic laws on the other hand are passed by a three fifths (3/5) majority vote of Senators.

**(c) (i) The candidate is expected to demonstrate knowledge and understating on the means of administration.**

- Material means of administration is the means brought out in the case scenario;
- Material means concerns the public property which is divided into two categories i.e. property in the public domain of the State which is not transferrable (extra commercium) and property in the private domain of the State which are transferrable/alienable (in commercium).

**(ii) The candidate is expected to demonstrate knowledge and understating on the means of administration**

**Legal means:**

- These are the acts posed by the administration in the context of performance of the mission assigned to it by the law;
- They may include orders (Presidential order, PM’s order, Ministerial order), regulation (National Bank of Rwanda regulations, Rwanda Utilities Regulatory Authority regulations), instructions (Ministerial instructions, Mayor of the District instructions, etc.) and decisions.

**State personnel:**

- These are State employees under statutes who are empowered by law to serve and they must be respected;
- State employees range from the police, the military, the judicial officers, cell leaders etc.

## QUESTION THREE

### Marking Guide

SN	Distribution of Marks	Marks
(a)(i)	Award 1 mark each for the type of court with the jurisdiction and 1 mark for the specific court or chamber	2
(ii)	Award 1 mark each for the 3 offences identified in the case study	3
(iii)	Award 1 mark each for any 4 offences tried by the court identified in the case study	4
(b) (i)	Award 1 mark each for type of court and 1 mark for the specific court, 1 mark for any 5 issues identified and 1 mark each for any 2 pieces of advice	7
(ii)	Award 1 mark each for any 4 other matters tried by the court identified in the case study	4
	<b>TOTAL</b>	<b>20</b>

### Model Answers

**(a)(i) The candidate is expected to demonstrate knowledge and understanding on the jurisdiction of courts in Rwanda**

- Considering the offences committed, the Intermediate Court has the jurisdiction to hear the case;
- Intermediate Court, chamber for minors and family in the first instance has the jurisdiction because a minor is among the suspect.

**(ii) The candidate is expected to demonstrate knowledge and understanding on the Jurisdiction of specialized chambers at the Intermediate Court level**

- Domestic violence;
- Abortion;
- Infanticide
- Spousal homicide.

**(iii) The candidate is expected to demonstrate knowledge and understanding on the Jurisdiction of specialized chambers at the Intermediate Court level**

The specialized chamber for minors and family tries at the first instance the following offences:

- Any offence committed by a minor at the time of commission of such an offence, his/her co-perpetrators and accomplices, except those tried at first and last instances by the Supreme Court;
- Domestic violence ;
- Abortion;
- Infanticide ;
- Parricide ;
- Spousal homicide.

- The specialized chamber for minors and family also hears, at first instance, applications seeking an order for abortion provided under law.

**(b) (i) The candidate is expected to demonstrate knowledge and understanding on the jurisdiction of specialized courts**

The Commercial Court hears in the instance, all commercial, financial and fiscal cases and other related matters in connection with:

- Disputes arising from commercial contracts or commercial activities between individuals or business entities
- Disputes arising from the use of negotiable instruments
- Disputes arising from contracts between individuals and financial institutions
- Dispute related to liquidation, dissolution and recovery of business firms facing bankruptcy
- Disputes related to taxes and duties

**(ii) The candidate is expected to demonstrate knowledge and understanding on the jurisdiction of commercial courts in Rwanda**

The Commercial Court hears in the instance, all commercial, financial and fiscal cases and other related matters in connection with:

- Disputes arising from commercial contracts or commercial activities between individuals or business entities;
- Disputes arising from the use of negotiable instruments
- Disputes arising from contracts between individuals and financial institutions
- Dispute related to liquidation, dissolution and recovery of business firms facing bankruptcy
- Disputes related to insurance with the exception of those related to accident compensation claimed from insurance companies by those who have no contract with such companies
- Disputes related to taxes and duties
- Disputes related to the transportation of persons and goods
- Any disputes that may arise between persons who own or manage registered entities and other business companies namely:
  - ✓ Members of the Board of Directors
  - ✓ Directors
  - ✓ Auditors
  - ✓ Liquidators of a dissolved company
  - ✓ Administration of the property of a bankrupt firm
- Disputes related bankruptcy
- Cases related to intellectual property
- Disputes related to registration and deregistration of business people from commercial registers
- Disputes related to the appointment or dismissal of auditors of firms
- Disputes related to business competition and consumer protection

- Business-related issues arising in cooperative organizations
- Any dispute arising in the preparation and execution of administrative contracts between public organs and the private sector on business and financial affairs
- Cases related to public tenders.

#### QUESTION FOUR

SN	Distribution of Marks	Marks
(a)(i)	Award 1 mark for affirmation and 1 mark each for identifying 3 matters which cannot be arbitrated	4
(ii)	Award 1 mark each for any 4 enumerated features of arbitration	4
(iii)	Award 2 marks each for any two differences between negotiation and mediation	4
(b) (i)	Award 1 mark each for any 2 legal issues identified from the case scenario	2
(ii)	Award 1 mark for the affirmation and I mark for justification	2
(iii)	Award 1 mark each for any 4 conditions upon one can be vicariously liable for an act of a third party	4
	<b>Total</b>	<b>20</b>

#### Model Answers

##### (a)(i) The candidate is expected to demonstrate knowledge and understanding on the law of arbitration

- No arbitration cannot be used to resolve the dispute relating to marital status as demonstrated in the scenario;

Arbitration is not permissible in following matters:

- Matrimonial causes;
- Matters relating to status;
- Criminal cases,

##### (ii) The candidate is expected to demonstrate knowledge and understanding on the salient features of arbitration

Four significant features of commercial arbitration are singled out. These features are:

- The agreement to arbitrate;
- The choice of arbitrators;
- The decision of the arbitral tribunal;
- The enforcement of the award.

**(iii) Candidates are expected to demonstrate knowledge and understanding on the difference between negotiation and mediation as ADR**

- Negotiation is any form of communication between two or more people for the purpose of arriving at a mutually agreeable solution while mediation is a non-binding process in which an impartial third party facilitates the negotiations process between the disputants and it is that impartial third party who is called the mediator;
- In a negotiation the disputants may represent themselves or they may be represented by agents and whatever the case, whether they are represented or not represented, they have control over the negotiation process while in mediation the mediator has no decision-making power and the parties maintain the control over the substantive outcome of the mediation;
- In negotiation it is the two parties alone, without a neutral third party that have to solve the dispute while in mediation the mediator with the assistance of the parties will control the process and he will with the consent of the parties set and enforce the ground rules for the mediation process.

**(b) (i) The candidate is expected to demonstrate knowledge and understanding on the liability for the acts of others under the law of tort**

- Shooting of Byiringiro Alexis by the security guard (Mutimura Jean) of Equity bank;
- Who is liable to compensate Byiringiro Alexis (Equity Bank or Mutimura Jean);
- Who shall be responsible for medical bill.

**(ii) The candidate is expected to demonstrate knowledge and understanding on liability of masters for the action of the third parties.**

- Yes, the action of Mutimura Jean was done on behalf of Equity Bank
- Mutimura Jean is an employee of Equity Bank and therefore he was very alert and protective to ensure that the money which was delivered to the bank was safe;
- The gun used by Mutimura is provided by Equity Bank and therefore there is no way for Equity Bank to exonerate itself.

**(iii) The candidate is expected to demonstrate knowledge and understanding conditions for the liability of a master/commettant for wrongs of a domestic and agent (worker) respectively**

- Relationship of subordination. The fault of the domestic or agent (worker);
- The damage is supposed to be caused to a third party, that is to say, any other person other than the master/commettant;
- A relationship between the act of the domestic or agent and the functions which they do e.g. a domestic servant who injures somebody who is near him while he is cutting a fish or if a server in a restaurant drops a hot pot of coffee on you and burns you, the restaurant is liable for the server's actions;
- It must be clear as to the one is in control when injury is caused so as to ensure that independent contractors are not treated as agents/worker.

## QUESTION FIVE

### Marking Guide

SN	Distribution of Marks	Marks
(a)(i)	Award 1 mark for affirmation, 1 mark for the justification, 1 mark for identifying the law which would have been violated had the dogs actually cost injury to Annette and 1 mark for culpability	4
(ii)	Award 2 marks each for any 4 well explained characteristics of reparable damage	8
(b) (i)	Award 1 mark for the nature of the contract and 1 mark each for the 2 options available to Nkubara Seth	3
(ii)	Award 1 mark each for any 5 vitiating factors of a contract	5
	<b>Total</b>	

### Model Answers

**(a)(i) The candidate is expected to demonstrate knowledge and understanding on the liability for personal acts under the law of tort**

- Annette has got no any rationale of taking Nkubara to court;
- The culpability for Nkubala can consist in the fault as violation of a rule;
- Since the dogs notwithstanding the fear, they caused no harm and thus there was no violation of any rule;
- If they would have caused injury to Annette then Nkubara would have been held responsible for the tort of negligence under the civil law in which case he was to compensate Annette for the injury sustained.

**(ii) The candidate is expected to demonstrate knowledge and understanding on the characteristics of reparable damage under the law of tort**

**The damage must be actual and certain**

- The damage to be certain means that there is no doubt of its reality;
- In order to be compensated, the victim must prove the existence of the damage which he suffered;
- This damage must be certain at the time when the judge is evaluating it in order to facilitate him;
- The eventual damage cannot be indemnified. For example, a father of a child who was killed in an accident cannot claim the compensation related to the benefits invoking that his child could be a President because he was intelligent.

**The damage must consist of the violation of a legitimate interest (legally protected interest)**

- The damage which the victim claims must be a legitimate damage. It is the interest which is protected by the law that will be considered;
- For example, the owner of a property has a right to request for indemnity because he has a right to property (interest protected by the law);
- On the contrary, an illegitimate interest that is not protected by the law cannot be indemnified;
- For example, a lady living with a boyfriend (without a marriage relationship) cannot claim compensation because of the damage that arises from the death of her lover (boyfriend);
- This damage is not a violation of an interest protected by the law.
- **The damage must be direct;** The damage to be compensated must be the direct and immediate continuation of a faulty behavior;
- This characteristic makes it possible to put aside the reparation of many other consequential damages, which perhaps, could not have been caused by the fault of the author of the damage.

**The damage must be personal**

- The victim must have personally suffered the damage;
- Thus, one must prove that s/he is victim of the damage;
- If the action causes damage to various persons, each of them must prove his/her personal damage.

**(b) (i) The candidate is expected to demonstrate knowledge and understanding on the formation of a contract**

- A voidable contract as a result of misrepresentation;
- Ignore the misrepresentation and the contract is good is one option;
- Avoid the contract on the grounds of misrepresentation and the contract becomes null and void is the second option.

**(ii) The candidate is expected to demonstrate knowledge and understanding on the vitiating factors of a contract**

**Misrepresentation**

- A misrepresentation is a false statement of fact or law which induces the other party to enter in to the agreement.
- Generally speaking, such statements have to be made before the contract is entered in to.
- Thus, the requirements of an action for misrepresentation are that it must purport to be statement of fact or law, it must have induced the other party to enter the contract and it must have been a false statement.
- Statements of opinion or of intention are not misrepresentations, as long as the opinion or intention is genuinely held at the time.

## **Mistake**

- Mistakes can be split in to those mistakes which nullify the agreement (common mistake) and those which negate the agreement (mutual mistake).
- At common law, a common mistake will nullify the agreement where the mistake is to the existence of the subject matter (res extincta), a party buys property which he already owns (res sua) or if there has been a mistake as to the quality which renders the contract impossible to perform or if it is rendered radically different.
- Mutual mistake where the parties are at across purposes but neither is aware of this prevents the contract from arising as there is no consensus ad idem.

## **Duress**

- The parties must enter in to a contract willingly if it is to be enforceable however there are situations where this may be in question. This is the case where Duress or Undue Influence may have been exerted over one of the contracting parties.
- Duress was originally based on threats of physical violence; however, the modern doctrine requires that the victim be subjected to pressure amounting to compulsion of the will and that the pressure was illegitimate, taking in to account the nature and of the threat. The modern doctrine manifests itself as economic duress covers situations where there are more subliminal threats rather than overt threats of physical violence.
- A threat to commit a lawful act can sometimes amount to unlawful duress.

## **Undue influence**

- Equity recognizes that contracts may be set aside for undue influence.
- Undue influence may be actual or presumed.
- If undue influence is to be presumed there must be a relationship which gives rise to the presumption and something about the transaction which requires an explanation.
- Undue influence will be presumed irrebuttable where certain relationships exist.
- Examples include solicitor/client, doctor/patient, and parent/child. A rebuttable presumption will apply in other relationships if it can be shown one party dominated the other.
- Where a loan is secured by a person who is not in a commercial arrangement with the debtor, the lender is put on notice that undue influence may be presumed.
- The contract of security will in such a situation may be set aside if there has been any undue influence or misrepresentation by the debtor, unless the lender has made sure that the person providing the security has received independent legal advice before entering in to the contract.

## **Unconscionability**

- A contract which is one-sided or oppressive that is considered morally or ethically unacceptable

## QUESTION SIX

### Marking Guide

SN	Distribution of Marks	Marks
(a)(i)	Award 1 mark for the affirmation and 1 mark for justification	2
(ii)	Award 1 mark for the affirmation and 1 mark for justification	2
b)	Award 1 mark for affirmation and pointing out the reason and 1 mark for the mode of discharge	2
c)	Award 2 marks on how the contract will be discharged by K and 2 marks on how A can enforce the contract	4
d) i)	Award 0.5 mark for identifying the issue and 0.5 mark for the arrangement	1
d) ii)	Award 0.5 mark for stating if Ngabo can take Ngamije to court and 0.5 marks for identifying the arrangement	1
e) i)	Award 1 mark for identifying the arrangement, mark for reasons and 1 mark each for any 4 elements of the contract of sale of goods well explained	6
e) ii)	Award 1 mark for the affirmation and 1 mark for justification	2
	<b>Total</b>	<b>20</b>

### Model Answers

a) i) **The candidate is expected to demonstrate knowledge and understanding on the discharge of a contract**

- The seller cannot convince the court;
- Already the buyer has shown interest of shipping 15,400 tonnes and nothing can stop him from making arrangement for the remaining balance.

ii) **The candidate is expected to demonstrate knowledge and understanding on the discharge of a contract**

- The seller cannot be discharged from the contractual obligation;
- The buyer has demonstrated through the nomination of the sub-buyer who has the capacity to carry 15,400 tonnes, implying that the remaining balance shall also be shipped.

b) **The candidate is expected to demonstrate knowledge and understanding on the discharge of a contract**

- John Nsigaye cannot be bound by this contract because the contract has been frustrated;
- If it is impossible for any of the parties to the contract to perform their obligations, then the impossibility of performance leads to a discharge of the contract.

**c) The candidate is expected to demonstrate knowledge and understanding on the discharge of a contract**

- Since the taxation was raised after the contract was entered the contract shall be discharged as a result of impossibility of performance;
- While the following conditions are satisfying the act, it should have become impossible after the formation of the contract.
- The impossibility should have been caused by a reason of some event which was beyond the control of the promissory;
- The impossibility must not be the result of some act or negligence of the promisor(K) himself;
- The above reason is also applicable to A because the contract has been frustrated by impossibility resulting from increasing the taxes.

**(d) i) The candidate is expected to demonstrate knowledge and understanding on the contract of sale of goods**

- The above scenario is about a contract of sale of goods where the goods(cow) was to be sold;
- Given that the price which is consideration the rights of ownership would not be transferred and the ownership of the cow remained with the seller and not the buyer;
- The above arrangement is an agreement to sale.

**ii) The candidate is expected to demonstrate knowledge and understanding on the contract of sale of goods**

- Ngabo would not succeed to take Ngamije to court because the sale was absolute and there was nothing which was remaining to be done;
- Upon the payment, the ownership of the cow was immediately transferred from the seller to the buyer;
- This a case of a sale as opposed to an agreement to sale espoused above.

**(e) i) The candidate is expected to demonstrate knowledge and understanding on the elements of a contract of sale of goods**

- The arrangement is about a sale under the contract of sale of goods;

**Elements of contract of sale of goods**

- The presence of two parties is a must. As is the case with a contract, there must be at least two parties in the contract of sale. One shall become the seller and the other a buyer;
- The clauses therein present in the contract of sale must limit their scope to only the movable property. This “movable property” may constitute existing goods, goods in the possession or the ownership of the seller or future goods;

- One of the important elements is the consideration of price. A price in value (currency and not in kind) has to be paid or promised. The price consideration or the actual payment could be partly in kind and partly in money but never in kind alone;
- The ownership of the property of goods must change from the seller to the buyer. In the contract of sale, like we saw in the elements of a contract, an offer has to be made and then accepted. The offer is made by a seller and then accepted by the buyer.
- The contract of sale may be absolute or conditional.

**ii) The candidate is expected to demonstrate knowledge and understanding on the contract of sale of goods**

- Musanze Super Hotel was not at fault;
- The agreement signed clearly indicated that on delivery demos will be undertaken and Kigali Samsung Limited renegaded on this condition, first by coming late and second by absconding.

## QUESTION SEVEN

### Marking Guide

SN	Distribution of Marks	Marks
a	Award 2 marks each for any 6 differences between a sale and an agreement to sale	12
b	Award 1 mark for affirmation and 1 mark for justification	2
C (i)	Award 1 mark each for any 4 explanations on which amount Sam will pay Dr. Tooth	4
(ii)	Award 0.5 mark for any 4 requirements necessary for the formation of a contract of agency is created	2
	<b>Total</b>	<b>20</b>

### Model Answers

**a) The candidate is expected to demonstrate knowledge and understanding of the differences between a sale and an agreement to sale under the contract of sale of goods**

- When the vendor sells goods to the customer for a price, and the transfer of goods from the vendor to the customer takes place at the same time, then it is known as Sale. When the seller agrees to sell the goods to the buyer at a future specified date or after the necessary conditions are fulfilled then it is known as Agreement to sell;
- The nature of sale is absolute while an agreement to sell is conditional;
- A contract of sale is an example of Executed Contract whereas the Agreement to Sell is an example of Executory Contract;
- Risk and rewards are transferred with the transfer of goods to the buyer in Sale. On the other hand, risk and rewards are not transferred as the goods are still in possession of the seller;
- If the goods are lost or damaged subsequently, then in the case of sale it is the liability of the buyer, but if we talk about an agreement to sell, it is the liability of the seller;
- Tax is imposed at the time of sale, not at the time of agreement to sell;
- In the case of a sale, the right to sell the goods is in the hands of the buyer. Conversely, in agreement to sell, the seller has the right to sell the goods.

**b) The candidate is expected to demonstrate knowledge and understanding on the formation of the contract of agency**

- Yes, the second customer was entitled to the discount;
- When the first customer was given a discount of 35% by mistake and the manager instead of repudiating the sale, he accepted it and hence ratifying the sale and therefore the second customer cannot be denied the discount.

**c) (i) The candidate is expected to demonstrate knowledge and understanding on the formation of the contract of agency**

- Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act;
- The one for whom action is to be taken is the principal and he one who is to act is the agent;
- An agency relationship can be created expressly by agreement. It can also be informally created based on the conduct of the parties;
- An agent is typically viewed as acting for and on behalf of a principal;
- Additionally, the agent is subject to control by the principal;
- An agent can enter a contractual obligation with a third party on behalf of a principal;
- If the agent acts with authority, the principal is contractually bound to the third party;
- If the third party is aware the agent is acting on behalf of a principal only the principal (and not the agent) is bound on the contract;
- The authority for an agent to act on behalf of a principal can be created in several different ways;
- First, a principal can give an agent express authority;
- Second, an agent can have implied authority if the agent reasonably believes, in light of the surrounding facts and circumstances, that she has authority;
- Finally, apparent authority exists if actions (or inaction) of the principal reasonably lead a third party to believe the principal has given the agent authority;
- Carol Gum is employed by Dr. Tooth who pays her a salary;
- Consequently, Dr. Therresse has the ability to control Ms. Akayesu in her employment;
- Additionally, Ms. Carol Akayesu only sees Dr. Theresse's patients so he has control over her workload by virtue of providing patients to Ms. Gum;
- Finally, Dr. Theresse sets the price and collects payment for all services performed in his office including cleanings by Ms. Akayesu;
- Consequently, Ms. Akayesu is acting under the control of and on behalf of Dr. Theresse an agency relationship exists;
- Dr. Theresse is the principal and Ms. Akayesu is the agent;
- Dr. Theresse doesn't permit anyone except himself to quote the cost of dental services;
- Therefore, Ms. Akayesu doesn't have express authority to tell patients the cost of dental services;
- Nevertheless, it is customary for most dental hygienists to quote the cost of dental services to patients;
- However, Ms. Akayesu is aware this customary practice is inapplicable in Dr. Theresse's office since he has communicated to her that only he is permitted to tell patients the cost of dental services;
- Dr. Theresse has not told patients that in his practice Ms. Akayesu is not permitted to quote the cost of dental services on his behalf;

- Consequently, a patient could reasonably assume that the customary practice of a dental hygienist telling the patient the cost of dental services applies to Dr. Theresse;
- The failure of Dr. Theresse to inform patients that his practice operates differently can be viewed as inaction by a principal (Dr. Theresse) that reasonably leads a third party (Sam) to believe the principal's agent (Ms. Akayesu) had authority to tell him the cost of dental services;
- This would establish the existence of apparent authority;
- Acting pursuant to apparent authority, Ms. Akayesu acted on behalf of Dr. Theresse and obligated him to fix Nzakomeza tooth for FRW 50,000;
- Therefore, Nzakomeza probably is only obligated to pay Dr. Theresse FRW 50,000 and not FRW 500,000 for repairing his tooth.

**(ii) The candidate is expected to demonstrate knowledge and understanding on the requirements for formation of the contract of agency**

- **Principal-Agent Relationship:** A contract of agency establishes a principal-agent relationship, where the agent acts as an extension of the principal's authority;
- **Fiduciary Duty:** The agent owes a fiduciary duty to the principal, which includes acting in the principal's best interests, maintaining confidentiality, and avoiding conflicts of interest;
- **Limited Authority:** The agent's authority is limited to the scope defined in the contract. They can only perform actions specified by the principal;
- **Consensual:** Like any other contract, agency contracts require mutual consent and understanding between the principal and the agent;
- **Bilateral Nature:** It involves obligations and rights for both parties—the principal and the agent;
- **Representation:** The agent represents the principal, making decisions or conducting transactions on their behalf;
- **No Personal Interest:** Agents are obligated to prioritize the principal's interests over their own, ensuring no personal gain from the transactions.

**END OF MARKING GUIDE AND MODEL ANSWERS**