



CERTIFIED PUBLIC ACCOUNTANT

FOUNDATION LEVEL 1 EXAMINATIONS

F1.2: INTRODUCTION TO LAW

DATE: WEDNESDAY 27, NOVEMBER 2024

MARKING GUIDE AND MODEL ANSWERS

QUESTION ONE

Marking Guide

QN	GUIDLINE	MARKS
a.i.	1 mark for affirmation and 1 mark for justification	2
ii.	1 mark each for any legal positions well elaborated	3
b.i.	1 mark each for any four issues clearly identified	4
ii.	1 mark each for any three principles well explained	3
c.i.	1 mark for explaining the mode of payment, 1 mark for defining the mode and 1 mark each for any other two modes well explained	4
ii.	1 mark each for any 4 requirements well explained	4
	TOTAL	20

Model Answers

a. i. The candidate is expected to demonstrate knowledge and understanding on Legal personality

- No, the rights have not been violated;
- According to law no 32/2016 of 28/08/2016 governing persons and family, every human being has capacity to have rights and duties from birth to death;
- Given that these people are presumed death they are no longer bearer of rights and duties;
- Legal personality of a natural person is terminated by death or, in the event of absence or disappearance, by a declaratory judgment of death.

ii. The candidate is expected to demonstrate knowledge and understanding on Legal personality

Article 17: Applying to the court for a declaratory judgment of death

- When a person disappears and is yet to be found or has not been identified, any interested person may, by unilateral petition, apply to the court for a declaratory judgment of his/her death.
- When the death is caused by such incidents as shipwreck, air disaster, earthquake or landslides whereby there are grounds to believe that several persons were killed, the death of such persons may be declared in a collective judgment.
- Before deciding on the petition, the judge orders any person who may have information on that disappeared person to provide him/her with such information.
- The order is published in accordance with legal provisions relating to service by publication that applies to the civil procedure.

b.i. The candidate is expected to demonstrate knowledge and understanding on administrative law

- Equality of users because Mukamana was treated differently from Mukeshimana;

- Continuity and regularity in service thus the issue of those installing for leave is not tenable;
- Fairness, by being told to talk well is not fair or payment of any other undocumented payments amounts to corruption;
- Mukamana may file the case in court to compel the authority to provide her with the service.

ii. The candidate is expected to demonstrate knowledge and understanding on general principles of Administrative Law

The five general principles of Administrative Law are:

- **Principle of equality** of the users of public service or equality of users' rights which means citizens have equal right to access the public service;
- **Principle of continuity and regularity** in service's provision which means the public service runs continuously and cannot be halted or stopped merely because the servant is not available;
- The consequence of this principle is that the service, duties and obligations of the State are intrinsically interlinked and the obligations of the past Government are repaid by the Government in place;
- **Principle of fairness of public service** which means any public service must be fair;
- **Principle of adaptation** which means the administration, in providing services to the people must adapt to changes;
- **Principle of legality** which means the decisions of the administration must be legal.

c. i. The candidate is expected to demonstrate knowledge and understanding on types of negotiable instruments

- The mode of payment is through a promissory note (negotiable instrument);
- A negotiable instrument is a written document of monetary value which creates a right, that is transferable to different persons;
- A promissory note on the other hand is an instrument in writing containing an unconditional undertaking, signed by the maker, to pay a specified sum of money to or to the order of a specified person, or to the bearer of the instruments.

Other types of negotiable instruments

- **A bill of exchange** is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time, a specified amount of money or to the order of a specified person, or to the bearer;
- **A cheque** is a clear and unconditional order in writing that is addressed by its signatory to a financial institution and requires to pay on demand a specific amount of money to the drawer or to a specified person or to the bearer.

ii. The candidate is expected to demonstrate knowledge and understanding on the requirements of negotiable instruments

Article 4: Requirements for a negotiable instrument (LAW No 060/2021 OF 14/10/2021 Governing Negotiable Instruments)

A promissory note must:

- Be in physical or electronic form and signed by the maker.;

- Contain an unconditional promise to pay a specified amount of money;
- Be payable on demand, or at a fixed time;
- Be payable to order or to bearer;
- Be addressed to a drawee who must be named or otherwise indicated therein with reasonable certainty.;
- Indicate the date on which it is made.

QUESTION TWO

Marking Guide

QN	GUIDELINES	MARKS
a. i	1 mark for identifying the 2 issues in the arrangement, 1 mark for identifying the owner and 1Mark for justification	4
ii.	2 marks each for any of 3 differences between a sale and an agreement to sale	6
b. i	1 mark for identifying the arrangement, 1 mark for the definition and 1 mark each for the parties in the arrangement	4
ii.	2 marks each for any of 3 characteristics well explained	6
	TOTAL	20

Model Answers

a.i. The candidate is expected to demonstrate knowledge and understanding on the contract of sale of goods

- The issues arising from the case scenario is a contract of sale of goods with the components of a sale and an agreement to sale
- A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price in the form of money.
- A contract of sale may be absolute or conditional.
- In an absolute sale the property in the goods passes from the seller to the buyer immediately and nothing remains to be done by the seller.
- Sale at a counter in the shop is an absolute sale.
- In a conditional contract of sale, the property in the goods does not pass to the buyer absolutely until a certain condition is fulfilled.
- Where the seller transfers the property in the goods immediately to the buyer there is a sale.
- But where the transfer of the property in the goods is to take place at a future time or subject to some condition(s) thereafter to be fulfilled, the contract is called an agreement for sale.
- An agreement for sale becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.
- Every sale originates in an agreement to sell. It is an agreement to sell which gives birth to a sale.

- On a sale, the agreement of sale is completely exhausted and ceases to exist.
- Rukundo Robert is the owner of the company because having paid the prize the ownership of the car was immediately transferred to him.
- Ntwali Diana had taken the car under an agreement to sale and a sale would have taken place at the end of one month and therefore ownership of the car was never transferred to her.

ii. The candidate is expected to demonstrate knowledge and understanding on the difference between a sale and an agreement to sale.

Distinction between a sale and an agreement for sale

The distinction between sale and an agreement for sale is very necessary to determine the rights and liabilities of the parties to a contract. The main points of distinction are:

- **Transfer of property:** In a sale the property in the goods passes from the seller to the buyer at the time the contract is made. But in an agreement for sale the transfer of property takes place at some future time or until some condition is fulfilled.
- In other words, in a sale the buyer becomes the owner of the goods immediately at the time of making the contract. In an agreement for sale the seller continues to be the owner until the agreement for sale becomes a sale.
- **Nature of the contract:** An agreement to sell as an executory contract, is a contract pure and simple and no property passes, whereas a sale is an executed contract plus a conveyance.
- **Risk of loss:** In a sale the buyer immediately becomes the owner of the goods and the risk as a rule passes to the buyer; under an agreement to sell, the seller remains the owner and the risk is with him.
- Thus, under a sale if the goods are destroyed the loss falls to the buyer even though the goods are in the possession of the seller. But under an agreement to sell, the loss will fall on the seller even though the goods are in the possession of the buyer.
- **Consequences of the breach:** On breach of an agreement to sell by the seller, the buyer has only a personal remedy against the seller.
- But if after a sale, the buyer breaks the contract (e.g. resells the goods) the buyer may sue him for delivery of the goods or damages. In an agreement to sell, if the buyer fails to accept the goods the seller may sue for damages only and not for the price.
- On a sale, if the buyer does not pay the price, the seller may sue him for the price.
- **Insolvency of the buyer:** In a sale if the buyer is adjudged an insolvent, the seller in absence of lien over the goods is bound to deliver the goods to the official receiver or any government appointee for that purpose.
- The seller will however, be entitled to a rateable dividend for the price of the goods. In an agreement to sell, when the buyer becomes insolvent before he pays for the goods, the seller need not part with the goods.
- **Insolvency of the seller:** In a sale if the seller becomes insolvent the buyer is entitled to recover the goods from the official receiver or any government appointee for that purpose as the property of the goods is with the buyer.
- In an agreement to sell, if the buyer has already paid the price and the seller becomes insolvent, the buyer can claim only a rateable dividend and not the goods.

- **General and particular property:** An agreement to sell creates a right “in personam” while a sale creates a right “in rem”.
- In case of an agreement to sell the buyer and the seller get remedy against each other in case of a breach of an agreement.
- The agreement for sale creates a right with which only the contracting parties are concerned and not the whole world, whereas in case of a sale the buyer gets an absolute right of ownership and this right of the buyer is recognized by the entire world.
- **Right of resale:** In an agreement for sale, the property in the goods remains with the seller and he can dispose of the goods as he likes, although he may thereby commit a breach of his contract.
- In a sale, the property is with the buyer and as such the seller cannot resell the goods. If he does so, the buyer can recover the goods sometimes even from third parties.

b.i. The candidate is expected to demonstrate knowledge and understanding on the contract of agency

- The arrangement espoused in the case scenario is a contract of agency;
- Agency is a relationship between two parties created by agreement express or implied;
- The relationship of agency arises wherever one person called the agent has authority to act on behalf of another called the principal;
- The concept of agency emphasizes that one person brings two other persons into a legal relationship;
- It is this power of creation of a relationship between the principal and the third parties that the essential importance of agency lays;
- It may be noted that an agent is not a mere connecting link between the principal and the third parties;
- He has the power to make the principal answerable to the third parties for his conduct;
- The relationship of agency is based upon a contract;
- The contract may be either express or implied.

ii. The candidate is expected to demonstrate knowledge and understanding on the essential elements of a contract of agency

The essential elements of the contract of agency are as follows:

- There should be the appointment by the principal of an agent;
- The principal should confer authority on the agent to act for him;
- The authority conferred must be such as will make the principle answerable to third parties;
- The object of the appointment must be to establish relationship between principal and third parties;
- The relationship of agency, being based on confidence between the principal and the agent, deems that no consideration is necessary.

QUESTION THREE

Marking Guide

QN	GUIDELINES	MARKS
a. i	1 mark for mentioning the formal sources of law, 1 mark for the 3 formal sources of law and 2 marks each for any of 2 explanations on how the President makes law	6
ii	1 mark for affirmation, 1 mark for justification, 1 mark for explaining real right and 1 mark for Mugisha's right	4
b. i	1 mark for the country and 1 mark each for any of three features of common law	4
ii	1 mark for the 2 actions for the 2 and 1 mark each for criminal and disciplinary sanctions	3
iii	1 mark each for any of the 2 types of insurance and 0.5 mark each for any of 2 roles of insurance	3
	TOTAL	20

Model Answers

a. The candidate is expected to demonstrate knowledge and understanding on the formal sources of law

- The main topic of discussion is the formal sources of law;
- In Rwanda, primary sources of Law are established by the Constitution of the Republic of Rwanda of 2003 as revised in 2015 which is itself the primary source of law.

In a nutshell, primary sources of Law are

- Constitution of the Republic of Rwanda of 2003 as revised in 2015;
- Organic law;
- International treaty ratified by Rwanda;
- Ordinary law;
 - Orders and regulations provided for by a law.
- Yes, the president makes the law which is known as a decree Law;
- In case of the absolute impossibility of parliament holding session;
- This is the piece of legislation which is promulgated by the President of the Republic and adopted by the Cabinet in case of absolute impossibility of the Parliament holding session;
- A decree law has the same effect as an ordinary law but they became null and void if they are not adopted by the Parliament at its next session.

b. The candidate is expected to demonstrate knowledge and understanding on real rights

- Yes, Ingabire has a right to evict Mugisha from the house;
- Ingabire being the owner of the house has the right of ownership which is a real right;

- The law protects the right of ownership against in the whole world intending to interfere with it;
- Mugisha has a personal right which is known as possession but at the will of Ingabire who is the owner.

c. The candidate is expected to demonstrate knowledge and understanding on major legal families of the world

- The country to file the divorce is Kenya where the marriage was solemnized; or Rwanda if the couple is residing there
- Kenya is a common law system and Rwanda is from traditional civil law even if it is now an hybrid legal system (common and civil);
- The legal system prevalent in Kenya is the common law system;
- The common law family embraces the law of England and Wales;
- Its wide expansion throughout the world came as a result of colonization or expansion. Most English-speaking countries in the world are common law jurisdictions.

The essential features of the common law system are the following;

- It is basically judge made law or Precedent-based system
- The common law was formed primarily by judges who had to resolve individual disputes;
- Secondly, the legal rule in the common law system is one which seeks to provide the solution to the case in hand. It does not seek to formulate a general rule of conduct.

d. The candidate is expected to demonstrate knowledge and understanding on the legal sanctions

- Mugabo should be arrested and be prosecuted for committing a crime (embezzlement);
- Gashugi should be disciplined by the ministry for not doing his work diligently.

Legal sanctions

- Mugabo shall face the **criminal sanctions and disciplinary sanctions**;
- Criminal sanctions are applied when an act which is defined by the Law as an offence and whose penalty is defined by the same law is committed;
- Penalties in Rwanda for example in case of a criminal conduct (offense) range from fine, community service to imprisonment.
- Gashugi shall **face disciplinary sanction**;
- Disciplinary sanctions are such as those extended to employees of the civil service, judges and other magistrates as well as soldiers who do not conform to the duties of their functions;
- These sanctions range from the warning, temporary suspension and in extreme cases the exclusion from service.

e. The candidate is expected to demonstrate knowledge and understanding on insurance and its role in the society

Types of insurance;

- Fire insurance;
- Life insurance.

The following are roles played by insurance:

- The focus has been to stick to the traditional roles of insurance in community, which are to spread risk, and if the risk materializes, to spread the resulting loss but at the same time making diverse the range of products provided;
- Incidental to this task, but increasingly a significant subordinate task of insurance in itself, has been the management of risk and the prevention of loss;
- By providing contingent promises insurers offer a risk management tool enabling those who are least able to bear the risk to transfer, at a cost, those risks to those who are able to manage them;
- With the vulnerabilities to natural disasters in this region, people are exposed to their risks and consequent income fluctuations. Taking insurance cover can offset this;
- Life insurance companies mobilize savings from the household sector and channel them to the corporate and public sectors;
- The key difference between banks and life insurers is that the maturity of liabilities in banks is generally shorter than those of life insurance companies;
- This enables life insurers to play a large role in long-term financing. At the same time, life insurers' portfolios are typically more liquid than those of banks, making them less prone to liquidity crises.

QUESTION FOUR

Marking Guide

QN	GUIDELINES	MARKS
a.	1 mark each on any of 6 positions well expounded	6
b.	2 marks each for any of 2 grounds well explained	4
c.	1 mark for affirmation and 1 mark for justification	2
d.	2 marks for any of 4 grounds for refusing recognition or enforcement of the arbitral award.	8
	TOTAL	20

Model Answers

a. The candidate is expected to demonstrate knowledge and understanding on appointment of arbitrator or jury of arbitrators.

(Law N° 005/2008 of 14/02/2008 Law on arbitration and conciliation in commercial matters)

Article 13: Appointment of arbitrator or a jury of arbitrators

- No person shall be denied by reason of his or her nationality from acting as an arbitrator, unless otherwise agreed by the parties to the arbitration agreement;
- The parties to arbitration agreement are free to agree on a procedure of appointing the arbitrator or a jury of arbitrators, without prejudice to provisions of paragraphs 4 and 5 of this Article;
- Failing such an agreement, by the parties an arbitration tribunal must be composed of three (3) arbitrators, each party who sought assistance of an arbitrator shall choose one arbitrator, and the two arbitrators thus shall choose the third arbitrator; if a party fails to choose the arbitrator in a period not exceeding fifteen (15) days from receipt of a written request sent by the yet chosen arbitrator, or if the two arbitrators fail to agree on choosing the third arbitrator within fifteen (15) days after their appointment, the appointment shall be made, upon request of a party who sought assistance of the arbitrator, by the court;
- In case the arbitrator is one, and the parties who sought assistance from the arbitrator fail to agree over him or her, the arbitrator shall be appointed by the court mentioned in Article 8 of this Law, upon request by one of parties;
- . Unless the agreement on the appointment procedure of the arbitrators provides other means for securing the appointment, any party among the parties to the arbitration agreement who sought assistance from the arbitration may request the court specified in Article 8 of this Law to take the necessary measure, where the parties to the arbitration agreement agree on the procedure of appointment of arbitrators,(provided in the agreement) and one of the parties fails to respect the terms of agreement in that manner,(procedure agreed) the parties to the agreement or two arbitrators are unable to agree with each other as expected and when requested by such procedure;
- A third party, including a certain institution, fails to perform his or her obligation as such a procedure requires;
- A decision on the matter mentioned in paragraph 3 and 4 of this Article submitted to the court specified in Article 8 shall be subject to no appeal;
- The ordinary court, in appointing an arbitrator, shall consider due regard to any qualifications required of the arbitrator as mentioned by the arbitration agreement;
- It shall also pay due regard to other considerations in the appointment of an independent and impartial arbitrator;
- In case of need of a sole or a third arbitrator, the court shall appoint an arbitrator of a nationality other than those of the parties to the agreement.

b. The candidate is expected to demonstrate knowledge and understanding on the grounds for disqualification of arbitrators

(Law N° 005/2008 of 14/02/2008 Law on arbitration and conciliation in commercial matters)

Article 14: Grounds for disqualification of arbitrators

- When parties to the conflict approach a person with an intention to appoint him or her as an arbitrator, he or she shall disclose all justified circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence;

- From the time an arbitrator is appointed and throughout the arbitral proceedings, he or she shall disclose any such circumstances to the parties unless he or she had informed them earlier;
- An arbitrator may be challenged only if circumstances that exist give rise to justifiable reasons as to his or her impartiality or independence, or if he or she does not possess qualifications agreed to by the parties to the agreement;
- One of the parties who sought assistance from the arbitrator may challenge him, or an arbitrator in whose appointment he or she participated, basing only on reasons of which he or she knew after his or her appointment.

c. The candidate is expected to demonstrate knowledge and understanding on recognition and enforcement of arbitral award

(Law N° 005/2008 of 14/02/2008 Law on arbitration and conciliation in commercial matters)

- No, Kinyanjui will not recognize the award if he can provide proof that impartiality was compromised;
- If he has tangible evidence that the arbitrators were corrupted as indicated then he justified to refuse to recognize the award and in which case he can proceed to court.

d. The candidate is expected to demonstrate knowledge and understanding on the grounds for refusing recognition or enforcement of the arbitral award

(Law N° 005/2008 of 14/02/2008 Law on arbitration and conciliation in commercial matters)

Article 51: Grounds for refusing recognition or enforcement of the arbitral award

Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

- At the required of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:
 - ✓ a party to the arbitration agreement referred to in Article 9 of this Law was under some incapacity; or the said agreement is not valid under the Law to which the parties have subjected it or, failing any indication thereon, under the Law of the country where the award was made;
 - ✓ the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;
 - ✓ the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
 - ✓ the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the Law of the country where the arbitration took place; or e) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the Law of which, that award was made;

- If the court finds that:
- ✓ the subject-matter of the dispute is not capable of settlement by arbitration under the Rwandan Law;
- ✓ the recognition or enforcement of the award would be contrary to the public policy of the Republic of Rwanda.

QUESTION FIVE

Marking Guide

QN	GUIDELINES	MARKS
a.	1 mark for affirmation; 1 mark for justification and 1 mark each for any of the 2 rights	4
b.	1 mark for a minor as the agent, 1 mark for the father and 1 mark for the customer as the third party	3
c.i.	1 mark for mentioning frustration and 1 mark each for explaining the type of frustration and how it brings the contract to an end	3
c.ii	1 mark for mentioning frustration and 1 mark each for explaining the type of frustration and how it brings the contract to an end	3
c.iii	1 mark each for any of 4 well explained ways through which contractual obligations are discharged	4
c.iv	1 mark each for any of 3 types of contracts well explained	3
	TOTAL	20

Model Answers

a. The candidate is expected to demonstrate knowledge and understanding on property

- Yes, Rugabira is justified;
- He is the owner of the car and at no point would Rumongi have the right to sale the car;
- Ownership is the right of disposing of things in the absolute and exclusive manner;
- The right of ownership is considered as a total and an exclusive right strictly reserved to the usage and enjoyment of individuals;
- Rumongi had only a right of possession for a period of one week and nothing more than using it for purposes agreed upon.

b. The candidate is expected to demonstrate knowledge and understanding on the law of agency

- **The 15-year-old minor** is an agent of Bushaija;
- Any person can be an agent;
- In other words, even a minor can be employed as agent and the principal shall be bound by the acts of such an agent;

- But no person who is not of the age of majority and of sound mind can become an agent so as to be responsible to his principal;
- Thus, if an agent is to be held reliable to the principal, he must be a major and of sound mind.
- **The father is the principal**
- The person who is a major and who is of sound mind can employ another person as an agent;
- A person who is of the age of majority and is of sound mind can become a principal;
- The customer is a third party who is brought into a relationship with the principal through the agent;
- In the scenario, the principal cannot even if he would trace the third party recover the extra money.

c.i. The candidate is expected to demonstrate knowledge and understanding on discharge of a contract by frustration and impossibility

- The doctrine of frustration deals with the allocation of risks and losses which occur as result of an unanticipated change in circumstances occurring after parties have entered into a contract;
- Frustration generally arises when a contracting party refuses to perform or has failed to perform its obligations in whole or in part because performance of the contract has become either physically impossible, illegal or is no longer commercially viable;
- The law says that where, after a contract is made, a party's performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption, on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate the contrary;
- The principle is, once the parties had agreed to their various obligations and the contract was valid, then nothing should be recognized as permitting one part to go back on his word;
- The attitude, being strict, was that the parties should have provided for the happening of future difficulties in the wording of the original agreement;
- If not then, it was his own fault for not so providing and he must bear the consequences.

c. ii. The candidate is expected to demonstrate knowledge and understanding on discharge of a contract by agreement

- After the formation of contract, but prior to complete performance, parties may wish to bring their contractual rights and obligations to an end.
- Often this will be due to a change in circumstances of one or both parties and may also be used as part of a dispute resolution mechanism between parties.
- In order to effectively terminate an existing contract, a new agreement must meet all criteria of a binding contract.
- In such a situation each releases the other party from performing. In that way each has given consideration to the other, namely the release, and the second agreement discharges the first. If one party has performed, or partly performed his obligations, in this case it is not sufficient for him merely to say that he releases the other person.

- The reason being that the other person has given no consideration to be executed as his contractual obligations, in other words the second agreement is not a contract at all.

c.iii. The candidate is expected to demonstrate knowledge and understanding on discharge of a contract

CONDITION

- A condition is an event whose happening or non-happening affects a duty of performance under a contract. Some conditions must be satisfied before any duty to perform arises; others terminate the duty to perform; still others either limit or modify the duty to perform. A condition is inserted in a contract to protect and benefit the promisor.
- For example, A promised to pay 100,000 FRW provided that such amount is realized from the sale of an automobile, provided that the automobile is sold within sixty days.
- This condition is known as a precedent condition.
- That is, a contract that is subject to a future event, there cannot be a transfer of property because the future event has not yet occurred.
- In this case, the risk shall always remain with the debtor of an obligation since transfer of property has not yet been done.
- It may also be a subsequent condition when a condition will terminate the contract. Subsequent condition occurs, despite the fact that the contract will have been formed; the occurrence of the subsequent condition renders the contracts without effect.

Discharge by performance

- The performance signifies that the parties have dutifully carried out their respective obligations, thus freeing themselves from further liability.
- The basic rule is that the parties must perform their obligation in exact accordance with the agreed terms of the contract.
- The contract must be performed at the time and place agreed upon.
- If no time is agreed then it must be completed within a reasonable time and that will obviously depend upon the circumstance of the particular case.

Discharge by breach

- A breach of a contract may bring it to an end; in other words, may discharge, or terminate the contract. When one party fails to perform his obligations or performs them in a way that does not correspond with the agreement, the innocent party is entitled to a remedy.
- What form the remedy will take depends on what type of breach the guilty party has committed. In all cases the innocent party is entitled to claim damages, but only in two situations can the contract be regarded as discharged and thus freeing him from performing his own obligations.
- Breach can be fundamental or repudiatory breach

Rescission

- Parties to a contract can file an action requesting for its nullity or rescission if there was error, fraud or violence.

- An agreement of rescission is an agreement under which each party agrees to discharge all of the other party's remaining duties of performance under an existing contract.
- An agreement of rescission discharges all remaining duties of performance of both parties.
- It is a question of interpretation whether the parties also agree to make restitution with respect to performance that has been rendered.
- Rescission of the contract extinguishes not only the rights of the parties therein but also those of their successors in title.

c.iv. The candidate is expected to demonstrate knowledge and understanding on the contracts classified on the basis of legal effect

- By definition a valid contract is one that meets all of the requirements of a binding contract.
- It is an enforceable promise or agreement.
- A void contract is not a contract at all such as an agreement entered into by an incompetent person or by physical compulsion.
- A voidable contract on the other hand, is not wholly lacking legal effect.
- A voidable contract is a contract; however, because of the manner in which the contract was formed or lack of capacity to it, the law permits one or more of the parties to avoid the legal duties created by the contract.
- If the contract is voided, both parties are discharged of their legal duties under the agreement. A party may also have power to ratify a voidable contract and thereby eliminate any power to extinguish the legal relations arising from the contract.

Consequences of avoidance may differ, depending on the circumstances.

- The party who avoids the contract may, in the circumstance, be entitled to be restored to as good a position as that which he occupied immediately before entering the contract; or depending on the circumstances, may be left in the same condition as before the contract.
- If a party cannot be restored to substantially the same original position, the Court may decide there is no power of avoidance.
- In some circumstances, the power of avoidance may be lost by unreasonable delay in manifesting election to avoid or in returning benefits received under a contract

QUESTION SIX

Marking Guide

QN	GUIDELINES	MARKS
a.i.	0.5 mark for the affirmation and 0.5 mark for justification	1
ii	2 marks for any 2 conditions well explained	4
b.	1 mark for affirmation and 1 mark each for any of 4 elements of a contract of sale of goods	5
c.	1 mark each for any of 5 positions on territorial jurisdiction	5
d.	1 mark for affirmation and 1 mark each for any of 4 characteristics of law	5
	TOTAL	20

Model Answers

a.i. The candidate is expected to demonstrate knowledge and understanding on the liability of a Master for wrongs of a domestic worker and agent

- No, he will not be held responsible;
- Stealing is not part of the assignment given to the work for he had been given to buy the banana.

ii. The candidate is expected to demonstrate knowledge and understanding on the liability of a Master for wrongs of a domestic worker and agent

- 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;
- A relationship between the act of the domestic or agent and the functions which they do.

b. The candidate is expected to demonstrate knowledge and understanding on contract of sale of goods

- Yes, he did not buy the house since in the first place the house belonged to him and a sale will require the buyer and seller

Essentials of contract of sale

- **A contract;** The word contract means an agreement enforceable at law;
- It presumes free consent on the part of the parties who should be competent to contract; A compulsory transfer of goods under any Nationalization Act is not a sale;
- The agreement must be made for a lawful consideration and with a lawful object;
- In other words, all the essential elements of a valid contract must also be present in a contract of sale;
- **Between two parties;** To constitute a contract of sale, there must be a transfer or agreement to transfer the property in the goods by the seller to the buyer;

- It means that there must be two persons one the seller and the other the buyer;
- The buyer and the seller must be two different persons, for a man cannot purchase his own goods;
- The parties must be competent to contract;
- **Example:** A partnership firm was dissolved and the surplus assets including some goods were divided among the partners. The Tax Officer wanted to tax this as a sale; The court held that this was not a sale as partners were themselves joint owners of the goods and they could not therefore be both sellers and buyers;
- **Transfer of property;** In a contract of sale there should be a transfer or an agreement to transfer the absolute or general property in the goods sold;
- It contemplates the transfer of ownership in the goods;
- Though passing the title in the goods is an essential ingredient of sale, physical delivery of goods is not essential;
- The sale of goods contemplates the transfer of the general property or title in the goods from the seller to the buyer;
- **Goods;** The subject matter of the contract of sale of goods must be the goods, the property in which is to be transferred from the seller to the buyer;
- Goods of any kind except immovable goods may be transferred. It does not include money and other actionable claims;
- The seller must be the owner of the goods the ownership of which is sought to be transferred;
- **Price;** To constitute a valid contract of sale, consideration for transfer must be money paid or promised;
- Where there is no money consideration the transaction is not a contract of sale as for instance goods given in exchange for goods as remuneration for work or labour;
- However, an existing debt due from the seller to the buyer is sufficient;
- Further there is nothing to prevent the consideration from being partly in money and partly in goods or some other articles of value;
- For example, when an old car is returned to the dealer for a new one and the difference is paid in cash that would also be a sale;
- It may be noted no particular form is necessary to constitute a contract of sale;
- A contract of sale may be made in writing or by words of mouth or may be implied from the conduct of the parties.

c. The candidate is expected to demonstrate knowledge and understanding on territorial jurisdiction

Territorial jurisdiction in criminal courts

- When territorial jurisdiction is challenged in criminal case pending before more than one court, the court with jurisdiction over the case is:
- The court for the place of commission of the offence;
- The court for the accused person's place of residence or domicile;
- The court for the accused's place of arrest;
- The court for the commission of the offence takes precedence over the court for the accused's domicile or residence;

- The court for the accused's place of domicile or residence takes precedence over the court for the place of the accused's arrest;
- Where several persons are jointly prosecuted as offenders or accomplices in the commission of related offences, the court with territorial jurisdiction over the most serious offence has also jurisdiction over other offences.

d. The candidate is expected to demonstrate knowledge and understanding on the characteristics of law

- Umunya's explanation reflect the true meaning of law;
Characteristics of a law
- The law is obligatory, general, authoritative and oriented to the common good;
- **The law is obligatory:** In principle, the law is compulsory;
- However, the intensity of the compulsoriness differs depending on the prohibitive rule or suppletive rule;
- Prohibitive rules are those rules which are binding overall and no one can turn around them. E.g. Tax laws while the suppletive rules leave room to the persons to turn around them. They are only binding if the parties did not decide;
- **The law is authoritative:** The law is to respect. It must be observed even by the persons who did not vote for it;
- The legal rule is a norm whose obligatory force is guaranteed by the actual intervention of the sanctions from the public authority;
- These include civil sanctions which aim at protecting the private interests of the persons, criminal sanctions protecting the society and disciplinary sanctions aiming at adjusting the conduct of the employees;
- **the law is general:** The law is applicable to all. Individual consideration is not taken into consideration and once the persons are individually considered, the law is applicable to this group in an abstract way;
- **the law is oriented to the common good:** The law protects the common good. It deals with the economic, cultural and social development of the members of the society.

QUESTION SEVEN

Marking Guide

QN	GUIDELINES	MARKS
a.	1 mark for material sources, 1 mark for any of 3 material sources and 1 mark for a value of material sources	5
b. i	1 mark for commercial court, 1 mark for the basis and 1 mark for commercial high court and its basis	3
b. ii	1 mark for military court and rationale and 1 mark for military court and its rationale	2
c.	1 mark each for any of 5 legal positions well explained	5
d.	1 mark for agency relationship, 1 mark for agency by implication and 1 mark each for agency relationships created by implication	5
	TOTAL	20

Model Answers

a. The candidate is expected to demonstrate knowledge and understanding on material sources of law

- The topic of discussion is about material sources of law;
- The material sources are the sources of inspiration of law;
- In other words, it is what is at the origin of the legal provision;
- There are, for example, historical sources. The 'right' keeps the memory of its past, it is marked by a rather great continuity, a rather great stability;
- On certain essential questions (contract law, right of the responsibility, etc.), the applicable rules come to us from the old right (the canonical right, Roman law, habits);
- The historical sources are significant.

Various material sources

- **Social standards:** The 'right' very often endeavours to re transcribe social rules to transform them into legal provisions:
- Example: the question of the homosexual couples and its legal recognition:
- **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:
- **Religion:** They play a rather weak and indirect role, today in France, primarily through the historical tradition:
- It is not the case in other countries of the world (p. ex.: Muslim countries).

Value of the material sources

- The material sources are, themselves, never obligatory:
- They inspire the legal provisions, but they are not themselves legal provisions:
- They can be however taken into account to interpret a legal provision and they can clarify the direction.

b.i. The candidate is expected to demonstrate knowledge and understanding on the organization of courts

- Viera has to take Mutoni to the commercial court which is a specialized court
- The Commercial Court hears in the first instance disputes arising from commercial contracts or commercial activities between individuals or business entities;
- Mutoni can take the appeal to the commercial High court
- The Commercial High Court hears on the appeal level judgments rendered at first instance by Commercial Court.

b. ii. The candidate is expected to demonstrate knowledge and understanding on the organization of courts

- Mutoni the high-ranking military officer will be taken to military court which is a specialized court;
- The Military Court has jurisdiction at the first instance over all offences committed on the territory of the Republic of Rwanda and abroad by soldiers irrespective of their ranks, their co-perpetrators and accomplices unless such offences were committed with children or persons tried in the Supreme Court at first and last instance;
- Mutoni can make the appeal in the military High court;
- The Military High Court hears at appeal level all cases tried by the Military Court.

c. The candidate is expected to demonstrate knowledge and understanding on elements of identifying legal person

Article 42: Change of name (Law N°32/2016 of 28/08/2016 Law governing persons and family)

- The change of name falls under the responsibility of the Minister in charge of civil status upon request by the person bearing the name having attained the age of majority;
- In case of a minor, the application for change of name is made at the request of both of his/her parents or other persons who exercise parental authority over him/her;

The application for the change of name is permissible for the following grounds:

- If the name infringes upon the honour of the person bearing it;
- If the name is offensive to good morals or people's moral integrity;
- When the name is used by another person such that it may infringe upon his/her honour or cause injury to his/her property;
- Such other reason as may be deemed valid by the Minister in charge of civil status.

Article 43: Effects of change of name

- The change of name becomes effective from the time the new name is recorded in the register of birth records;
- Documents made under the former name of a person are deemed to be made under the new name;
- The person bearing the name or any other interested person demands that such documents be rectified by indicating the new name.

d. The candidate is expected to demonstrate knowledge and understanding on the creation of agency relationship

- The relationship is of agency created by implication of law;
- The relationship of principal and agent need not be expressly constituted and can arise by implication of law as well;
- Authority to act as an agent can be inferred from the nature of the business, the circumstances of the case, the conduct of the principal or the course of dealings between the parties;
- Thus, if a person realizes rent and gives it to the landlord, he impliedly acts for the landlord as an agent.

Implied agency includes:-

- **Agency by estoppel:** In many cases an agency may be implied from the conduct of the parties though no express authority has been given;
- Thus, where the principal knowingly permits to act in a certain business in his name or on his behalf, such a principal is estopped from denying the authority of the supposed agent to bind him;
- **Agency by holding out:** Where a person permits the other by a long course of conduct to pledge his credit for certain purposes, he is bound by the act of such person for pledging his credit for similar purposes, though in some cases without the previous permission of his master;
- Similarly, where a husband holds out his wife has had his authority by words or conduct and a third-party advance to the wife on the faith of such conduct; the husband is liable for the debts;
- **Agency by necessity:** Sometimes extraordinary circumstances require that a person who is not a really agent should act as an agent of another;
- In such a case although there might not have been an express or implied authority to do an act, the law implies such an authority in favour of that person in account the necessity that has arisen;
- However, before an agency of necessity can be inferred, the following conditions should be fulfilled;
- There should be real and definite necessity for the creation of the agency;
- It should be impossible to obtain the principal's instructions;
- The person acting as an agent should act bona fide and in the interest of the parties concerned.

End of marking guide and model answers