



CERTIFIED PUBLIC ACCOUNTANT
FOUNDATION LEVEL 1 EXAMINATIONS
F1.2: INTRODUCTION TO LAW
DATE: WEDNESDAY 26, APRIL 2023
MARKING GUIDE AND MODEL ANSWERS

QUESTION ONE

Marking guide

a) Comment on the statement “Law is a set of rules of conduct prescribed by a controlling authority and which has a binding force and link it with the case scenario (4 Marks) = 0.5 mark of each well explained statement and a well linked to case

- The phrase ‘prescribed by a controlling authority’ means that the controlling authority declares with authority that something should be done or should not be done or that a rule should be followed. 0.5
- Linking to the case, Mr. Kavuyo through the law determining offences and penalties in Rwanda, the assault is prohibited by the country which is controlling authority 0.5
- Law having ‘a binding force’ means that the law is that which must be respected or complied with by citizens and where the people don’t abide by it, sanctions are attached; 0.5
- Linking to the case related to a binding force, there is the law determining offences and penalties in Rwanda that should be respected; 0.5
- Sanctions which may be criminal, civil or disciplinary mean the penalties or punishments for someone who has done wrong or who has not respected the law; 0.5
- Linking to the case on sanctions, the assault or battery is punished by imprisonment for a term of not less than eight (8) days and not more than two (2) months and a fine of not less than one hundred thousand Rwandan francs (FRW 100,000) and not more than two hundred thousand Rwandan francs (FRW 200,000) if it is unintentionally or imprisonment for a term of not less than three (3) years and not more than five (5) years and a fine of not less than five hundred thousand Rwandan francs (FRW 500,000) and not more than one million Rwandan francs (FRW 1,000,000). If the offence is committed against a child, a parent, a spouse or a person unable to protect himself/herself because of his/her physical or mental state, he/she is liable to imprisonment for a term of more than five (5) years and not more than eight (8) years and a fine of not less than one million Rwandan francs (FRW 1,000,000) and not more than two million Rwandan francs (FRW 2,000,000) if it is intentionally. The penalties change depending on the impact of the offence; 0.5
- Having a character of a rule of conduct implies that it commands what is right and what is wrong; 0.5
- Linking to the case on its character, the assault or battery as far as it is prohibited and punished by the Law determining offences and penalties in Rwanda, it is wrong. 0.5

Maximum marks 4

b) Explain the importance of law and list seven examples of what the law does, in attempting to prevent and resolve conflict in society (10 Marks) = 1 mark of each importance well explained for the maximum of 3 marks and 1 mark of each example listed for the maximum of 7 marks

- The establishment of laws in society is necessary to protect the rights of individuals and to ensure the good order, functioning and survival of the society. 1
- The law is trying to provide answers to the myriad of everyday problems that can arise in society. 1
- The solutions to such problems must accord with objectives that are judged by the community to be socially desirable. 1
- The problems arise in the first place because of the conflicting interests of individuals and groups within the society and the necessity to ensure the functioning and survival of the society itself. 1

seven examples of what the law does, in attempting to prevent and resolve conflict in society

- Control social relations and behavior; 1
- Provide the machinery and procedures for the settlement of disputes; 1
- Preserve the existing legal system; 1
- Protect individuals by maintaining order; 1
- Protect basic freedoms; 1
- Provide for the surveillance and control of official action; 1
- Recognize and protect ownership and enjoyment of the use of property; 1
- Provide for the redress (compensation) of harm; 1
- Reinforce and protect the family; 1
- Facilitate social change. 1

Maximum marks 10

c) Differentiate objective law from subjective law and provide one example each (6 Marks) = 2 marks of each well explained of terms and 1 mark of any example well provided

- Objective law is a set of rules governing persons' conduct in a society, enacted and sanctioned by the public authority. 2
- Subjective law refers to the prerogatives or rights bestowed (given) to a person by the objective law (above). These are rights or privileges belonging to a particular person or a group because of their importance or social position 2
- Subjective law is what we would call subjective rights. The reason why we call it a subjective right is because a right cannot exist on its own. It needs somebody that has the right. It is an issue of who owns what. The one who owns is the subject and what is being owned is the right. 2

- A human being is endowed with a number of rights that he or she enjoys in his relationship with others which is subjective law. 2

Examples of objective law

- Rwandan law; 1
- Belgian law; 1
- Criminal law; 1
- Civil law; 1

Examples of subjective law

- Right to property; 1
- The right to privacy; 1
- Freedom of speech; 1
- Right to life 1

Maximum marks

6

Model answers

a) The student is expected to know the meaning of law and be able to link it with daily life

- The phrase ‘prescribed by a controlling authority’ means that the controlling authority declares with authority that something should be done or should not be done or that a rule should be followed. Linking to the case, Mr. Kavuyo through the law determining offences and penalties in Rwanda, the assault is prohibited by the country which is controlling authority;
- Law having ‘a binding force’ means that the law is that which must be respected or complied with by citizens and where the people don’t abide by it, sanctions are attached. Linking to the case related to a binding force, there is the law determining offences and penalties in Rwanda that should be respected;
- Sanctions which may be criminal, civil or disciplinary mean the penalties or punishments for someone who has done wrong or who has not respected the law. Linking to the case on sanctions, the assault or battery is punished by imprisonment for a term of not less than eight (8) days and not more than two (2) months and a fine of not less than one hundred thousand Rwandan francs (FRW 100,000) and not more than two hundred thousand Rwandan francs (FRW 200,000) if it is unintentionally or imprisonment for a term of not less than three (3) years and not more than five (5) years and a fine of not less than five hundred thousand Rwandan francs (FRW 500,000) and not more than one million Rwandan francs (FRW 1,000,000). If the offence is committed against a child, a parent, a spouse or a person unable to protect himself/herself because of his/her physical or mental state, he/she is liable to imprisonment for a term of more than five (5) years and not more than eight (8) years and a fine of not less than one million Rwandan francs (FRW 1,000,000) and not more than two million Rwandan francs

(FRW 2,000,000) if it is intentionally. The penalties change depending on the impact of the offence;

- Having a character of a rule of conduct implies that it commands what is right and what is wrong. Linking to the case on its character, the assault or battery as far as it is prohibited and punished by the Law determining offences and penalties in Rwanda, it is wrong.

b) The student is expected to know the importance of law and what it does, in attempting to prevent and resolve conflict in society

- The establishment of laws in society is necessary to protect the rights of individuals and to ensure the good order, functioning and survival of the society.
- The law is trying to provide answers to the myriad of everyday problems that can arise in society.
- The solutions to such problems must accord with objectives that are judged by the community to be socially desirable.
- The problems arise in the first place because of the conflicting interests of individuals and groups within the society and the necessity to ensure the functioning and survival of the society itself.

Seven examples of what the law does, in attempting to prevent and resolve conflict in society

- Control social relations and behavior;
- Provide the machinery and procedures for the settlement of disputes;
- Preserve the existing legal system;
- Protect individuals by maintaining order;
- Protect basic freedoms;
- Provide for the surveillance and control of official action;
- Recognize and protect ownership and enjoyment of the use of property;
- Provide for the redress (compensation) of harm;
- Reinforce and protect the family;
- Facilitate social change.

c) The student is expected to know the difference between objective law and subjective law

- Objective law is a set of rules governing persons' conduct in a society, enacted and sanctioned by the public authority.
- Subjective law refers to the prerogatives or rights bestowed (given) to a person by the objective law (above). These are rights or privileges belonging to a particular person or a group because of their importance or social position
- Subjective law is what we would call subjective rights. The reason why we call it a subjective right is because a right cannot exist on its own. It needs somebody that has the right. It is an issue of who owns what. The one who owns is the subject and what is being owned is the right.

- A human being is endowed with a number of rights that he or she enjoys in his relationship with others which is subjective law.

Examples of objective law

- Rwandan law;
- Belgian law;
- Criminal law;
- Civil law;

Examples of subjective law

- Right to property;
- The right to privacy;
- Freedom of speech;

QUESTION TWO

Marking guide

a)

- i) List the hierarchy of law focusing on national primary sources of laws and explain if International Convention prevails over the Organic Law (5 Marks) = 0.5 mark for any well listed on hierarchy of law and 1 mark for comparing well International Convention and the Organic Law

Hierarchy of Law

- Constitution of the Republic of Rwanda of 2003 as revised in 2015; 0.5
 - Organic law; 0.5
 - International treaty ratified by Rwanda; 0.5
 - Ordinary law; 0.5
 - Presidential Orders; 0.5
 - Prime Minister Orders; 0.5
 - Ministerial Orders; 0.5
 - Other public authorities Orders. 0.5
- Basing on the hierarchy of laws of Rwanda, Organic law is above International Treaty ratified by Rwanda. This means that any provision of International Treaty which is contrary to the Organic Law, the provision of that International Treaty is invalid. 1

Maximum marks

5

- ii) Explain if general principle of law can be used for this case and provide two examples of it (4 Marks)= 1 mark of the definition of a general principle of law, 1 mark for well linking with the case and 1 mark each for any well listed example

- The general principle of laws are the principles of law common to the legal systems of the world. 1
- In this case, general principle of laws will not be applied because in Rwanda there is a law prohibiting and punishing narcotic drugs or psychotropic substances and United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 which was ratified by Rwanda which should be used if Rwanda does not have a domestic law related to it because the general principles of law are inferior to the Law. 13
- Some of them are already part of the Rwandan penal code; 1
- In general, general principles of law are not as direct a source of law as the laws they inspire the judge and they are resorted to in the absence of the law. 1

Examples of general principles of law

- The principle of double jeopardy; 1
- The law provides for the future and does not have a retroactive effect; 1
- The principle of permanence and continuity of the state; 1
- It is presumed that no-one is ignorant of the law. 1

Maximum marks 4

iii) Define custom, list the elements of a custom and explain when a custom can be used in courts of Law (8 Marks) = 1 mark for the definition, 0.5 mark for any element well listed and 1 mark each for any situation well explained in which a custom can be used for the maximum of 4 marks

Definition of a custom

- A custom is generally defined as a set of a people’s way of doing things which has acquired an obligatory in a given social group and which is practiced over a relatively long time period. 1
- Customs are practices or usages of a given society. 1
- Customary law is unwritten. 1
- It has to be considered as legally binding on (obligatory by) the people in the society. 1
- A custom is not created as a written law, a unique act, but by a repetition of similar practices especially with the conception that it has a binding (obligatory) force. 1

The essential elements of a custom are:

- The usage 0.5
- Binding force 0.5
- The social consensus 0.5
- The time in which it is applicable 0.5

- But the first two are the ones that are most frequently cited as the ones that form a custom. It is also important to point out that custom can inspire the legislator when modifying or completing an existing law 1

A custom can be used in courts of Law

- When judges are regulating new cases where the existing laws are not clear or incomplete. 1
- When it can also help for the comprehension of a legal text. 1
- It is important to indicate that custom is applicable in the absence of law; 1
- When they are not contrary to the constitution, laws, regulations, public order and good morals. 1
- Custom is just a subsidiary source of law, in the sense that they can inspire the judge and help him in the comprehension of legal texts 1

Maximum marks 8

b) Compare Ordinary Law and Decree Law

- Ordinary laws, which commonly are referred to as the law with sovereign authority in all matters. They apply to all matters which means the Parliament can pass an ordinary law for any matters. 1
- Decree law 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 1
- 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 1

Maximum marks 3

Model answers

- a)**
 - i) The candidate is expected to know the hierarchy of law**

Hierarchy of Law

- Constitution of the Republic of Rwanda of 2003 as revised in 2015;
- Organic law;
- International treaty ratified by Rwanda;
- Ordinary law;
- Presidential Orders;
- Prime Minister Orders;
- Ministerial Orders;
- Other public authorities Orders.

• Basing on the hierarchy of laws of Rwanda, Organic law is above International Treaty ratified by Rwanda. This means that any provision of International Treaty which is contrary to the Organic Law, the provision of that International Treaty is invalid.

ii) The candidate is expected to know when a general principle of law can be used

- The general principle of laws are the principles of law common to the legal systems of the world.
- In this case, general principle of laws will not be applied because in Rwanda there is a law prohibiting and punishing narcotic drugs or psychotropic substances and United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 which was ratified by Rwanda which should be used if Rwanda does not have a domestic law related to it because the general principles of law are inferior to the Law.
- Some of them are already part of the Rwandan penal code;
- In general, general principles of law are not as direct a source of law as the laws they inspire the judge and they are resorted to in the absence of the law.

Examples of general principles of law;

- The principle of double jeopardy
- The law provides for the future and does not have a retroactive effect.
- The principle of permanence and continuity of the state
- It is presumed that no-one is ignorant of the law.

iii) The candidate is expected to define a custom, its elements and to know when a custom can be used in courts of Law

Definition of a custom

- A custom is generally defined as a set of a people's way of doing things which has acquired an obligatory in a given social group and which is practiced over a relatively long time period.
- Customs are practices or usages of a given society.
- Customary law is unwritten.
- It has to be considered as legally binding on (obligatory by) the people in the society.
- A custom is not created as a written law, a unique act, but by a repetition of similar practices especially with the conception that it has a binding (obligatory) force.

The essential elements of a custom are:

- The usage
- Binding force
- The social consensus
- The time in which it is applicable

- But the first two are the ones that are most frequently cited as the ones that form a custom. It is also important to point out that custom can inspire the legislator when modifying or completing an existing law

A custom can be used in courts of Law

- When judges are regulating new cases where the existing laws are not clear or incomplete.
- When it can also help for the comprehension of a legal text.
- It is important to indicate that custom is applicable in the absence of law;
- When they are not contrary to the constitution, laws, regulations, public order and good morals.
- These laws are the principal sources of law. Custom is just a subsidiary source of law, in the sense that they can inspire the judge and help him in the comprehension of legal texts

b) The candidate is expected to know the differences and similarities between Ordinary Law and Decree Law

- Ordinary laws, which commonly are referred to as the law with sovereign authority in all matters. They apply to all matters which means the Parliament can pass an ordinary law for any matters.
- Decree law 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 it becomes null and void if it is adopted by the Parliament at its next session.

QUESTION THREE

Marking guide

a)

i) Discuss the organization of courts in Rwanda (5 Marks) = 0.5 mark for determining ordinary and specialized courts and 0.5 mark of each well listed basing on their hierarchy

- The law determining the jurisdiction of courts establishes ordinary courts and specialized courts 0.5
- **Ordinary courts are:**
- Primary Court; 0.5
- Intermediate Courts; 0.5
- High Court; 0.5
- Court of Appeal; 0.5
- Supreme Court. 0.5

Specialized courts are:

- Commercial Court; 0.5
- Commercial High Court; 0.5

- Military Court; 0.5
 - Military High Court. 0.5
- Maximum marks 5**

b) List five situations whereby second appeal to Court of Appeal is allowed (5 Marks) = 1 mark each situation well listed

The Court of Appeal has also jurisdiction to try at the second level of appeal cases tried by the High Court, the Commercial High Court and Military High Court, if such cases:

- Have an impact on national security; 1
- Have ordered penalties which are not provided by law; 1
- Are decided based on a non-existing law, refer to repealed legal provisions or are tried by a court lacking jurisdiction; 1
- Are decided based on evidence, a document or submissions that were presented after the conclusion of the hearing without any reopening of the hearing; 1
- Are decided by a bench with no required minimum number of judges provided by law; 1
- Were pronounced by a judge other than the one having heard them; 1
- Are not tried in public while no in-camera hearing is ordered; 1
- Have ordered the award of damages of at least seventy-five million Rwandan francs (FRW 75,000,000) or in case of disagreement between the parties, the same amount is ordered by the judge; 1
- Involve a term of imprisonment of at least fifteen (15) years. In criminal cases, reference is only made to the imprisonment sentence given to determine the jurisdiction of the Court of Appeal. 1

Maximum marks 5

c) Respond the competent court to try disputes linked to business activities and provide 5 jurisdictions of that Court (5 Marks) = 1 mark for providing the competent court and 1 mark for each jurisdiction well provided

- Commercial Court of Nyarugenge has the jurisdictions to try disputes related to business 1

The Commercial Court hears in the first 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; 1
- Disputes arising from the use of negotiable instruments; 1
- Disputes arising from contracts between individuals and financial institutions; 1
- Disputes related to liquidation, dissolution and recovery of business firms facing bankruptcy; 1

- 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; 1
- Disputes related to taxes and duties; 1
- Disputes related to the transportation of persons and goods; 1
- **Any dispute that may arise between persons who own or manage registered entities and other business companies namely:**
- Members of the Board of Directors; 1
- Directors; 1
- Auditors; 1
- Liquidators of a dissolved company; 1
- Administrators of the property of a bankrupt firm; 1
- Cases related to bankruptcy; 1
- Disputes related to intellectual property, including trade marks and names; 1
- Disputes related to registration and deregistration of business people from commercial registers; 1
- Disputes related to the appointment or dismissal of auditors of firms; 1
- Disputes related to business competition and consumer protection; 1
- Business-related issues arising in cooperative organisations; 1
- Any dispute arising in the preparation and execution of administrative contracts between public organs and the private sector on business and financial affairs; 1
- Cases related to public tenders; 1
- Tax cases referred to under the East African Community Customs Management Act. 1

Maximum marks 5

d) List the territorial chambers of High Court (5 Marks) = 1 mark for each chamber well listed

- The Chamber in Musanze which has its seat at Musanze; 1
- The Chamber in Nyanza which has its seat at Nyanza; 1
- The Chamber in Rwamagana which has its seat at Rwamagana; 1
- The Chamber in Rusizi which has its seat at Rusizi; 1
- The Chamber which has jurisdiction over international and transnational crimes which has its seat at Nyanza. 1

Maximum marks 5

Model answers

a) Candidate is expected to know the organization of courts

- The law determining the jurisdiction of courts establishes ordinary courts and specialized courts

Ordinary courts are:

- Primary Court
- Intermediate Courts;
- High Court;
- Court of Appeal;
- Supreme Court.

Specialized courts are:

- Commercial Court;
- Commercial High Court;
- Military Court;
- Military High Court.

b) The candidate is expected to know when Court of Appeal can try the second appeal

The Court of Appeal has also jurisdiction to try at the second level of appeal cases tried by the High Court, the Commercial High Court and Military High Court, if such cases:

- Have an impact on national security;
- Have ordered penalties which are not provided by law;
- Are decided based on a non-existing law, refer to repealed legal provisions or are tried by a court lacking jurisdiction;
- Are decided based on evidence, a document or submissions that were presented after the conclusion of the hearing without any reopening of the hearing;
- Are decided by a bench with no required minimum number of judges provided by law;
- Were pronounced by a judge other than the one having heard them;
- Are not tried in public while no in-camera hearing is ordered;
- Have ordered the award of damages of at least seventy-five million Rwandan francs (FRW 75,000,000) or in case of disagreement between the parties, the same amount is ordered by the judge;
- Involve a term of imprisonment of at least fifteen (15) years. In criminal cases, reference is only made to the imprisonment sentence given to determine the jurisdiction of the Court of Appeal.

c) The candidate is expected to know the competent court to try disputes linked to business activities and to know the jurisdictions of that Commercial Court

- Commercial Court of Nyarugenge has the jurisdictions to try disputes related to business

The Commercial Court hears in the first 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;
- Disputes 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 dispute 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;
 - administrators of the property of an bankrupt firm;
- cases related to bankruptcy;
- disputes related to intellectual property, including trade marks and names;
- 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 organisations;
- 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;
- tax cases referred to under the East African Community Customs Management Act.

d) The student is expected to know the chambers of High Court

The territorial chambers of High Court are:

- The Chamber in Musanze which has its seat at Musanze;
- The Chamber in Nyanza which has its seat at Nyanza;
- The Chamber in Rwamagana which has its seat at Rwamagana;

- The Chamber in Rusizi which has its seat at Rusizi;
- The Chamber which has jurisdiction over international and transnational crimes which has its seat at Nyanza.

QUESTION FOUR

Marking guide

a) Explain the conditions of liability of personal acts and take a decision on the case (10 Marks) = 1 mark for each listed condition, 2 marks for explaining well any condition which is allocated 1 mark for 1 explanation and 1 mark for the decision

The conditions of liability of personal acts

- The wrongful act or fault 1
- The damage 1
- The causal relationship 1

The wrongful act or fault

- Culpability: 1
- Fault, violation of a rule A fault, violation of a rule can concern civil, penal, administrative rules 1
- Without a violation of a legal text 1
- Abuse of authority 1
- Imputability 1

The damage:

Various kinds of damages

- Material damage: 1
- Moral damage 1

Characteristics of the reparable damage

- The damage must be actual and certain; 1
- The damage must consist in violation of a legitimate interest (legally protected interest); 1
- The damage must be direct; 1
- The damage must be personal. 1

The causal relationship

- The victim must establish that there is a immediate relationship between the fault and the damage which has been suffered. 1
- The victim must establish that there is a direct and certain relationship between the fault and the damage which has been suffered. 1

A decision

- Basing on the explanation for the conditions of liability of personal acts, Mr. Mutobo is wrong and he has to buy the new windshield of the car as to repair it is not possible. He has also to give the owner of the car the money converted into the moral damage and time lost. 1

Maximum marks 10

b) List the conditions for the liability of a master/commettant for wrongs of a domestic (4 Marks) = 1 mark for any well listed condition

The conditions for the liability of a master/commettant for wrongs of a domestic

- Relationship of subordination; 1
- The fault of the domestic (worker); 1
- The damage is supposed to be caused to a third party, that is to say, any other person other than the master/commettant; 1
- A relationship between the act of the domestic and the functions which they do; 1

Maximum marks 4

c) Comment on the case and advise him (6 Marks) = 3 marks for necessary condition which are allocated 1 mark on one well listed, 1 mark each for defense and legal actions on well explained and 1 mark for the advice

Necessary condition:

- There must be a building; 1
- The damage must be caused by the ruins of the building; 1
- The origin of these ruins can either be caused by the default of maintenance or a construction defect. 1

Defences:

- Case of force-majeure if it is not caused by default of maintenance or a construction defect 1
- The exclusive fault of the victim. 1

Legal actions of the owner

The owner can have legal actions against:

- The architect or entrepreneur in case of default in construction; 1

- The tenant if the owner proves that there was default of maintenance. 1

Advise

- Basing on the explanation provided, Mr. Kamanzi should repair the damage caused to his neighbor because as explained by the expert that the ruin was caused by the default of maintenance or a construction defect. 1
- Mr. Kamanzi has legal actions against the entrepreneur if it has not passed 10 years since it is built. 1

Maximum marks

6

Model answers

a) The candidate is expected to know conditions of liability of personal acts

The conditions of liability of personal acts

- The wrongful act or fault;
- The damage;
- The causal relationship;

The wrongful act or fault

- **Culpability:** the culpability can consist in the fault as violation of a rule, as a fault without a violation of a rule or abuse of authority;
- Fault, violation of a rule A fault, violation of a rule can concern civil, penal, administrative rules... Example: to steal something from somebody (fault, violation of criminal law); to injure somebody (fault, violation of civil and criminal law);
- Without a violation of a legal text Without a violation of a legal text, one can commit a fault. This fault is defined as a behaviour which an ordinarily diligent, prudent, honest person or one mindful of fulfilling social duties, placed in similar circumstances would not have committed (e.g. behaviour of the good father of family);
- Abuse of authority: this is a fault that is committed by a person in the exercise of his duties. For example, a head of a certain Department who obliges his/her secretary to stay at work beyond office hours in order to have a sexual relationship;
- **Imputability:** it is not sufficient that the act was illegal; it must be attributable to somebody (the wrongdoer) who has the conscious and free will to do the act. The conscience, capacity and free will are the three components of imputability;

The damage: in order for the victim to be indemnified, there has to be not only the fault but also the damage. This is the harm to be repaired.

Various kinds of damages

- **Material damage:** this is damage on one's patrimony. It is defined as attack on one's patrimony arising from bodily injury, death or damage to property;
- **Moral damage:** the moral damage is the extra-patrimonial damage. It is a damage which does not concern one's patrimony. Examples: an attack against one's personality, attack against one's honour or the attack on the reputation of a person, or his feelings of affection. e.g. saying that one is a prostitute when she is not.

Characteristics of the reparable damage

- **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;
- **The damage must consist in 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;
- **The damage must be direct:** the damage to be compensated must be the direct and immediate continuation of a faulty behaviour. 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.

The causal relationship

- The victim must establish that there is a direct, certain and immediate relationship between the fault and the damage which has been suffered;

Advice

- Basing on the explanation for the conditions of liability of personal acts, Mr. Mutobo is wrong and he has to buy the new windshield of the car as to repair it is not possible. He has also to give the owner of the car the money converted into the moral damage and time lost.

b) The candidate is expected to know the conditions for the liability of a master/commettant for wrongs of a domestic

The conditions for the liability of a master/commettant for wrongs of a domestic

- Relationship of subordination;
- The fault of the domestic;

- 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 and the functions which they do.

c) The candidate is expected to know about Liability for the damage caused by the ruins of a building

Necessary condition:

- There must be a building: the primary meaning of a building should be understood as a normal construction;
- The damage must be caused by the ruins of the building: in other words, when the building or a part of the building falls. This is different from the building in ruins, meaning that building has already fallen;
- The origin of these ruins can either be caused by the default of maintenance or a construction defect.

Defences:

- Case of force-majeure if it is not caused by default of maintenance or a construction defect;
- The exclusive fault of the victim.

Legal actions of the owner

The owner can have legal actions against:

- The architect or entrepreneur in case of default in construction. But this kind of action is prescribed after 10 years from the time the owner receives the building;
- The tenant if the owner proves that there was default of maintenance (a failure of an obligation resulting from the contract).

Advise

- Basing on the explanation provided, Mr. Kamanzi should repair the damage caused to his neighbor because as explained by the expert that the ruin was caused by the default of maintenance or a construction defect. Therefore, Mr. Kamanzi has legal actions against the entrepreneur if it has not passed 10 years since it is built.

QUESTION FIVE

Marking guide

a) Define an agency relationship (4 Marks) = 1 mark for each explanation of an agency relationship

- Agency relationship is a relationship that exists when one party represents another party in the formation of legal relations. 1
- The “Agent” is the person who is authorized to act on behalf of another 1
- the “Principal” is the person who has permitted another to act on his behalf. 1
- Agents are often given authority to bind principals in contractual relationships. 1

Maximum marks

4

b) Explain the types of agents (8 marks) = 1 mark for mentioning any types of agent and 1 mark each for any explanation of type of agent mentioned

Types of agents:

• Express or implied agents

1

An express agent is one who is appointed verbally or by writing. An implied agent is one whose appointment is to be inferred from the conduct of the parties. 1

• General, special or universal agents

1

A general agent is one who is employed to transact generally all the business of the principal in regard to which he is employed. A special agent has only authority to do some particular act or represent his principal in some particular transaction. A universal agent is one who is authorized to transact all the business of his principal of whatever kind and to do all the acts which the principal can lawfully do and can delegate. 1

• Agent or Sub –Agent

1

An agent derives his authority directly from the principal. A sub-agent derives his authority from the agent who has been appointed to do the act. One broad classification of agents is Mercantile or commercial agents and non-Mercantile or non-Commercial agents. 1

The types of mercantile agents:

- Factor; 1
- Auctioneer; 1
- Broker; 1
- Commission Agent; 1
- Del credere Agent; 1
- Banker; 1

Non-Mercantile agents include

- Counsel; 1
- Solicitor; 1
- Guardian; 1
- Promoter; 1
- Wife; 1
- Receiver; 1
- Insurance agent etc. 1

Maximum marks 8

c) Discuss how an agency is created (8 Marks) = 1 mark for mentioning each how an agency is created and 1 mark each for any explanation of how an agency is created

Agency relationship can be created by

- Express agreement (express authority); 1
- an oral or written contract appoints the agent and gives her/him specific authority to act on behalf of the principal; 1
- Estoppel/conduct (apparent authority); 1
- Ratification; 1
- There is no express or apparent authority, but a principal accepts a contract that was negotiated on his behalf without his authority. 1
- Operation of law, as a director acts for his company, or a partner for his partnership. 1
- Holding out: 1
- Where a person is acting like an agent and the purported principal is aware and does nothing until a relationship is created which the principle cannot deny. 1

Maximum marks 8

Model answers

a) The student is expected to know the definition of an agency relationship?

- Agency relationship is a relationship that exists when one party represents another party in the formation of legal relations.
- The “Agent” is the person who is authorized to act on behalf of another
- the “Principal” is the person who has permitted another to act on his behalf.
- Agents are often given authority to bind principals in contractual relationships.

b) **The student is expected to know the types of agents**

Types of agents:

- **Express or implied agents**

An express agent is one who is appointed verbally or by writing. An implied agent is one whose appointment is to be inferred from the conduct of the parties.

- **General, special or universal agents**

A general agent is one who is employed to transact generally all the business of the principal in regard to which he is employed. A special agent has only authority to do some particular act or represent his principal in some particular transaction. A universal agent is one who is authorized to transact all the business of his principal of whatever kind and to do all the acts which the principal can lawfully do and can delegate.

- **Agent or Sub-Agent**

An agent derives his authority directly from the principal. A sub-agent derives his authority from the agent who has been appointed to do the act. One broad classification of agents is Mercantile or commercial agents and non-Mercantile or non-Commercial agents.

The types of mercantile agents:

- **Factor;** A factor is a mercantile agent to whom possession of goods is given for sale. Generally speaking, he is a person to whom the goods are consigned for sale by a merchant residing abroad, or at a distance from the point of sale. He usually sells the goods in his own name. He cannot barter or pledge the goods. He has a general lien for the balance of account as between himself and the principal.

- **Auctioneer:** An auctioneer is an agent who is appointed to sell goods at a public auction for remuneration. He may or may not be entrusted with the possession or control of the goods which he sells. He may be agent both for the seller and the buyer. The auctioneer can sue for the purchase price in his own name.

- **Broker:** A broker is a mercantile agent who is employed to make contracts for the purchase and sale of goods for a commission called brokerage. A broker unlike a factor is not entrusted with the possession of the goods. Even the documents of title are not made over to him. His business is to find purchasers for those who wish to sell, and sellers for those who wish to buy. His duty is to bring parties together to bargain or to bargain for them in various matters. He makes contracts in the name of his principal and not in his own name. He is a mere negotiator or, in a sense, a middleman.

- **Commission Agent:** A commission agent is a mercantile agent who in consideration for a certain commission engages to purchase or sell goods for his principal. He sells and buys goods in the market on the best terms and in his own name. His only interest in the transaction is his commission. All profits and losses accrue to the principal

• **Del credere Agent:** A Del credere agent is an agent who in consideration of an extra remuneration guarantees to his principal the performance of the contract by the other party. This Del credere commission is a higher reward than is usually given in the form of commission. He occupies the position of the guarantor as well as of an agent. But his liability is secondary and arises only on the insolvency or failure of the other party. A Del credere agent is appointed generally when the principal deals with persons about whom he knows nothing.

• **Banker:** The relationship between a banker and the customer is either that of debtor and creditor or of an agent and principal. When the banker advances money to his customer as a loan, banker is the creditor and the customer is the debtor. But the banker acts as an agent of his customer when he buys or sells securities, collects cheques, dividends, bills etc. on behalf of his customer.

Non-Mercantile agents include

- Counsel,
- Solicitor,
- Guardian,
- Promoter,
- Wife,
- Receiver,
- Insurance agent etc.

c) The student is expected to know how an agency is created

Agency relationship can be created by

• **Express agreement (express authority):**

• an oral or written contract appoints the agent and gives her/him specific authority to act on behalf of the principal.

• **Estoppel/conduct (apparent authority):**

no agreement exists, but the actions or statements of the principal give a third party a reasonable impression that the agent has authority to act on behalf of principal. It may be established by 'holding out' which is where the principal takes no step to counter the impression that the agent had the authority to act as he does

• **Ratification:**

• There is no express or apparent authority, but a principal accepts a contract that was negotiated on his behalf without his authority.

• Operation of law, as a director acts for his company, or a partner for his partnership.

• **Holding out:**

• Where a person is acting like an agent and the purported principal is aware and does nothing until a relationship is created which the principle cannot deny.

QUESTION SIX

Marking guide

a) List and explain the rights a Foreigner on land (5 Marks) = 1 mark for any right listed and 1 mark for its explanation

- An emphyteutic lease; 1
- A land concession. 1
- Emphyteutic lease is a type of land ownership based on a long-term contract between the State and a person granting him or her rights on land; 1
- A land concession is contract between a State and a person where it grants him or her the right to use a private State land for investment and social welfare purposes for a fixed term. 1
- The rights referred to a Foreigner are only allocated for investment. 1

Maximum marks 5

a) Discuss the classification of State lands and provide two examples of each (10 marks) = 1 mark for any classification provided, 1 mark for any explanation provided and 1 mark for any example provided up to three marks each category

State lands are classified as follows:

- Lands in public domain; 1
- Lands in private domain. 1

Explanation of the lands of public domain and lands in private domain

- State lands in public domain consist of all lands intended to be used by the general public or all the lands reserved for organs of State services and national lands reserved for environmental protection. 1
- State lands in private domain consist of lands that are not included in State lands reserved for public activities or infrastructure, lands of a State-owned company excluding lands reserved for public activities or infrastructure of that company, lands registered under the name of a specialized organ basing on its responsibilities excluding lands reserved for public activities or infrastructure of that organ and lands that do not belong to individuals 1

Examples of land in public domain

- Lands occupied by lakes or rivers as listed by an Order of the Minister in charge of water resources; 1
- Lands on the banks of lakes or rivers up to a distance determined by an Order of the Minister in charge of water resources starting from the furthest line reached by water depending on successive floods, excluding exceptional floods; 1
- Lands occupied by springs and wells determined by an Order of the Minister in charge of water resources; 1
- National lands composed of natural forests, national parks, protected swamps, State public gardens and tourist sites; 1
- Islands as listed by an Order of the Minister; 1
- National roads and their boundaries; 1
- Lands reserved for public State activities and infrastructure; 1
- Lands reserved for public cemeteries; 1
- Lands on which memorial sites of the genocide against the Tutsi are built. 1

Examples of land in private domain

- Vacant lands; 1
- Escheat lands; 1
- Lands repossessed by State in accordance with laws; 1
- State lands previously occupied by public activities that were transferred from public domain in accordance with relevant laws; 1
- Lands the State acquired through purchase, exchange, donation or expropriation; 1
- Unprotected swamps; 1
- Lands occupied by State owned forests; 1
- Lands derived from non-renewed emphyteutic lease issued to a foreigner as provided by this Law; 1
- Lands reserved for special cemeteries. 1

Maximum marks 10

b) Discuss how land rights are transferred between persons (5 Marks) = 0.5 mark for any land rights listed

Transfer of land rights is carried out through the following:

- Succession; 0.5
- Donation; 0.5
- Inheritance; 0.5
- Lease; 0.5

- Sale; 0.5
- Sub-lease; 0.5
- Exchange; 0.5
- Mortgage; 0.5
- Concession; 0.5
- Any other transfer means in conformity with conditions and methods provided for by laws. 0.5

Maximum marks

5

Model answers

a) the candidate is expected to know the rights of a Foreigner on land for investment purpose

A foreigner has rights to:

- An emphyteutic lease;
- A land concession.
- Emphyteutic lease is a type of land ownership based on a long-term contract between the State and a person granting him or her rights on land
- A land concession is contract between a State and a person where it grants him or her the right to use a private State land for investment and social welfare purposes for a fixed term

b) The candidate is expected to know the classification of States lands and their explanation and be able to provide examples

State lands are classified as follows:

- Lands in public domain;
- Lands in private domain.

Explanation of the lands of public domain and lands in private domain

- State lands in public domain consist of all lands intended to be used by the general public or all the lands reserved for organs of State services and national lands reserved for environmental protection.
- State lands in private domain consist of lands that are not included in State lands reserved for public activities or infrastructure, lands of a State-owned company excluding lands reserved for public activities or infrastructure of that company, lands registered under the name of a specialized organ basing on its responsibilities excluding lands reserved for public activities or infrastructure of that organ and lands that do not belong to individuals

Examples of land in public domain

- Lands occupied by lakes or rivers as listed by an Order of the Minister in charge of water resources;
- Lands on the banks of lakes or rivers up to a distance determined by an Order of the Minister in charge of water resources starting from the furthest line reached by water depending on successive floods, excluding exceptional floods;
- Lands occupied by springs and wells determined by an Order of the Minister in charge of water resources;
- National lands composed of natural forests, national parks, protected swamps, State public gardens and tourist sites;
- Islands as listed by an Order of the Minister;
- National roads and their boundaries;
- Lands reserved for public State activities and infrastructure;
- Lands reserved for public cemeteries;
- Lands on which memorial sites of the genocide against the Tutsi are built.

Examples of land in private domain

- Vacant lands;
- Escheat lands;
- Lands repossessed by State in accordance with laws;
- State lands previously occupied by public activities that were transferred from public domain in accordance with relevant laws;
- Lands the State acquired through purchase, exchange, donation or expropriation;
- Unprotected swamps;
- Lands occupied by State owned forests;
- Lands derived from non-renewed emphyteutic lease issued to a foreigner as provided by this Law;
- Lands reserved for special cemeteries.

c) The candidate is expected to know to know how land rights are transferred between persons

Transfer of land rights is carried out through the following:

- Succession;
- Donation;
- Inheritance;
- Lease;
- Sale;
- Sub-lease;
- Exchange;

- Mortgage;
- Concession;
- Any other transfer means in conformity with conditions and methods provided for by laws.

QUESTION SEVEN

Marking guide

a) Define administrative law (4 Marks) = 1 mark for each meaning of the administrative law

- Administrative Law means the law relating to public administration. 1
- It is the law relating to the organization, composition, function and procedures of public authorities and special statutory tribunals, their impact on the citizen, and the legal constraints which they are subject. It includes the whole of the law about local authorities and the services they provide, the law relating to nationalized industries, social security and so on. 1
- Administrative Law is concerned with legal forms and constitutional status of public authorities; with their powers and duties and with the procedures followed in exercising with legal, relationships with one with the public and with their employees. 1
- It is the body of rules which aims at reducing the areas of conflict between the administrative agencies of the state and the individuals. 1
- The Administrative Law is concerned with the nature of powers of public authorities and, especially with the manner of their exercise. 1
- It can be defined as a set of legal rules and principles which aim to regulate the organization, the functioning and the control of the executive. 1
- Administrative law covers those rules of law which relate to the executive government's power and privileges, they are the rules that govern the making of other rules. Here the public interest is involved in that, although a private interest may be the subject of an administrative decision that decision is based upon certain guidelines which promote and advance the public interest. 1
- Administrative law deals with the relations between officials and citizens and the ways in which people can object to official decisions. 1
- The scope of administrative law includes purely the action of the administration and also litigations involving State agencies. 1
- Administrative law is classified as an autonomous branch of public law; this is why private rules of liability do not govern controversies within the jurisdiction of administrative law. The reason of this independence is that the administration serving a public interest, it cannot be subject to the same rules with individuals. This dictates special rules different from those applied to private individuals and in some countries, administrative disputes are adjudicated by special courts; those are administrative courts. 1

Maximum marks

4

b) Discuss the general principles of administrative law and link it with the case (6 Marks) = 1 mark for each principle of administrative law and 1 mark for the link between the selected principle of administrative law with the case

- 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; 1
- 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; 1
- Principle of fairness of public service which means any public service must be fair; 1
- Principle of adaptation which means the administration, in providing services to the people must adapt to changes; 1
- Principle of legality which means the decisions of the administration must be legal. 1
- Principle of legality is linked to the case because expropriation for public interest is provided for by the law whereby the land of the citizen was deprived for the construction of power plant that will be beneficial to many citizens. 1

Maximum marks

6

c) List 3 privileges and explain the privilege that has been used for the case study (6 Marks) = 1 mark for each privilege and 1 mark for the link between the selected privilege with the case

3 privileges

- Privileges for the protection of the public interest which means the decisions of the administration is for common interest. 1
- The privilege of execution which means the decisions of the administration remain with the enforcement authority until a final decision of the court annulling it is handed. 1
- Privilege of the administration is expropriation for public interest of the private property of individual citizens. 1
- The privilege that has been used for the case study is the privilege of expropriation for public interest because the land of citizen was used for the construction of power plant that will produce electricity and become beneficial to all citizens. 1

Maximum marks

4

d) **Discuss the means of administration and link it with the case study (6 Marks) = 2 marks for each means of administration listed and well discussed and 2 marks for the link between the means of administration with the case**

The means of administration are of three categories:

- **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. 2
- **Material means:** this 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). 2
- **State personnel:** these are State employees under statutes. 2
- **Legal means** were used for legal provisions that provide expropriation for public interest, **material means** were used because the land after being expropriated became land property and **State personnel** because the staff of the government were use to expropriate and monitor the construction of power plant 2

Maximum marks

6

Model answers

a) The student is expected to know the definition of administrative law

- Administrative Law means the law relating to public administration.
- It is the law relating to the organization, composition, function and procedures of public authorities and special statutory tribunals, their impact on the citizen, and the legal constraints which they are subject. In includes the whole of the law about local authorities and the services they provide, the law relating to nationalized industries, social security and so on.
- Administrative Law is concerned with legal forms and constitutional status of public authorities; with their powers and duties and with the procedures followed in exercising with legal, relationships with one with the public and with their employees.
- It is the body of rules which aims at reducing the areas of conflict between the administrative agencies of the state and the individuals.
- The Administrative Law is concerned with the nature of powers of public authorities and, especially with the manner of their exercise.
- It can be defined as a set of legal rules and principles which aim to regulate the organization, the functioning and the control of the executive.
- Administrative law covers those rules of law which relate to the executive government's power and privileges, they are the rules that govern the making of other rules. Here the public interest

is involved in that, although a private interest may be the subject of an administrative decision that decision is based upon certain guidelines which promote and advance the public interest.

- Administrative law deals with the relations between officials and citizens and the ways in which people can object to official decisions.
- The scope of administrative law includes purely the action of the administration and also litigations involving State agencies.
- Administrative law is classified as an autonomous branch of public law; this is why private rules of liability do not govern controversies within the jurisdiction of administrative law. The reason of this independence is that the administration serving a public interest, it cannot be subject to the same rules with individuals. This dictates special rules different from those applied to private individuals and in some countries, administrative disputes are adjudicated by special courts; those are administrative courts.

b) The student is expected to know the general principles of administrative law

- 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.
- Principle of legality is linked to the case because expropriation for public interest is provided for by the law whereby the land of the citizen was deprived for the construction of power plant that will be beneficial to many citizens.

c) The student is expected to know the privileges of administration

3 privileges

- Privileges for the protection of the public interest which means the decisions of the administration is for common interest.
- The privilege of execution which means the decisions of the administration remain with the enforcement authority until a final decision of the court annulling it is handed.
- Privilege of the administration is expropriation for public interest of the private property of individual citizens.

- The privilege that has been used for the case study is the privilege of expropriation for public interest because the land of citizen was used for the construction of power plant that will produce electricity and become beneficial to all citizens.

d) The student is expected to know the means of administration

The means of administration are of three categories:

- 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.
- Material means: this 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).
- State personnel: these are State employees under statutes.
- Legal means were used for legal provisions that provide expropriation for public interest, material means were used because the land after being expropriated became land property and State personnel because the staff of the government were use to expropriate and monitor the construction of power plant.

END OF MARKING GUIDE AND MODEL ANSWERS