



**CERTIFIED PUBLIC ACCOUNTANT
FOUNDATION LEVEL 1 EXAMINATION
F1.2: INTRODUCTION TO LAW**

**DATE: WEDNESDAY 23, AUGUST 2023
MARKING GUIDE AND MODEL ANSWERS**

QUESTION ONE

Marking Guide

Sub questions	Marks
(a)(i) Award 1 mark for definition of law (Maximum 1 mark)	1
(a)(ii) Award 1 mark for each reason why the society should have a law and the student should outline at least 3 (Maximum 3 marks)	3
(a)(iii) Award 2 marks for compare and 2 marks for contrast between law and morality (Maximum 4 marks)	4
(a)(iv) Award 2 marks for compare and 2 marks for contrast between law and ethics (Maximum 4 marks)	4
(b) Award 0.5 marks for outlining the two classifications, 1 mark each for explaining the four classes, 1 mark each for 4 examples from each class (Maximum 4 marks)	4
(c) Award 0.5 marks for outlining each characteristic of law and 0.5 marks for explanation of each characteristic (Maximum 4 marks)	4
Total for this question 1	20

Model Answers

- (a)
- (i) **The candidate should demonstrate knowledge and understanding on the concept of law**
- Law is a set of rules of conduct prescribed by a controlling authority and which has a binding
 - Law is a set of rules which are generally obeyed and enforced within a politically organised society
 - Law is a body of rules for the guidance of human conduct which are imposed upon and enforced among the members of a given state
- (ii) **The candidate should demonstrate knowledge and understanding on the importance of law in the 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

(iii) The candidate should demonstrate knowledge and understanding on law and morality

Differences:

- From a legal perspective the essential difference between these two sets of rules exists in their respective enforcement;
- Legal rules are enforced in the courts while rules of morality depend for their observance upon the good conscience of the individual and the force of public opinion;
- There are many rules of morality and ethics which the law does not seek to enforce, such as the commandment to honour our parents; and many legal rules which are not intrinsically moral, such as the husband's general liability to pay tax on his wife's income

Similarities

- There is a connection between legal laws laid down by a state and certain other norm of behaviour known as laws of morality;
- In any society it is usual to find the rules of morality observed by the majority of its members reflected in the legal laws of that society;
- The contents of morality and law overlap to a great extent, e.g murder, theft and slander

(iv) The candidate should demonstrate knowledge and understanding on law and ethics

Differences:

- Law is enforced by the organs of the state, ethics are not;
- Law concerns itself primarily with the external behavior of a person, his overt acts, being interested in the state of his mind, his intention or his motive as a rule only where it manifests itself in an act. Ethics on the other hand, state of a person's mind, with his thoughts and desires, and is interested in his acts in the main only in so far as they reveal the state of his mind;
- Law imposes its commands in the interests of the community, the laws of ethics are imposed for their own sake, to achieve virtue
- To a large extent law and ethics overlap, but they do not coincide.

Similarities

- The commands of the law are imposed from without (heteronymous) and enforced by sanctions primarily exterior, the final decision in moral issues is left to each man's personal conscience, and the sanctions lie in one's own heart (save that, where a rule of ethics coincides with one of positive morality, public opinion may provide a sanction);
- The Law aims at the doing of justice and the maintenance of peace and order in the community, the aim of ethical theory is the perfection of character
- Institution of law has to do with the regulation of conduct.

(b) The candidate should demonstrate knowledge and understanding on the classification of law.

Classification of law

Law is classified as follows:

- Substantive and procedural law
- Criminal and Civil law
- ✓ **Substantive law:** It establishes the rights and duties governing the persons as they act in the society and specifies remedies to back up those rights. Duties tend to take the form of a command. ‘Do this’ or ‘Do that’ or ‘Do not do that’

Examples of substantive law

- The Law regulating labor in Rwanda: This law prohibits employers from discriminating the employees on the basis of race, color, religion, sex, etc.
- The constitution of Rwanda of 2005 as amended in 2015: It establishes rights and privileges, e.g., freedom of speech, the right to self-defence.
- ✓ **Procedural law:** It establishes the rules by which substantive law is enforced. It does not define rights or duties, but merely implements them. Rules as to what trials are managed in a court and judgments are handed and enforced are part of procedural law.

Examples of procedural law

- Rwanda criminal and civil procedure codes: These codes establish the procedures followed in both criminal and civil matters in Rwanda
- The law of evidence: This law provides the procedure on the manner in which the evidence is adduced in court
- ✓ **Criminal law:** It consists of rules prohibiting anti-social conduct as well as certain deviant behavior. It aims to establish offences and their penalties (imprisonment, community work and or fines)
- ✓ **Civil law:** It is intended to give compensation to persons injured, to enable property to be recovered from wrongdoers and to enforce obligations (contracts and trusts). Civil law refers to legal rules that govern the relationships between individuals in their dealings with one another. civil law refers to broad range of subjects including family law, the law of persons, estates and civil liability.

(c) The candidate should demonstrate knowledge and understanding on the characteristics of 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. They leave the room to the will of the parties (art. 64 of the Law governing contracts 2011 in Rwanda) and in general they supplement to the silence (inaction) of the parties

- **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 TWO

Marking Guide

Sub questions	Marks	
(a)	Award 1 mark for each 6 principles well explained (Maximum 6 marks)	6
(b)	Award 1 mark each for any 2 privileges well explained and 1 mark each for any example of privileges (Maximum 4 marks)	4
(c)	Award 2 marks each for any 3 means of administration well named and explained (Maximum 6 marks)	6
(d)	Award 2 marks each for any 2 techniques of management well named and explained (Maximum 4 marks)	4
Total for this question 2		20

Model Answers

a. **The candidate should demonstrate knowledge and understanding on the principles of administrative law**

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.
- 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.

b. The candidate should demonstrate knowledge and understanding the privileges of administrative law

Privileges

- 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.
- **Example:** cabinet takes a decision related to curfew.
- Privilege of the administration is expropriation for public interest of the private property of individual citizens.
- **Example:** expropriation for a building a school, a citizen's land will be used to build a school upon giving him/her a prior payment of fair compensation.

c. The candidate should demonstrate knowledge and understanding on the means of administration

Three categories of means of administration

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

d. The candidate should demonstrate knowledge and understanding on the techniques of management

Two techniques of management

- **Centralisation** which denotes the concentration of authority in a few hands, generally at the top of the organization hierarchy. Decisions are taken at the top by a few, and communicated down to the lower rungs of the management. That's means that all operational and policy directions are given by a few at the top management level while those below have to carry out the instructions.
- **Decentralisation** may be defined as a situation in which ultimate authority to command and ultimate responsibility for results is localised as far down in the organisation as efficient management of the organisation, permits. It is carried out by creating; under a central organisation, a number of autonomous units with mandates to operate as independent units.

QUESTION THREE

Marking Guide

Sub questions	Marks
(a) Award 1 mark for naming the court and 1 mark for the explanation (Maximum 2 marks)	2
(b) Award 1 mark for naming the court and 1 mark for the explanation (Maximum 2 marks)	2
(c) Award 1 mark for naming the court and 1 mark for the explanation (Maximum 2 marks)	2
(d) Award 1 mark for naming the court and 1 mark for the explanation (Maximum 2 marks)	2
(e) Award 1 mark for naming the court and 1 mark for the explanation (Maximum 2 marks)	2
(f) Award 1 mark for naming the court and 1 mark for the explanation (Maximum 2 marks)	2
(g) Award 1 mark for naming the court and 1 mark for the explanation (Maximum 2 marks)	2
(h) Award 1 mark for naming the court and 1 mark for the explanation (Maximum 2 marks)	2
(i) Award 1 mark for naming the court and 1 mark for the explanation (Maximum 2 marks)	2
(j) Award 1 mark for naming the court and 1 mark for the explanation (Maximum 2 marks)	2
Total for this question 3	20

Model Answers

a) The candidate should demonstrate knowledge and understanding on the court system of Rwanda

- Commercial Court;
- As it is provided by article 81 of the law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts, Commercial court has the jurisdiction to hear and decide on disputes related to taxes and duties;

b) The candidate should demonstrate knowledge and understanding on the court system of Rwanda

- Primary Court;
- As it is provided by article 27 of the law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts that Primary court has the jurisdiction to hear and decide on disputes related to immovable property other than land used for agriculture and livestock of a value of more than three million Rwandan francs (FRW 3,000,000), but which does not exceed twenty million Rwandan Francs (FRW 20,000,000) and succession in respect thereof as well as disputes between the emphyteutic lessee and the so-called landowner with no certificate;
- The appellate court is Intermediate Court.

c) The candidate should demonstrate knowledge and understanding on the court system of Rwanda

- Primary Court;
- As it is provided by article 27 of the law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts, primary court has the jurisdiction to hear and decide cases relating to the status of persons and family.

d) The candidate should demonstrate knowledge and understanding on the court system of Rwanda

- Commercial Court;
- As it is provided by article 81 of the law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts, Commercial court has the jurisdiction to hear and decide on disputes related to intellectual property, including trade marks and names;

e) The candidate should demonstrate knowledge and understanding on the court system of Rwanda

- Intermediate Court, Chamber for labour and administrative cases;
- As it is provided by article 136 of the law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts that Commercial court has the jurisdiction to hear and decide on disputes related to labour disputes between individuals and the Government or its corporations;

f) The candidate should demonstrate knowledge and understanding on the court system of Rwanda

- No, the Court of Appeal does not have jurisdiction to hear on second appeal the case;
- 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 they 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 (article 52 of the law determining the jurisdiction of courts)

g) The candidate should demonstrate knowledge and understanding on the court system of Rwanda

- Commercial High Court;
- As it is provided by article 82 of the law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts that Commercial High Court hears on the appeal level judgments rendered at first instance by commercial courts

h) The candidate should demonstrate knowledge and understanding on the court system of Rwanda

- Supreme Court;
- As it is provided by article 75 of the law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts that Supreme Court is petitioned by any person or company and associations with legal personality over petitions seeking to declare unconstitutional a law if they have any interest.

i) The candidate should demonstrate knowledge and understanding on the court system of Rwanda

- Commercial Court;
- As it is provided by article 81 of the law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts, Commercial court has the jurisdiction to hear and decide on cases related to bankruptcy;

j) The candidate should demonstrate knowledge and understanding on the court system of Rwanda

- High Court, specialized chamber hearing international crimes and transnational crimes;
- As it is provided by article 42 of the law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts, Commercial court has the jurisdiction to hear and decide on crimes related to human trafficking;

QUESTION FOUR

Marking Guide

Sub questions	Marks
(a) Award 1 mark for each answer explaining the position with legal basis (Maximum 3 marks)	3
(b)(i) Award 1 mark for each definition of a person and a legal personality of a person (Maximum 2 marks)	2
(b)(ii) Award 1 mark for the effect of legal personality named and 1 mark for the effect of legal personality well explained (Maximum 3 marks)	3
(b)(iii) Award 1 mark each for any 2 ways of terminating legal personality (Maximum 2 marks)	2
(c) Award 1 mark of naming them and 1 mark each for the explaining one of the characteristics (Maximum 4 marks)	4
(d)(i) Award 1 mark for each difference between domicile and residence (Maximum 4 marks)	4
(d)(ii) Award 1 mark for mentioning which to consider between domicile or residence (Maximum 2 marks)	2
Total for this question 4	20

Model Answers

a) The candidate should demonstrate knowledge and understanding on the family law especially related to marriage

- Yes, Rwanda can celebrate that marriage

The marriage between a foreigner and a Rwandan celebrated in Rwanda is governed:

- by the Rwandan law with regard to the marriage celebration;
- with regard to substantive requirements, by the Rwandan law for a Rwandan and by the law of the country of which the foreigner is a national, if it does not contravene public order and good morals of Rwandans (article 180 of Rwanda family law).

b) i) The candidate should demonstrate knowledge and understanding on the definition of a person and a legal personality of a person

- A person is a human being who enjoys full legal personality and has rights and duties
- A person's legal personality commences from the time of birth. The legal personality is the foundation of civil rights. The civil rights of a conceived child are granted by his/her legal personality. It follows that a conceived child is entitled to civil rights recognized for every person, provided he/she is born alive. A child, simply by virtue of being conceived is deemed to have been born whenever its interests so dictate.

ii) The candidate should demonstrate knowledge and understanding on the effects of a legal personality of a person

- Freedom to enjoy civil rights

Every person is free to exercise civil rights. A foreigner enjoys in Rwanda the same civil rights as those granted to Rwandans unless otherwise provided by law.

- Capacity to exercise civil rights

Every person, whether a Rwandan or a foreigner, has the capacity to exercise his/her civil rights except where the law provides for representation or assistance. Every person exercises his/her civil rights under the name assigned to him/her in his/her birth record. Abuse and excessive or unreasonable exercise of civil rights with the intent to inflict harm upon another shall not be protected by law.

iii) The candidate should demonstrate knowledge and understanding on how a legal personality of natural person can be terminated in Rwanda

Termination of legal personality (natural person)

- In Rwanda a legal personality of a natural person is terminated by death
- In the event of absence or disappearance, by a declaratory judgment of death

c) The candidate should demonstrate knowledge and understanding on the characteristics of name

- The name is characterised by three elements which are immutability, imprescriptibility and unavailability;
- **Immutability:** the name is imposed on a person. None shall officially take/adopt a name or a given name which is different from the one mentioned on the birth certificate. A person cannot change his/her name at will. Changing a name is only authorised by the Minister of Justice on request of any interested person in conformity with the prescribed legal procedure;
- **Imprescriptibility:** the person's name is not subject to extinguishing or acquisitive prescription;
- **Unavailability:** the person's name is not subject to commercial transaction. It's beneficiary cannot pass it (on) to another neither can he/she generally allow another person to use it. However, an individual's name attributed to the commercial exploitation can be passed to another person as a commercial name.

d) i) The candidate should demonstrate knowledge and understanding on differences between a domicile and residence

- Domicile is a place where a person is registered in civil registers while a residence is a place where a person lives for occupational or any other purposes but which is different from his/her place of domicile;
- A person has only one domicile while a person can have more than one residence;
- The domicile of Mr. Kanamugire is Gasabo District while for Mr. Muneza is Gasabo District;
- The residence of Mr. Kanamugire can be France and or Italy while for Mr. Muneza is Nyarugenge District.

ii) The candidate should demonstrate knowledge and understanding on how a domicile and residence are used when to file a case to court

- The court for the defendant's place of domicile, has jurisdiction over the case, unless the law otherwise provides;
- The court for the defendant's place of residence or elected domicile has jurisdiction over the case, unless the law otherwise provides;

When the defendant's domicile is unknown, the case is heard by the court for the place of the plaintiff's domicile or residence (Article 13 of OFJ). For this case, Mr. Muneza's domicile will be taken into consideration for filing a case to court.

QUESTION FIVE

Marking guide

Sub questions	Marks
(a)(i) Award 1 mark for each point on the liability of parents for the acts of their children (Maximum 3 marks)	3
(a)(i) Award 1 mark for each point on the conditions of the liability of parents for the acts of their children (Maximum 3 marks)	3
(b)(i) Award 2 marks for each point on the necessary conditions to establish the liability of the owner of the building (Maximum 6 marks)	6
(b)(ii) Award 2 marks for each point on defenses available to the owner of the building (Maximum 4 marks)	4
(b)(iii) Award 2 marks for each point on the legal action the owner can exercise against to different persons (Maximum 4 marks)	4
Total for this question 5	20

Model answers

a)

i) The candidate should demonstrate knowledge and understanding on the liability of parents for the acts of their children

- The parents are liable to replace the rearview mirror broken.
- The parents (father, and the mother, after the death of the father,) are liable for the damage caused by their children residing with them under age of capacity.
- The parents (father, and the mother, after the death of the father,) are liable for the damage caused by their children residing with them.

ii) The candidate should demonstrate knowledge and understanding on the conditions of the liability of parents for the acts of their children

- The damage must be caused by the child;
- The child must be residing with the parent;
- The damage must be caused by the personal act of the child.

b)

i) The candidate should demonstrate knowledge and understanding on the necessary conditions to establish the liability of the owner of the building

- 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.

ii) The candidate should demonstrate knowledge and understanding on defenses available to the owner of the building

- Case of force-majeure if it is not caused by default of maintenance or a construction defect;
- The exclusive fault of the victim. There is an exclusive fault of the victim when the latter knows the deteriorating situation of the building (for example if the owner posts the sign clearly indicating that the building is in ruins) and the victim sustains an injury after passing nearby.

iii) The candidate should demonstrate knowledge and understanding on the legal action the owner can exercise against to different persons

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).

QUESTION SIX

Marking Guide

Sub questions	Marks
(a) Award 2 marks for an event named and well explained that may frustrate the performance of a contract (Maximum 12 marks)	12
(b) Award 2 marks for an event named and well explained through which a contract can be terminated (Maximum 8 marks)	8
Total for this question 6	20

Model Answers

a) The candidate should demonstrate knowledge and understanding on the events that may frustrate the performance

- Destruction of something essential
If the continuing existence of a thing or a person is assumed by both parties as the foundation of the contract, the destruction of that thing or a person may invoke the doctrine of frustration.

- Non-occurrence of an essential event
If the occurrence of an essential event is assumed by both parties as the basis of their contract relationship, the non-occurrence of that event may invoke the doctrine of frustration.

- Impossibility of performance
If, as a result of a supervising event, a contract becomes impossible to perform, either physically or commercially, the doctrine of frustration may operate to discharge the contract.

• Events causing delay or making performance more expensive
Events which merely delay performance or render it more expensive than contemplated will not frustrate a contract. However, where delay or increased expenses is such that the contract becomes one that is radically different from that contemplated by the parties the doctrine of frustration may operate. However, sometimes as we said earlier, courts have to assess and decide to consider or to disregard this theory.

• Changes in the law or government intervention
A subsequent change in the law may frustrate a contract, even if it does not render performance of the contract illegal, provided it substantially affects the parties so that the contract becomes different in nature from that contemplated by the parties. This may be, for example, an interdiction from selling some kind of commodities in a given area or time.

• Death in contracts involving personal performance (intuitu personae)
If the contract can be regarded as one that requires the personal service of one party and that party dies or it becomes physically impossible or illegal for him to complete his obligations, then it is regarded as a frustrating event. The law says that if the existence of a particular person is necessary for the performance of a duty, his death or such incapacity as makes performance impracticable is an event the non-occurrence of which was a basic assumption on which the contract was made. For instance, if a law graduate had signed a contract to work for a firm of advocates and the Government then decided that all such graduates must spend one year at the Institute of Legal Practice Development before starting their carrier, then the original contract of employment would be frustrated because of the incapacity of that graduate.

b) The candidate should demonstrate knowledge and understanding on various kinds to terminate a contract

A contract may be terminated by performance by the parties, agreement of the parties to terminate the contractual obligation, happening of a condition and impossibility of performance, by breach or by rescission

• Termination (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.

• Termination (discharge) 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.

• Termination (discharge) by frustration or 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.

- Termination (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.

- Termination (discharge) by 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

QUESTION SEVEN

Marking Guide

Sub questions	Marks
(a)(i) Award 1 mark for the position and 1 mark for the explanation of the position (Maximum 2 marks)	2
(a)(ii) Award 1 mark for any duty explained; at least 2 duties (responsibilities) of the principal in relation with the agent and 3 duties (responsibilities) of the agent to his principal (Maximum 5 marks)	5
(a)(ii) Award 1 mark each for any 3 ways of agency termination well explained with example (Maximum 3 marks)	3
(b)(i) Award 2 marks for any 3 prerogatives well explained (Maximum 6 marks)	6
(b)(ii) Award 1 mark for any dismemberment of the right of ownership well explained (Maximum 4 marks)	4
Total for this question 7	20

Model Answers

a)

i) The candidate should demonstrate knowledge and understanding on liabilities of principal on the performance of his/her agent

- Yes, the principal is liable on the issue related to the performance of the agent
- The principal is liable on the performance of the agent as far as the client is dealing with the agent who is working on behalf of the principal. Principal has given power the agent to act in his behalf, any damage that can be caused by the agent within the limit of his/her duties, the principal is liable

ii) The candidate should demonstrate knowledge and understanding on duties (responsibilities) of the principal in relation with the agent and duties (responsibilities) of the agent to his principal

Duties (responsibilities) of the principal:

- Pay reasonable remuneration (unless the parties expressly agreed otherwise).
- Indemnify the agent from expenses reasonably incurred in connection with relationship.

Duties (responsibilities) of the agent to his principal.

- Duty to comply with the agency agreement: The agent has to comply with the express and implied terms (based on custom) of the agency agreement.
- Personal performance: In general, because a principal place a high degree of trust in the judgment and skill of an agent, the latter cannot delegate his or her duties without the principal's consent.
- Duty of care: The agent is required to take reasonable care in the performance of its responsibilities. The skill demanded depends on the agent's task and competence.
- Fiduciary duty (fiduciary comes from Latin meaning 'holding in trust'): from a legal standpoint, this is one of the strictest standards of care imposed on relationships. The agent has to act in good faith and in the best interest of the principal
- Avoids conflict of interest, where personal interest conflicts with the best interest of the principal
- Disclose anything that may be relevant to the principal's interests
- Not personally profit from the information or opportunities as a result of the agency relationship
- Not compete with the principal

iii) The candidate should demonstrate knowledge and understanding on ways in which the contract of agency can be terminated.

Agency relationship can be terminated:

- At the end of a time, event, or project specified in the agency agreement;
- On notice by either party;
- By performance
- By operation of law

- Death of either party
- By Frustration; for example, it becomes impossible for the agent to perform tasks, the principal or the agent dies or becomes insane, or the principal becomes bankrupt.

b) i) The candidate should demonstrate knowledge and understanding on the prerogatives of the ownership right

The prerogatives of the ownership rights are

- Right of use (the *usus*): the right to use just like that of habitation constitutes a real right. On a positive note, the right to use your property is that right that allows you to be served by the same property. You must however abide by the limitations of the law. A person is free to use his property. E.g., a house, by occupying it or a farm by cultivating it, or any kind of use of your property.
- Right to enjoy fruits (the *fructus*): this is the right to enjoy the fruits from your property or from the property on which you exercise the real right. It is the right of harvesting all the fruits that are given by that property.
- Like those from natural trees or even timber from those trees; civil fruits like rent from a real property e.g., a house or land, income (interests) from the money the bank lends you, etc; and then the industrial fruits which are mostly from the works of man (man's labor) like the agricultural produce or any other produce that is not of a regular basis and that diminishes totally or periodically.
- Right to dispose of (the *abusus*): The right to dispose of your property can be either physical or legal. The disposition can be can also be either total or partial. It is total when the right of ownership is transmitted to someone who becomes the owner. But when it is only a bundle of the ownership which is transmitted, the one who acquires the bundle is only a user. The physical (material) disposition of property implies the modification or transformation of the property.
- It can be for example by deciding to destroy or demolish your house when you want to use the plot on which it is built for other things/activities. It is the physical disposition which distinguishes the ownership from other real rights. The legal disposition on the other hand, is the alienation or transfer of the ownership right.

ii) The candidate should demonstrate knowledge and understanding on the dismemberment of the right of ownership

• Usufruct

This right combines the two rights embedded in the right of ownership (i.e. *usus* and *fructus*). The usufructuary is a person who has and exercises the right to use and enjoy the fruits from a property that does not belong to him. The one who exercises this right is however bound by another obligation of preserving the property's substance for its owner.

• Servitude

This is the right a person is entitled to on a property (Land) that is not his/hers due to the circumstances surrounding that property. These include the right of passage through another person's land so that he/ she may reach his or her own Land, the right to water resources on another person's land, or the right to channel the running water through another person's land

below your own. The right to another person's land which emanates from the nature of the terrain is provided for by the law or from mutual agreement between the concerned parties.

- **Superficies**

The Rwandan civil code defines superficic as a right to enjoy an immoveable belonging to another person and to dispose of all buildings, wooded areas, trees and other types of plants joined to land. It can be created free of charge or by onerous title. The superficiary behaves totally like the one having a full ownership of a given property but which is just limited to a given period of time (not exceeding 50 years).

- **Emphytensis**

Emphyteusis is a right just like the superficic which, for a certain period of time, grants to a person a full benefit and enjoyment of an immoveable property (Land) owned by another person, provided he/she does not endanger the existence of this immoveable and this carries with it a right or even an obligation to put constructions, works or plantations thereon and in due-course, durably, increases the land's value.

END OF MARKING GUIDE AND MODEL ANSWERS