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Operational Level

Ethics, Law, and Governance (LG2.1) Workbook

Institute of Certified Public Accountants of Rwanda
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Contents

List of figures

Overview of the Module

CPA level	Operational level
Title	Ethics, Law, and Governance
Guided learning hours	120
Exam length	3 hrs

Unit A: Essential elements of the legal system

Learning outcomes

A.1. Sources of law

A.2. The judicial system and other government institutions

A.3. Constitutional rights and obligations of the citizen

Introduction to unit A

"Ubi societas ubi jus" this Latin maxim means "where there is a society, there is law". The maxim suggests that law is based off social practices and depends on them, and as such, a society cannot fully exist without a semblance of laws or rules. This brings us to the question whether it is possible to have a society without law or to have law without society. A society without law will be seen as a jungle where only strongest will survive and hence lead eternal disorder. If there is no law, the interactions, relationships and cohabitation between the community members will be difficult and even impossible. Thus, enactment of the law in a given society affects every aspect of the members' lives. A law governs and protects a person from the time he/she an embryo (from the time of conception) to after our death. This unit provides a wide understanding of the concept of law, source of law, and judicial system aspects. It further explains the organisation and jurisdiction of courts as well as key human rights and property rights.

A.1. Sources of law

Before discussing the sources of law, it is important to first understand what law is, the importance of law and comparison between law and other related concepts.

a) Definitions of law

i) Conceptualising law

Historically, Greek philosophy and Roman jurisprudence viewed law as the "art of the Good and the Just" (Jus est boni et aequi), emphasizing its purpose in achieving justice and equity. This perspective prioritized the underlying ideals and their realization.

Today, law is often characterized as the expression of the "will of the legislator," encompassing statutes, regulations, and other legal instruments.

However, many scholars recognize law as a social phenomenon, a product of the society it governs or the community it serve.[1]

In a broad sense, law refers to any set of rules that govern a particular society. In a stricter sense, it specifically denotes the body of legal rules, established and enforced by the state, that are binding within a politically organized community.

These legal rules, comprising both written and unwritten laws derived from custom and formal enactment, are recognized as binding upon the members of a society or state. They are enforced through appropriate sanctions and serve to maintain order, protect individual rights, and ensure the functioning and stability of society.

Human beings are inherently social creatures, driven by a fundamental need for connection and belonging. This innate social nature necessitates the establishment of rules and regulations within any society. These rules serve as a framework, defining acceptable and unacceptable behaviors among members. Adherence to these rules is crucial for the very existence and survival of society. They provide a sense of order, predictability, and stability, ensuring the harmonious functioning of the social system. In this context, law emerges as a vital mechanism for regulating various aspects of life within a given society.

ii) Comparison between legal and non- legal rules

Legal rule versus societal rule

Both rules are run by the authority who leads a given community during a given period. However, legal rule differs from the societal rule by its general scope and the enacting authority. The law is enacted and sanctioned by the sovereign authority (State) to regulate and serve in accordance with the design of the global and particular objectives of this State. It designates every norm which is legally binding (normally covered with the obligatory force), whatever its source (law, custom), its degree of generality (general or special rule) and its scope (prohibitive, soft or suppletive rule).

On the other hand, the societal rule is enacted by the authority that leads a given small community during a given period and in accordance to his/her conception. It is applicable to this small community (individuals or a group of individuals) and comprises disciplinary and statutory rules. Disciplinary rules determine the sanctions while statutory rules fix the prerogatives or rights and duties of the members of that small community (e.g., internal rules and policies of a company).

While both legal and societal rules aim to govern behavior within a community, they differ significantly in their scope, origin, and enforcement.

Legal Rules:

- **Origin:** Enacted and sanctioned by the sovereign authority (the State).
- **Scope:** Broad and comprehensive, encompassing the entire society.
- **Purpose:** To regulate social conduct in accordance with the overarching goals and objectives of the State.

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[1] *See for example, Rene, J, The Role of Law Under the Social Structure, in Journal of Education, Humanities and Social Sciences, Volume 42 (2024), p. 710-715; or David, Rene, and John EC Brierley. Major legal systems in the world today: an introduction to the comparative study of law. Simon and Schuster, 1978; or Boyle, Elizabeth Heger, and John W. Meyer. Modern Law as a Secularized and Global Model: Implications for the Sociology of Law. Soziale Welt, 1998, 49(3): 213-232.*

- **Binding Force:** Possess legal binding force, typically backed by the coercive power of the State.
- **Inclusivity:** Encompass all norms, regardless of their source (law, custom), generality (general or specific), or nature (prohibitory, permissive, or suppletory).

Societal Rules:

- **Origin:** Enacted by the authority governing a specific, smaller community (e.g., a company, a club, a religious organization).
- **Scope:** Limited to the specific community within which they are established.
- **Purpose:** To regulate behavior and maintain order within that particular community.
- **Enforcement:** Typically enforced through internal mechanisms within the community (e.g., disciplinary actions).
- **Types:** Include disciplinary rules (specifying sanctions for rule violations) and statutory rules (defining the rights, duties, and privileges of community members).

Law and morality

Law is law, regardless of its moral content. For example, in Rwanda, the law allows abortion in some circumstances specified in article 125 (See art.125 of Law No. 68/2018 of 30/08/2018 determining offences and penalties in general as amended to date). The provision was criticised and challenged as being contrary to moral values by which, in any case, the human life is inviolable from the conception until the death.

Moreover, most legal rules are derived from morality. Law-makers seeking to enact new laws to regulate human conduct usually convert into law their deeply held moral convictions. There are 3 main ways to convert a moral rule into law. First, a moral rule that is considered by a given society as so important as to require legal backing is converted into law by enacting a piece of legislation incorporating that moral rule. For example, caning kids at schools used not be criminalised. However, today it is a criminal offence under article in art. 142 Rwandan Criminal Law. A child is protected from corporal sanctions under article 28 of the Law No. 71/2018 of 31/08/2018 relating to the protection of the child. Today, some people argue that it is morally acceptable to impose non-severe corporal sanctions including non-heavy caning to correct the kid's bad behaviour. Secondly, where the law is unclear (grey areas), courts resort to moral principles in interpreting the law. For example, the issue related to the type and amount of dowery paid as part of marriage protocol. Lastly, some moral rules, by force of their wide acceptance and observance, graduate into a binding custom.

Moral rules derive from divine revelation and they emanate from the conscience, while the legal rule is the outcome of the will of some authorities. Compared from their object, a moral rule has a vaster domain than the legal rule. A moral rule is more demanding, tends to perfection and imposes charitable duties that are not necessarily aligned with legal techniques or legal requirements. The sanction of legal rule is immediate, present and emanates from the public authority while the sanction of the moral rule is of internal consideration i.e. the conscience and it refers to the next world, the Heaven. Again, the authority of legal rule is well defined and precise while the authority of the moral rule is vague.

Position of the law in relationship with the moral rules is seen through three positions. There are some legal rules that are also moral rules. For example, the term "fault" has a moral significance and it is the basis of tort liability (Principle of damage and obligation to repair). However, there are some legal rules that are not moral rules, e.g., traffic law, law on customs, tax laws. In addition, there are some moral rules that are not legal rules and not all inconsistent behaviours with the morals are punishable by the law. For instance, the Rwandan criminal law does not punish homosexuality, suicide, prostitution, etc. It is clear that the legality is not synonym of morality because for example slavery was morally wrong, even though it was legally practiced. Abortion is morally condemned although it is legal in some jurisdictions and acceptable in Rwanda in some specific cases provided for by the Law

From these details mentioned above, the relationship between law and morality is complex. While law often reflects moral values, it is crucial to recognize their distinct natures.

Autonomy of Law: Law possesses a degree of autonomy from morality. For instance, the Rwandan law allows abortion in certain circumstances, highlighting that legal validity does not automatically equate to moral correctness.

Morality as a Source of Law: Moral principles significantly influence the development of law.

- **Legislative Enactment:** Societally significant moral rules are often codified into law by legislative bodies. For example, the prohibition of corporal punishment in schools, such as caning, reflects evolving societal values.
- **Judicial Interpretation:** Courts may interpret ambiguous legal provisions by drawing upon underlying moral principles.
- **Emergence of Custom:** Widely accepted moral norms can evolve into legally binding customs.

Distinguishing Characteristics:

- **Origin:** Moral rules originate from diverse sources such as divine revelation, individual conscience, and societal values, while legal rules are products of the state's will.
- **Scope:** The scope of morality extends beyond legal obligations, encompassing a broader range of human conduct, including charitable duties and personal virtues.
- **Enforcement:** Legal rules are enforced through state-sanctioned mechanisms, while moral rules are primarily self-enforced through societal pressure and individual conscience.
- **Authority:** The authority of legal rules is clearly defined and enforced by the state, whereas the authority of moral rules is often more subjective and less clearly defined.

Overlap and Divergence:

While some legal rules align with moral principles (e.g., the concept of "fault" in tort law), many legal rules, such as traffic laws or tax regulations, have little to do with morality. Conversely, numerous morally objectionable acts may not be legally prohibited. For example, while slavery was once legally permissible, it was always morally reprehensible. Similarly, while some argue for the moral permissibility of certain forms of corporal punishment for children, this is not currently permitted under Rwandan law.

Law and religion

Religious rules originate from religious authorities within specific confessional organizations and govern the conduct of their members. While both law and religious rules aim to guide behavior, significant differences exist:

- **Enforcement:** In secular states, religious rules are generally not enforceable by law. However, in theocracies, religious rules may form the basis of the legal system.
- **Scope:** Religious rules typically apply to specific religious communities, while laws are generally applicable to all citizens within a given jurisdiction.

Despite these differences, there can be significant interplay between law and religion like legal recognition of religious practices**.** In some countries, like Uganda, religious marriages may be legally recognized, demonstrating a degree of legal accommodation for religious practices.

It can therefore be deduced that the relationship between law and religion is multifaceted and varies significantly across different societies. While secular states strive to maintain a separation between church and state, there is often a degree of reciprocal influence, with law recognizing or accommodating certain religious practices while religious principles may indirectly shape legal norms.

Figure 1: Comparison between law and other rules

Comparison aspects	Law	Morality	Religion	Company internal rule
Author	sovereign authority (State)	Divine revelation and the conscience	Religious authority	Owner of the organisation/ company
Scope of application	General – applicable to all and on the whole territory of a state	Applicable to those acceptable to it	Applicable to the faithful or members of the religious organisation	Within the organisation/ company
Legal / probative force	Obligatory/ authoritative	Not binding	Binding on the Religious organisation members	Members and workers
Sanction of breach	Immediate sanction by the public authority	No sanction	Applicable disciplinary sanctions	Applicable Disciplinary sanctions

Law and politics

The law suffers direct influence of the politics. However, this does not mean that law ceases to be law in order to become a simple instrument of political powers although the interactions between politics and the law are inevitable. In principle, law is aligned to the government policy and it is enacted to achieve and implement objectives of existing policy of the state.

iii) Systems of law

In the world, there are two major legal systems: Common Law system and the Civil Law system (also known as Romano-Germanic Law) except in some Islamic based states where the Sharia law is dominant. While most countries adhere primarily to one system, Rwanda transitioned from a purely Civil Law system to a hybrid approach, incorporating elements of both.

Common law system

Common law is a legal system based on judicial decisions (precedents) rather than written laws. It originated in England and emphasizes consistency by following past rulings in similar cases. This system allows for flexibility as judges can interpret and apply existing laws to new situations, ensuring the law adapts to changing circumstances. The legal system was adopted and adapted by countries formerly colonized by Britain.

Civil Law system

The civil law system primarily relies on codified laws enacted by the legislature. These comprehensive legal codes serve as the primary source of law, providing a systematic framework for legal rules. Unlike common law, where judicial precedent plays a significant role, civil law emphasizes the application of these written codes to specific cases.

- **Differences**

1. Application and interpretation

Both legal systems, utilize written laws, but the application and interpretation might differ. For example, in UK the tort law is mainly contained in judicial precedent and in statutory provisions. In contrast, the civil law system often embodies a broader principle such as "anyone who causes injury to another must repair the damage caused." This principle, not explicitly recognised in the same way by common law where its only to parties in a contract, emphasizes a broader scope of liability beyond contractual obligations.

2. Evidence Presentation and Appellate Review

In common law systems, the trial court is the primary forum for evidence presentation. Appellate courts generally do not entertain new evidence. They primarily review the lower court's decision to determine if errors of law or procedure occurred. Parties are expected to present all their evidence during the trial. Conversely, in civil law systems, such as that outlined in Rwanda's Law No. 22/2018, the introduction of new evidence on appeal is generally permitted. Article 154 paragraph 3[2] specifically allows for the submission of new

[2] *'It is not prohibited to submit, in appeal, new arguments or elements of evidence that were not heard at the first level*

arguments or evidence not previously considered. However, there are exceptions to the rule in the common law system. New evidence may be admitted if discovered during the appeal process or if previously rejected at the trial court, provided sufficient justification is given for the delayed presentation.

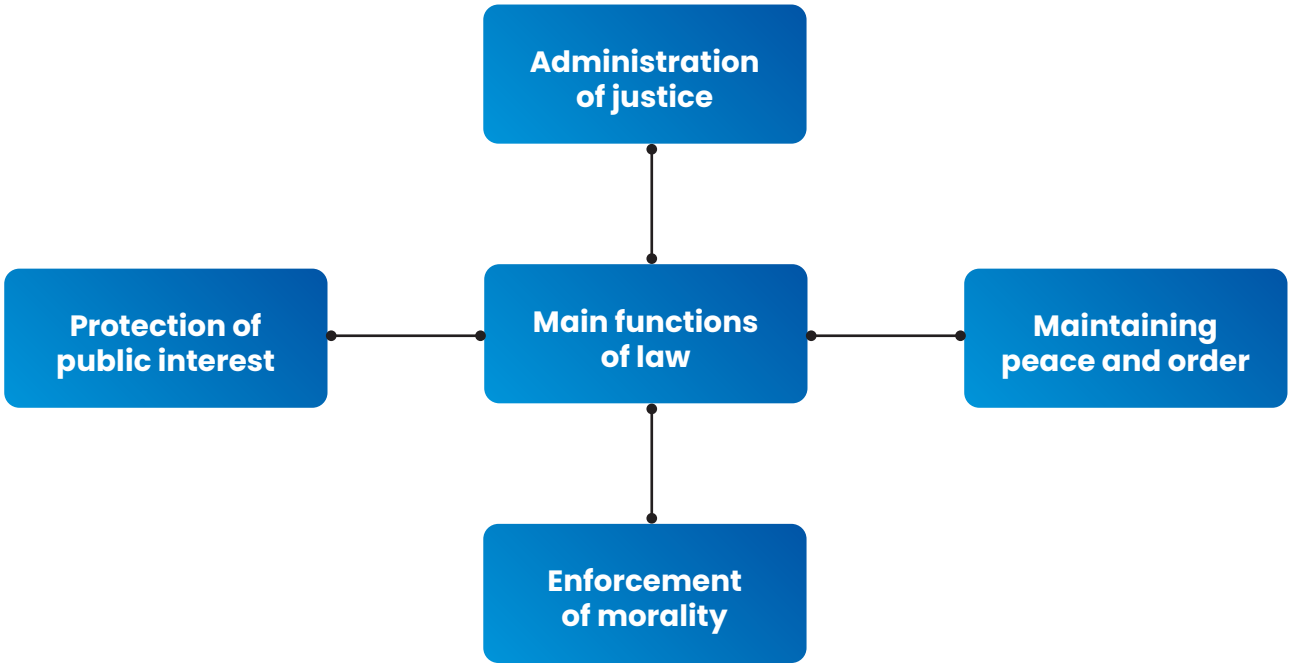
3. The Role of the Judge

The role of the judge also differs significantly. In common law systems, judges primarily act as impartial arbiters, overseeing the adversarial process where parties are responsible for presenting their own evidence and arguments. The judge's role is to ensure a fair hearing and apply the relevant law to the established facts. In contrast, the judge in civil law systems plays a more active role, often acting as an investigator who actively questions parties to uncover the truth. This inquisitorial approach aims to ensure all relevant facts are brought to light.

iv) Main functions of law

The functions of law include: administration of justice, maintaining peace and order, enforcement of morality and protection of public interest.

Figure 2: Main functions of law



Administration of Justice

All legal systems acknowledge the fundamental principle that law should serve the ends of justice. The key challenge however, is defining what amounts to justice. What is just for one person may not be perceived as just for another. Accordingly, the assertion that law must serve the ends of justice is used to promote the view of justice shared by those whose perceptions dominate a given society.

Fairness is widely considered a cornerstone of justice. Therefore, when evaluating law, it is pertinent to consider whether it is just or unjust. It is also crucial to recognize that adhering to the law, does not guarantee a just outcome, particularly if the law itself is unjust. Hence, the court is obliged to enforce the law *as it is*, regardless of personal perceptions of the judge. While the ideal is that law ought to serve the ends of justice, the remedy for an unjust law lies primarily with the legislative branch, not the judiciary. Courts are primarily concerned with interpreting and applying existing laws, not with determining their inherent justice.

Maintaining peace and order

The primary function of law is to maintain peace and order within society. In its absence, society descends into a chaotic state where only the strongest survive, and the weak become prey. Without established rules of conduct, disorder and anarchy prevail, hindering progress and undermining societal stability. Thus, law plays a crucial role in preserving peace and order even though the latter must be sought with due regard to justice and respect for fundamental human rights.

Enforcement of morality

While closely related, maintaining peace and order is distinct from promoting justice. Justice is merely one component of morality. There are other components of morality not encompassed by the concept of justice. For instance, a law may be deemed morally wrong if it compels individuals to perform actions that are morally prohibited, or prevents them from engaging in morally obligatory actions.

Characteristics of Legal Rules

Legal rules possess unique characteristics:

- **Obligatory:** Compliance with legal rules is generally mandatory.
- **General:** Laws typically apply to a broad range of individuals or situations.
- **Authoritative:** Laws are backed by the authority of the state and enforced through legal sanctions.
- **Oriented towards the common good:** Ideally, laws are intended to serve the interests of society as a whole.

Types of Legal Rules

In principle, a law is compulsory. However, the intensity of the compulsion differs depending on whether the concerned rule is prohibitive or suppletive. Prohibitive rules are those rules that are binding on all (*erga omnes rules*) and cannot be disregarded. These include, tax laws, criminal laws etc. On the other hand, suppletive rules are applicable only in the absence of specific agreements between parties. They provide default rules that can be overridden by individual choices and are only binding if the parties did not decide. In fact, they supplement the silence of the parties.

Examples of suppletive rules:

(1) Article 64 of the Contract law: "Contracts made in accordance with the law shall be binding between parties. They may only be revoked at the consent of the parties or for reasons based on law. They shall be performed in good faith." From this legal provision, an agreement is a law to the parties and prevail over other applicable laws provided that the contract does not violate the public order and good morals.

(2) Article 373 of the Persons and Family laws: Intestate succession is a succession opened if the deceased person has not made a will. The Intestate succession is conducted in accordance with provisions of the Companies Act. The meaning of the article is that intestate succession applies only in the vent that the De cujus has left the testament (a will). Hence, a statement prevails over the law.

A law is enacted to be respected and observed by society regardless of whether they personally agree with the legal provisions or voted for the law makers who enacted them. This principle is often summarised by the Latin maxim "*Dura Lex Sed Lex*"- "the law may be harsh, but it is the law."

The Force of Law:

- A legal rule is a norm enforced by the state through the imposition of sanctions. These sanctions can take various forms;
- **Civil Sanctions:** Aim to protect the private interests of individuals.
- **Criminal Sanctions:** Aim to protect society as a whole.
- **Disciplinary Sanctions:** Aim to regulate the conduct of employees within specific organizations.

Protection of public interest

Public interest refers to the collective well-being of society as opposed to the welfare of a individual citizens or private entities. Hence, the government has an obligation to promote and protect the public interest. It is in this respect that the public administration has prerogatives of expropriating or requisitioning a private asset for public interest purposes. This constitutes an exception to the constitutional right on the inviolability of private property as enshrined in Article 24 of Rwandan Constitution related to inviolability of the private property.

b) Sources of law

The sources of law vary depending on whether it is a national/domestic law or international law.

i. Sources of national or domestic law

According to Article 9 of Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure[3] the main sources of Rwandan law include;

[3] *A judge adjudicates a case on the basis of relevant rules of law. In the absence of such rules, the judge adjudicates according to the rules that he/she would establish if he/she had to act as legislator, relying on precedents, customs, general principles of law and doctrine*

- Legislation: Laws enacted by the legislative branch.
- General Principles of Law: Fundamental legal principles that transcend specific legal systems.
- Case Law (Jurisprudence): Judicial decisions that establish legal precedents.
- Customs: Long-standing and widely accepted social practices with legal significance.
- Doctrine: Legal scholarship and academic writings.

It follows therefore that the law gives power to the judge to use the primary source of law that is primary legislations and refer to secondary sources (i.e., other sources listed above) in the event that the law is silent on the matter.

While legal codes were previously a significant source of law in Rwanda, they were repealed in 2019.[4] These codes, such as the Civil Code and Penal Code, provided a comprehensive framework for various legal areas. The three civils codes I, II, and II regulated the persons and family, property and obligations respectively. The Penal Code consisted of the rules related to general principles of incrimination, offences and penalties. The Penal Code was also repealed and replaced by the law of 2018 determining the offences and penalties in general.[5]

ii. Source of the international law

Article 38(1) of the Statute of the International Court of Justice identifies he primary sources of international law:

- **International conventions**, Treaties and agreements between states.
- **International customs**: Established practices accepted as legally binding by states.
- **General principles of law recognized by civilized nations**- Fundamental legal principles common to most legal systems.

Judicial decisions and the teachings of the most highly qualified publicists-of the various nations, as subsidiary means for the determination of rules of law.

iii. Purpose and scope of the constitution

Definition of constitution

Constitution is the supreme law of a given state and establishes the fundamental principles by which the state is governed. It describes the main institutions of the state, and defines the relationship between these institutions (for example, division of power amongst the three arms of the state: the executive, the legislative and the judicial), places limits on the exercise of power, and sets out the rights and duties of citizens. In essence, the constitution outlines the relationship between the state and the individual citizens. The current constitution governing Rwanda is the Constitution of 2003 which has undergone significant revisions in 2015 and 2023.

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[4] *See Law n° 020/2019 of 22/08/2019 repealing all legal instruments brought into force before the date of independence. The law defines before the date of independence as period of time running from the year 1885 to 1st July 1962.*

[5] *See Law No.68/2018 of 30/08/2018determining offences and penalties in general published in the Official Gazette No. special of 27/09/2018*

Key Characteristics of a Constitution

Generally, constitution is a body of rules which:

- Regulates the system of government within a state.
- Establishes the structure and composition of governmental bodies and institutions
- Defines the powers and responsibilities of the institutions
- Determines the interactions and co-existence among the different branches of government
- Defines the relationship between government and its citizens.

Hierarchy of Laws in Rwanda

Article 95 of the Rwandan Constitution establishes a hierarchy of laws:

- **Constitution**: The supreme law of the land.
- **Organic law**
- **International treaties and agreements**: Ratified by Rwanda;
- **Ordinary law**: Laws enacted by the Parliament.
- **Orders and regulations**: Issued by competent authorities within the limits of the law.

The purpose of the hierarchy is to ensure that no law can contradict a higher-ranking law. To avoid this issue of contradiction, new laws often include a clause repealing all prior provisions contrary to the new law.

Resolving Conflicts Between Laws

In cases of conflict between a general law and a special law (e.g., general statutes governing public servants and special statutes governing specific public institutions), the principle of "specialia generalibus derogant" applies. This principle dictates that the special law takes precedence over the general law.

In cases of conflict between a general law and a special law, (For example, general statutes governing public servants and special statutes governing some of the public institutions), the principle "specialia generalibus derogant" applies. This principle dictates that the special law takes precedent over the general law. Hence, the special law shall apply to the case at hand.

Organic Laws

The organic laws are those designated as such and empowered by the Constitution to regulate other key matters in the place of the Constitution as provided by art 95 par. 3 of the Constitution of the Republic of Rwanda. They occupy a position below the Constitution but above ordinary laws and international treaties.

International Treaties

While international treaties are an important source of law, they cannot contradict the Constitution or organic laws. The international conventions and treaties ratified by Rwanda come at the third place after the organic laws. This is because organic laws are provided by the constitution and international treaties cannot be contrary to the constitution or

organic laws. Hence, a state can make reservation on the clauses of an international convention/treaty that contravenes the internal supreme laws.

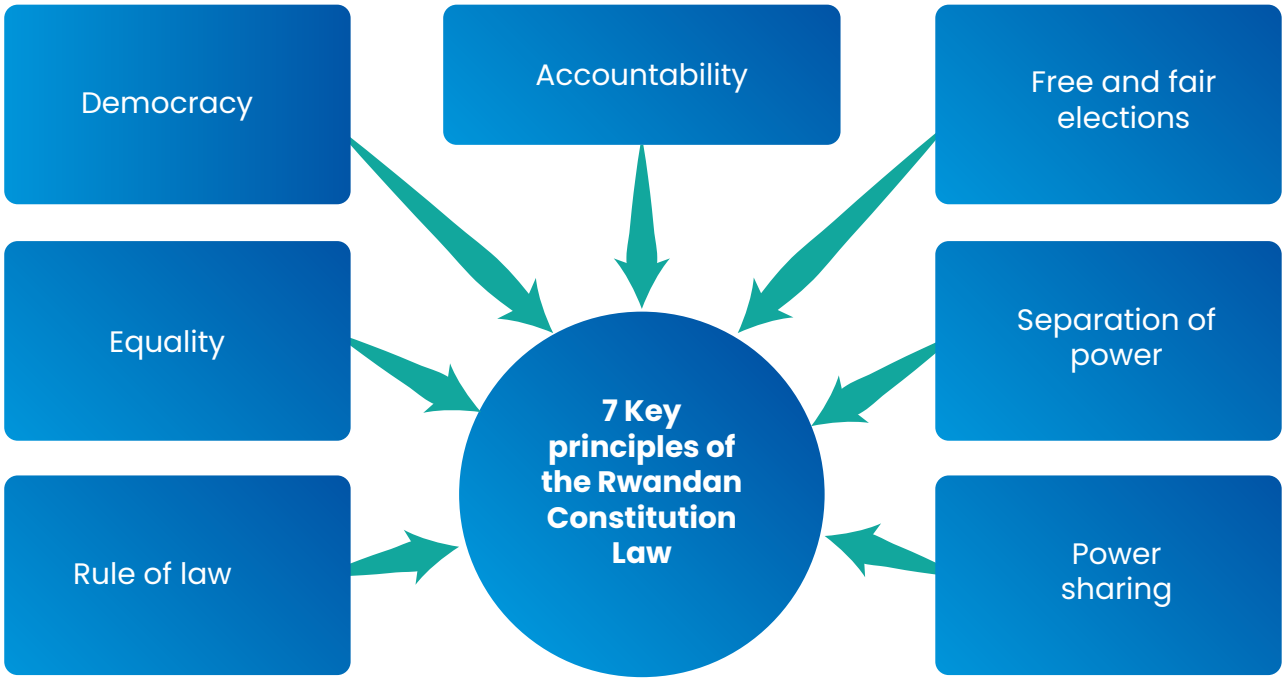
Decree-Laws

Article 92 of the Rwandan Constitution empowers the President to issue "Decree-law" having legal binding force as ordinary law when the parliament cannot convene.[6] However, these decree-laws cease to have legal force if not adopted by the Parliament at its next session.

Key principles of the Rwandan Constitution law

The key principles of the constitution of Rwanda include *inter alia*: rule of law, equality, democracy, accountability, free and fair election, separation of power and power sharing.

Figure 3: Principles of Rwandan Constitutional law



Rule of law

The rule of law is essential in any society where human rights are to be protected. It acts as a safeguard for human rights by:

- **Legally guaranteeing them** through provision of a legal framework for the protection of individual rights.
- **Providing redressal mechanism**: where violations occur.
- Deterring human rights abuse by imposing appropriate punishments to discourage future violations.

[6] *"If it is absolutely impossible for the Parliament to sit, the President of the Republic may, during that time, promulgate decree-laws approved by Cabinet."*

When legislation fails to adequately protect human rights or redressal mechanisms are compromised by factors like corruption, human rights violations often go unpunished, creating a culture of impunity.

The basic function of rule of law is to ensure justice, peace and order in society. This principle of rule of law is explicitly recognized in the preamble of the Rwanda Constitution.

Equality

Democratic societies emphasise the principle of equality recognizing that all individuals possess equal value and deserve equal opportunities. Discrimination based on race, religion, ethnicity, gender, sexual orientation or any other ground is unacceptable. This principle is enshrined in Article 15 of the Rwandan constitution which stipulates that "All human beings are equal before the law. They shall enjoy, without any discrimination, equal protection of the Law". It follows therefore that equality is a direct outcome of upholding the rule of law.

Democracy

A legitimate government derives its authority from the consent of the majority of people falling under such government. This is in line with the traditional view that democracy is "a government of the people, by the people and for the people." The principle is enshrined in Article 4 (2) of the Rwandan constitution which states "The founding principle of the Republic of Rwanda is: Government of the people of Rwanda, by the people of Rwanda and for the people of Rwanda." Rwanda is a democratic republic as provided in art.4 (1) of the Rwanda Constitution.

In a democratic system, the power to govern is not vested in one person (a monarch) or in a small group of persons (an aristocracy) but in the people of the state. In this regard democracy presupposes:

- **Free political expression** through free and fair elections to public office and where adults have equal rights to vote and stand for election;
- **Protection of civil and political rights** through guaranteed freedom of speech, assembly, association, and other fundamental rights.
- **Accountability of government to the people** – mechanisms for holding government officials accountable for their actions
- **A vibrant civil society:** where there is existence of independent organizations and social groups that can participate in public discourse and advocate for citizen interests.

Accountability

Accountability exists when individuals or entities are responsible for their actions and are subject to oversight. It involves two key elements:

- **Answerability:** The obligation to provide information and justification for decisions and actions.
- **Enforcement:** The ability to sanction or remedy wrongdoing. Article 117 (2) of the Rwandan constitution states that "The Cabinet is accountable to the President of the Republic and the Parliament ...

In a democratic society, citizens must be able to access information government decisions and hold officials accountable for their actions. Mechanisms for public accountability include:

- **Free and independent media:** To inform the public and hold officials to account.
- **Access to information:** Enabling citizens to obtain information about government activities.
- **Public consultations and forums:** Providing opportunities for citizen participation and input.

The Rwanda National Dialogue (Umushyikirano), as outlined in Article141 of the Rwandan Constitution exemplifies a mechanism for public consultation and engagement.

Free and Fair Elections

Free and fair elections are a cornerstone of democracy. They allow citizens to express their will by electing representatives to govern them.

- **Key elements of free and fair elections:**
  - **Freedom from intimidation:** Citizens must be able to participate in the electoral process without fear of coercion or intimidation.
  - **Absence of corruption:** The electoral process must be free from corruption and manipulation.
  - **Equal access:** All eligible voters must have equal access to the electoral process.

Separation of powers

The principle of separation of powers divides the government into three distinct branches:

- **Legislative Branch:** Enacts laws.
- **Executive Branch:** Enforces laws.
- **Judicial Branch:** Interprets and applies laws.

This separation aims to prevent the concentration of power within a single entity and ensure checks and balances among the branches of government.

Power Sharing

Article 62 of the Constitution incorporates the principle of power sharing, reflecting a commitment to inclusive governance. The key provisions in Article 62 are:

- **Restrictions on the President and Speaker of the Chamber of Deputies:** They cannot belong to the same political party.
- **Cabinet composition:** The political party holding a majority in the Chamber of Deputies cannot appoint more than 50% of Cabinet members.
- **Women's representation:** At least 30% of positions in decision-making bodies must be held by women.
- **Representation of various categories:** Parliament must reflect the diverse composition of Rwandan society.

Power sharing is also a corollary of political tolerance which is the willingness to extend basic rights and civil liberties to persons and groups with differing political views including those of the opposition. This fosters a more inclusive and informed decision-making process.

c) Branches of law

i) Public and private law

The most important classification of law is its division into public law and private law i.e., the legal rules are either of public law or of private law except some few rules which constitute a mixed branch of law.

Public law is that branch of law which governs the organization and functioning of state (country) and its institutions. It also regulates relationship between state and its citizens and relationships between private organizations and the state or its organs. Public law includes areas such as Constitutional law, administrative law, criminal law, public finance law, tax law, and public procurement law among other.

On the other hand, private law governs relationships between private individuals, organizations, and companies. For example persons and family law, contract law, tort law, land and property law, company law and labour law).

It can therefore be deduced that Public law is the term that covers all areas of law that bring us into contact with the State power and its application, while private law is an umbrella term of all areas of law that regulates relationships between private persons on equal footing.

ii) Substantive law and procedural law

Substantive law sets out the rights, obligations or duties governing individuals within society. Duties tend to take the form of a command: "Do this!" or "Don't do that!". In essence Substantive law also establishes the legal standards of conduct, rights and privileges.

On the other hand, procedural law establishes the legal processes for enforcing the substantive rights and obligations. It includes court processes, rules of evidence, and methods of enforcing judgments.

iii) National and International law

National law is a body of laws applicable within a specific country (domestic Law). It follows therefore that national law is enforced by the national government. International law on the other hand governs the relationships between states. International law is divided into three main branches:

- **Public international law**: relationship between states and/or international organisations.
- **Private international law**: deals with the exercise of jurisdiction by national courts in matters involving a foreign element (international element).
- **International humanitarian law**: governs the conduct of armed conflict. It lays out the responsibilities of states and non-state armed groups during an armed conflict. There are two types of laws of war:

- *Jus ad bellum* that set rules for engaging a war. Any state that engages a war against another without any legal justification (only accepted reason is self-defence) commits a crime of aggression.
- *Jus in bello* that set principles governing the conduct of war. This comprises for example four Geneva conventions and additional protocols.

iv) Customary rules vs. written rules

Customary law and written law represent distinct approaches to legal systems.

Customary law originates from long-standing, customs, usages and practices within a given community without the intervention of the authority. These rules are generally unwritten; they are transmitted orally through generations and often reflect the unique social and cultural values of a particular community. Contrary, written law comprises a set of written rules enacted by a legislative body or other authority with the power to create law. It is formally documented and published in official legal texts and provides a clear and codified framework for legal rules

d) Legislative process

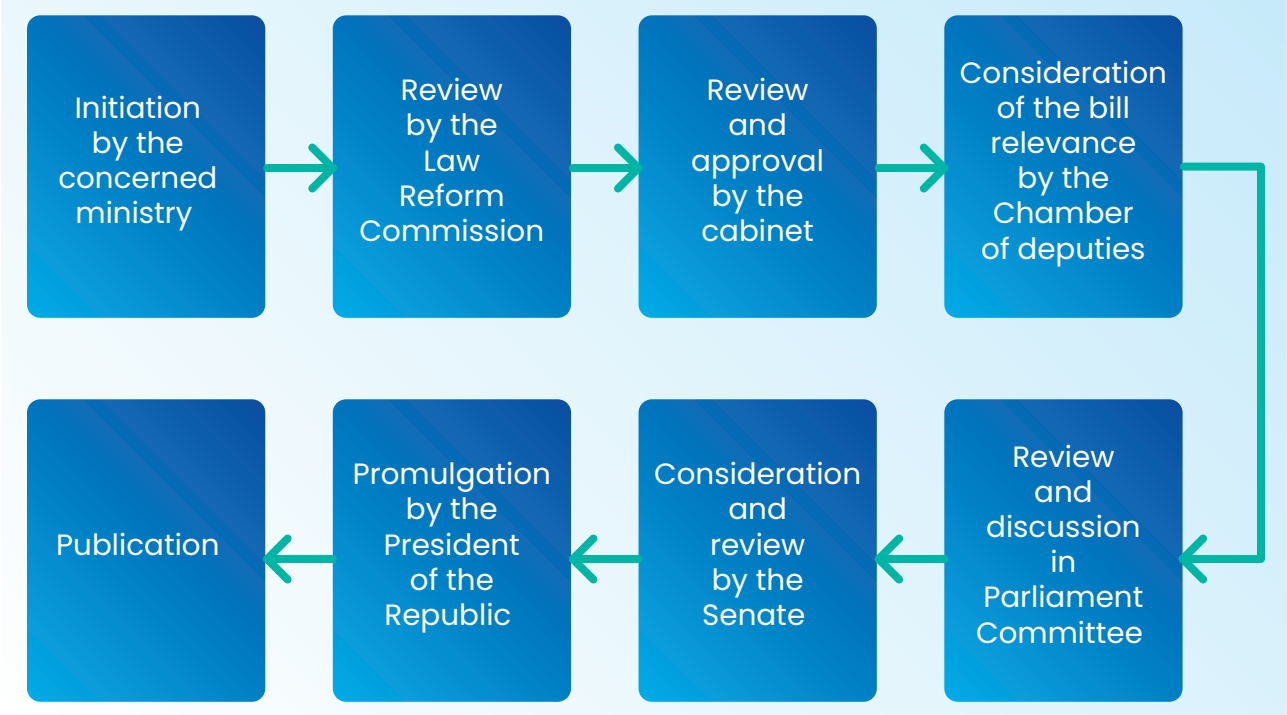
The legislative process differs depending on whether the law is primary legislation (i.e., acts) or secondary legislation (i.e. orders, regulations and directives).

i) Process for primary legislation

The process of drafting and enacting laws in Rwanda is structured through a familiar and constitutionally provided separation of powers between the executive and legislative branches of government. The executive has primary responsibility for drafting bills to Parliament while Parliament has responsibility to review, amend, and pass bills into law. However, the parliament has also the power to initiate new laws or amendments[7].

[7] *Article 88 Rwanda Constitution-Initiation and amendment of laws is the right of every Deputy or the Government acting through Cabinet. However, the Senate initiates the draft organic law determining the functioning of the Senate.*

Figure 4: Legislative process



Initiation of the law

When government initiates the legislative process, the line ministry prepares the draft bill based on policy directives from the minister. The drafting team typically must include both policy experts and lawyers with legal drafting skills. According to Article 3 of Instructions of the Minister of Justice N° 01/11 of 14/11/2006 relating to the drafting of the texts of laws all draft legislations must be prepared and submitted to the Cabinet in three official languages (Kinyarwanda, English, and French) on each page. The draft legislations are sometimes initiated in either French, English or Kinyarwanda depending on which language the initial legal drafter is most familiar with.

Once the draft legislation is complete, it is presented to the relevant minister who may convene a meeting to present the draft legislation to the public including Civil Society Organisations and other stakeholders. This process, known as "validation" aims to raise awareness solicit public input on the proposed legislation.

Review by the Rwanda Law Reform Commission

Following validation at the ministerial level, the draft legislation is submitted to the Rwanda Law Reform Commission (RLRC) for further review The RLRC's Legislative Drafting Unit made of a team of legal drafters plays a crucial role in this process.

Key responsibilities of the RLRC in this process;

- **Legal Review:** Ensure the draft legislation is consistent with the Constitution, ratified international treaties, and existing laws.
- **Technical Review:** Ensure adherence to proper drafting protocols, including format, style, and clarity.

- **Language Translation:** Ensure accurate translation of the draft legislation into all three official languages of Rwanda (Kinyarwanda, English, and French).

It's important to note that while Kiswahili is an official language of Rwanda, it is not currently used in official legal documents.

Transmission of the draft project to the cabinet

When the initiating ministry has complied with all recommendations from the Ministry of Justice and when it has the approval of the Ministry of Justice, the draft legislation is transmitted from the initiating minister to the cabinet. A cabinet paper that explains the policy intent of the draft in a non-technical language is also drafted by the initiating ministry and includes the draft legislation itself in an annex. Once a draft is before the cabinet, it may be (1) adopted, (2) adopted with amendment, or (3) rejected. Adoption with amendment is the most common.

The draft legislation that moves forward and supported by the cabinet is that that is most central to the President's political agenda, because the determination of which draft legislation moves through this stage is largely a political matter. Finally, when the cabinet adopts the draft legislation, the draft is then presented as a bill to the Parliament, the Chamber of Deputies; and from this level, the responsibility for or "ownership" of the draft legislation or bill passes from the executive to the legislative branch of State. Transmission of the bill to the chamber of deputies

Following Cabinet approval, the initiating minister presents the bill to the Chamber of Deputies (the lower house of Parliament) during a plenary session, at the request of the Prime Minister. The plenary session initially considers the bill's relevance and appropriateness. The bill is then referred to a relevant parliamentary committee. In practice, the Members of Parliament in a standing committee discuss a bill and review and offer proposed amendments that will be voted on by the plenary article by article. As part of its review, the standing committee may invite experts or interested civil and public sector organisations to comment on the bill. The process of consideration involves the Members of Parliament sitting to discuss each clause of the bill. If passed, the bill is then sent to the upper house (Senate) if it is to be passed by both Chambers.

Transmission of the bill from the Chamber of Deputies to the Senate

According to the internal rules governing the Senate, the process for reviewing a bill in the Senate is similar to that in the Chamber of Deputies. Article 126 of the Organic Law n° 02/2005 of 18/02/2005 establishing Rules of Procedure of the Senate provides that, "Upon adoption of a draft bill by the Senate, the President of the Senate shall inform the Chamber of Deputies in a period not exceeding fifteen (15) days." When a draft bill is rejected, the President of the Senate shall, in brief statement, in a period not exceeding fifteen (15) days, explain to the Chamber of Deputies the reasons of its rejection.

When a draft bill which has been amended is adopted by the Senate, the President of the Senate, in a brief statement, shall inform the Chamber of Deputies in a period not exceeding fifteen (15) days. It is important to point out that when the Senate votes favourably without amendment to the text received from the Chamber of Deputies, the bill becomes a law but when the bill was amended by the Senate, a joint committee of the two houses is formed to synchronize the two versions of the bill. Once synchronized, both houses need to vote for the bill again. Once both Chambers have passed the identical text, it becomes a law and is then sent by the speaker of the Chamber of Deputies to the President of the Republic to prepare the step towards promulgation.

Transmission to the President of the Republic

- Once submitted to the President's Office, not only can the President of Republic accept the law and promulgate it (within 30 Days), i.e., sign it as it is, but he also, can use his prerogative to request Parliament to reconsider it.
- In this case, the Constitution provides Parliament with the option to override the request, by a majority of two-thirds for an ordinary law or three-quarters for an organic law.

Transmission to the Ministry of justice for publication

The final stage in the whole process of adoption of a binding law is its publication in the official gazette. This task is entrusted to the Ministry of Justice who countersigns the laws adopted by Parliament and promulgated by the President of the Republic. The Ministry of Justice publishes the law in three versions (English, French, Kinyarwanda) in the Rwandan Official Gazette. It is only then, that the draft legislation becomes legally binding on all individuals and entities in Rwanda. that binds everyone since it is published in the Rwandan Official Gazette, ignorance of it is not a defence.

ii) Process for secondary legislation

Secondary legal acts are instruments used to enforce the primary legislation. These include orders such as Presidential orders, Prime minister's Orders, ministerial Orders and regulations passed by the public entities having regulatory power (such as National Bank of Rwanda, Rwanda Utility Regulatory Authority, Capital Market Authority, National Cybersecurity Authority etc.). The main role of the executive is to enforce laws. Hence, secondary legislation is initiated, reviewed and approved by the executive institutions and is legally binding once it is gazetted.

A.2. The judicial system and other government institutions

The Judiciary operates with other Government institutions and they are complementary. However, each institution is independent from the other. This section analyses the organisation, functioning and jurisdiction of courts, and the role of a judge in criminal and civil matters and independence of the judiciary.

a) Organisation, functioning and jurisdiction of courts

i) General overview of judicial system

The principle of separation of powers deals with the mutual relations among the three organs of the State. This doctrine aims to bring exclusiveness in the functioning of the three organs through a strict demarcation of powerthereby minimizing the risk of tyranny and ensuring a system of checks and balances. Hence, one person or body of persons should not exercise all the three powers of the State namely the legislature, the executive and the judiciary.[8]

The legislative organ of the state makes laws, the executive enforces them, and the judiciary applies them to the specific cases arising out of the breach of law. Under the doctrine of the separation of powers, the judiciary generally does not make laws, but

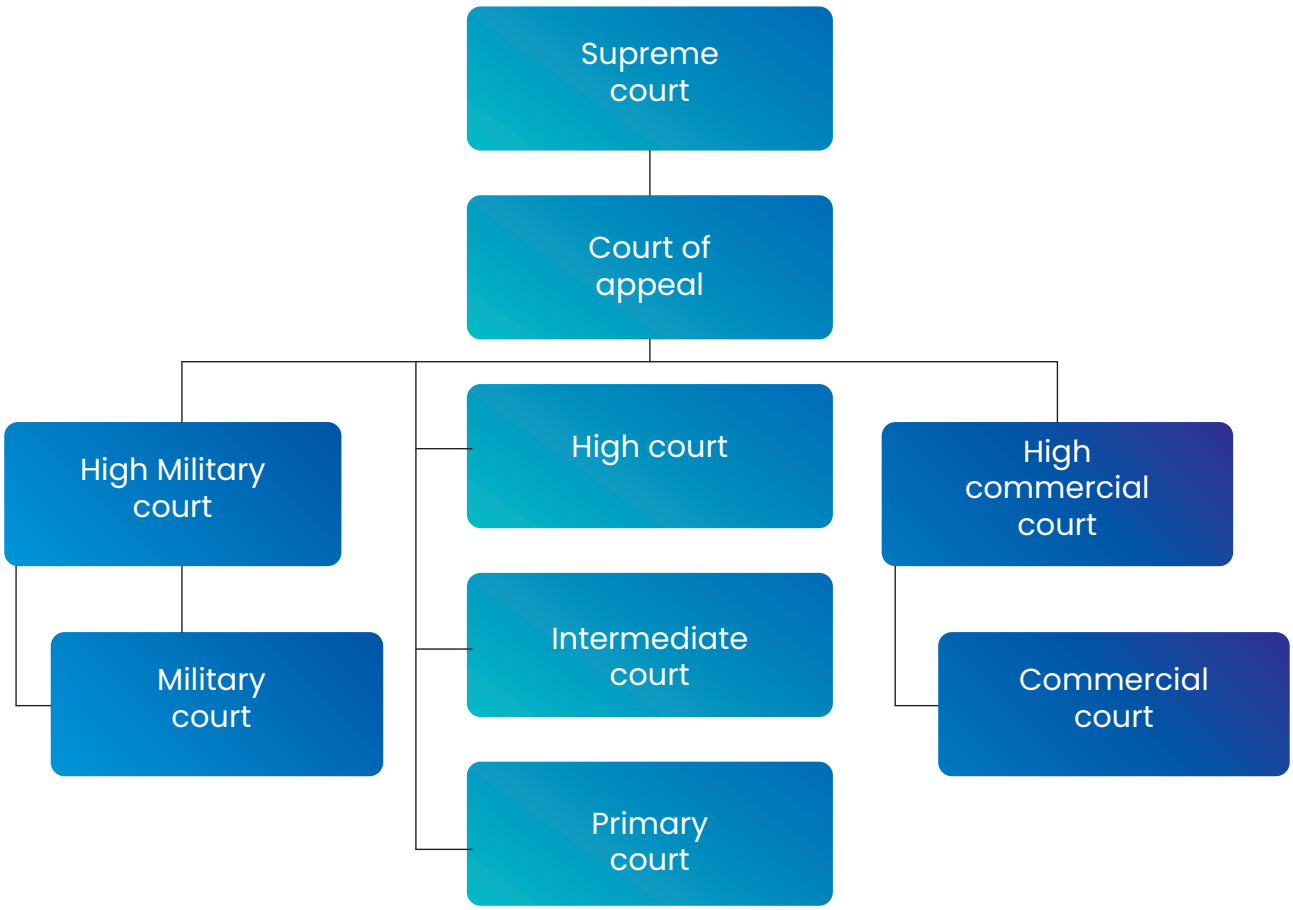
[8] See article 60 of 2003 Rwandan Constitution as revised to date.

rather applies law to the facts of each case. The judiciary (also known as the judicial system) is a system of courts which interprets and applies the law in the name of the sovereign or state and also provides a mechanism for the resolution of disputes.

A court is often a state institution with the authority to adjudicate legal disputes between parties and carry out the administration of justice in all matters. In both common law and civil law legal systems, courts are the central means for dispute resolution, and it is generally understood that all persons have an ability to bring their claims before a court. The Rwandan legal system recognizes two kinds of courts: ordinary courts and specialised courts.

Ordinary courts include Supreme Court; Court of Appeal; High Court; Intermediate Courts; and Primary Courts. Specialised courts include Commercial courts: Commercial High Court and Commercial Court; and military courts that is Military High Court and Military Tribunal.

Figure 5: Organisation of courts in Rwanda



ii) Jurisdiction of courts

The jurisdiction of a court may be defined as its power to hear or adjudicate a case. In judicial law, there are five types of court jurisdiction.

- **Subject matter jurisdiction (*ratione materiae*)**: this is the jurisdiction of the court based on the nature or the value of the claim under litigation. The value of the litigation is determined by principal claim plus interests agreed upon in the contract.

- **Territorial jurisdiction (*ratione loci*)** this the jurisdiction based on the geographical area where the claim occurred/is located. For example, if the subject matter is a house or land, the competent court shall be the court where the property is located or, in criminal matters, where the offence was committed.
- **Personal jurisdiction** (***ratione personae***): It is the jurisdiction based on the person of the defendant. Example: a case involving a child is only heard by the juvenile chamber of the Intermediate court, a case involving a soldier is only heard by a military court, a case involving one of the top five State Officials is only heard by the Supreme Court.
- **Temporal jurisdiction (*ratione temporis*)**: This is the jurisdiction based on the time when the claim occurred. For example, Rwandan courts are competent to hear cases of the genocide against Tutsi for acts committed in Rwanda between 1/10/1990 and 31/12/1994 while the International Criminal Tribunal for Rwanda ICTR/MICT is competent to hear such cases for acts committed between 1/1/1994 and 31/12/1994.
- **Universal jurisdiction:** Universal jurisdiction is the ability of the court of any state to try persons for crimes committed outside its territory based solely on the nature of the crime, regardless of where the crime was committed, the nationality of the perpetrator, the nationality of the victim, or any other connection to the state exercising such jurisdiction. Example: in international law, each country has the competence to prosecute offenders of international crimes arrested on their territory if they do not extradite them according to the principle of "*aut dedere aut judicare* (i.e., either you extradite or you adjudicate).

iii) Organisation and functioning of ordinary courts

The Supreme Court

The Supreme Court is the highest court in the Country. Its decisions are neither appealable nor revocable except in case of presidential pardon or review of its decision on own motion in the interest of the law. The Supreme Court comprises a President being also the president of the High Council of the Judiciary, a Vice President, at least five (5) other judges, court registrars and other staff members in charge of various duties in the Supreme Court. The Supreme Court bench consists of three (3) judges assisted by its registrar. However, the bench may consist of an odd number of more than three (3) judges depending on the importance the President of Supreme Court attaches to the case at hand. The territorial jurisdiction of the Supreme Court comprises the whole territory of the country. Its seat is located in the City of Kigali. No one can be tried before the Supreme Court without the assistance of a counsel.

The supreme court has jurisdiction to try:

- Applications for review of judgements rendered at last instance on grounds of their being vitiated by injustice upon approval by the President of the Supreme Court. However, the President of the Supreme Court may designate another court higher than the one that heard the case at the last instance in the event that the case may not constitute a precedent for other courts.
- Review of the direction of the final judgements taken by the courts to protect the law and give direction on request by the Rwanda Bar Association or the National Public Prosecution Authority.

- In criminal cases (as exclusive jurisdiction), in the first and last instances, the President of the Republic, the President of the Senate, the Speaker of the Chamber of Deputies, the President of the Supreme Court and the Prime Minister including their co-offenders or accomplices.
- At first and last instances to try the President of the Republic on charges of treason or gross and deliberate violation of the Constitution.
- Following disputes at first and last instances:
    - Take decision on petitions on the unconstitutionality of Organic laws, international instruments, laws and decree-laws;
    - Resolve disputes relating to interpretation of the Constitution;
    - Resolve disputes relating to the preservation of public interest;
    - Provide authentic interpretation on laws
    - Give authentic interpretation on traditional unwritten customs in case written law is silent;
    - Resolve disputes relating to referendum, presidential elections and parliamentary elections;
    - Decide that there is a force majeure that prevents Chambers of the Parliament from sitting in the national capital city.
- Administering the oath of office taken by high ranking officials.
- Petitions seeking to confirm unconstitutionality of a law.
- Cases relating to the referendum and presidential and parliamentary elections.
- Resolving disputes relating to a decision of expelling a Deputy or a Senator.
- Resolving disputes based on the interpretation of laws or the traditional custom.
- Resolving disputes based on the preservation of rights relating to general interest.
- Other jurisdictions:
    - Approve the list of Senatorial candidates except those appointed by the President of the Republic;
    - Declare vacant the Office of the President of the Republic in case the President in office dies, resigns or is sentenced by the court for treason or gross and deliberate violation of the Constitution;
- Hear petitions relating to a decision of expelling a Senator or a Deputy from Parliament or from a political organisation.

The Court of Appeal

The Court of Appeal tries cases at the appeal level; cases tried by the High Court, Commercial High Court and the Military High Court. Cases tried by the Court of Appeal are not subject to appeal unless provided otherwise by the law. No party to the case in the Court of Appeal is allowed to plead unless he/she is assisted by a counsel. Its jurisdiction covers the entire national territory. Its seat is located in the City of Kigali.

The Court of Appeal comprises its President, Vice President, at least eleven (11) other judges, Chief Registrar, Registrars and other necessary support staff members in various duties of the court provided by the law. The President of the Court determines the appropriate

number of judges for each case, ensuring an odd number of judges preside over each case. The proceedings are assisted by a Court Registrar.

The Court of Appeal has jurisdiction to:

- Hear the first level of appeal cases tried at first instance by the High Court, the Commercial High Court and the Military High Court.
- Try at the second level of appeal cases tried by the High Court, the Commercial High Court and Military High Court in the circumstances specified by the law.

The High Court

The High Court has its seat in the City of Kigali and its jurisdiction covers the entire national territory. It has the five (5) Chambers:

- Special Chamber hearing international and transnational crimes (with its seat at Nyanza)
- High Court Chamber which has a seat at Nyanza;
- High Court Chamber which has a seat at Musanze;
- High Court Chamber which has a seat at Rwamagana;
- High Court Chamber which has a seat at Rusizi.

Every Chamber has its administration. The High Council of the Judiciary may establish other Chambers or suppress them. The High Court comprises its President, Vice President, at least thirty (30) other judges, the Chief Registrar, registrars and other support staff members in various duties of the court provided by the law.

- High court has the following jurisdiction in criminal matters:
  - To try at first instance the offences of high treason, offences against State security and terrorism offences committed by civilians, except minors.
  - To try at first and last instances matters related to the rehabilitation of persons convicted by ordinary courts.
  - To hear at the first level of appeal criminal cases tried at first instance by Intermediate Courts
  - To hear at the second level of appeal criminal cases heard at the first level of appeal by Intermediate Courts in the cases specified by the law.
  - Through its specialised chamber, to try at first instance cases transferred to Rwanda from the International Criminal Tribunal for Rwanda/Mechanism for International Criminal Tribunals or transferred by courts of other countries
  - To try at the first instance international or transnational crimes committed within or outside the territory of Rwanda (i.e., the specialised chamber of High court has Universal jurisdiction over international and transnational crimes).
  - The specialised chamber of the High Court has appellate jurisdiction over the crimes of the genocide against the Tutsi, genocide ideology and other related crimes.
- The High Court has the following jurisdiction in civil administrative matters:
  - To hear cases for exequatur of judgments and decisions rendered by foreign courts.

- To hear appeals against civil, labour and administrative cases rendered at first instance by Intermediate Courts.
- To hear second appeals of civil cases heard at second instance by the Intermediate Court in the circumstances specified by the law. Admissibility of the second appeals is subject to the Court Chief Registrar whose decision is appealable to the President of the Court within five (5) days of notification of the decision.
- To hear at the first instance cases related to recission of administrative decisions taken by the President of the Republic, Speakers of the chambers of Parliament and members of cabinet.
- To hear cases relating to applications for asylum or extradition of foreign nationals.
- At the appeal instance, judgements rendered at first instance by chambers at the Intermediate Court level in administrative matters.
- With Special jurisdiction to hear some specific administrative matters provided for in the law.
- At the appeal instance labour cases decided at first instance by the chambers responsible for labour and administrative cases at the Intermediate Court level.

The Intermediate Courts

Rwanda has 12 Intermediate Courts and each one has specialised chambers, namely: Chamber hearing children and family cases; Chamber hearing cases on corruption and economic crimes; and Chamber hearing labour and administrative cases.

Judges that sit in the Chambers may also adjudicate other cases not assigned to Chambers as may be decided by the President of the court if considered necessary. The President and the Vice President of the Intermediate Court can hear any cases in the Court they head including those in the specialised chambers. Intermediate courts along their specialised chambers have jurisdiction to try:

- In criminal matters, offences punishable by a term of imprisonment exceeding five (5) years except the cases to be tried by courts such as international and transnational crimes, offences of high treason, offences against State security and terrorism offences committed by civilians, exclusive of minors.
- Crimes of genocide perpetrated against the Tutsi and crimes against humanity committed in Rwanda between 1st October 1990 and 31st December 1994 by persons considered as major criminals.
- Hear criminal cases and appeals against decisions of Primary Courts located within their territorial jurisdiction.
- Hear at the first instance all civil cases that are outside the jurisdiction of other courts including family and persons status.
- Hear civil actions relating to road traffic accident insurance disputes.
- Appeals against cases tried and decisions rendered at first instance by Primary Courts located within their respective territorial jurisdictions.
- Try at the first instance crimes committed by minors and those related to family.
- Hear appeals over all cases relating to the minor child's interests tried at first instance by the Primary Court if they are appealable.
- Try at first instance all labour and social security cases.

- Try at first instance the cases related to administrative decisions taken at last instance by the administration.
- Hear at first instance through their specialised chambers economic crimes.

The Primary courts

There are currently 41 Primary Courts and every one comprises at least two Judges. The Court also comprises a Chief Registrar, registrar or registrars and other necessary staff members. The Primary Court hears cases by a bench of one (1) judge assisted by a court registrar unless otherwise provided for by law. Primary court has jurisdiction to:

- Try offences punishable by a term of imprisonment not exceeding five (5) years, except those which are exclusively preserved for other courts;
- Try crimes of genocide against Tutsi and crimes against humanity committed in Rwanda between 1st October 1990 and 31st December 1994 not falling under the jurisdiction of other courts;
- Review of cases tried by Gacaca courts which fulfil the conditions required by law;
- Hear applications for provisional detention and release at first instance;
- Try at the first instance civil cases with a value not exceeding FRW 20 million;
- Try all commercial matters involving amounts not exceeding FRW 5 million.;
- Try at first and last instance complaints related to the Abunzi Committees' decisions.

iv) Organisation and functioning of specialised court

Commercial court

The commercial court has jurisdiction to hear at first instance:

- All commercial, financial and fiscal cases and other related matters such as commercial contracts or commercial activities, negotiable instruments, insolvency and insurance with the exception of those related to accident compensation.
- Business companies related cases;
- Disputes related to intellectual property, including trade marks and names;
- Tax cases referred to under the East African Community Customs Management Act.

High Commercial Court

It has jurisdiction to try:

- At first instance, applications seeking execution in Rwanda of decisions and judgements rendered by foreign courts on commercial, financial and fiscal cases.
- Petitions seeking execution in Rwanda of authentic deeds drawn by foreign authorities.
- Cases related to the legality of awards rendered by the arbitrators.
- On the appeal level, judgments rendered at first instance by commercial courts.

Military court

- It has jurisdiction at the first instance over all offences committed on the territory of the Republic of Rwanda and abroad by soldiers irrespective of their ranks, their co-perpetrators and accomplices unless such offences were committed with children and persons tried in the Supreme Court at first and last instance.
- It also tries former soldiers and former gendarmes who are prosecuted for having committed the crime of genocide against the Tutsi and other crimes against humanity that were committed in Rwanda between 1 October 1990 and 31 December 1994.

High Military Court

The High Military Court has the following jurisdiction:

- To try at first instance, all offences which constitute a threat to national security committed on the territory of the Republic of Rwanda and beyond by soldiers irrespective of their ranks, their co- perpetrators and accomplices.
- To hear, at appeal level, all cases tried by the Military Court; tries cases of rehabilitation of persons tried by military courts.

It is important to note that application for damages arising from a criminal offence to be tried by the military courts may be filed together with the criminal case in military courts or may be filed separately in a competent civil court.

b) Independence of Judiciary

Judicial power is exercised by the Supreme Court and other courts (system of courts) established by the Constitution and other laws. The Judiciary is independent and separate from the legislative and executive branches of government. The Ministry of Justice is responsible for managing the Judiciary's budget.

Independence presupposes a separation of powers in which the judiciary is institutionally protected from undue influence by, or interference from, the executive branch and, to a lesser degree, from the legislative branch. This is in line with the right to a competent, independent and impartial tribunal established by law; article 14(1) of the International Covenant on Civil and Political Rights. The rationale of this provision is to avoid the arbitrariness and/or bias that would potentially arise if criminal charges were to be decided on by a political body or an administrative agency.

The courts ought to not only be independent but also impartial. The latter prohibits a judge from adjudicating

- His/her own case or
- A case in which he/she has taken part in the proceedings in some prior capacity, or
- When he or she is related to the parties, or
- When he or she has a personal stake in the proceedings,
- He/she cannot take part in the proceeding because it can open the suspicion.

In such a case parties may disqualify the judge or the judge disqualifies him/herself and this is what is termed as recusation.

c) The role of judges in criminal and civil matters

A judge plays different roles depending on the nature of the case whether the case is criminal or civil. A criminal action intends to protect the public interest. Hence, the judge is active and may intervene in the trial and take some initiatives without any demand from the party, particularly when he decides, by himself, to conduct investigation. Therefore, the procedure is known as inquisitorial.

By contrast, a civil action is meant to preserve private and an individual's interests. Parties have a preponderant role in the trial and take initiative either in bringing the action or presenting evidence, or terminating case, without judicial intervention. The judge is passive in the proceedings; he intervenes (at the end) at the time of taking the decisions. The procedure is then known as adversarial. In other words, the parties have control over the direction of the trial.

A.3. Constitutional rights of citizens

a) Fundamental rights and freedoms

Human rights are mainly grouped into three categories: (i) civil and political rights; (ii) economic, social, and cultural rights; and (iii) solidarity rights.

i) Civil and political rights

Civil and political rights also known as rights of the first generation or fundamental human rights uphold the sanctity of the individual before the law and guarantee his/her ability to participate freely in civil, economic and political society. Civil rights include such rights as the right to life, liberty and personal security; the right to equality before the law; the right of protection from arbitrary arrest; the right to due process of law; the right to a fair trial; and the right to religious freedom and worship. When protected, civil rights guarantee one's personhood and freedom from state-sanctioned interference or violence.

Political rights include such rights as the right to speech and expression; the rights to assembly and association; and the right to vote and political participation. Political rights thus guarantee individual rights to involvement in public affairs and the affairs of the state. In many ways, both historically and theoretically, civil and political rights have been considered fundamental rights for which all nation states have a duty and responsibility to uphold. They have also been seen as so-called negative rights since they merely require the absence of their violation in order to be upheld. These rights denote actions that a government should not take.

ii) Social, economic and cultural rights

The central characteristic of economic, social and cultural rights also known as rights of the second generation are positive rights in that they enhance the power of government to do something to the person to enable her or him in some ways. They are generally interpreted as programmatic clauses, obligating governments and legislature to pursue social policies and they require the affirmative action of government for the implementation. Cultural rights for instance, are meant to maintain and promote sub-national cultural affiliations and collective identities, and protect minority communities against the incursions of national assimilationist and nation building-projects. These rights are about the conditions for the actual well-being of people that require the society to use its resources; protections against severe poverty and starvation.

This second generation of rights include among others, the right to education (article 20), right to good health (article 21), right to clean environment (article 22), right to respect of personal and family privacy (article 23), right to liberty and security (article 24), right to free movement and residence (article 26), right to access public service and free participation in country governance (article 27), right to participate in activities promoting national culture (article 36) etc. When protected, these rights help promote individual flourishing, social and economic development, and self-esteem. Economic, social, cultural rights denote rights that the State is obliged to protect and provide.

The second-generation rights are seen as an aspirational and programmatic set of rights that national governments ought to strive to achieve through progressive implementation; and their realisation depends heavily on the fiscal capacity of states. They are generally interpreted as programmatic clauses, obligating governments and legislature to pursue social policies and they require the affirmative action of government for the implementation.

iii) Solidarity rights

Article 28 of the Universal Declaration of Human Rights refers to the role of each individual in realising the so-called third generation human rights or the rights that belong to peoples. Solidarity rights which include rights to public goods such as development and the environment, seek to guarantee that all individuals and groups have the right to share in the benefits of the earth's natural resources, as well as those goods and products that are made through processes and economic growth, expansion, and innovation.

The third-generation rights include the rights of people and groups. Among other group rights include rights to self-determination and to disposal of natural wealth, the right to development, the right to peace, the right to environment, the right to ownership of the common heritage of mankind, and the right to communication.

b) The capacity to enjoy and exercise human rights and limitations

i) Legal personality and capacity

The capacity to exercise civil rights is recognised at the age of 18 years (article 104 of the Law No. 71/2024 of 26/06/2024 governing persons and family).[9] But the law specifically puts the majority age for marriage at 21 years old. Before a person attains the majority age, he/she can exercise the civil rights through representation by the person who exercises parental authority over him or her (i.e., parents, guardian or adoptive parent or in some specific cases, the children rights organisations). However, a child having attained the age of 16 years may be emancipated upon application and for justifiable grounds in accordance with the law[10]. The exercise of any civil right or any legal act shall not violate any law or contrary to public order or good morals otherwise such an act is void.

In principle, any human being is a subject of rights although this does not mean any individual is *in fact* owner, creditor, debtor, etc. or can exercise those rights. It simply means he/she can have different prerogatives or be imposed obligations. The quality of subject of right is therefore an *aptitude*, a *possibility to have rights* or, inversely *be imposed some*

[9] *All matters related to persons; family matrimonial regimes, donations and successions are regulated by the law No. 71/2024 gazetted on 26th June 2024 (2024 Persons and Family Law) replacing the persons and family law of 2016 and 2016 Matrimonial regime, liberalities and succession law.*

[10] *Article 105 of Law nº 71/2024 of 26/06/2024 governing Persons and Family*

obligations. Note also that among all the being, solely, the human being has the quality of being subject of rights. Apart from the legal personality recognized to human being; legal persons also have legal personality. Hence, a "person" is defined as a "being" that can have rights and duties or obligations, and that has therefore capacities to play a part in the life of a given community. Rwandan law distinguishes between two classes of persons: the natural persons or human beings, and the legal persons (artificial person).

This principle implies that things and animals are legal objects and cannot be legal subjects (active or passive). There was a time in history where a human being was considered as objects (commodity) instead of a human being: slaves. A human being does not ask for juridical personality. It is recognised as a matter of law. Legal personality has a beginning and an end. A natural person's personality begins at birth. However, the potential interests of the unborn child may be protected from conception.

Whenever there is a situation which can be to the advantage of a child, the child shall be deemed to have been born from the time of conception. Provisions of this article enable the child born alive to claim his/her rights from the time of conception, and that will be the case in matters relating to succession. It appears thus that rights are conferred on the unborn child at birth, if he is born alive. However, there are rights that are to be protected before birth for example the right to life. From the time of conception, the right to life is recognised to unborn child (foetus/embryo), hence the punishment of abortion. The legal personality, recognised to a person alive, ends by death; the human being is considered as legal subject from birth to death.

ii) Distinction between natural person and legal person

Law No. 71/2024 of 26/06/2024 governing Persons and Family defines a person as a natural person with rights, capacity and duties (article 2). A natural person is a living human being and legal subject recognized by the law. A natural person's personality begins at birth. However, the potential interests of the unborn child may be protected from his conception. Whenever there is a situation which can be to the advantage of a child, the child shall be deemed to have been born from the time of conception. The law enables the child born alive to claim his/her rights from the time of conception, and that will be the case in matters relating to succession.

Not only a natural person has legal personality but also the law recognises a legal person to be called "juristic persons", which are social associations representing a group of interests. Such organisations can be either a group of individuals such as a state, companies, cooperatives and associations, or a group of properties such as foundations. There are two categories of legal persons: legal persons of public law and legal person of private law.

The juristic persons of public law are those created by the public authority through regulation or acts (public institutions). The law itself determines the objectives, mission, powers, and responsibilities of public institutions. Juristic persons of public law are responsible for the satisfaction of general interests. These are for example, University of Rwanda, National Bank of Rwanda (BNR) and other public institutions with legal personality (administrative and financial autonomy).

On the other hand, legal persons of private law are juristic persons established by private individuals. This category includes non-profit organisations (such as associations, non-governmental organisations, faith-based organisations etc.) and profit-based organisations that is companies and cooperatives. Associations is a grouping of natural or legal persons governed by civil law aiming at promoting social works, while

a cooperative is an association of natural or legal persons based on the values of promoting their members. A company is a corporate body composed of one or more persons for making profit.

The juristic persons of public law acquire the legal personality from the law or acts that create them. Although juristic persons of private law come from the initiative of individuals, their legal personality is granted by public authority once they fulfil the required conditions. The acquisition of the legal personality implies the acquisition of the name, domicile (head office), patrimony, and the capacity to sue or to be sued in courts. The legal person is capable of enjoying rights and being subject to duties, separate from its members. Juristic persons have the capacity and power to defend their interests in court and may also be held liable in civil or criminal matters. They exercise their rights, juristic persons act through their representative bodies (directors, administrators, etc. The Legal personality of legal persons is terminated in four ways: legal measures (by law), court decision, members' decision/resolution, or by statutory measures (articles of association or statutes).

c) Termination of legal personality

The legal personality of a person is terminated by *death* or by *disappearance*. In law, if a missing person has been absent for 7 to 9 years, he is confirmed to be dead by the court. The period includes 2 or 4 years for declaration of the absence depending on whether the absentee has appointed a proxy/representative or not and five years after obtaining the absence declaratory judgement (See art. 23 and 32 of 2024 Persons and Family Law). The legal personality, recognised to a person alive, ends by death. Dead persons cannot possess (have) rights. Nevertheless, Rwandan law recognizes the protection of the deceased's body and burial place; respect of the deceased's names and protection against defamation, and respect of the *De cujus'* will/testament after his death.

A natural person is identified by name, gender, filiation (Paternal or maternal filiation, domicile and residence (See Chapter IV of the 2024 Persons and family Law). On these elements, one may add "nationality" in order to distinguish a Rwandan citizen from a foreigner as well as "the place and date of birth "can be additional elements (See Chapter IV of the 2024 Persons and family Law). The person's name is composed of a surname and one or more post names. It is mandatory that in administrative documents, the family name is placed first, otherwise, the document becomes invalid. However, this legal provision does not have retroactive effects on the documents drawn up before the publication of the new law or those issued abroad in accordance with the domestic laws. It is a set of qualities which attribute to him or her place in a given community and differentiate him or her from others as regards to enjoyment and exercise of civil rights. Status is considered in the country or in the family. In the country, a person is a citizen or a foreigner. In the family, a person is married, divorced, single, legitimate child, widower, adoptee or adopter, etc.

d) Legal value of family under constitution

i) Family and marriage

The Rwandan Constitution considers family as the foundation of the society. This is provided for in article 18 which states that *"the family, being the natural foundation of the Rwandan society, is protected by the State."* A family being composed of parents and children is founded though a marriage and it is a voluntary union of a man and a woman (see art. 17(2) of the Rwandan Constitution) in accordance with mandatory rules established by the law. Marriage is a solemn legal act as it is submitted to legal formalities

required by the law, failure to comply with those formalities, the act is void. The Rwandan law recognizes monogamous marriage and criminalises extramarital relationships such as adultery, concubinage and bigamy.

The legal marriage creates reciprocal rights and duties between spouses from the time of its celebration before the civil registrar. These obligations include *inter alia* cohabitation, mutual assistance, loyalty and contribution to the household expenses. Those duties are reciprocal and everyone can enforce and invoke them before the court. The rights to the patrimony of spouses start upon celebration of marriage before the civil registrar in accordance with their matrimonial regime.

ii) Matrimonial regime under marriage contract

Under Rwandan Law, the matrimonial regime is a body of rules governing the agreement between spouses on the management of their property. The matrimonial regime has a patrimonial character. It is composed of a set of provisions which aim at protecting the pecuniary interests of the family from the family and, in particular, the protection of the spouses. The law provides for three types of matrimonial regime: community of property, limited community of property and separation as per Chapter IX of Persons and Family Law, 2024.

- ***Community of property*:** a contract by which the spouses opt for a marriage settlement based on joint ownership of all their property-movable as well as immovable and their present and future assets and liabilities; it is also a primary-default regime.
- ***Limited community of property (acquests)*:** a contract by which spouses agree to pool their respective properties owned on the day of marriage celebration, to constitute the basis of the acquests as well as the property acquired during marriage by a common or separate activity, donation, legacy or succession.
- ***Separation of property*:** a contract by which spouses agree to contribute to the expenses of the household in proportion to their-respective abilities while retaining the right of enjoyment, administration and free disposal of their personal property.
- ***Contractual matrimonial regime*:** The new Persons and Family law gives freedom to spouses to choose matrimonial regime based on agreement drawn up by themselves provided that it is not contrary to the rules of public order and good morals rules.

The regime adopted by spouses is dissolved on the grounds of divorce or change in type of matrimonial regime or death (article 173 of 2024 Persons and Family Law). The death of spouses opens the rights of succession to the heirs.

iii) Donations and succession

Donations and succession are also subjects governed by the Law No. 71/2024 of 26/06/2024 governing Persons and Family. Donation consists of an act by which a person transfers to another by gratuitous act a patrimonial right. Succession is an act by which the rights and obligations on the patrimony of the *de cujus* are transferred to the heir.

Donation

The law provides for two types of donations: *inter vivos* donation and legacy. The *inter vivos* donation is a charitable contract by which the donor irrevocably transfers a patrimonial

right to another person who accepts it. Donation takes effect on the date of its acceptance (in writing or verbally) and the transfer of ownership of movable or immovable property is done in accordance with relevant laws. In case of community of property regime or limited community of property regime, a donation from a family property by one of the spouses requires the consent of the other spouse.

Legacy is a legal act by which a patrimony devolved as a donation by the owner while alive and for which the legatee acquires full ownership only after the death of the donor. Legacy is different from succession on the fact that legatee (the recipient of a legacy) has no obligations of paying debts of the testator while a successor inherits assets and liabilities of the *De cujus* (deceased). Legacy can be revoked if the legatee dies before the testator except for the case the former can be represented, or the bequeathed property is completely destroyed or the legatee rejects the legacy or becomes unworthy to receive it. Moreover, if the legatee fails to fulfil some conditions attached to legacy, the latter is dissolved. Donation has limitations (disposal portion) depending on whether the donor has children or not. A donatable portion cannot exceed 1/5 of the property if the donor has a child or 1/3 of the property if the donor has no child while the remaining portion is reserved for succession.

Succession

Succession is an act by which the rights and obligations on the patrimony of the *de cujus* are transferred to the heir. The succession is always for the successor as a mode of acquisition of rights; it is a gratuitous mode of acquisition of rights, because it enriches the successor without consideration. Succession can be testamentary or intestate.

Testamentary succession: a testament is an act by which a person (testator/testatrix) decides on the destination of his/her patrimony after his/her death and fixes provisions of his/her last will. Testament can be oral, holographic or authentic. However, when a testament is holographic, it must be entirely written, dated and personally signed by the testator/testatrix.

Intestate succession: is a succession which is made in accordance with the succession law where no testament was made. Heirs are entitled to inherit in the following order:

- Children of the de cujus;
- Father and mother of the de cujus;
- Full-blood brothers and sisters of the de cujus;
- Half-brothers and half-sisters of the de cujus;
- Grandparents of the de cujus;
- Paternal and maternal uncles and aunts of the de cujus.

Each category of successors excludes others in the order of succession. Full-blood children of the de cujus inherit from both the paternal and maternal sides, while consanguineous and uterine children inherit only from the side of the parent to whom they are related. The order of heirs allows establishing the preferences between heirs. The law also gives rights to a surviving spouse to succession in equal shares as the heirs. Any dispute related to succession is first handled by the family council before it is submitted to the competent court.

The family council is an organ within the family responsible for development of the family, safeguarding interests of the family members and settling the disputes arising in the family. It has the responsibility among other things to protect the interests of the family;

listen to and settle disputes relating to succession and any other dispute arising in the family; and appoint the members of the Guardianship Council. A ministerial order shall determine members, duties, organisation and functioning of the family council (article 154 of the 2024 Persons and Family Law).

e) Protection of the property rights by the constitution

i) General protection of property rights

A person can obtain property such as land or any other property though sale, exchange, lease, donation or succession. The property rights are protected by the constitution under article 34 which says that "Everyone has the right to private property, whether individually or collectively owned. Private property, whether owned individually or collectively, is inviolable. The right to property shall not be encroached upon except in public interest and in accordance with the provisions of the law. "Ownership right is the most complete real right one can talk about because it is the only one which accords to its owner all the three prerogatives also known as dismemberment rights of ownership: *Abusus* (right to dispose), *Usus (right to use) and Fructus* (right to enjoy fruits from the asset). The right of ownership is an absolute right. Thus, it is exclusive in a sense that only the owner exercises his/her right over the property (thing) save for usufruct and servitudes.

Ownership can be individual or collective. Instances of collective succession include instances of succession, co-ownership or condominium (joint ownership of a real estate). Acquisition and loss of ownership right becomes effective through common means of contract to transfer the ownership like through sale (consensual transfers) and through donations or succession (gratuitous consensual transfers), among others. Land rights being part of the property rights are also protected by the constitution. The protection is enshrined under article 35 of the Constitution which states that "private ownership of land and other rights related to land are granted by the State." A law determines modalities of concession, transfer and use of land."

ii) Types of land ownership

After the 1994 Genocide against the Tutsi, Rwanda established the first land policy in 2004 followed by the first organic law governing land enacted in 2005. This land law was revised in 2013 and 2021 based on article 35 of the Rwandan Constitution. Today, land matters are governed by Law No. 27/2021 published on 10th June 2021. The Companies Act defines land rights as an inalienable ability of a person to obtain, possess and utilise land at their discretion provided that their activities on that land do not violate the rights of others (Article 2 (22) of 2021 Land Law). The law considers land as common heritage for all Rwandans (Article 3) and thus the State has the supreme power to manage land for the benefit of all. Any form of discrimination in accessing land property is prohibited (Article 5).

The law provides for two types of land ownership: Freehold and emphyteutic lease. A land title of emphyteutic lease, freehold or land concession is obtained upon land registration by the registrar of land titles. An investor granted a concession or lease on State lands ought to use it in conformity with the terms and conditions of the contract with the Government. Failure to comply with these terms may result in Government repossessing the land. (Article 14).

Private individual's land subject to freehold cannot exceed two (2) hectares per person unless an Order of the Minister authorises otherwise (Article 6). A foreigner can own land in Rwanda through only emphyteutic lease and concession on state land. Hence, freehold

land is recognised for only Rwandans. The emphyteutic lease and land concession period does not exceed ninety-nine (99) years which may be renewed and the renewal is automatic for Rwandans.

iii) Land rights and obligations

Upon registration of land ownership, the owner obtains a land title (land certificate) which is an authentic deed solely used for lawful purpose. Under Rwandan Law, an authentic document has legal force and binding to all parties. Its content cannot be challenged unless it is proven by the competent court (Article 10 of Law No. 062/2024 of 20/06/2024 governing evidence). Hence, a holder of land rights is protected from misappropriation or unlawful deprivation unless it is confirmed by a court that the land title was falsified, forged or obtained in a fraudulent way. Land ownership is also protected by the constitution under Article 34 which states that private property, whether owned individually or collectively is inviolable except for the expropriation for public interest or state requisition in case of extreme necessity.

Transfer of land rights is done through succession, inheritance, donation, lease sub-lease, sale, exchange, mortgage and concession. Any transfer of rights of co-owned land or land owned by spouses is subject to consent of the other owner or other spouse even if she/he is no registered on the land title. The transfer is effective and legally binding if it is signed by the contracting parties approved and witnessed by the signature of the land notary and registered in the land register (Articles 23 and 24 of the 2024 Land Law).

iv) Land management and termination of land rights

A holder of land rights enjoys full rights in exploiting his or her land in accordance with legal provisions. However, all rights of ownership and control of natural resources on, under or upon any land in Rwanda are vested in the State in accordance with relevant laws. A holder of land rights has obligations of protection, conservation, servitude and exploitation of lands in accordance with their intended use. He/she has also the obligation to increase the land value in a productive way in accordance with its nature and intended use and pay applicable taxes.

The change of the land use can be done in accordance with masterplan and approved by the competent authority. Land ownership can be terminated with a written notice of ninety (90) days to the lessee in the event of non-compliance with land ownership contract obligations unless the owner has presented reasonable grounds proving a justification. The modalities for terminating a land ownership contract are determined by a ministerial order.[11]

[11] *See article 63 of the 2024 Land law.*

Unit A Key terms

Abusus A.3
Accountability A.2
Adversarial A.2
Civil law A.1
Common Law A.1
Community of property A.3
Constitution A.1
Domestic Law A.2
Emphyteutic lease A.3
Executive A.1
Freehold A.3
Fructus A.3
Fundamental rights A.3
Hierarchy of Norms A.1
Inquisitorial A.2
International Law A.1
Inter-vivos donation A.3
Judiciary A.2
Justice A.1
Law A.1

Legal person A.3
Legal personality A.3
Legal rule A.1
Legislative A.2
Morality A.1
Natural person A.3
Private Law A.3
Procedural Law A.3
Promulgation A.2
Public Law A.1
Public Order A.1
Rule of Law A.2
Separation of property A.3
Substantive Law A.1
Supremacy A.3
Usus A.3

Summary of Unit A and key learning outcomes

Learning outcomes	Summary
Sources of law	We explored the definition of law, comparison between law and other related rules, sources of law, hierarchy of laws, the concept of constitution and constitutional rights and the process of primary and secondary legislation. It was highlighted that law is meant to ensure administration of justice, peace and public order as well as protection of the public interest. Furthermore, we discussed the supremacy of the constitution over other laws and international conventions/ treaties ratified by Rwanda.
The judicial system and other government institutions	The principle of separation of powers deals with the mutual relations among the three organs of the State- Executive, legislative and Judiciary. The main role of the legislative is to make laws, judiciary to apply law and executive is responsible for enforcement of law. The judiciary which is Wcomposed of the ordinary courts and specialised courts is independent from other powers of the state to render justice in the name of people by taking fair decisions without any influence.
Constitutional rights and obligations of citizens	We explored different constitutional rights subdivided into three generation that include civil and political rights; economic, social, cultural rights; and solidarity rights. A person is subject to these rights from the birth until the death and acquires the capacity to exercise them at 18 years of age being the majority age recognised by law to perform the civil acts. However, the majority age to celebrate marriage is 21 years of age. In the contract of marriage, spouses adopt one of the matrimonial regimes: Community of property, limited community of property and separation of property or shape their regime based on a contract.

Quiz questions

1. Which of the following are the main functions of law style? *(Select all that apply.)*

   A. The law is meant to promote justice and enforce morality, because justice is merely one component of morality even though there are other components of morality that the concept of justice does not embrace.

   B. The first and foremost purpose of law is to maintain peace and security because without law society cannot exist as there will be disorder, anarchy and culture of impunity.

   C. The law is enacted to promote public interest being the most responsibility of government to promote and protect what is best for the general public.

   D. The function of law is only to protect the private individual rights and private interests.

2. Which of the following are part of the scope of the constitution being the supreme law of a state? *(Select all that apply.)*

   A. It shapes the ethical guidelines for politicians and citizens

   B. It sets out the fundamental principles by which the state is governed.

   C. It describes the main institutions of the state, and defines the relationship between these institutions (for example, between the executive, legislature and the judiciary),

   D. It places limits on the exercise of power, and sets out the rights and duties of citizens.

   E. It is not concerned with the role and powers of the institutions within the state and with the relationship between the citizen and the state.

3. The main difference between private law and public law is as follows (select one):

   A. Public law is the term that covers all areas of law that deal or protect the private individual rights without involvement of a state whereas private law is an umbrella term of all areas of law that regulate relationships between state and private persons on unequal footing.

   B. Private law is that branch of law which determines and regulates the organization and functioning of states (country) and its institutions while public law governs the powers and obligations of private individual persons without taking into account the public interest.

   C. Public law regulates relationship between state and its subjects and relationships between individuals or private organizations and the state or its organs while private law regulates relationships between private people, organizations, and companies.

   D. Public law determines the rights, obligations or duties governing people as they act in society while public law establishes the rules under which the substantive rules of law are enforced.

4. What is the main different between law and morality? (select all that apply)

   A. Moral rules derive from divine revelation and they emanate from the conscience, while the legal rule is the outcome of the will of some authorities.

   B. A moral rule is more demanding, tends to the perfection and imposes charitable duties that are not necessarily aligned with legal techniques or legal requirements.

   C. The sanction of legal rule is immediate, present and emanates from the public authority while the sanction of the moral rule is of internal consideration i.e. the conscience and it refers to the next world, the Heaven.

   D. The law and morality have the same purpose and scope as all intend to criminalise all immoral conducts while imposing different sanctions that include imprisonment, fine and administrative sanctions.

5. Under Rwandan legislative process, promulgation of a law means: (select one):

   A. The initiation and approval of a law by the cabinet following a review by the law reform commission.

   B. Signature of the law by the President of the Republic following its adoption of the same by the Parliament.

   C. Adoption of the draft law by both chambers of the parliament that is chamber of deputies and senate sitting in the same plenary session.

   D. Review of the draft law by the relevant committee of parliament in public session where experts, interested civil and public sector organisations may be invited to comment on the bill.

6. The Rwandan legal system recognizes two kinds of courts: ordinary courts and specialised courts. What are those courts? (select one)

   A. Ordinary courts include Supreme Court; Court of Appeal; High Military Court; Intermediate Courts; and Primary Courts.

   B. Specialised courts include Commercial courts: Court of Appeal, Commercial High Court and Commercial Court; and military courts that is Military High Court and Military Tribunal while Ordinary courts include Supreme Court; High Court; Intermediate Courts; and Primary Courts.

   C. Ordinary courts include Supreme Court; Court of Appeal; High Court; Intermediate Courts; and Primary Courts. Specialised courts include Commercial courts: Commercial High Court and Commercial Court; and military courts that is Military High Court and Military Tribunal.

   D. Ordinary courts include Supreme Court; Court of Appeal; Commercial High Court; Intermediate Courts; and Primary Courts. Specialised courts include Commercial courts: High Court and Commercial Court; and military courts that is Military High Court and Military Tribunal.

7. Mr. Antony being a resident of Kigali City acquires a land located in Muhoza Sector, Musanze District, Northern Province through succession of his parents deceased last year, 2023. A neighbour called Alice living at Musanze has merged the land with hers and got a land title showing that the whole land belongs to Alice and her husband. What are the criteria to determine the competent court to hear this case? (select all that apply)

   A. Subject matter jurisdiction (*ratione materiae*)

   B. Territorial jurisdiction (*ratione loci*)

   C. Personal jurisdiction (*ratione personae*

   D. Temporal jurisdiction (*ratione temporis*)

8. Mr Andrew of 15 years of age has entered into contract of sale of his car inherited from his father who died 2 years ago. This contract is contested for not fulfilling the conditions of validity of contract. What is the likely violated condition that can render this contract void? (select one)

   A. Object of the contract

   B. Licit cause

   C. Consent

   D. Capacity

9. The constitutional rights are classified into three categories namely: (i) civil and political rights; (ii) economic, social, and cultural rights; and (iii) solidarity rights. What is the main purpose of rights included in first category also known as fundamental human rights? (select all that apply)

   A. Civil and political rights also known as rights of the first generation or fundamental human rights uphold the sanctity of the individual before the law and guarantee his/her ability to participate freely in civil, economic and political society.

   B. Political rights thus guarantee individual rights to involvement in public affairs and the affairs of the state.

   C. Cultural rights are meant to maintain and promote sub-national cultural affiliations and collective identities, and protect minority communities against the incursions of national assimilationist and nation building-projects.

   D. Solidarity rights which include rights to public goods such as development and the environment, seek to guarantee that all individuals and groups have the right to share in the benefits of the earth's natural resources, as well as those goods and products that are made through processes and economic growth, expansion, and innovation.

10. What is the main difference between the legacy and succession under Rwandan law related persons and family? (Select one)

A. Legacy is a legal act by which a patrimony devolved as a donation by the owner while alive and for which the legatee acquires full ownership only after the death of the donor.

B. Legacy is different from succession on the fact that legatee has no obligations of paying debts of the testator while a successor inherits assets and liabilities of the *De cujus*.

C. Succession has limitations (disposal portion) depending on whether the deceased person has children or not where the inheritable portion cannot exceed a donatable potion cannot exceed 1/5 or 1/3 of the property respectively while legacy has not limitation in terms of property to be donated.

D. Succession is an act by which the rights and obligations on the patrimony of the *de cujus* are transferred to the heir and can be testamentary or intestate.

Unit B: Public Administration Law

Learning outcomes

B.1. The nature and scope of public administration law

B.2. Public institutions

Introduction to unit B

The main function of law is to protect the rights of individuals and to ensure peace, security and order, functioning and existence of the society as discussed under unit A. This is normally the primary responsibility of the public administration in addition to ensure the protection of the public interest, human rights and welfare of the population. Hence, administrative law is a legal instrument that confers to the Government the power to achieve its objectives and goals.

B.1. The nature and scope of public administration law

a) Definition and application of administrative law

Public administration law also known as Administrative Law is a set of legal rules and principles which regulate the organisation, the functioning and the control of the executive administration. Hence, administrative law covers those rules of law that determine the powers and prerogatives of the executive as well as its relationship with citizens. Administrative law applies to public officials and public agencies and also provides for procedures to challenge administrative decisions.

Public administration is the government tool which is used to maintain peace and order in the community, to protect peoples' lives and their properties as well as implement the government policy.

b) Functions of the administrative law

Administrative law plays a critical role in the organisation's functioning and powers of the government agencies. Thus, administrative law governs the internal control of the state agencies and sets boundaries of their powers by stipulating how government officials conduct their functions. Administrative law is considered as regulatory law of the operations, functions and powers of the state agencies to ensure efficient and just administration.

Administrative law is also meant to ensure accountability, transparency and effectiveness in exercising of power in public domain as well as observance of rule of law. Hence, it has control function over the administrative acts to prohibit unlawful decisions and limit the abuse of government power.

The functions of administrative law are corollary of its principles. First, administration justice calls upon public officials to safeguard the rights/interests of ordinary citizens and serve the public in their decision making.

Secondly, executive accountability by which the performance of tasks or functions by government officials or government agencies are subject to another's oversight, direction or request that they provide information or justification for their actions.

Lastly, good administration whereby administrative decisions and actions are taken, shall conform to universally accepted standards such as rationality, fairness, consistency, transparency and rule of law.

c) Legal means of administration

The legal means of administration are the powers conferred to the administration to take decisions and such legal means are: Unilateral acts and material acts administration.

Unilateral acts of administration

All decisions of administration taken in accordance with law by one individual for the smooth running of administration activities. As far as the characteristics of legal acts are concerned, they are legal since they produce legal effects and acts emanating from administration by the mere fact that they are enacted by the public authority. Unilateral acts, orders, regulations, directives as well as individual acts are the decisions taken by the competent person but that concerns one person such the appointment of the person on a certain position. Therefore, such acts may be terminated by abrogation (when the new administrative act removes and replaces completely the existing/previous act) or through invalidation by a court decision.

To perform their obligations, the administration officials may conclude a number of administrative contracts; acts of administration made in form of agreements for example, Contracts of procurement/public tenders.

Material means of administration

The administration needs some material property to use either movable or immovable, and those properties can be either of public or private domain. Public domain properties are reserved for public use and for the conservation of environment and are inalienable (i.e. cannot be transferred to private individuals.) They are governed by public law, cannot be subject to trade and are imprescriptible. On the other hand, private domain properties of the administration are meant to be used for daily functioning of the state. The state private domain properties are governed by private law and can be easily transferred to private users or be subject to concession agreement. The government can move or reallocate a property from public domain to private domain so that it can be surrendered to private investors.

B.2. Public institutions

a) Territorial administration of Rwanda

The administration of a country with a certain dimension (extent, number of people) requires in general that a territory must be in sub-divisions; the importance of these sub-divisions varies according to the levels to which they belong. The territorial administration of Rwanda does also apply this rule. The country is distinguished, from top to bottom, by Province/City of Kigali, District, Sector, Cell and Village. The Republic of Rwanda is divided into 4 provinces and the City of Kigali, 30 Districts, 416 sectors; 2,148 Cells, and 14,837 villages.

Rwanda has four provinces specifically, the law fixes the organisation and the functioning of Provinces, the City of Kigali and Districts.

These laws include Law No 87/2013 of 11/09/2013 determining the organisation and functioning of decentralized administrative entities; law No. 22/2019 of 29/07/2019 governing the City of Kigali; and law No 065/2021 of 09/10/2021 governing the districts. The Province is a supervising organ of decentralised entities. It coordinates the efficient and effective planning, execution and supervision of decentralised services on behalf of the central Government. The Province acts as an advisor of local authorities and coordinator of the implementation of development activities.

Districts in Rwanda are headed by Mayors. Most districts have legal personality, hence have administrative and financial autonomy. However, the 3 districts comprising the City of Kigali (Gasabo, Nyarugenge and Kicukiro) are headed by District Executive Administrator (DEA) and are not autonomous (do not have legal personality).

The district's main responsibility is to promote democratic principles as major driver of the socio-economic development of its citizens and promote the solidarity of the population in its development. Sectors chaired by executive secretaries (of sector) are meant to implement development programs, ensure service delivery, and promote good governance and social welfare of its citizens. Under the sector, there is a cell which is an entity responsible for provision of basic services and helping its population to achieve sustainable development and it is headed by cell executive Secretary. At the lowest level there is a village which is the smallest administrative entity closest to the citizens.

The village's primary responsibility is mobilisation of citizens to actively participate in planning and execution of the central government policies, plans and strategies. A village is meant to feed other government organs with basic statistics and be a channel of communication between population and other government agencies. All issues affecting citizens, needs and priorities are identified at the village level and addressed by the village executive committee chaired by the village coordinator or escalated to village council which comprises its residents of majority age.

b) Prerogatives of Public Authority

The administration is a public person vested with public power to be able to promote, protect and preserve the public interest. To do so, the Public authority has prerogative of expropriation for the public interest, requisitions and other privileges.

The prerogative of expropriation for the public interest

Expropriation can be defined as the competence of the administration to compel an individual or group of individuals to surrender their property, to public administration, for the purposes of public interest.

This prerogative of the administration is an exception to the right to property that should not be interfered with. (Art. 34 of the Constitution of the Republic Rwanda). The expropriation can only be made in circumstances and procedures determined by law subject to a fair and prior compensation.

Prerogative of requisition

Requisition refers to the competence of the administration to formally demand property (movable or immovables) or services owned by private individuals for official use subject to compensation which may not necessarily cover the actual prejudice incurred. By

contrast to expropriation, requisition may be resorted to in cases of extreme necessity or need of saving a public situation from deteriorating. Thus, it is beyond the simple general interest and can take place before the payment of compensation. The property requisitioned by the administration cannot remain the property of the administration for good. It can be returned after the situation has normalised.

Automatic decisions enforcement

The administration is characterised by the principle of inequality in its relationships with individuals, whereby the general interest takes precedence over private interests. Therefore, the administration does not need to have recourse to courts to secure an individual's consent for the execution of its decision. Moreover, when the administration's decision is contested, this will not prevent it from its enforcement. The decision of public is presumed to be legal because it is meant to serve the general interest.

Not being compelled to fulfil its obligations

Two reasons justify the existence of this prerogative. First, there is a principle that "the state can never be insolvent". Therefore, since all public services are created by the state and its organs, their solvency will be guaranteed by the state, although they may not entirely be dependent on the state financially. Secondly, the fact that public property cannot be subject to seizure ensures respect of the principles of continuity and regularity underlying all public services. Hence, creditors of the public administration concerned with their personal interests cannot be allowed to divert public property from its use because that would ultimately affect the general interest.

c) Legality of administrative acts

The exercise of public power by the executive and other administration agents should not be arbitrary. Decisions must be rationally related to the purpose for which the power was given. Therefore, the legality of administrative acts must be in conformity with the laws in force in the country. The administrative acts are presumed to be legal because it is meant to serve the general interest and hence, be subject to automatic enforcement without any other formalities.

d) Public regulatory institutions and their powers

Some public entities have the responsibility to oversee and supervise some private activities that have direct impact to living standards, state economy, daily life of ordinary citizens. These include inter alia, financial services, utilities, food, medicines etc. These public entities namely National Bank of Rwanda, Capital Market Authority, Rwanda Utility Regulatory Authority, Food and Drugs Authority, among others have the responsibility to ensure availability, good quality, accessibility and affordability of those services, protection of the consumer and promoting a fair completion among service providers. In doing so, they have some legislative powers to enact regulations, directives and guidelines having the same legal powers as laws and orders. Moreover, Public regulatory Institutions have the powers to impose administrative sanctions that include pecuniary penalties, suspension of withdrawal of operating license, or shutting down the business.

e) Public law enforcement entities and prerogatives

The main public law enforcement entities are the National Police, Rwanda Investigation Bureau and National Public Prosecution Authority. The law confers to other administrative entities having the investigative and prosecution powers for specific areas commensurate with their responsibilities. For example, office of the Ombudsman has the power to investigate and prosecute all offences related to corruption, while Rwanda Utility Regulatory Authority has the power to investigate and prosecute all offences related to public utility services.

Law enforcement bodies have prerogatives recognised to conduct preliminary investigation and submit relevant results of the competent court for adjudication. In the investigation process, the organs can arrest and detain criminal suspects; cordon off and restrict access to an area; search a person, enter a building or premises; seize any property subject to criminal investigation, carry out telecommunication surveillance/interception, conduct extraterritorial investigations; use firearms and other security devices necessary to perform its mission.

Unit B key terms

Administrative action B.1
Administrative law B.1
Automatic enforcement B.2
Continuity B.1
Imprescriptibility B.2
Inalienability B.2
Public action B.1
Public interest B.2
Regulatory power B.2
Requisition B.2
Sanctions B.2 Summary of Unit B and key learning outcomes

Summary of Unit B and key learning outcomes

Learning outcomes	Summary
The nature and scope of public administration law	Public administration law also known as administrative law governs the internal operations of the agencies of state and ensure that they do not abuse their power. Its main goal is therefore to protect the interests of the public as it interacts with the government. It stipulates how officials of government conduct their functions. Thus, public administration law is the regulatory law of the public agencies.
Public institutions	The Republic of Rwanda is divided into 4 provinces and Kigali City, 30 Districts, 416 sectors; 2,148 Cells, and 14,837 villages. Rwanda has four provinces specifically, the law fixes the organisation and the functioning of Provinces, the City of Kigali and Districts. These public instructions have powers and prerogatives to achieve their responsibility of serve in the best interest of the common good, promote the wellbeing of the public, maintain public order and peace in the society. Having the public power, the government can expropriate private persons' property for the public interest with prior fair compensation or resorts to requisition property (ies) or services owned by private individuals for official use in cases of extreme necessity or need of saving a public situation from deterioration. As the public agencies are presumed lawful, they are subject to automatic enforcement without recourse to a court.

Quiz questions

1. Which are the following statements define the administrative law? (select all that apply)

   A. Administrative Law also known as public administration law is a set of legal rules and principles which regulate the organisation, the functioning and the control of the executive administration.

   B. Administrative law covers those rules of law that determine the powers and prerogatives of the executive as well as its relationship with citizens.

   C. Administrative law applies to public officials and public agencies and also provides for procedures to challenge administrative decisions.

   D. Public administration is the government tool which is used to maintain peace and order in the community, to protect peoples' lives and their properties as well as implement the government policy.

2. The public administration prerogatives include expropriation and requisition. What is the difference between these two prerogatives? (select one most correct answer)

   A. Expropriation refers to the competence of the administration to compel an individual or group of individuals to surrender their property to public administration for the purposes of the public interest subject to prior fair compensation while requisition may be resorted to in cases of extreme necessity or emergency need of saving a public situation from deteriorating.

   B. Expropriation can be done by the public administration for individual private interest while requisition is done to protection the public interest in case of necessity and emergency.

   C. Defined as the competence of the administration to compel an individual or group of individuals to surrender their property to public administration their property for the purposes of the public interest.

   D. Both prerogatives namely requisition and expropriation are in the competence of public administration and both require prior compensation and the property requisitioned or expropriated cannot be at any circumstances retuned to the initial owner.

3. What are the reasons justifying the prerogative of public administration of not being compelled to fulfil its obligations? *(select all that apply)*

   A. The state can never be insolvent.

   B. Private property can be violable.

   C. Public property cannot be subject to seizure ensures respect of the principles of continuity and regularity underlying all public services.

   D. Creditors of the public administration concerned with their personal interests can be allowed to divert public property from their use if the seizure does not ultimately affect the general interest.

4. What does the legality of administrative acts mean under public administration law? (*Select one*)

   A. The administrative acts are presumed to be legal because it is meant to serve the general interest and hence, be subject to automatic enforcement without any other formalities.

   B. The administrative acts are presumed to have been taken in conformity with the relevant laws and hence their enforcement is subject to court order.

   C. The Administrative acts are only taken by the public instructions that exercise the regulatory powers in the interest of consumers or users of the regulated services.

   D. The Administrative decisions are taken by the executive and other administration agents and sometimes can be arbitrary and not rationally related to the purpose for which the power was given especially in their private gain.

5. What is the organisation of the territorial administration of Rwanda? *(select all that apply)*

   A. Rwanda is divided from top to bottom into Central government, Ministries, Province, City of Kigali, District, Sector, Cell and Village.

   B. Rwanda is divided from top to bottom into Province, City of Kigali, District, Sector, Cell and the Village.

   C. The Republic of Rwanda is divided into 4 provinces and Kigali City, 30 Districts, 416 sectors; 2,148 Cells, and 14,837 villages.

   D. Rwanda is divided from top to bottom into Province, City of Kigali, District, Sector, Cell, Village and sub-village that is often composed of ten households.

Unit C: Law of Obligations

Learning outcomes

C.1. Law of contracts

C.2. Sale of goods and services

C.3. Agency contracts

C.4. Law of torts

Introduction to unit C

The Law of obligations covers two major courses in Private Law. It on one hand deals with the contractual relationships between the parties and to the other hand, it deals with torts. Law of obligations is a branch of private law which governs contractual and extra-contractual relationships between individuals. By this, there are two main categories of obligations, namely contractual obligations and extra-contractual obligations.

C.1. Law of contracts

a) Definition and effects of contract

The 2011 Contract Law defines ''contract" as a promise or a set of promises the performance of which the law recognizes as obligation and the breach of which the Law provides a remedy.[12] The term "contract" refers to a legal act [legal relationship] consisting of a set of rights and obligations deriving from the agreement between parties. As derivative or generic sense, the term 'contract' may refer to a document evidencing the expressions of minds that the parties exchanged under a written or notarized act.

A contract creates obligations on contracting parties and not to a third party. This is in accordance with Article 64 of the 2011 Contract Law which states that "Contract made in accordance with the law shall be binding between parties. They may only be revoked at the consent of the parties or for reasons based on law." The essential conditions leading to the validity of the contract are: consent of the parties to the contract; the capacity of parties (majority age) to enter into contract; object matter of the contract; and licit cause (art.4 of the 2011 Contract Law).

Obligations may be classified on the basis of different criteria: object, as regards the warranty attached to their performance, or in relation to their sources. The obligation of the debtor can be obligation to give something, to do something or not to do something**.** The obligations can be of means or of result, real or personal, legal or moral.

Obligation of means and obligation of result: The obligation of means is that by which the debtor commits himself or herself using the adapted means, to be careful and

[12] *Law n° 45/2011 of 25/11/2011 governing contracts published in the official gazette No. 04bis of 23/01/2012 (2011 Contract Law), art.2.*

diligent in the performance of a service, without guaranteeing a given result. This is the case of a doctor who commits himself to provide a patient with care diligence in order to heal the patient, without guaranteeing the latter. This is the same case with a lawyer who promises to his client to do all the actions necessary in order to succeed in a case without guaranteeing success of the case, or of a professor who commit himself to deliver his course without guaranteeing correctly the success of his students. In contrast, the obligation of result is that by which the debtor commits himself/herself to provide the promised service which consists of a given result (obligation of a builder of a house or obligation of Transport Company).

Ordinary (personal) obligation and real obligation: An ordinary obligation attaches itself to the assets of the debtor in general and its breach or in-execution entitles the creditor to sue and recover against this general property. A real obligation, on the other hand, is associated with a specific piece of property, which entitles the creditor of that obligation to sue and recover against that specific property no matter who the actual owner is.

Legal obligation and moral obligation: Non- compliance or non-performance of a legal obligation can be enforced by courts and entail damages/remedies whereas a moral obligation (give dowry to someone, supply food to a cousin) is not enforceable under the law and non-compliance has only moral sanction.

b) Formation of a contract

i) Conditions for contract formation

For the contract formation, there must be at least two parties, a promisor and a promisee, but there may be multiple promisors and promisees. The validity of a contract requires the following conditions: the consent of the parties to the contract; the capacity to enter into contract; the object and licit cause.

Capacity to contract

Everyone is regarded as having legal capacity to enter into contracts unless the law, for public policy reasons, holds that the individual lacks such capacity. It is the case for minors, persons under guardianship, mentally ill or defective. A minor also called infant is a person who has not attained the age of legal majority. In common law, a minor was an individual who had not reached the age of 18 years. Today, the age of majority has been changed by statute in nearly all jurisdictions, usually to age eighteen. In Rwanda, except otherwise provided, it is also 18 years. In commercial matters, the majority is 18 years while for the employment contract, the majority is 16 years of age.

A minor 's contract whether executed or executory is voidable at his guardian's option. Thus, the minor is placed in favoured position by having the option to disaffirm the contract or to make it enforceable. The exercise of the power of avoidance called disaffirmance release the minor from any liability under the contract. On the other hand, after the minor becomes of age, he/she may choose to adopt or ratify the contract, in which case he surrenders his/her power of avoidance and becomes bound by his/her ratification. A minor may disaffirm a contract within a reasonable time after coming of age as long as he/she has not already ratified the contract. Determining reasonable time depends on circumstances such as the nature of the transaction, whether either party has caused delay. Some jurisdictions prescribe a time period within which the minor may disaffirm the contract.

A minor has the option of ratifying a contract after reaching the age of majority. Ratification makes the contract binding from the beginning (*ab initio*). Once effected, ratification is final and cannot be withdrawn un less it is evidenced that the ratification was made without free consent or independent mind. Furthermore, a ratification must be in total, validating the entire contract. Contractual incapacity does not excuse a minor from an obligation to pay for necessaries such as food, shelter, medicine and clothing that suitably and reasonably supply his personal needs. If a person is under guardianship, her contract is void and of no legal effect. Nonetheless, a party dealing with an individual under guardianship may be able to recover the fair value of any necessaries provided to him.

Mental illness or intoxication

The parties to a contract must have a certain level of mental capacity if a person lacks such capacity, he or she is mentally incompetent and the contract entered into by such a person is voidable. A person is mentally incompetent if he or she is unable to comprehend the subject of the contract, its nature and its foreseeable consequences. Contracts entered into may be ratified or disaffirmed during a lucid period. The provisional draft had a provision on intoxicated persons that had been considered as covered by the provision on mental Illness or defect but in other jurisdictions, intoxicated persons are treated separately because the courts are even more strict with intoxicated persons due to its voluntary nature. The intoxicated person regaining his capacity must act promptly to disaffirm and generally must offer to restore the consideration he has received. Individual persons who are taking prescribed medicine or who are involuntarily intoxicated are treated the same as person with mental illness or defect.

iii) Offer and acceptance

Definition and essentials of an Offer

An offer is a manifestation of a willingness to enter into a contract made in a manner so as to justify another person in understanding that his or her assent is invited and will conclude the contract. The person making an offer is the offeror and the person to whom the offer is made the offeree. An offer needs not to take any particular form to have legal effect. It may propose the formation of a single contract by a single acceptance or formation of a number of contracts by separate acceptance (article 2(9) and 11 of the 2011 Contract Law).

In case of doubt, an offer is to be interpreted as inviting the offeree to accept either by promising to perform what the offer requests or by rendering the performance, as the offeree chooses. To be effective however, it must be communicated, manifest intent to enter into a contract and sufficiently certain and definite. If a communication creates in the mind of a reasonable person; in the position of the offeree, an expectation that his acceptance will conclude a contract, then the communication is an offer. If it does not, then the communication is a preliminary negotiation.

Even though a manifestation of intention is understood as an offer, it cannot be accepted so as to form a contract, unless the terms of the purported contract are reasonably certain or can be made reasonably certain from the manifestation of parties in the circumstances. The terms are reasonably certain if they provide a sufficient basis for determining the existence of a breach and for providing an appropriate remedy (article 13 of the 2011 Contract Law).

Counter- offer and acceptance

A counteroffer is an offer made by an offeree to his offeror relating to the same matter as the original offer but on terms or conditions different from those contained in the original offer. It is not an unequivocal acceptance of the original offer, and by indicating an unwillingness to agree to the terms of the offer, it generally operates as a rejection. It also operates as a new offer. An offeree's power of acceptance is terminated by his or her making of a counter-offer, unless the counteroffer manifests an intention of the offeree that the original offer remains open or the offeror, a contrary intention will have been manifested. A rejection or counter-offer by mail or telegram does not terminate the power of acceptance until received by the offeror.

Note:

A counteroffer functions as both a rejection of an offer to enter into a contract, as well as a new offer that materially changes the terms of the original offer.

As long as the rejection or counter-offer becomes valid and effective upon receipt by the other party, before the receipt, the party sending the rejection or counter-offer can withdraw his/her position and send an acceptance.

In case of acceptance by promise, it is essential that the offeree exercises diligence to notify the offeror of acceptance or that the offeror receives the acceptance within a reasonable time, except where acceptance by silence is possible. An offeree is generally under no legal duty to reply to an offer. Silence or inaction therefore does not indicate acceptance of the offer. By custom, usage, course of dealing, however, the offeree's silence or inaction of an offeree may operate as an acceptance. Thus, the silence or inaction of an offeree operates as an acceptance and causes a contract to be formed where by previous dealings the offeree has given the offeror reason to understand that the offeree will accept all offers unless the offeree sends notice to the contrary (article 32 of the 2011 Contract Law).

c) The principle of freedom of contract

In principle, the contract is formed by the sole force of human initiative: it is the fundamental principle of the autonomy of the will. This theory puts the individual at the centre of the creation of the obligation. The principle of the autonomy of the will means that the will creates an obligation on its own. The principle guiding the conclusion of particular contracts is not the application of general legal rules, but *"Pacta sunt servanda"*, which reflects the principle of "sanctity of contracts". The parties' freedom to create is enshrined in article 64 of the 2011 Contract Law which states that "Contract made in accordance with the law shall be binding between parties. It may only be revoked at the consent of the parties or for reasons based on law."

Principle rule governing contract:

"Contract made in accordance with the law shall be binding between parties. It may only be revoked at the consent of the parties or for reasons based on law."

Article 64 of the 2011 Contract Law

This legal provision confers freedom on parties to make relationships, and conclude any contract that is suitable for them. This is translated into the principle of "autonomy of will" which allows parties to make any agreement provided that it is not contrary to public order or good morals- "*contra bonos mores*". Therefore, any contract that violates or is contrary to public order rules and good morals is null and void. No claim can be raised or made basing on the obligations and rights related to that contract.

Exceptions/limitation to the freedom of contract:

Any contract shall not contravene public order or good morals- "contra bonos mores". Otherwise, it is void. The nullity of the contract which violates the public order and good morals rules is absolute not relative – i.e. cannot be subject to parties' ratification.

d) Classification of contracts

Article 3 of the 2011 Contract Law gives the standards classifications of the Common Law contract according to various characteristics such as method of formation, content, and legal effect. The standard classifications include (1) express or implied contracts; (2) bilateral or unilateral contracts; (3) valid, void, voidable or unenforceable contracts, and (4) executed or executory contracts. Article 3 mentions the three first categories and some additional categories from the Civil Code Book III like gratuitous contracts or formal contracts.

i) Bilateral and unilateral contracts

A contract is said to be unilateral if it binds only one party to execute an obligation in favour of another, without the latter undertaking any commitment with respect to the undertaking of the former. An example is a contract of voluntary deposit by which the debtor i.e., the depositary undertakes to return something to the creditor, without the creditor (depositor) undertaking a corresponding obligation. Another example is a donation where a party who has obligation is only the donor (handing over the asset). The beneficiary does not have any obligation except for the conditional donation where he or she can be obliged to first fulfil some set conditions or requirements.

On the other hand, a reciprocal (bilateral or synallagmatic) contract is the one which requires each party to execute a commitment in favour of the other, that is to say, each party is both a creditor and a debtor of his or her part of the obligation. For example, a contract of sale is a bilateral/synallagmatic contract. The seller and the buyer are reciprocally obliged. The seller has the obligation to transfer and deliver the thing sold properly, while the buyer (purchaser) on the other hand, has the obligation to pay the price. Another example is a contract of employment; the employer is a creditor of a right to have work performed and a debtor of an obligation to pay wages, while the worker (employee) is a creditor of a right to receive wages (salaries) and a debtor of an obligation to perform work.

Should one of the parties to the bilateral contract stop executing his or her part of the obligation, the other party may also cease or has the right to stop executing his part (*exceptio non adipleti contractus* "or seek to have it terminated.

ii) Express and implied contract

Parties to a contract may indicate their assent by conduct implying such willingness. Such a contract formed by conduct is an implied contract or more precisely, an implied in fact contract. In contrast, a contract in which the parties express their acceptance in words is an express contract. These two situations lead to contractual obligations (contracts) and are equally enforceable. The difference is merely the manner in which the parties manifest their acceptance.

iii) Valid, void, voidable, and unenforceable

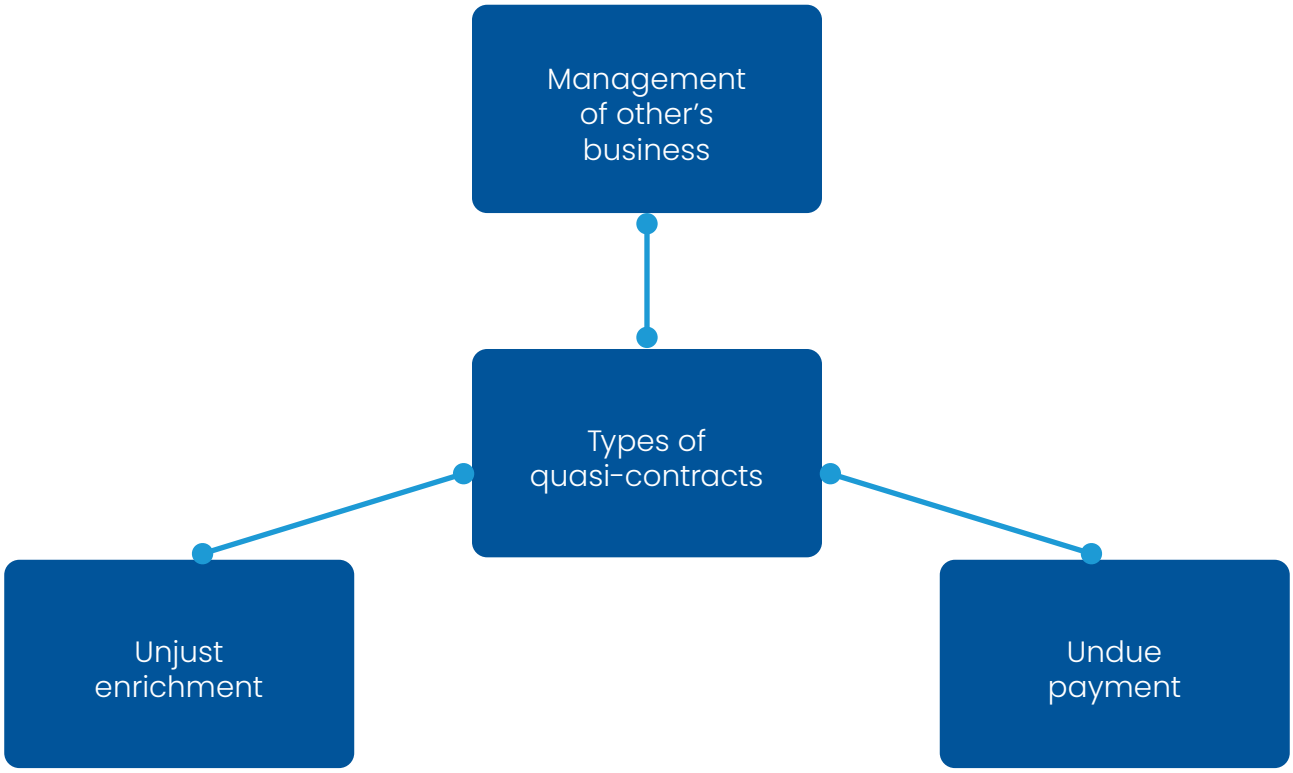
By definition, a *valid contract* is one that meets all of the requirements of a binding contract. It is an enforceable promise or agreement. A *void contract* is not a contract at all such as an agreement entered into by an incompetent person or by physical compulsion. On the other hand, though is not wholly lacking legal effect, a voidable contract is a contract. However, because of the manner in which such contract was formed or lack of capacity to it, the law permits one or more of the parties to avoid the legal duties created by the contract. If the contract is voided, both parties are discharged of their legal duties under the agreement.

A contract that is neither void nor voidable may nonetheless be enforceable. An unenforceable contract is one for the breach of which the law provides no remedy. For example, in application of the law of limitations or prescription, after the statutory time period has passed, a contract is referred to as an unenforceable contract, rather than void or voidable.

iv) Quasi- contracts

Contractual obligations either arise from *pure contracts* such as contracts of sale, of purchase, of rent, etc. or from the situations which, though not constituting contracts at the outset, produce the same effects as the ones inherent from contracts. The common element of the quasi-contract is the intervention of one party to perform one-sided or volunteered obligations without requirement of the other party's consent. These are known as quasi-contracts which include *negotiorum gestio* (management of other's business), undue payment and unjust enrichment (enrichment without cause).

Figure 6: Three types of quasi-contracts



Negotiorum gestio (management of other's business)

The management of another person's affairs is where one person voluntarily assumes the management of some activity or enterprise of another. We note that this obligation is a result of the will of a single individual. It is not a real contract because there is no agreement between two persons.

The owner of the business or enterprise does not normally consent formally, and he or she may or may not be aware of the intervention. The Rwandan civil code views such activity as a form of tacit mandate or agency. The person managing the business ("the manager") must intend to assist the owner of the business, and must not simply be acting in his or her own interest. The management must be useful and opportune (appropriate). Such a quasi-contract would arise, for example, where one neighbour repairs the leaky roof of another neighbour's house, where the latter is absent and cannot tend to his property. In this case, one neighbour voluntarily assumes the obligation, but without the other neighbour's consent. Upon the conclusion of the quasi contract, that is, once the owner has again assumed full responsibility, for his or her property, the manager is entitled to be reimbursed for useful and necessary expenses

Undue payment

This quasi-contract arises where one person receives payment from another person where there is no obligation necessitating this payment; that is to say, where there was nothing due or nothing was owed. This payment may be in cash or even in kind or in any other form. Examples of scenarios where this quasi-contract may arise:

- Payment for some obligation which did not or doesn't any longer exist

- Payment for more than is due; this means that the difference between what is paid and what is due must be realised in favour of that who gave more; or
- Payment for a debt (by error) in place of (for) somebody who was supposed to pay.

In effect, where an individual receives something that is not owed, out of that quasi-contractual relationship (obligation so created), that person receiving it is under an obligation to return it. The quasi-contract does not exist if there is in fact a debt and it has merely been paid before its term. If the thing received has already been resold, then it cannot be returned to its original owner. In such cases the price of the sold object must be repaid.

Unjust Enrichment

Unjust enrichment (or enrichment without cause) doesn't have origins during Roman times, unlike the other two already mentioned. It was at the end of the 19th century that this concept began to have its place as an independent source of quasi-contractual obligation. This gave rise to an independent cause of action for this quasi-contract known as *de in-rem verso*. Enrichment without cause arises where property or income of one party finds itself in the hands of other without legitimate cause or justification, this being a detriment of that other person. There are five conditions that the law regards as indispensable for this quasi-contract to apply:

- Correlative impoverishment and enrichment between respective parties;
- Absence of fault on the part of the party being impoverished;
- Absence of personal interest on the part of the party being impoverished;
- Absence of cause;
- Absence of any other action that can be regarded as subsidiary in character to the action de in-rem verso.
- This correlative impoverishment and enrichment between the parties may not only take monetary forms, it may take any other form such as time that can be translated into money for example, intellectual input and time taken by a teacher to teach students.

There is thus one party that is losing out (impoverished) and another that is gaining out of this arrangement. It is this correlative relationship that underlies the quasi-contractual obligation on the part the one who is being enriched, towards the party that is being impoverished. That is to say, the enrichment should be a necessary consequence of the impoverishment. This may be pecuniary, material, moral or even intellectual. It may also be done directly or through an intermediary. A person alleging unjust enrichment may not simultaneously do so for benevolent intervention (*negotiorum gestio*) or undue payment (*solutio indebiti*).

v) Onerous and gratuitous contracts

An onerous contract is a contract which requires both parties to give or to do something in respect of the other. Each party engages him/herself in consideration of the advantage he/she expects from the other party. The definition provided in the above article may lead to some confusion in as much as it is assimilated to the definition of bilateral contacts. In this vein, one may conclude that all bilateral (synallagmatic) contracts are also onerous contracts.

However, one should bear in mind that not all unilateral contracts are gratuitous contracts, e.g., a loan with interest. A gratuitous contract, on the other hand, bestows an advantage to one of the parties at no cost or charge at all. A gift or donation is an example of a gratuitous contract but a contract, all the same, the creditor, though not obliged for nothing, engages in consideration of the interest that he/she expects.

vi) Commutative and aleatory contract

A contract is commutative when it consists of an obligation on each party to do something or to give something that is viewed as being equivalent. A contract is deemed aleatory when there is a chance of profit or loss for one of the parties based on the occurrence of an uncertain event. The purchase of a tombola, lottery or a betting ticket, the insurance contract are examples of aleatory contracts.

Commutative contracts may be set aside for lesion (abusive or unconscionable terms), whereas this is not the case with an aleatory contract because the risk was contemplated by the parties before the formation of the contract.

vii) Instantaneous and continuous or successive contracts

Instantaneous contracts are contracts that are executed at once and for all. For example, in a contract of sale, price is paid and the object is delivered. On contrary, continuous or successive contracts are contracts which cannot be executed once; they are normally executed in stages or phases, e.g. employment contract, lease contract, etc.

viii) Modern classification of the contracts

These contracts require some specific formalities in their formation to be valid and produce legal effect. This category includes consensual contracts, contracts of adhesion and standard contracts**.**

- **Contracts of free discussion (consensual contracts):** in this contract, the parties freely discuss the clauses of their contract. It is also called private contract. Here, the parties freely negotiate the contents of their agreement and arrive in theory with a balanced agreement. Consensual contracts are contracts where the parties agree and simultaneously execute their contracted obligations without other formalities, e.g. the contract of sale of goods.
- **Contracts of adhesion** (Standard form contract): Here the two parties do not discuss the clauses of their contract. The strong party economically prepares the contract and the weaker party adhere to the terms set out (WASAC, REG, ..., contract).
- **Formal or solemn contracts**: apart from consent, they need other pre-established formalities for them to be valid. For example, a contract of marriage needs a marriage certificate and also to be celebrated by the civil status officer and in accordance with the law; the purchase of immovable property such as a house, needs, besides consent and price, other formalities for the ownership to be transferred. Some types of contracts, which may be called "formal Contracts" because they are subject in some aspects to special rules that differ from some of the rules that govern contracts in general.

Examples of formal and solemn contracts:

- Contracts under seal,
- Marriage contract,
- Negotiable instruments,
- Negotiable documents (such as treasury bill, treasury bond, Eurobond….)
- Letters of credit and those formed by electronic means.
- Collateral agreement

ix) Principal contract vs. accessory contract

The existence of an accessory contract depends on the principal contract. For example, a pledge or mortgage contract cannot have an autonomous existence it is accessory to loan contract. Because of the accessory characteristic of the pledge, it is extinguished by any of the circumstances which may terminate the principal obligation.

Legal framework of collateral contract under Rwandan Law

In line with doing business policy in Rwanda, coined to investments and transform Rwanda as finance hub, the Government has eased the process of registration of collateral for commercial banks and shortened the process of auction without making recourse to court process. The Rwandan laws use the word "security" to refer to or to mean "collateral". Hence, under this section these two concepts are used interchangeably. The expression "law of securities" consists of a set of rules applicable to securities/collaterals. The law of security is composed of general and specific provisions applicable to immovable and movable collaterals/securities. Under Rwandan law, the immovable collaterals are governed by Law No.10/2009 of 14/05/2009 on mortgages as modified and complemented by Law N° 13/2010 of 07/05/2010 while the movable collaterals are governed by Law No. 34/2013 of 24/05/2013 on security interests in movable.

Security may be defined as the means offered to a creditor by the law or agreement between parties to guarantee the execution of obligations of the debtor. A security protects the creditor against the risk of the debtor's insolvency. This results in the fact that the creditor acquires an increased guarantee and an additional chance of payment. As a rule, a creditor, irrespective of the date and the origin of his or her claim, has the right of seeking payments on the value of all assets of the active. i.e. "the right of general pledge".

According to the rule of competition, all creditors of the same debtor are in equal position (the obtained price of the collateral or mortgage is shared in accordance with the procedure of come first to be served first. This is in line with the principle that patrimony of the debtor constitutes common pledge for his/her creditors. Thus, ordinary/unsecured creditors may encounter the risk of the debtor's insolvency.

Security is an exception to this rule of competition between creditors. Securing a specific asset as collateral or a solvent third party will confer to the creditor the rights of a preferential payment over the asset or by a guarantor. Collaterals are grouped into two main categories: securities: real securities and personal securities.

Real collaterals

Real security refers to that one which is established in the patrimony of the debtor. It is based on either one of the assets or the assets which make up the whole patrimony and it is realised by allocating one or many assets for the payment of the secured debt. As mentioned above, a collateral agreement over debtor's assets creates a right of rank of priority through an allocation of the debtor's asset or a group of assets for settlement of a claim. Real security cannot have an autonomous existence. It is an accessory to a loan and confers to the creditor the right of follow up- seize and sell the secured asset to recover the due amount of the loan. The real collateral can be security rights established on movable or immovable property belonging to the debtor or third party. This can include the right of retention, privilege, pledge and mortgage.

- **Right of retention:** right acquired by a person (creditor) who is in possession of someone else's property to retain that property until he/she is refunded for expenditure on the article, or paid for his or her labour in respect of the property.
- **Pledge** with or without dispossession: a contract by which a debtor (pledgor) places movable property in the hands of a creditor (pledgee) or an agreed third party as security for a debt. Under Rwandan movable security law, a pledge is valid upon its registration by the Registrar general and dispossession is not a requirement. The debtor (pledgor) continues to enjoy the rights over the secured asset and only a caveat is placed to restrict any transfer of the property. For example, for a car registered as collateral a caveat is automatically recorded in RRA system. This is the same for land where the caveat is placed in the Land Office system as the Rwanda Development Board collateral registration system is interfaced with the entities in charge of management of the same properties.
- **Mortgage:** security over immovable property.
- **Privilege:** prerogative provided by the law to some creditors to have priority of payment over the assets regardless whether they have security agreement or registered collateral. This includes salary and related benefits of the debtor's employees (as per the Labour law), social security contribution (Rwanda Social Security Board -RSSB Law) and Taxes (Rwanda Revenue Authority Law). More importantly, the tax administration authority has the power to seize and put under auction the taxpayer's assets to recover the tax arrears.

Creditors can share one or many assets of the debtor as security. As a result, the banks (lenders) are co-creditors and are equally managed without any display of preference. The creditors have equal rights of payment, or equal rank of priority. This requires to have security sharing agreement between co-lenders (also known as *pari passu* agreement) in case one bank single obligor limit (or single borrowing limit) does not allow one bank to fund the borrower, hence enters into a loan syndication agreement with other banks to disburse the requested amount. One bank will be appointed as lead arranger to coordinate the analysis and contracting process, collect repayment funds and distribute the instalments to other lenders in accordance with the repayment schedule set forth.

Personal securities

Personal securities are undertakings by an individual person (personal guarantee) or by a corporate entity (corporate guarantee) guaranteeing the execution of an obligation of the principal debtor in case of the latter's failure to perform the obligation. The classic types of personal guarantee include suretyship and corporate guarantee:

- **Suretyship or personal guarantee** is a contract where an individual (surety) guarantees the fulfilment of another person's obligation (debtor's obligation) to a creditor. If the debtor fails to perform their obligation, the surety becomes responsible for fulfilling it. This agreement requires the surety's acceptance of the responsibility and the creditor's acceptance of the surety.
- **Corporate guarantee:** when the guarantor is a legal entity such as a company, the agreement is called a corporate guarantee. Loan protection and Government sovereign guarantee fall under the corporate category of securities issued by a legal entity.

Collaterals deriving from business practices

This category of collateral includes letter of credit, bank cheque, assignment/cession of payment, and invoice discount.

- **Letter of guarantee or letter of credit (LC)** refers to an agreement by which, at the request or on the instruction of the principal, the guarantor undertakes to pay a fixed amount to the beneficiary upon the beneficiary's first demand. The practice is noticed in imports and exports of goods where the businessperson can import goods on credit upon presentation of the Bank LC undertaking to pay the price at the maturity date.
- **Bank cheque:** The bank cheque is a negotiable instrument issued by the bank to its client which, in return once signed by drawer permits the holder to operate withdrawals from his account up to a ceiling amount at whatever bank counter or affiliated mechanism in the country. The issuance of a cheque to the beneficiary guarantees him payment. This justifies the criminalisation of issuance of a bouncing cheque (without sufficient funds on the account).
- **The cession of claim as a guarantee:** The cession is sometimes allocated in exchange for a price which in most times is equal to the payment which will be made by the ceded debtor to the cessionary. This is done through a tripartite agreement between the ceding creditor, ceded debtor and cessionary that has to be an authentic deed in which the ceded debtor accepts to pay the cessionary. This is a sort of subrogation as the cessionary will become the new creditor of the ceded debtor and be subrogated in the rights of the former creditor (ceding creditor).
- **Invoice discount:** An invoice discount agreement is a *sui generis contract* by which the bearer of a negotiable instrument such as promissory note, cheque or invoice transfers its ownership to a banker who is obliged to give him or her an amount of money equal to the title, with interests calculated till date of payment. The bearer binds himself to reimburse the banker the nominal value of the negotiable instrument in case the latter is not paid on time. This is a type of cession of claim because a banker gives an advance payment to the bearer before the maturity of the negotiable instrument and the bank becomes the owner of the instrument to claim payment from the initial debtor. It is important to note that negotiable instruments are transferred by simple endorsement – writing and signing at the back of the document that the ownership is transferred to another person.

Negative pledge

The concept of negative pledge refers to various clauses inserted in either credit contracts or in other contracts of suretyship, or in contracts of claim subordination or corporate undertakings. They can be divided into two categories: negative securities that generate the right to veto, and the negative securities which create the right of control. All this is done

to the benefit of the creditor to give him or her the rights to interfere in the management of the debtor's business. The purpose of a negative pledge as collateral per se bis to either have control over the performance of business or the decision making of a major transaction that can affect the debtor's ability to pay. The purpose of the clauses is to protect the creditor against unfavourable modifications of the property of a debtor and have relationship with positive obligations imposed on the debtor and thus the creditor can verify their execution

The negative pledge can consist of contract clauses related for example with maintenance of adequate leverage of insurance requirement, use the credit to the determined purposes, to maintain social personality, to pay the taxes, maintain certain elements of the patrimony in good condition shareholders subordinated debt, maintain adequate level of stock, to make and submit a financial report to the credit on set timelines etc.

e) Remedies for breach of contractual obligations

The remedies available to the breach of contractual obligations include monetary damages and equitable remedies.

Monetary damages

The main remedy available to the grieved party in a breach of contract claim is monetary damages. Article 137 of the contract law provides that the injured party has a right to damages for any breach by a party against whom the contract is enforceable unless the claim for damages has been suspended or discharged. The injured party has a right to damages based on his/her expectation vis à vis the interest as measured in relation to the loss recorded resulting from the other party's performance caused by its failure or deficiency as well as any other loss, including incidental or consequential loss, caused by the breach.[13]

Total breach gives rise to damages based on all of the injured party's remaining rights to performance. Partial breach gives rise to damages based on only part of the injured party's remaining rights to performance. This is a monetary sum fixed by the court to compensate the injured party. It is the process in which damages are assessed and is designed to put the injured party in the same position they would have been in if the contract had been performed.

Equitable remedies

Equitable remedies seek to compel performance of assumed contractual obligations and consequently may, where appropriate, prove a more desirable option for the innocent party. These remedies are not, however, available as a matter of course. Equitable remedies are discretionary in nature and, in each case the court is required to decide whether it is appropriate for it to exercise discretionary to grant the remedy sought. The court will generally only exercise their discretion to equitable remedies where it can be demonstrated that common law remedies such as damages, would be inadequate to compensate the plaintiff for the defendant's breach, or anticipated breach of contract.

[13] *2011 Contract Law, art. 138*

Example:

Mr. A agrees to buy land of Ms. B, which is adjacent to hers and Ms. B later refuses to complete her side of obligation (transfer of ownership). Hence, Mr. A can prefer to claim the completion of ownership transfer and claiming monetary damages because perhaps that piece of land would have provided him with a more convenient access to the main road so that he could transport his produce/goods to the market more easily and cheaply.

f) Termination or rescission of a contract and legal effects

One of the remedies for breach of contract is termination. A contract is terminated by ordinary ways such as payment, novation, voluntary remittal or release, compensation, confusion, loss or destruction of the thing, nullity or rescission, the operation of a resolutive condition, and limitation or prescription (statute of limitations).

C.2. Sale of goods and services

a) Definition of sale and sale agreement

A sale and sale agreement are two different concepts even through sometimes are used interchangeably. A sale consists of a transfer of ownership from the seller to the buyer for a determined price. On the other hand, a sale agreement is a convention by which one person binds himself to deliver a thing and another to pay the price. Simply put, a sale is the outcome of the slae agreement. In terms of movable property, a sale agreement and sale can happen at the same times as the transfer is made by simple handover without any other formality. E.g. sale of telephone or laptop in a shop.

Many civil scholars argue that the sale is perfect between parties and the ownership right is acquired by the buyer with regard to the seller, from the time they have agreed to the item and price even if the item has not yet been delivered and the price has not yet been paid. However, the theory does not apply to the sale of land under Rwandan Law which stipulates a well specified procedure., Two main elements of sale: an obligation for the seller to deliver the good(s) which implies the transfer of the ownership; and an obligation for the buyer to pay the price.

b) Main features of sale

Sale is consensual, onerous, commutative, translative and synallagmatic. A sale is consensual because it is effective from the time the consent from both parties is obtained regardless of the handover of the sold asset or the payment of the price. There are some exceptions where the law requires some formalities for the validity of the sale contract. In terms of sale of land, parties' consent shall be conveyed through an authentic document signed by the concerned persons or upon them appending their fingerprints, before a competent notary in land matters.

Sale is onerous and synallagmatic as it creates obligations on both sides. The seller has the obligation to ensure transfer of ownership while the buyer has the obligation to pay the price agreed on. Sale agreement is also commutative as the parties intend to receive as much as it was given. It is in this regard; the price shall not be symbolic but a seriously fixed or ascertainable condition.

The price must be fixed and stated by parties. There are cases where the price is fixed by only the seller (super market prices, pharmacy, hospitals) or by only the buyer (sale by auction). The maximum price may also be fixed by regulation-electricity, fuel- petrol. Indeed, the price must be determinable if it is not clarified in the contract. More importantly, the price must be proportional to the value of the asset. The proportionality or equivalence between the price and the market value of the asset is a key element to distinguish the sale with other contracts on asset rights. Furthermore, sale is a translative contract given it is meant to transfer ownership right subject to the payment of price as opposed to a donation where the transfer of ownership is free of charge or the price is only symbolic.

c) Effect of sale agreement

As mentioned above, the end result significant of the contract of sale is the transfer of ownership of the thing from the seller to the buyer which implies also the transfer of risk. The sale contract is translative, the buyer gets the right to use, to enjoy and transfer at will. This makes the difference between the contract of sale and other contracts such as lease contract, whereby the lessee gets a temporary right to use and to enjoy, but not to transfer.

d) Transfer of ownership and opposability to third party

Transfer is different from delivery even though in some instances, two may happen at the same time. For example, sale of mobile telephone, the buyer pays the price and immediately gets the handset unless it was agreed otherwise.

Transfer of ownership

A sale is complete between the parties and the ownership passes as a matter of right to the purchaser from the seller as soon as the thing and the price have been agreed upon, although the thing is not yet delivered or the price paid. The ownership of property sold is transferred by mere agreement (*solo consensus*). Transfer of ownership consists of therefore a transfer of the right but not necessarily of the *corpus*, since delivery may occur at a later stage. The transfer of ownership may be suspended by law or prohibited by special agreement. For example, in the event where things sold are not yet in existence, transfer occurs when they become available (i.e., the traditional operation of "*kugwatiriza*"), or where things are un-ascertained or fungible (generic sales) e.g. Cement, beans...

Where the buyer has a choice between two things, and has not yet chosen, the transfer is concomitant to the choice. However, where the contract is a sale of immovables, ownership of property is transferred by registration in the land deeds office (art.18 (2) and 24 of law No. 27/2021 of 10/06/2021 governing land. The registration of land and issuance of the land title is apposable to third party unless the land title is challenged in the court evidencing that the certificate was forged or the acquisition of the land was obtained in a fraudulent way. Consequently, for example if the land was sold to many buyers in different moments, the true owner will be the buyer that has successfully registered the land and obtained a land title. Hence, other buyers will initiate a legal action to claim damages and refund of the price paid.

In terms of Sale of movable property, the rule means that the buyer needs to be not only a contracting party, but also has to enter into possession of the thing sold for the purpose of opposability *erga omnes*. This rule originated from the principle which states that "possession of movable property equals to title of ownership". Hence, the first *bona*

fides possessor is protected in case of sale to two successive buyers, irrespective of the dates of acquisition.

Delivery of the asset sold

Delivery of the sold asset must be made at the place where the thing sold was at the time of the sale, save otherwise provided. This has impact on the payment of the price and determines the competent court. The seller must deliver the thing at the time mentioned in the contract. If no time is mentioned, he or she must deliver within a reasonable time according to circumstances or in reference to the practices or usages of the delivery location. The expenses of delivery are paid by the seller and those of transport by the purchaser, unless there is a stipulation to the contrary

In other words, all costs connected to the delivery of the purchased thing, whether movable or immovable (including the costs of measuring and weighing), in any case where the place of destination is also the place of performance, do all fall on the seller. But the costs of registration of a transfer of ownership of an immovable or registered charge are payable by buyer. In the line of the principle *Exceptio non adimpleti contractus*, the Seller has the right to withhold delivery of the asset until payment.

e) Hidden defects, lack of conformity and remedies

For specific things, conformity is appreciated in reference to the time of contract, the thing must be delivered in the state in which it was at the time of the sale not at the time of delivery. But for generic things (e.g., goods), the seller must deliver the goods as specified in the contract. Parties must agree on that goods are or not in conformity with the contract, and if they do not contain any kind of defect improper to the use of the thing. The buyer who becomes aware of the non-conformity of the thing sold to the specifications of the agreement, should claim for delivery of proper goods within a reasonable time. If he does not do so, he may be opposed upon with the tacit acceptance rule. The last duty of the seller is his warranty against hidden defects in the thing sold. The warranty is by law or by convention between parties.

The buyer has two options in case of non-conformity: the *actio redhibitoria* (to claim restitution); and the *actio quanti minoris* (to claim a reduction in the purchase price). The purchaser may opt between returning the thing and having the price refunded to him/her or to keep the thing and have such part of the price refunded as shall be decided by experts.

C.3. Agency contracts

a) Definition of Agency and related concepts

Agency refers toa contract whereby a person, on a permanent basis, can create, alter or extinguish rights for and on behalf of another. The person performing the act (the agent) must have power to do so, and he or she must act in the name of the represented party (the principal).

The agency has some similarities with mandate and commission agent. Mandate is a contract by which a person, the mandator, empowers another person, the mandatary, to represent him or her in the performance of a legal act with a third person, and the mandatary, by his or her acceptance, binds himself or herself to exercise the power-the power of attorney. Once a mandate is accepted, the mandatary will have the obligation

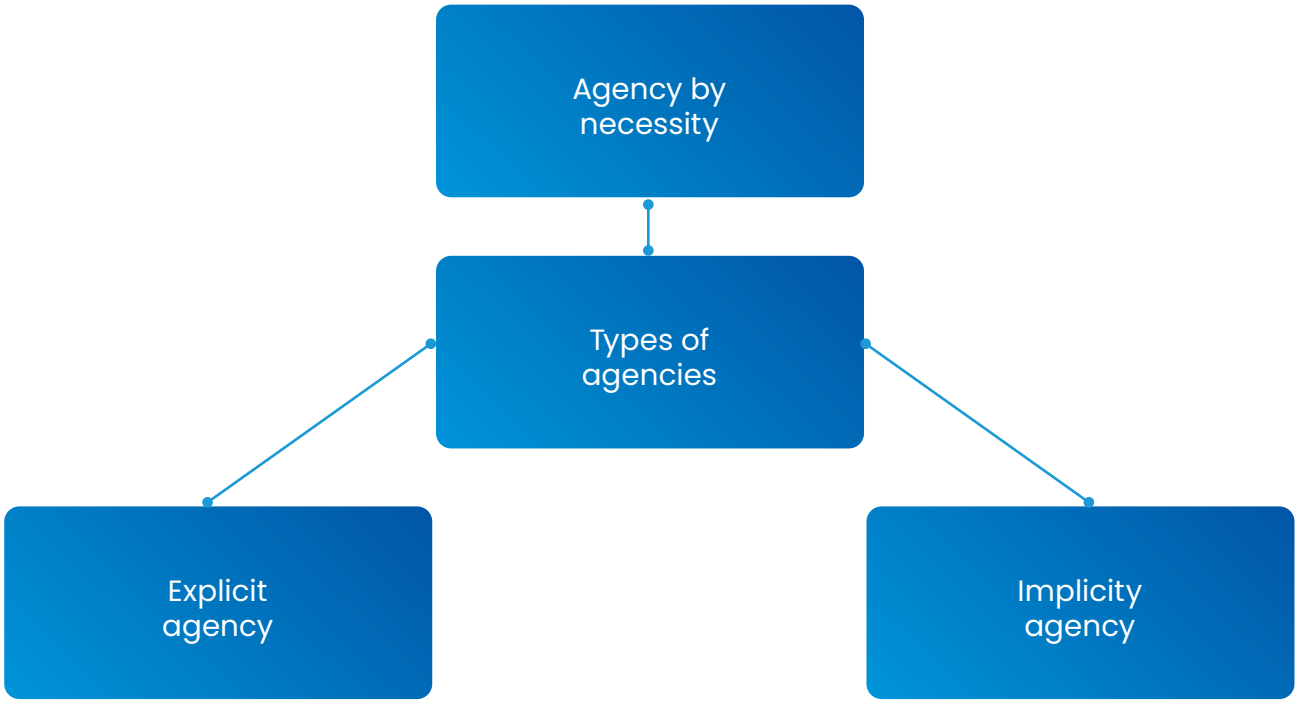
to perform his or her duties and to report to the mandator. The mandator has the duty to remunerate, compensate the mandatary for expenses or losses incurred.

Commission agent is a person, who, in the regular course of his or her business, undertakes to purchase or sell goods in his or her own name, but upon the instruction of another person.

b) Types of Agencies

The agency can be explicit, implicit or created by necessity.

Figure 7: Types of agencies



Explicit agency

Explicit agency also known as express agency is one created by contract between the principal and the agent. The contract can be oral or in written form. The typical example is the power of attorney which explicitly outlines the powers and boundaries of the agent. Explicit agency can be general by which the agent will perform all legal acts in the name and on behalf of the principal or specific where the agent has the power to perform a well specific act or transaction. For example, a lawyer has specific power to represent a client before the court and not in other legal acts unless it was so agreed.

Implicit or implied agency

The implicit agency is created by the manifest conduct or behaviour showing that indirectly the person is acting as agent of another person without express existence of agency contract. The agency relationship results from the conduct of both parties and the external impression they have given to third parties.

Agency by necessity

Agency by necessity is seen as a volunteering act performed by one person on behalf of another but without consent or appointment by the other party. For example, where one neighbour repairs the leaky roof of another neighbour's house, where the latter is absent and cannot tend to his property. In this case, one neighbour voluntarily assumes the obligation as agent due to the necessity to safeguard the neighbour's property, but without the other neighbour's consent or appointment for such a purpose.

c) Legal effects of agency

The agency agreement like any other contract be binding between parties. They may only be revoked at the consent of the parties or for reasons based on law (art 64 of the 2011 Contract Law). Agent is acting in the name and on behalf of the principal and his acts will have the legal value and binding effect as if they have performed by the principal him/herself and the latter cannot challenge them unless he/she proves that the acts are out of the agency limits.

d) Obligations of principal and agent

The principal has the obligation to determine the scope of authority. In the agency contract, the principal should clearly outline and describe authority conferred to agent agreement should clearly describe the scope of authority granted to the agent with clear tasks and responsibility. By setting the limitations of the agent power, the principal avoids possible misinterpretation, abuse and litigation that arise therefrom. Moreover, the principal has the obligation to provide the agent with all necessary support and information useful for the execution of the tasks. The principal shall thus remunerate, refund and compensate the agent for all expenses and loss incurred while executing his/her obligations in accordance with the terms and conditions of the agency agreement.

On the other hand, the agent has the obligation to execute all tasks and acts assigned to him/her within the limits of his/her authority, act in the best interests of the principal. The agent has to protect the confidential information and ensure that the performance of his/her obligations is in compliance with the relevant laws. If the contract sets timelines, the agent has to ensure that the completion of his tasks is aligned with the agreed timelines. Unless it was expressed otherwise in the agency agreement, failure to perform the obligations within the set timeline, can be considered as breach of contractual obligations and gives the power to the principal to use relevant remedies. The modes of termination of an agency contract is the same as other contracts.

e) Responsibility of the Principal and Agent

Given, the agent is acting in the name and on behalf of the principal, the principal will be liable for all illegal acts performed by the agent within the scope of the agency contract. Moreover, all contracts concluded by the agent will bind the principal and the latter will be responsible for reparation of damages caused by the agent while performing the legal acts on behalf of the principal. Hence, the agency agreement should be reduced in writing with clear powers and to avoid the abuse of the agency contract by the agent and limit liability of the principal if the agent acts outside the agency terms and conditions.

However, the principal can provide evidence that the agent performed acts outside the scope of the agency agreement and thus make recourse against agent for reparation of damages and loss suffered.

C.4. Law of torts

a) Definition of a liability

Law of tort is a branch of law which deals with personal liability. A tort is an act or omission, other than a breach of contract, which gives rise to injury or harm to another, and amounts to a civil wrong for which a judicial authority imposes liability. A liability is a legal bond which results from not a legally formed contract but from a fault (civil fault of criminal fault). A liability is a consequence of breach of prohibited conduct or failure to perform or honour the obligations voluntarily set. The source of a liability includes an offence (criminal fault) or a quasi-delict (civil fault). An offence is an illicit fact which causes damage. It gives birth to an obligation relationship, a true bond of right between the victim and the author of the damage. The offence is a fault or an intentional fact. The quasi delict itself is a fact of simple negligence, or recklessness which causes damage to another person. The wrong act which occurs unintentionally but by negligence or recklessness

b) Types of tort liability

i) Personal liability

Personal liability arises when an individual violates a duty of care owed to another person. This occurs when an individual's actions or omissions fall below the standard of care that a reasonable person would exercise in similar circumstances.

Three conditions are required to assess the existence of the personal liability: A wrongful act (fault, negligence), damage and causal link between the fault and damage.

ii) Vicarious liability

A part from being held for his/her own acts or omissions, a person may also be held liable for acts or omissions or damages of others, as well as for damage caused by things under their control.

Liability of parents

The parents are severally answerable for damage caused by their children who reside with them. This liability derives from the fact that parents have a degree of control over their children, and a presumption that where their children have committed wrongful acts, ineffective supervision, for which they are responsible, is to blame.

Liability of employers

Employers are also held responsible for damage caused by their employees in the course of functions for which they are employed. The requirement of this liability is establishment of the subordinate relationship between the employee and the employer and the wrongful act of the employee. Normally, the relationship between the employer and employee produces the same legal effects as agency contract because, the employee performs the tasks assigned on behalf of the employer (principal). For example, the Government is liable for the acts and decisions taken by its agents (employees/officials).

Liability of artisans

Artisans answer for damage caused by their apprentices under their supervision. The liability is only engaged if the victim proves that the individual provided professional training and the sole difference between this liability and teacher's liability is that the artisan requires that his/her apprentice carry out work. For example, a medical doctor is liable for mistakes committed by the medical intern under his/her supervision.

Liability of teachers

Teachers may be held liable for damage caused by their students. For teachers to be held liable, the students must be effectively under their supervision, a rule that excludes those who have no real responsibility of supervision such as university professors. For liability to be established, the student must have committed a wrongful act that caused damage or harm.

iii) Damages caused by things

Animals

The owner or the user [tenant, usufruct, farmer, borrower thief] of an animal is liable for damage caused by the animal, whether the animal is being kept or has escaped.

Buildings

The owner of a building in ruins is responsible for damage that it causes when this is the result of poor maintenance or defects in its construction. There is no fault requirement with respect to the owner to establish liability in this context. The owner is held liable, even if the construction or maintenance problems are not the owner's fault. It is important to note that deliberate fault of the victim, in case of the acts committed by things is not covered. In fact, in case of construction, the owner is liable once there is damage caused as the result of defect and non-maintenance of the building, but, once there is the warning not to enter the work-site (*chantier)*, once you entered it and got injured or dead, the damage will not be covered.

c) Conditions of tort liability

Three conditions are required to assess the existence of the personal liability: A wrongful act (fault, negligence), damage and causal link between the fault and damage.

A wrongful act or fault, negligence

Fault is the violation of a legal duty of care. It occurs when an individual acts or fails to act in a manner that a reasonable person would under similar circumstances. (*Bonus pater familias*). Negligence on the other hand, arises from a failure to exercise the degree of care that a reasonable person would exercise in a similar situation. Essentially, any act or omission that causes harm to another person may give rise to legal liability, depending on whether it can be attributed to fault, including negligence.

Prejudice or damage to the victim

Prejudice refers to the loss the creditor suffered actual harm or loss. In the absence of the prejudice, there is no liability since there will be no interest. This reflects the legal principle

of "no interest, no action" – there can be no legal action in the absence of actual prejudice.

A causal link between the fault and the prejudice

It is not sufficient that the victim of a prejudice establishes the fault to obtain compensation from its author, but it is also a requirement for the victim to show a direct connection between the wrongful act and the resulting harm. The court must determine whether the harm suffered by the victim was a direct and foreseeable consequence of the wrongful act."

d) Reparation of damages

The damages depend on whether there is a material loss and the moral/psychological harm.

The Material loss

Material loss refers to financial loss that diminishes an estate or asset. For example, Destruction or deterioration of property, Loss of money or financial assets, Loss of earnings or income.

Physical Injury:

Refers to any harm caused to a person's body. This can encompass a wide range of injuries, from minor cuts and bruises to severe and debilitating conditions. For example, loss of limbs, brain injuries, spinal cord injuries, gunshot wounds, stab wounds, body lesions such as wounds and mutilations among others.

Moral or psychological harm

Harm can be categorized as:

- **Extra-patrimonial Harm:** This refers to non-financial harm that affects a person's reputation, feelings, or emotional well-being. Examples include damage to reputation, emotional distress, and loss of affection.
- **Bodily Harm:** This encompasses both physical and psychological consequences of injury.
  - **Material Aspects:** Include medical expenses, lost income, and other tangible financial losses.
  - **Moral Aspects:** Include pain and suffering (pretium doloris), mental anguish, and loss of enjoyment of life.

The reparable damage must be certain, not have already been repaired, direct, personal and it must have affected a legitimate interest, judicially protected. For example, person cannot claim damages for the destruction of illegal substances like cannabis becausethe interest is not legally recognised and protected. This is also on the basis of the principle of **Nemo *auditur suam turpitudinem allegens* -** Nobody is heard recounting his own turpitude.

Unit C key terms

Agency by necessity C.3
Agent C.3
Causal link C.4
Cessation of claim C.1
Collateral C.1
Compensation A.1
Conformity C.2
Counter-offer C.1
Damage C.4
Defects C.2
Explicit agency C.3
Fault C.4
Guarantee C.1
Implicit agency C.3
Liability C.4
Mortgage C.1
Movable security interests C.1
Negotiorum gestio C.1
Obligation of means C.1
Obligation of results C.1
Offer C.1
Onerous contract C.1
Opposability C.2

Power of attorney C.3
Preferential payment C.1
Principal C.3
Promise C.1
Quasi-contract C.1
Reparation C.4
Retained asset C.1
Sale C.2
Super-privilege C.1
Surety C.1
Synallagmatic contract A.1
Undertaking C.1
Undue payment C.4
Unilateral contract C.1
Unjust enrichment C.4

Summary of Unit C and key learning outcomes

Learning outcomes	Summary
Law of contracts	The 2011 Contract Law defines ''contract" as a promise or a set of promises the performance of which the law recognizes as obligation and the breach of which the Law provides a remedy. A contract creates obligations on contracting parties and not to third party. This is in accordance with article 64 of the 2011 Contract Law which states that "Contract made in accordance with the law shall be binding between parties. They may only be revoked at the consent of the parties or for reasons based on the law." The essential conditions leading to the validity of the contract are: consent of the parties to the contract; the capacity of parties (majority age) to enter into contract; object matter of the contract; and licit cause (art.4 of the 2011 Contract Law). The principle guiding the conclusion of particular contracts is not the application of general legal rules, but "Pacta sunt servanda", which reflects the principle of "sanctity of contracts"
Sale of goods and services	A sale is an agreement by which one person binds himself to deliver a thing and another to pay the price. the end result significant of the contract of sale is the transfer of ownership of the thing from the seller to the buyer which implies also the transfer of risk. The sale contract is translative, the buyer gets the right to use, to enjoy and transfer at will. This makes a difference between the contract of sale and other contracts such as lease contract; whereby the lessee gets a temporary right to use and to enjoy, but not to transfer. Delivery of the sold asset must be made at the place where the thing sold was at the time of the sale, save otherwise provided This has impact to the payment of the price and determine the competent court. The seller must deliver the thing at the time mentioned in the contract. If no time is mentioned, he or she must deliver within a reasonable time according to circumstances or in reference to the practices or usages of the delivery location. The expenses of delivery are paid by the seller and those of transport by the purchaser, unless there is a stipulation to the contrary. In the event of non-conformity of the sold asset at its delivery, the buyer has two options: the actio redhibitoria (to claim restitution); and the actio quanti minoris (to claim a reduction in the purchase price). The purchaser may opt between returning the thing and having the price refunded to him/her or to keep the thing and have such part of the price refunded as shall be decided by experts.

Learning outcomes	Summary
Agency contracts	Agency is defined as a contract whereby a person, on a permanent basis, can create, alter or extinguish rights for and on behalf of another. The person performing the act (the agent) must have power to do so, and he or she must act in the name of the represented party (the principal). The agency can be explicit, implicit or created by necessity. By the agency agreement, Agent is acting in the name and on behalf of the principal and his will have the legal value and binding as if they have performed by the principal him/herself and the later cannot challenge them unless he/she proves that the acts are out of the agency limits.
Law of torts	Law of tort is a branch of law which deals with personal liability. A tort is an act or omission, other than a breach of contract, which gives rise to injury or harm to another, and amounts to a civil wrong for which a judicial authority imposes liability. Liability is those obligations which exist and are formed without any agreement between the parties, they derive from fault or wrongful acts which creates the obligation between the victim, creditor and the perpetrator, debtor, the latter being liable of his/her acts. Three conditions are required to assess the existence of the personal liability: A wrongful act (fault, negligence), damage and causal link between the fault and damage.

Quiz questions

1. Which of the following statements define the term "contract"? (select all that apply)

   A. A contract is a promise or a set of promises the performance of which the law recognises as obligation and the breach of which the Law provides a remedy.

   B. A contract is an agreement made in accordance with the law and which is binding between parties.

   C. A contract refers to a legal act or legal relationship which consists of a set of rights and obligations deriving from the agreement between parties.

   D. The term 'contract' may refer to a document evidencing the expressions of minds/ will that the parties exchanged under a written or notarized act.

2. The validity of a contract requires four conditions: the consent of the parties to the contract; the capacity to enter into contract; the object and licit cause. What is the meaning of the capacity to contract? (select all that apply)

   A. It is the age of 18 years for civil legal acts, 16 years for employment contracts and 21 years for marriage.

   B. Mental aptitudes to contract.

   C. Physical appearances to perform the work assigned.

   D. The level of freedom to understand the content of contract without coercive influence or fraudulent misrepresentation.

3. An offer is a manifestation of a willingness to enter into a contract made in a manner so as to justify another person in understanding that his or her assent is invited and will conclude the contract. The what is a counter-offer? *(select all that apply)*

   A. It is an indication of an unwillingness to agree to the terms of the offer which generally operates as a rejection of the initial offer and suggests a new offer.

   B. A counteroffer is an offer made by an offeree to his offeror relating to the same matter as the original offer but on terms or conditions different from those contained in the original offer.

   C. A counteroffer functions as both a rejection of an offer to enter into a contract, as well as a new offer that materially changes the terms of the original offer.

   D. A counter-offer does not necessarily mean the rejection or amendment of the terms of the initial offer but an acceptance by the offeree which can even be done through silence or inaction.

4. The principle of the autonomy of the will confers to the contracting parties the freedom to shape their contractual obligations and relationship in accordance with their determination or purpose. What is the exception or limitation to this principle? *(select one)*

   A. Any contract shall respect other human rights.

   B. Any contract shall benefit and be binding between parties and third persons.

   C. Any contract shall not contravene public order or good morals.

D. Any contract shall be made in accordance with the contract law and sometimes can contradict the public order rules to protect the interest of contracting parties provided for in the contract.

5. What is the difference between the obligation of result and obligation of means? *(Select one)*

   A. The obligation of result is attaches itself to the assets of the debtor in general and its breach or in-execution entitles the creditor to sue and recover against this general property while the obligation of means is associated with a specific piece of property, which entitles the creditor of that obligation to sue and recover against that specific property no matter who the actual owner is.

   B. The obligation of means is that by which the debtor commits himself using of the adapted means, to be careful and diligent in the performance of a service, without guaranteeing a given result while the obligation of result is that by which the debtor commits himself/herself to provide the promised service which consists of a given result.

   C. The non- compliance or non-performance of obligation of result can be enforced by courts and entail damages/remedies whereas an obligation of means) is not enforceable under the law and non-compliance has only moral sanction.

   D. The obligation of result is that by which the debtor commits himself using of the adapted means, to be careful and diligent in the performance of a service, without guaranteeing a given result while the obligation of means is that by which the debtor commits himself/herself to provide the promised service which consists of a given result regardless of the means used.

6. What is the difference between contract and quasi-contract? *(select all that apply)*

   A. The common element of the quasi-contract is the intervention of one party to perform one-sided or volunteered obligations without requirement of the other party's consent while a contract requires the other party's consent for its validity.

   B. Quasi- contract has to fulfil the 4 conditions required by law namely consent, capacity, object and licit cause while for a contract, the absence of one of the conditions does not invalidate the contract.

   C. A contract is the expression the intention of parties while quasi-contract is like a voluntary agency with consent of the master.

   D. Contractual obligations either arise from *pure contracts* such as contracts of sale, of purchase, of rent, etc. or from quasi- contract being the situations which, though not constituting contracts at the outset, produce the same effects as the ones inherent from contracts such as management of the other's business, undue payment and unjust enrichment.

7. Which of the following statements are the definition of sale? (select all that apply).

   A. A sale is an agreement by which one person binds himself to deliver a thing and another to pay the price.

   B. A sale is the transfer of ownership of the thing from the seller to the buyer which implies also the transfer of risk.

C. In terms of immovable property like land or house, a sale is complete between the parties and the ownership passes as a matter of right to the purchaser from the seller as soon as the thing and the price have been agreed upon, although the thing is not yet delivered or the price paid.

D. In terms of movable property, the sale is concluded and ownership is transferred after completion of the formalities of transfer such as conclusion of the contract before competent notary.

8. Which of the following statements define the agency by necessity? (select one)

A. It is an agency created by contract between the principal and the agent which can be oral or in written form.

B. It is an agency created by the manifest conduct or behaviour showing that indirectly the person is acting as agent of another person without express existence of agency contract.

C. It is a volunteering act performed by one person on behalf of another but without consent or appointment by the other party

D. It is a contract by which agent is acting in the name and on behalf of the principal and his acts will have the legal value and binding as if they have performed by the principal him/herself.

9. Which of the following are included in the three conditions determining the personal liability? (select all that apply)

A. Fault

B. Consent

C. Negligence

D. Damage

E. Causal link

10. What is vicarious liability? (select all that apply)

A. A person may also be held liable for acts or omissions or damages of others, as well as for damage caused by things under their control or his/her buildings.

B. The parents are severally answerable for damage caused by their children who reside with them.

C. Employers are also held responsible for damage caused by their employees in the course of functions for which they are employed.

D. Teachers may be held liable for damage caused by the minor students under their effective supervision.

Unit D: Employment law

Learning outcomes

D.1. Laws relating to employment in the public sector

D.2. Laws relating to employment in the private sector

Introduction to unit D

Labour refers to some kind of 'mental' or 'physical' action undertaken with a motive to earn a salary. Any effort or act performed for the sake of pleasure or social service is not considered as labour. The work done by machines or animals is not labour. Thus, labour law can be described as the body of rules governing the relationship between employers and employees. The latter is conferred with power to perform the assigned work under the supervision and instructions from the employer- subordination relationship. The Labour Law shapes the obligations and rights of the employee and employer. This unit will explore the employment in the public sector and employment in the private sector.

D.1. Laws relating to employment in the public sector

a) Scope and application

The employment in public sector is regulated by Law No. N° 017/2020 of 07/10/2020 amended also in 2020 by Law No.019/2020 of 19/11/2020 establishing the general statute governing public servants in Rwanda. The law regulates employment relationship between the State and its permanent employees that are not governed by special status. It also applies to political leaders in terms of leave rights and other employment benefits (article 2 of the General statute). The law outlines the process of entry into public service, transfer and secondment of a public servant, leave regime, rights and obligations of employee and employer, incompatibility and disciplinary sanctioning. As the political leaders are governed by the special law, in case of contradiction between the general and special law the latter shall prevail in accordance with the principle: *Specialia generalibus derogant* (the special law derogates the general law).

b) Exceptions and limitations

Security organs and other entities determined by the Presidential Order or the Prime Minister's Order are governed by the special statutes. The latter shall only apply to recruitment modalities; career development modalities; modalities for disciplinary proceedings; staff training; official mission and retirement. Thus, other matters not specified in the special statutes are governed by the general statutes.

c) Methods of recruitment of public servants

Public servants are recruited in three ways namely: competition, appointment and direct recruitment that can be expanded by a Presidential Order which determines also their implementation. Along with other requirements outlined in article 9 of the general statute, a public servant has to be a Rwandan who has attained 18 years of age. However, subject to the Labour Minister's authorisation, a person of at least 16 years can be a public employee.

d) Grounds for termination of employment of a public servant

The termination of employment of a public servant takes place in the evince of absence for non-specific period, resignation, removal from office, authorisation to cease his or her duties in the interests of the service, dismissal, retirement, or death. The termination of employment of a public servant results in him or her being removed from the list of public servants. The application for leave of absence for a non-specific period is done in writing after serving at least 3 years within the same public institution. Public servants appointed by Presidential or Prime Ministerial Order, or those appointed by the Minister of Labour, may apply for leave of absence for unspecified periods if they have exceptional and justified reasons. Such requests require approval from the relevant appointing authority.

A public servant who is granted a leave of absence for a non-specific period has the right to be reinstated in public service three (3) years after his or her being granted a leave of absence for a non-specific period. However, a public servant whose resignation has been accepted may be reinstated in public service after five (5) years from the day his or her resignation was accepted or before this period for public interest purposes.

e) Public servant governed by an employment contract

The government can also recruit contractual employees. These employees are governed by the law N°66/2018 of 30/08/2018 regulating labour which regulates also employment matters in the private sector.

D.2. Laws relating to employment in the private sector

In Rwanda, employment matters are governed by the law N°66/2018 of 30/08/2018 regulating labour in Rwanda as modified and amended by Law n° 027/2023 of 18/05/2023. The Law governs labour in private sector and the public servants working under contract (as opposed to the public servants governed by the general statutes).

a) Employment contract

i) Definition and elements of contract

Employment contract is an agreement between an employer and an employee whereby an employee undertakes to work under the authority of the employer in return for remuneration (art.3 of the Labour Law). Scholars define contract of employment as a service agreement or a contract of service. A contract of employment is any contract, either oral or written, by virtue of which a person agrees to work for employer in return for pay.[14]

[14] *Michael Jefferson- Principles of employment law, 4th Edition.*

The main elements of the employment contract include:

- Parties to the contract: employer and employee,
- Salary: Being an essential element for the employment contract to be valid. Employment without remuneration is prohibited as it can be considered as illegal exploitation or slavery.
- Subordination: Meaning that a person receives instructions and orders from his employer or his representative for the execution of a given work and to be obliged to follow those instructions and orders.

The employment contract is formed by the mutual consent of a worker and employer (art.11 of the Rwandan Labour Law). The worker undertakes for a period of time to provide professional services to the employer under the employer's direction and supervision. In exchange, the employer agrees to pay the employee an agreed-upon remuneration. This labour law governs all employment contracts to be executed in Rwanda regardless of where the contract was made.

The existence of an employment contract must be proven as per the rules of evidence. The principle of "onus probandi" (burden of proof) dictates that the party claiming the existence of an obligation must provide evidence to support their claim While a written contract serves as the primary evidence of an employment relationship, other forms of evidence may be considered, such as appointment letters or salary payment slips. Both written and oral employment contracts are legally recognized. However, the duration of unwritten employment contract cannot exceed ninety (90) consecutive days.

The written form of the contract of employment was imposed by the legislator in order to help the employee to prove the existence of his or her employment. The core elements of a written employment contract as laid down in Ministerial order n° 007/19.20 of 17/03/2020 include: identification of the employee and employer; purpose of the contract; obligations of contracting parties; duration of the contract; nature of the employment (full-time, part-time, temporary); category or level of employment; place of work; probation period; working hours (Article 2)

ii) Types of employment contracts

An employment contract can be of indefinite/open-ended or fixed term. The open-ended contract is a contract of which the end has not been fixed in advance and which may end at any time by the will of either party for justifiable reasons. When such a termination of contract gives rise to disputes, the injured party may seek legal recourse through the competent juridical authority. An employee may hold multiple employment contracts simultaneously, provided these contracts do not conflict with each other.

A contract is for a fixed period when its end is fixed in advance by both parties or depends on the occurrence of a future and certain event, the achievement of which is, not depending on the will of either or both parties. A fixed-term employment contract comes to an end at the expiry of the duration set in the agreement. If a fixed-term contract is not renewed in writing while the employee continues to work, the employee is remunerated based on worked days. A fixed-term employment contract can be terminated before the duration set therein either by mutual consent of the parties or (for valid reasons) by giving a written notice to other party.

In both types of employment contracts, parties can include a probation period which cannot exceed three (3) months. However, it can be extended for additional period of 3 months based on the nature of the work, the employee's performance and conduct. If the probation period comes successfully to an end (proves to be conclusive) the employee is immediately offered employment and notified in writing by the employer. If the probation period proves that an employee is not competent based on written performance evaluation and notified to the employee, the employer terminates the employment contract without notice. Termination without notice does not entail terminal benefits. However, an employee re-employed by the same employer for the same job position is not subject to probation.

b) Employment relationships

Employment relationships can be collective or individual that include also the collective bargaining.

i) The collective employment relations

The collective employment relations are concerned with work conditions between employees (through their representatives) and their employers. That is either through trade union or employers' associations. Article 3 of the 2018 Rwanda Labour Law defines a trade union as a registered employees' association exercising the same occupation or similar/related occupations whose aim is to defend and promote common economic and social interests and rights of employees. *Centrale Syndicale des Travailleurs du Rwanda*-Trade Union Centre of Workers of Rwanda-CESTRAR is Rwanda Workers' Trade Union Confederation. It is the most influential National Centre in Rwanda with 16 affiliated Rwandan trade unions, with a progressive membership of more than 225,973 workers in different sectors.

Employer's association works the same way as trade unions but focuses on employers. Pursuant to Article 86 of the Law no 66/2018 of 30/8/2018 regulating labour law in Rwanda, no trade union or employers' professional organisation shall exercise legal capacity prior to the publication of its articles of association in the official gazette of the Republic of Rwanda. Private Sector Federation (PSF) is the only employers' professional organisation in Rwanda.

ii) Collective bargaining

A collective bargaining also called collective conventions or collective agreement may be described as one of the ways in which workers can participate in managerial decision-making by regulating wages and conditions of employment by agreement between their representatives and the employers. The negotiations between the representatives of workers and the representatives of the employers lead to collective agreements. A collective agreement is a contract stipulating the individual and collective relations between employers and employees, and the rights and obligations of the contracting parties. It contains elements in regards to rights and obligations as well as benefits of both parties- employer and employee and must provide favourable conditions to the employee.

iii) Individual employment relationship

Individual employment relationship is based on individual negotiations between the employer and employee and also based on the terms and conditions specified in the

employment contract. It is binding between the contracting parties and does not produce any legal effect to a third party (article 64 of the Contract Law).

c) Occupational Safety and Health

The employer has responsibility to guarantee the health, safety and welfare in the workplace for employees. For the implementation of the health and safety measures, the employer shall establish the Occupational Safety and Health Committee and procure protective equipment and instructions.

In the workplace, an employer has the responsibility to take necessary measures for first aid, fire-fighting, preventing and fighting imminent danger that can occur in his/her enterprise and preventing and fighting occupational accidents and diseases. In the event the incident materialises, the employer must submit a declaration of occupational accidents, disease or death to RSSB and Labour Inspector. The non-compliance with the health and safety requirements attracts administrative sanctions that can lead to a closure of the enterprise in case of total failure to remediate identified lapses.

d) Social Security regime in Rwanda

i) Basis and definition of social security

Social security is a concept enshrined in Article 22 of the Universal Declaration of Human Rights which states that "Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality".

Under the meaning of art. 3 of Law No. 009/2021 of 16/02/2021 establishing Rwanda Social Security Board, Social security is defined as Government strategies aimed at providing people living in Rwanda health insurance and social protection from effects based on lack or reduction of income due to old age, disability, occupation hazards, maternity leave, sick leave and death of the income earner. In other words, social security is that security which the society provides for through appropriate organisation against certain risks or contingencies to which its members are exposed. These risks are essentially contingencies against which the individual cannot afford by his/her small financial means, ability or foresight alone.

ii) Scope and application of social security

The social security comprises a compulsory or automatic membership and optional or voluntary affiliation.

Compulsory or automatic membership

Compulsory or automatic membership consists of pension scheme build up by employees/political appointees which is managed by a qualified public entity. All employees governed by the law regulating labour in Rwanda regardless of nationality, type of contract, duration of the contract or the amount of wages. These include:

- The employees governed by the General Statutes for Public Service and civil servants governed by special statutes and political appointees;

- The employees of international organisations, national non-governmental organisations, international non-governmental organisations, faith-based organisations and employees of Embassies accredited to Rwanda;
- The employees working for an enterprise operating in Rwanda but seconded to work for the same enterprise in another country shall remain subjected to pension scheme applicable in Rwanda provided the duration of work does not exceed twelve (12) months;
- Employees working for an enterprise operating abroad but seconded to work for the same enterprise in Rwanda remain subject to the pension scheme to which they are affiliated provided the duration of work does not exceed twelve (12) months.;
- A former employee who was a member of a mandatory pension scheme but no longer meets the conditions for maintaining membership therein may, on his/her own initiative and upon written request, continue to contribute to the scheme;
- The right to membership in a mandatory pension scheme shall be available to self- employed people who were not previously members thereto provided they so request and are not aged over fifty (50) years;
- Any other person that the order of the minister of labour may provide.

Optional or voluntary affiliation

An individual or collective retirement savings scheme in which membership is acquired voluntarily and is managed by legally authorized persons. Voluntary pension scheme shall consist of complementary occupational pension scheme and personal pension scheme. Complementary occupational pension scheme shall be established upon agreement between the employer and the employee. It shall be funded by both the employer and the employee or by the employer alone. Personal pension scheme shall be established by the opening of a retirement savings account with an authorized financial institution. The central bank being a regulator of financial sector may authorize a licensed bank, an insurer, a microfinance institution, a collective investment fund or other financial institution to establish personal retirement savings accounts in which individuals may save for retirement.

iii) Risks covered by the social security

The Social Security management is administered by Rwanda Social Security Board with main mandate to manage and promote (Art.7 of the RSSB Law):

- Old age pension,
- Survivorship benefits,
- Non-occupational invalidity benefits,
- Occupational hazards insurance,
- Maternity leave benefits scheme,
- Health insurance (RAMA, MMI and Community based medical insurance scheme).
- The long-term saving scheme- EJOHEZA

iv) Compensation and benefits from the social security

The risks covered by the branch of pensions are old age, premature injury, invalidity and death.

Old age benefits

Article 18 of Law N° 05/2015 Of 30/03/2015 Governing the Organisation of Pension Schemes provides three conditions in order to benefit from old age pension. It is about age conditions, period of affiliation: to be at least sixty (60) years old or to be of the age provided for by legally recognized specific statutes, have contributed to the pension scheme for at least fifteen (15) years; and have ceased to perform any remunerated activity. If the member of the pension scheme reaches the retirement age without having contributed for fifteen (15) years, he/she shall receive a lump-sum retirement allowance.

The amount of old-age pension benefits shall be computed basing on the total average monthly earnings received for the last five (5) years preceding the date of pension entitlement. However, if the insured did not contribute for five (5) years preceding the date of pension entitlement, the average monthly earnings shall be equal to one sixtieth (1/60) of the total number of months of contribution from the last five (5) years preceding the date of cessation of a remunerated activity. Where the total number of months of contribution is less than sixty (60), the average monthly earnings shall be determined by dividing the total remunerations of the career by the number of months of contribution. The monthly old-age pension benefits shall be equal to thirty percent (30%) of the average monthly earnings of the insured. The pension benefits shall be increased by two (2%) percent for every twelve (12) months of contribution exceeding one hundred and eighty (180) months.

Survivor benefits

The persons considered as eligible survivors include:

- The surviving spouse who did not divorce the decease
- The legitimate orphans single, non-employed and under eighteen (18) years of age or twenty-five (25) years of age if still studying. If they suffer from a physical or mental disability certified by a recognized medical doctor which renders them unable to perform a remunerated activity shall receive pension benefits until they die;
- The deceased's biological or adoptive parents.

The survivorship benefits shall be computed on the basis of the percentage of old-age, disability or early retirement benefits the deceased was receiving or was entitled to. Such benefits shall be distributed as follows:

- Fifty per cent (50%) for the surviving spouse.
- Twenty-five per cent (25%) for each child with one surviving parent.
- Fifty per cent (50%) for each orphan with no surviving parents.
- Twenty-five per cent (25%) for each parent or adoptive parent when the deceased leaves no spouse or children.
- In case of remarriage of the surviving spouse, his/her portion shall be distributed equally among the eligible deceased's children.

Social security contributions, and social benefits that may be given to beneficiaries as well as those received by beneficiaries are exempted from taxes and duties. The social

security benefits are not transferable and non-sizeable, except in the same conditions and limits as for salaries for paying for alimony. In case of forged documents, unduly incurred benefits strictly give rise to compensation and refund.

e) Prohibition of accumulation of social security benefits

It is prohibited to accumulate the social security benefits. This is in line with the purpose of the social aspects of social security to ensure the welfare of the person who ceases to get the normal salary as a result of the covered risks as social security is not an investment or enrichment tool. For example, in the event of work injury, the victim has the right to both the incapacity and invalidity benefits, the payment of the latter is suspended up to the amount equal to that paid for permanent incapacity.

In the event of work injury, the victim has the right to both the incapacity and invalidity benefits, the payment of the latter is suspended up to the amount equal to that paid for permanent incapacity. In case of a member's death due to work injury, the survivors have the right to both the incapacity and invalidity benefits, the payment of the latter is reduced up to the amount equal to the paid for work injures.

f) Employment Dispute resolution

A dispute is any disagreement relating to legal or factual matters between an employer or an organisation of employers on one hand, and a worker or a trade union on the other hand, relating to labour relations. Rwanda Labour Law provides for two ways for dispute resolution: individual dispute settlement and collective dispute resolution.

i) Individual dispute settlement

Dealing with an individual's labour dispute follows the following mandatory process:

- Amicable settlement of individual labour disputes between employers and employees by the employees' representative through conciliation.
- In case of failure, the concerned party refers the matter to the labour inspector of the area where enterprise is located for conciliation or mediation.
- If the Labour Inspector of the area where an enterprise is located fails to settle the dispute due to the nature of the case or the conflict of interests, he/she refers the dispute to the Labour Inspector at the national level stating grounds to refer such a dispute.
- If amicable settlement fails before the labour inspector of the area where an enterprise is located or before the Labour Inspector at the national level, the case is referred to the competent court.

These steps for amicable settlement are mandatory for the admissibility of the labour case before the court.

ii) Collective dispute settlement

Collective disputes arise from the matters affecting the big number of workers. For example, social security payment, medical insurance, working conditions. Below is the process of settlement of collective employment dispute:

- Collective labour disputes arising in the area of a labour inspector are notified to a labour inspector at the district level for settlement.
- In the event that collective disputes extending beyond an area of a labour inspector at the district level or in case of conflict of interest, the dispute is submitted to the Labour Inspector at the national level for settlement.
- If the disputes are not settled due to their nature or the conflict of interests by the Labour Inspector at the national level, they are brought before the Minister in charge of labour.

The prescription (statutes of limitation) of all disputes related to employment including claims related to salary and related benefits is 2 years (i.e., time limit to file an employment case).

Unit D key terms

Appointment D.1
Collective bargaining D.2
Compensation D.2
Compulsory Social security D.2
Conciliation D.2
Direct recruitment D.1
Employment contract D.1
Fixed term contract D.1
General Statutes D.1
Labour D.1
Labour inspector D.1
Labour Law D.2
Notice D.2
Occupational hazards D.2
Occupational safety D.2
Open-ended contract D.2
Public servants D.1
Retirement D.2
Staff representative D.2
Termination D.2
Voluntary pension scheme D.2

Summary of Unit D and key learning outcomes

Learning outcomes	Summary
Laws relating to employment in the public sector	The employment in public sector is governed by the general statute. However, the employment in some public institutions is governed by the special laws. The law regulates employment relationship between State and its permanent employees that are not governed by special status. It also applies to political leaders in terms of leave rights and other employment benefits (article 2 of the General statutes). The law outlines the process of entry into public service, transfer and secondment of a public servant, leave regime, rights and obligations of employee and employer, incompatibility and disciplinary sanctioning. As the political leaders are governed by the special law. The termination of employment of a public servant takes place in the evince of absence for non-specific period, resignation, removal from office, authorisation to cease his or her duties in the interests of the service, dismissal, retirement, or death. The public servant whose absence for non-specific period or resignation is reinstated in public services after three years and 5 years respectively or before that period for public interest purposes.
Laws relating to employment in the private sector	The employment in private sector is governed by the law N°66/2018 of 30/08/2018 regulating labour in Rwanda as modified and amended by Law n° 027/2023 of 18/05/2023. In principle, the employment contract has to be in writing unless the employment does not exceed 90 days consecutive. An employment contract can be of indefinite/open-ended or fixed term. Under Rwandan Law, each employee whether in public service or private sector has right to social security affiliation covering the old age, premature injury, invalidity and death. There are three conditions in order to benefit from old age pension: to be at least sixty (60) years old or to be of the age provided for by legally recognized specific statutes, to have contributed to the pension scheme for at least fifteen (15) years; and have ceased to perform any remunerated activity. If the member of the pension scheme reaches the retirement age without having contributed for fifteen (15) years, he/she shall receive a lump-sum retirement allowance.

Quiz questions

1. Which of the following statements are correct in terms of the scope of application of employment laws? (select all that apply)

   A. The employment in public sector is regulated by the general statute governing public servant which also govern employment relationship between State and its permanent employees.

   B. Security organs and other entities determined by the Presidential Order or the Prime Minister's Order are governed by the special statutes. The latter shall only apply to recruitment modalities; career development modalities; modalities for disciplinary proceedings; staff training; official mission and retirement.

   C. Labour law regulates employment in private sector and governs the non-permanent public servants.

   D. All employees in public sector are governed by the general status of public servants without any distinction while employment in private sector is governed by the labour law of 2018.

2. An employment contract can be written or oral. In which circumstances the labour accepts unwritten employment contract? *(select one)*

   A. If employment contract is concluded for fixed term

   B. If the probation period stipulated in the employment contract does not exceed ninety (90) consecutive days.

   C. If the written employment contract is not needed by parties and want to govern their relationship with oral agreement.

   D. If the duration of employment does not exceed ninety (90) consecutive days.

3. The fixed term employment contract is terminated in the following grounds: *(select all that apply)*

   A. If employment contract comes to an end at the expiry of the duration set in the agreement

   B. By mutual consent of the parties or justifiable reasons by giving a written notice to other party.

   C. If the probation period proves that an employee is not competent based on written performance evaluation and notified to the employee, the employer terminates the employment contract without notice or in case of gross misconduct committed by the employee.

   D. A fixed term employment contract cannot be terminated in any circumstances before the expiry of the contract period.

4. An open-ended employment contract is terminated in the following grounds: (select all that apply)

   A. By mutual consent of the parties or justifiable reasons by giving a written notice to other party.

B. If the probation period proves that an employee is not competent based on written performance evaluation and notified to the employee, the employer terminates the employment contract without notice or

C. In case of gross misconduct committed by the employee., the employer can terminate the employment with notice in 48 hours.

D. An open-ended employment contract term can be terminated by either party for any reason with written notice to other party.

5. The automatic or compulsory membership to social security applies to the following employees: *(select all that apply)*

A. The employees governed by the General Statutes for Public Service and civil servants governed by special statutes and political appointees;

B. The employees of international organisations, national non-governmental organisations, international non-governmental organisations, faith-based organisations and employees of Embassies accredited to Rwanda;

C. The employees working for an enterprise operating in Rwanda but seconded to work for the same enterprise in another country shall remain subjected to pension scheme applicable in Rwanda provided the duration of work does not exceed twelve (12) months;

D. Any other person that the order of the minister of labour may provide.

6. Which are of the following statements define the voluntary or optional pension scheme (select all that apply)

A. Voluntary or optional pension scheme is an individual or collective retirement savings scheme in which membership is acquired voluntarily and is managed by legally authorized persons.

B. Voluntary pension scheme shall consist of complementary occupational pension scheme and personal pension scheme.

C. Complementary occupational pension scheme shall be established upon agreement between the employer and the employee or shall be funded by both the employer and the employee or by the employer alone

D. Voluntary or optional pension scheme. Personal pension scheme shall be established by the opening of a retirement savings account with an authorized financial institution.

7. Which of the following risks are included in the risks covered by social security in Rwanda? (select all that apply)

A. Old age pension,

B. Survivorship benefits,

C. Non-occupational invalidity benefits,

D. Maternity and paternity leave benefits scheme.

8. Which of the following steps are included in the individual dispute settlement process? *(select all that apply)*

   A. Amicable settlement of individual labour disputes between employers and employees by the employees' representative through conciliation. In case of failure, the concerned party refers the matter to the labour inspector of the area where enterprise is located.

   B. If a Labour Inspector of the area where an enterprise is located fails to settle the dispute due to the nature of the case or the conflict of interests, he/she refers the dispute to the Labour Inspector at the national level stating grounds to refer such a dispute.

   C. If an amicable settlement fails before the labour inspector of the area where an enterprise is located or before the Labour Inspector at the national level, the case is referred to the competent court.

   D. Referring the dispute to the Minister of labour for mediation before filing a court case of failure of the conciliation or mediation process by the staff representative or labour inspector.

9. Which of the following steps are included in the collective dispute settlement process? *(select all that apply)*

   A. Collective labour disputes arising in the area of a labour inspector are notified to a labour inspector at the district level for settlement.

   B. In the event that collective disputes extending beyond an area of a labour inspector at the district level or in case of conflict of interest, the dispute is submitted to the Labour Inspector at the national level for settlement.

   C. If the disputes are not settled due to their nature or the conflict of interests by the Labour Inspector at the national level are brought before the Minister in charge of labour.

   D. If the disputes are not settled by the Minister of labour, they can be referred to parliament or office of the ombudsman.

10. What is the time limit (prescription) for filing a case related to employment including salary and related benefits? *(select one)*

    A. One (1) Year

    B. Ninety (90) days

    C. Six (6) months

    D. Two (2) years

Unit E: Business law

Learning outcomes

E.1. Legal entities
E.2. Formation and constitution of companies
E.3. Capital and financing, including sources of capital and capital maintenance
E.4. Insolvency

Introduction to unit E

The term business law describes a wide body of laws that govern business transactions. Also called commercial law, it deals with principles of business and commerce. It covers matters like business or bank transactions, loan and guarantee; matters and other things related to the laws of trade, commerce, company and insolvency matters. The expression "company law" may be defined as a branch of law governing companies. It deals with all aspects relating to companies, such as incorporation of companies, allotment of shares and share capital, memberships in companies, borrowing by companies, management and administration of companies, winding up of companies. Thus, company law is that law which exclusively deals with all matters relating to companies. Company Law in Rwanda is governed by Law No. 007/2021 of 05/02/2021 governing companies amended by No. 019/2023 of 30/03/2023.

E.1. Legal entities

a) Definition and types of legal persons

A legal entity is an artificial person created by private individual persons or by other entities with a purpose of achieving the goal set by members subject to having a legal personality upon registration with the competent authority. The legal entity acquires a legal personality different from its members. Hence, it has its own assets and liabilities, can institute a legal action or be sued. Legal persons include private and public entities with legal personality - financial and administrative autonomy.

Private legal persons (created by private individual persons as opposed to public entities created by government) include Companies, Partnerships, Foundations, Trusts, Cooperatives, Collective Investment Schemes, Non-Governmental Organisations, Sole traders etc. For example, the law defines a cooperative as "an enterprise, organ or organisation with legal personality or a group of persons that have joined together voluntarily to carry out together activities aimed at ensuring their socio-economic development according to the principles governing cooperatives". The difference between a cooperative and company is the objective or purpose of the entity. A cooperative is meant to fulfil a social or environmental objective, or is formed to fulfil its members' needs. However, a company is a business entity which is profit driven.

b) Legal personality and its legal effects

Once legally created, a company enjoys a legal personality and it is in consequence totally different for its shareholders in regards to rights and liabilities. The distinct legal personality is set out in article 24 of the company law according to which, once incorporated, a company gets its legal personality which is separate from the legal personality of its shareholders. The company's separate legal personality entails it a variety of rights and obligations which are totally distinct from the ones of its shareholders. Thus, a company may sue as it may be sued, it can contract with any other party, including any of its shareholders, etc. A company may own a property, as it may become a debtor or a creditor.

E.2. Formation and constitution of companies

Company Incorporation is a legal process used for a company to be formed and have legal personality separate from that of its owners" (Art. 2 (23°) of the the Company Law The application for registration of a company is done electronically and all required documents are also sent electronically to the Registrar General for his/her consideration. The Office of the Registrar General is one of the departments of Rwanda Development Board (RDB).

a) Company incorporation procedure

According to law n° 007/2021 of 05/02/2021 governing companies, one or more persons may form a company by pooling together resources or services for business purposes and filling out a prescribed form developed by the Registrar General office. For incorporating a company, it must fulfil the following essential requirements:

(i) Having a name;

(ii) Having one or more shareholders;

(iii) In the case of a company limited by shares, having one or more shares;

(iv) Having one or more directors, at least one of whom must be ordinarily resident in Rwanda.

Where two (2) or more persons jointly hold one or more shares, such persons are treated as a single shareholder. According to article 19 of the company law, the following is submitted to the Registrar General when applying for incorporation:

(i) Incorporation documents in the form prescribed by the Registrar General and signed by every shareholder or member or by each applicant, if any;

(ii) Consent in the prescribed form signed by each of the persons named as the company's directors and secretary in the incorporation documents;

(iii) Consent in the prescribed form signed by each member or shareholder of the company or by his or her agent who has been authorized thereto in writing;

(iv) The memorandum of association of the company;

(v) Where the company has articles of association, a copy of the articles of association;

(vi) Beneficial ownership information where applicable.

The articles of association refer to the company's charter or constitution which is also an incorporation document. This kind of document is optional for a private company but

mandatory for a public company. According to article 20, the memorandum of association of any company must state the name of the company; the address of the registered office of the company in Rwanda; the proposed business activity; whether the company is a public or a private company; whether the company has limited or unlimited liability; the type of company being incorporated; such other information as may be relevant to the type of company being incorporated and that is prescribed under the Law; and such other information as may be required in the Registrar General's regulations.

The articles of association govern the running of a company and mainly concerns the management of the company in relation to its internal affairs and the conduct of its business. It is subordinate and subsidiary to Memorandum of Association which constitutes a contract between the company and its members and also between the members themselves. Memorandum and articles of association may be contained in one document. Memorandum and Articles of association set out the voting rights of shareholders and the conduct of directors' meetings, and detail the powers of management of the company. The Memorandum and Articles of association also contain provisions on calling of a general meeting of shareholders and their voting rights, the bodies for the administration and the audit and the form in which the company shall publish notices.

A brief content of articles of association entails details on shares such as their categories, number, value and rights thereto attached, modalities of profits distribution, manner of appointment and number of organs charged with company administration and control, rules relating to the holding of meetings, company duration, beginning and end of the financial year, authority limits of managers, etc. In summary, Memorandum and articles of association contain the rules and regulations of the internal management of the company. In the event that a company does not have memorandum and articles of association, the company's management will be conducted in accordance with the companies Act.

Once legally created, a company enjoys a legal personality and it is in consequence totally different for its shareholders in regards to rights and liabilities which translate into the principle of corporate veil.[15] Upon incorporation, a company has both within and outside Rwanda, full capacity and rights to undertake any business, or activity, any act or enter into any transaction, has full rights, powers and privileges to do so, subject to the provisions of the Companies Act or any other special law or the company's articles of association (Art. 26 of the Companies Act).

b) Categories of companies

The law puts companies into classification, types and categories

i) Classification of companies

Companies exist in different forms and can be classified into group of companies, holding companies, subsidiary companies, foreign companies, domestic companies, dormant companies, etc. A holding company is defined as a company that owns another company and that other company is its subsidiary.

[15] *See Salomon Vs. Salomon & Company Limited (1897) AC 22. On appeal to the House of Lords, the House of Lords departed from the decision of the lower courts, lord Macnaghten held that a company is at law a different person altogether from the subscribers although it may be that after incorporation, the business is exactly the same as was before, the same persons are the managers, and the same hands receive the profits. That it does not matter whether all the members are relatives or strangers. That it does not also matter even if one of the members holds a substantial part of the shares. That a company being under the full control of one member does not mean that it is not a company, as long as it is legally registered, it is a legal person different from its members.*

A subsidiary company is therefore a company that is owned by another company. However, a mere fact of a company to own another company is not enough to qualify for a holding company or subsidiary company. As determined in article 16 of the company law, two cumulative conditions must necessarily be fulfilled for a situation of holding company to exist. Such conditions are (a) the other company is a subsidiary of the first-mentioned company and (b) the first-mentioned company is not itself a subsidiary of any company.

Figure 8: Comparison between holding company and subsidiary

Criteria	Holding Company	Subsidiary Company
Definition	Owns a controlling stake in another company	Wholly or partially owned by a parent company
Control and Ownership	Controls decisions, owns a majority stake	Operates independently, owned by parent company
Liability	Limited liability	Unlimited liability
Financial Reporting	Consolidated financial statements	Individual financial statements
Tax Implications	Dividend distribution tax	Withholding tax
Regulatory Requirements	Comply with laws and regulations	Comply with laws and industry regulations
Management and Operations	Supervisory role, major decisions influence	Operates independently, influenced by parent
Shareholding Pattern	Majority stake ownership	Multiple shareholders, including the parent company
Branding and Identity	May operate under different names	Independent brand identity
Risk Management	Spread investment risk across subsidiaries	Exposed to industry-specific risks

ii) Categories of companies

The Rwandan law accepts two categories of companies and four types of companies. A company can either fall within the category of public companies or within the category of private companies. The types of companies are in relation to their limitation of liability. Therefore, a company can be limited by shares, limited by guarantee, limited by both shares and guarantee or unlimited.

A private company is required to bear the word "limited" at the end or its abbreviation "Ltd". It must also have one or more shares with restricted rights of transfer, one or more shareholders whose liability is limited or unlimited, and one or more directors of whom at least one must be ordinarily resident in Rwanda.

A private company is basically characterised by restricting the transfer of shares and debentures, limiting the number of shareholders to 100 and prohibiting invitation to the public to subscribe for shares and debentures of the company. Even though the transferability of shares is possible though regulated, no offer to the public can be made and no prospectus can publicly be issued.

By contrast, a public company is required to bear the words "Public Limited Company" or "PLC" at the end of the name, have one or more shares which must be freely transferable, one or more shareholders whose liability must be limited to the amount, if any, unpaid on the shares respectively held by them; two or more directors and a company secretary. Like for private companies, public companies also have three basic characteristics namely free transferability of shares, absence of prohibitions to invite to the public to subscribe for shares or debentures of the company and a statement in the incorporation certificate that it is a public company.

Figure 9: Comparison between public company and private company

Item	Public company	Private company
Purpose	To raise capital from the public to run the enterprise	To confer a separate legal personality on the business.
Issue of capital	No restriction from offering securities by a public company - provided that the procedure of prospectus (document inviting deposits from the public or inviting offers from the public for the subscription or purchase of share in a company) issuance has been respected.	Raising capital through issuance of securities to the public is not possible
Transferability of shares	Shares are freely and fully transferable	The transfer of shares in a private company is restricted
Number of shareholders	Unlimited number of shareholders	Not exceeding 100 shareholders.

iii) Types of companies

According to article 11 of the Company law, companies are grouped into the following types: a company limited by shares; a company limited by guarantee; an unlimited company; and a protected cell company.

Company limited by shares

According to article 2, a company limited by shares is a company in which the liability of its shareholders is limited to the amount paid or unpaid on the shares held by them. The members' liability is limited by the memorandum to the number of shares in the company.

This means that the interests of the shareholder in the company shall be affected but shall not go beyond the amount of his shares. In case the shareholder has an unpaid amount of contribution as shares, this becomes mandatory and is liable to that unpaid amount. Company limited by shares is the most common.

Company limited by guarantee

A company limited by guarantee is a company used primarily for non-profit organisations and having the liability of its members limited to the amount as the members may agree. The liability of its members is limited to such amount as the members may respectively undertake, by the memorandum, to contribute to the assets of the company in the event of it is being wound-up. They are most often formed by non-profit organisations such as sports clubs, workers' organisations and membership organisations, whose owners wish to have the benefit of limited financial liability.

The company does not have any shares or shareholders (like the more common limited by shares structure) but is owned by guarantors who agree to pay a set amount of money towards company debts. Furthermore, there will generally be no profits distributed to the guarantors as they will usually be re-invested in the business to help promote the non-profit objectives of the company. If any profits are distributed to the owners, then the company will forfeit its right to apply for charitable status.

Company limited by shares and by guarantee

A company limited by shares and by guarantee is a company in which liabilities of the shareholders are limited to paid or unpaid amount on their shares, they may also be limited by guarantee, where liabilities of members are limited to the amount that the members undertake to contribute to the assets of the company in case of winding up.

An unlimited company

Unlimited company is a company for which the legal liability of its members or shareholders is not limited, where all members or shareholders have total and joint liability to cover all contingent debts. The liability of the members or shareholders is not limited - that is, its members or shareholders have a joint, several and unlimited obligation to meet any insufficiency in the assets of the company in the event of the company's formal liquidation. The joint, several and unlimited liability of the members or shareholders of the company to meet any insufficiency in the assets of the company (to settle its outstanding liabilities if any exist) only applies upon the formal liquidation of the company. A public company cannot be unlimited.

A protected cell company

A protected cell company (PCC) is a company in which a single legal entity consists of a core linked to several cells, each with separate assets and liabilities. The liabilities of one cell extend to the assets of that particular cell, which is principally liable. In the case where the assets of that cell are not sufficient to honour its liabilities, then the non-cellular assets of the PCC will be liable. It is important to point out that the liabilities of a particular cell do not have any impact on the assets of the others. On another note, if the liabilities of the PCC that do not relate to any transaction linked to a particular cell, the PCC's non-cellular assets will bear all liability.

c) The principle of corporate veil and exception

The corporate veil is "a legal concept that separates the personality of a company from the personalities of its shareholders, and protects them from being personally liable for the company's debts and other obligations. This protection is not however impenetrable. "So essentially, the corporate veil is the liability protection that owners, corporate officers, and corporate shareholders receive when they form a limited liability company. Failure to keep separate accounts, thereby intermingling personal and business finances can expose shareholders' personal assets to risk.

This may be more challenging for sole-owned businesses. An accountant can help a trader to ensure that he/she keeps his/her books clean and separate. Where a court determines that a company's business was not conducted in accordance with the provisions of corporate legislation (or that it was just a facade for illegal activities), it may hold the shareholders personally liable for the company's debts and other obligations. Owners of companies are afforded personal liability protection. However, this protection is not guaranteed, nor is it a right. "Piercing the corporate veil" or "lifting the corporate veil" refers to a situation in which courts put aside limited liability and hold a company's shareholders or directors personally liable for the company's actions or debts." This means that the liability protection afforded by corporate structures is limited. It's not permanent and there are things a company can do to lose it by piercing the corporate veil.

d) Legal regime of partnerships

Partnership is regulated by Law No. 008/2021 of 16/02/2021 governing partnerships amended in 2023.

i) Definition

Partnership is a relationship between two (2) or more partners carrying on a business in common with a view to making a profit under a partnership agreement. A partnership is a form of business where two or more people share ownership, as well as the responsibility for managing the company and the income or losses the business generates. A partnership is a kind of business where a formal agreement between two or more people is made who agree to be the co-owners, distribute responsibilities for running an organisation and share the income or losses that the business generates.

ii) Types of partnerships

General partnership: a type of partnership in which all partners have unlimited liability. A general partnership is a partnership with only general partners. Each general partner must actively participate in managing the business and any partner may sign a contract on behalf of the partnership. The partners must agree to major decisions, acting as a corporate board of directors.

Figure 10: Advantage and disadvantage of general partnership

Advantage	Disadvantage
Each partner can act independently, and each can invest in different types of capital. This partnership type also has low start-up costs and few formalities.	A general partnership operates as a sole proprietorship with no separation between the partners and the business. Because general partners actively participate, their liability is not limited, as described above. If one partner is sued, all partners are held liable. A partner's personal assets may be taken by a court or creditor.

Limited liability partnership: a type of partnership in which the liability of the partners for the debts of the partnership is limited to their capital contribution. A limited liability partnership (LLP) operates like a general partnership, with all partners actively managing the business, but it limits their liability for one another's actions. The partners still bear full responsibility for the debts and legal liabilities of the business, but they're not responsible for errors and omissions of their fellow partners. LLPs are not permitted in all states and are often limited to certain professions such as doctors, lawyers, and accountants.

Figure 11: Advantage and disadvantage of limited liability partnership

Advantage	Disadvantage
Unlike the limited partnership, general partners in an LLP have limited liability.	Because liability for all partners is limited, some businesses or individuals may be worried of doing business with the partnership.

Limited partnership: A limited partnership is a partnership which has one or more partners each with unlimited liability and one or more partners each with limited liability for the debts of the partnership. A limited partnership includes both general partners and at least one limited partner. In many cases, there is one general partner who manages the business and a number of limited partners. A limited partner does not participate in the day-to-day management of the partnership and their liability is limited to their investment in the business.

Figure 12: Advantage and disadvantage of limited partnership

Advantage	Disadvantage
The limited partners are merely investors who don't want to participate in the partnership other than to provide capital and to receive a share of the profits. You may want to use the limited partnership option to form a partnership, for example, with relatives or friends who just want to invest.	Limited partner doesn't have much say in regular business matters or large decisions. If he or she participates too much in the day-to-day activities, the limited partner could lose that limited partner status and become a general partner. Partners may lose their investments in the business if it does not succeed.

Figure 13: Comparison between limited liability partnership vs. other types of parentships

Item	Limited liability partnership	Limited partnership	General partnership
Legal personality	Has a legal personality	No legal personality	No legal personality
Legal personality	Limited liability (it is like a company limited by shares)	Unlimited liability	Unlimited liability

A partnership with legal personality is capable of suing and being sued in its own name. Where the partnership does not have legal personality, all the partners, other than limited partners, must be parties to the action. LLP's are often formed by groups of professionals who want to pool their resources and save money by sharing space.

Foreign partnership: a partnership formed in a foreign country and registered and carrying on business in or from Rwanda. However, a partnership formed in a member state of the East African Community and a partnership from countries having relevant agreements with Rwanda are accorded national treatment.

A partnership is seen as limited life company which has limited time to carry on business activity or duration of the company. For a limited life company, the lifespan cannot exceed fifty (50) years from the date of incorporation or, where necessary, a resolution of the company can be passed altering its memorandum and articles of association for that purpose. A limited life company is dissolved: when the period fixed for the duration of the company expires; where the shareholders of the company pass a special resolution requiring the company to be wound up and dissolved or where the memorandum and articles of association of the company so provides, upon the happening of any event stipulated in the memorandum and articles of association. The extension of this period cannot exceed 150 years from the date of the incorporation of the company. On registering a company as a limited life company, the Registrar General certifies in the certificate of incorporation issued or in the certificate of registration by way of continuation that the company is registered as a limited life company, stating the date of the registration.

e) Termination of a company

The dissolution of a company can be made by a shareholders' decision, its removal from the companies' register, amalgamation, acquisition and liquidation.

- Shareholder's resolution: The request has to be authorized by special resolution of shareholders entitled to vote and voting on the question. A Special resolution is a decision which, by virtue of the Companies Act or by the company's incorporation documents, is passed by a majority of seventy-five percent (75%).
- **Removal from the company's register:** This happens upon request by shareholders, Board of Directors or any other interested person, failure to file annual return, if the company ceased to carry on business or the company has no surplus assets after paying its debts in full or in part and no creditor has applied to the court for an order putting the company into liquidation.

- **Amalgamation of two or more companies:** In the event of amalgamation, the merged companies can opt to create a new company or retain one of the names of the amalgamated companies.

Example:

Amalgamation between Crane Bank and CBA Holdings (Commercial Bank of Africa Holdings). Upon amalgamation, crane bank absorbed CBA Holdings and later the former has changed the name to become Commercial Bank of Africa (currently NCBA Bank).

A second example is the amalgamation between KCB Rwanda and BPR (Banque Populaire du Rwanda). Upon amalgamation, the new entity kept the name BPR Bank Rwanda PLC but maintained the logo and branding of the former KCB.

- **Liquidation:** If the company was declared insolvent the court appoints a liquidator to sale the company's assets and pay its debts. After liquidation, the company ceases to exist.
- **Acquisition by another company:** Upon acquisition, the acquired company ceases to exist.

Example:

COGEBANQUE was acquired by Equity Bank and hence, the former ceased to exist. The assets and liabilities of the acquired company were transferred to Equity Bank and by virtue of the law, the acquiring bank became a successor of the acquired company.

f) Registration of investment: requirements, incentives and priority sectors

i) Requirements for investment registration

A foreign or national company can register its investment with Rwanda Development Board.[16] The application is submitted electronically through business registration portal and has to contain the following required documents: filled registration application form, a certificate of incorporation; five-year business plan that clearly shows implementation plan and strategies as well as the projected cash flow. The registration of investment is also subject to presentation of project environmental impact assessment certificate, projection on employment creation, and the license issued by the Sector regulator. An investment certificate is valid for a period of five (5) years from the date of its issuance and can be renewed upon request by the registered investor.

ii) Investment incentives

A registered investor benefits from some incentives like tax exemption, tax holiday, preferential rate or zeroised tax rate. These incentives are provided for in the annex of the investment Law. These include inter alia:

- **Preferential corporate income tax rate of zero per cent (0%)** for an international company, which has its headquarters or regional office in Rwanda with an investment capital of over USD10 million.

[16] *Article 7 of Law No. 006/2021 of 05/02/2021 on investment promotion and facilitation.*

- **Preferential corporate income tax rate of three per cent (3%)** for a company which operates as a pure holding company provided that it has total net asset of over USD 1 million in Rwanda, physical office in Rwanda, a ratio of at least 30% of its professional employees being Rwandans and 25% of its Board members are residents of Rwanda and meetings and resolutions are held in Rwanda among other things.
- **Preferential tax incentives for a philanthropic investor:** exemption from value added tax and income tax charges corporate for grants and funds transferred to the entity for the purposes of financing its social impact activities; goods and services procured locally by the entity are value added tax zero rated; an exemption of employment income tax is applied to foreign nationals recruited by the entity who ordinarily reside in Rwanda among others.
- **Preferential corporate income tax (CIT) rate for export investments:** Registered investors benefit from preferential CIT rates for exporting of goods and services of 25% and 15% depending on whether the related turnover is less than 50% or more than 50% respectively. However, these rates do not apply to exporters of unprocessed minerals, tea and coffee without any value addition on the exported goods.
- The law provides for incentives that include exemption from customs taxes and duties for products used in export processing zones in accordance with provisions of the East African Community Customs Management Act; (150%) tax deduction of all qualifying expenditures relating to internationalisation; Corporate income tax holiday of up to 5 years or (7) years; Preferential withholding tax of zero per cent (0%); or 5 % on dividends as well as incentives to start ups.

E.3. Capital and financing, including sources of capital and capital maintenance

Normally, a company may raise its capital from its shareholders (equity capital), borrowings (tier 2 capital or debt equity) and retained earnings.

a) Subscription for shares and debentures

i) Share and share capital

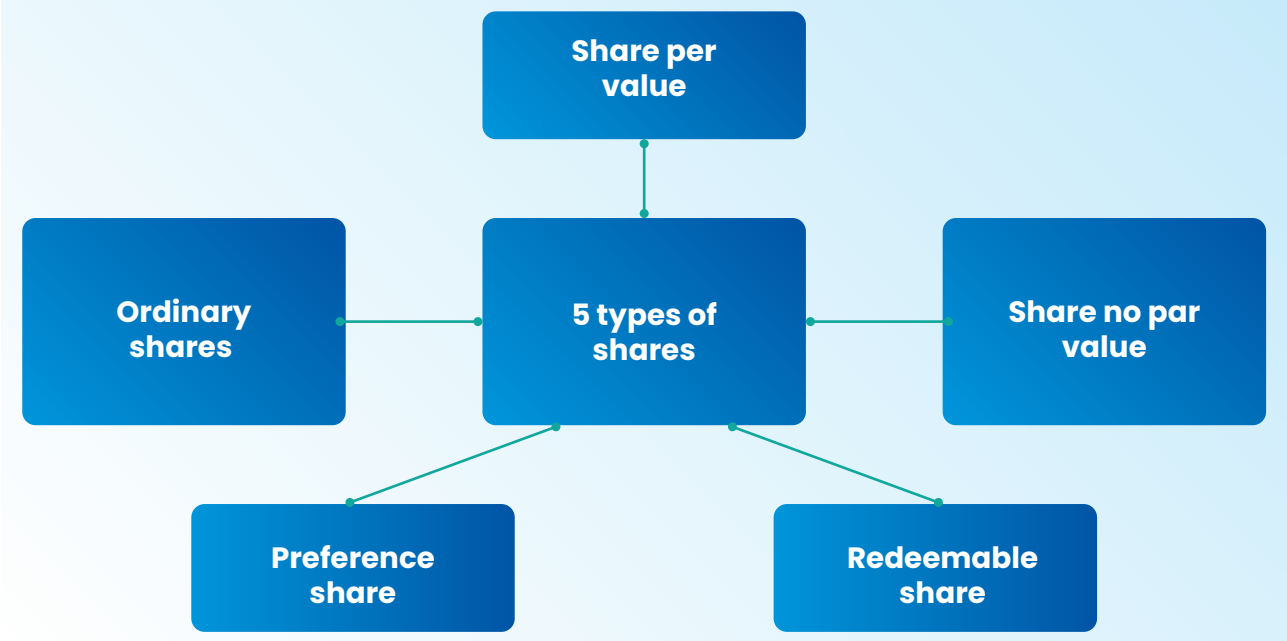
A share refers to a proportionate ownership interest in a company. A share is one of the equal parts of a company's share capital issued to every shareholder or the company itself (art.2 (42°)). One of the equal parts into which a company's capital is divided. Share capital is the money a company raises by issuing common or preferred stock (Investopedia), or the amount of money the owners of a company have invested in the business as represented by common and/or preferred shares, or is the amount invested by a company's shareholders for use in the business. Share capital does not represent the amount actually contributed by shareholders at the time when the company is formed, which may only be part of the share price.

A company may have one or more shareholders. In fact, in order to contribute to the formation of a share capital of the company, every shareholder must commit to make a share and is a debtor of the share that he undertook to give. A share is therefore a good which is transferred to the company by the shareholder in trade of which he/she is entitled some shares. That is to say that a share refers to a good that a shareholder commits to put at the disposal of a company for a common exploitation. A share is a

serious matter because without shares the idea of a company becomes obsolete. Shares entail subscription, which is a commitment to issue a share and the fulfilment, which is the actual performance of the obligation to dispossess a share to the profit of a company. Shares subscription can be concomitant as they can be in different times.

Depending on a company's incorporation documents, shares may have different types. In fact, a share in a company may be par value, no par value, ordinary, redeemable, confer preferential rights to distributions of capital or income, confer special, limited or conditional voting rights, not confer any voting rights.

Figure 14: Types of shares



The difference between these 5 types of shares is based on the nature of that share, and the rights attached to it. Share par value refers to the contribution paid in cash, which is the usual and simplest form of releasing the shares while share no par value refers to the contribution of a physical or incorporeal good, that is a share released in any other form other the money.

A redeemable share (which is also called a re-purchasable share) is a share which can be re-purchased or redeemed by the company either at its option, at option of the shareholder or at a date specified in the incorporation statement.

Preference shares confer some preferential rights on the holder, superior to ordinary shares. Normally, the preferential rights are the rights to fixed dividends, priority to dividends over ordinary shares and to a return of capital when the company goes into liquidation. Shares confer to shareholders the rights provided in the law and in the company's incorporation documents.

Ordinary shareholders also receive less dividends compared to shareholders who hold preference shares.

Shares are transferable subject to any restrictions or limitations set out in the company's incorporation documents.

Shareholder Vs Debenture-holder

A shareholder has ownership over the company while the debenture holder is a company creditor. Shares are also referred to interests in a company encompassing the liability on one side and profit on the other side. A debenture simply refers to a debt capital. Debentures do not grant an ownership over the company. They rather create a situation of debtor-creditor relationship and instead of paying the dividends, the debenture holders are regularly paid interests. These interests are paid in reference to the agreement and are not affected by the profits or losses of the company.

Figure 15: Comparison between share and debenture

	Shareholder	Debenture-holder
1	Share is part of the company capital	Debenture is a loan
2	Is a member and joint owner of the company	Is simply a creditor of the company
3	Has right to vote at the meetings of the company	Has no right to vote at any meeting of the company
4	Entitled to get dividends (on varying rate)	Entitled to get fixed interests
5	Payable only out of profits and any situation of profit-loss impacts his/her benefits	Payable regardless the profit-loss situation
6	Right to control company's affairs	No right to interfere with the company affairs
7	Has no charge over the company assets	Generally, has a charge of the company assets
8	In case of company winding up, he/she is paid after satisfying all other claims	In case of winding up, a secured debenture-holder is paid prior to the shareholder

In principle Shares are paid in cash, with promissory notes, contracts for future services or moveable or immoveable property or any other company securities except for restrictions on consideration on allotment of shares for public companies in accordance with company law.[17]

[17] *Companies Act, art.60.*

ii) Nature and allotment of shares

Allotment of shares consists of an act by which a person acquires the unconditional right to be included in the register of shareholders in respect of shares.[18] The stated capital account, including in case of shares having a par value, the share premium account may, provided that the directors are satisfied that the company will immediately after the application satisfy the solvency test, be applied by the company in order to pay preliminary expenses of the company and expenses or commission paid on the determination or issue of any such shares.[19] However, a company is restricted from allotment a nominal or par value share; a share which is subject to calls; and a redeemable share at a time when there are no allotted shares of the company which are not redeemable.

If a company allots par value shares, first a share purportedly allotted with a nominal or par value is deemed to be a share of no nominal or no-par value, allotted at its actual allotment price, including any purported premium. Secondly, a share purportedly allotted subject to calls is deemed to be fully paid and a share purportedly allotted as redeemable, is deemed to be not redeemable.[20] A company may allot shares subject to shareholders' ordinary resolution for private company or board resolution for public company and such a resolution has to be submitted to the Registrar General within a period not exceeding 15 days. The resolution shall specify the rights, privileges, limitations and conditions attached to each share to be allotted, and its transferability, the maximum number of shares to be allotted, and allotment date.

Transfer of share occurs when a shareholder transfers his/her shares to another person. Transfer of shares is greatly influenced by the category of the company.

For instance, transfer of shares in a public company is free while the transfer of shares in private company is restricted. This is the simplest form of increasing the share capital where new shares may be paid in cash or in kind. In principle, the existing shareholders have pre-emptive rights to subscribe for the new shares. The formalities to issue the new shares are the same as at the time of company incorporation and these formalities are much influenced by the category of the company.

b) Powers and rights of shareholders

i) Shareholders' rights

Shareholders enjoy and exercise their rights in accordance with the company incorporation document or where the company does not have the articles of associations, the company law shall apply. Shareholders have pre-emption rights which confer to the existing shareholders rights to purchase the newly issued shares before they are offered to others. This is meant to protect the existing shareholders from dilution in value and control over the company. Existing shareholder rights apply where allotment is at a lower price during or after invitation to existing shareholders. Shareholder rights in this regard are subject to incorporation documents. The right of each shareholder is to acquire the newly-issued shares pro rata to the shares already held by such existing shareholders, at a price no less favourable than that offered to other persons, and on terms which maintain the relative voting and distribution rights of those existing shareholders.

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[18] *Companies Act, art.2 (32).*

[19] *Companies Act, art. 56.*

[20] *Companies Act, art. 56.*

The company gives each existing shareholder advance notice of any proposed issuance stating, at a minimum, the number of shares to be issued, the proposed price or method of determining the price of issuance, and the time period and procedure for exercising the pre-emptive rights. The time period is open for a duration of three (3) months. All rules and conditions for exercise must be uniform for all shareholders who have this right.[21] Shares subject to pre-emption rights that are not acquired by existing shareholders pursuant to such rights may be issued to any person within a period of three (3) months after having been offered to existing shareholders at the same price as the price set for the exercise of pre-emption rights. The allotment of shares at a lower price during or after such three (3)-month period is subject to existing shareholders' rights.

ii) Powers of shareholders

Powers reserved for shareholders by the companies Act or by a company's incorporation documents are exercised by shareholders' resolution that can be Special resolution, Ordinary resolution, or Unanimous resolution.

- **Special resolution** is a decision which, by virtue of the Companies Act or by the company's incorporation documents, is passed by a majority of seventy-five percent (75%) or such higher majority as may be specified in the company's incorporation documents of the votes of shareholders entitled to vote and voting on the question, or passed by all shareholders if so, specified in the company's incorporation documents.
- **Ordinary resolution** is a decision taken by a simple majority of the votes of those shareholders entitled to vote on an agenda item subject to the company's incorporation documents and the Companies Act.
- **Unanimous resolution** is a resolution which has the assent of all shareholders entitled to vote on the matter which is the subject of the resolution, by virtue of the Companies Act or the company's incorporation documents.

Shareholders have the following rights and powers:

- Right to share in the distribution of the dividends of the company.
- Right to share in the distribution of the surplus assets of the company upon its liquidation.
- Subject to Company Law or the company's incorporation documents, the right to vote on shareholders' resolutions.
- The power to appointing or removing an auditor or director.
- The authority to approve a major transaction – that is acquisition of an asset equivalent to more than 10% of the company's total assets, dispose of asset of a value more than a half of the company's total assets, or a transaction that can create rights, obligations or labilities of more than half of the company's assets).
- Take a resolution adopting or altering articles of association.
- Issue a resolution dissolving the company.
- Take a decision/ resolution approving an amalgamation or acquisition.

[21] *Companies Act, art.59.*

- Apply for a solvent company to be removed from the register.

Even though shareholders are the owners of the company, in a public company, subject to incorporation's documents, the Board of Directors may refrain from complying with such a resolution if satisfied that the resolution is contrary to the company's interests.[22]

There are some instances where, shareholders are not in position to hold a general meeting due to any reason. The law confers to the Registrar General to convene by written notice such a meeting and give such ancillary or consequential directions as he or she considers necessary, including a direction modifying or supplementing the company's incorporation documents or provisions of the Companies Act in relation to the calling, holding and conducting of the general meeting. [23]

iii) Liability and responsibility of the shareholders

With the exception of an unlimited liability company, a shareholder is not liable for the obligations of a company only because of being a shareholder.

The liability of a shareholder to the company, or for the company's obligations is limited to:

- Any amount unpaid on a share held by the shareholder;
- Any liability expressly provided for in the company's incorporation documents which may provide that the shareholder's liability is unlimited.
- Any distribution received by the shareholder but which has to be recovered.

iv) Exception of the shareholders limited liability

A court may pierce the corporate veil to hold a shareholder liable for obligations of the company if the court finds that the shareholder has abused the company status form for fraudulent or illegal purposes or abused the company's assets as if they were personal assets.[24] This exception intends to limit the abuse of power of shareholders in the management of the company's business and protect its stakeholders that include also creditors. Hence, any interested person can request the court to lift the limited liability of shareholders (i.e., piercing the corporate veil) to hold them liable for the company's debts and also extend this liability to the personal assets. Piercing the corporate veil is engaged under conditions to evidence that the shareholders abused the company's assets for fraudulent or illegal purposes such as mismanagement or misappropriation, use of the company's assets or capital for private gain.

Example:

In South Africa, Venator Africa (Pty) Ltd (Venator), the plaintiff in the High Court proceedings and appellant in the SCA, initiated legal proceedings against the directors of Siyazi Logistics and Trading Ltd (Siyazi), following claims that they had conducted the business of Siyazi recklessly, with gross negligence and with an intent to defraud.

The same direction was given by Judiciary direction no.11 published in November 2023, page. 126.

[22] *Companies Act, art. 99.*

[23] *Companies Act, art. 102.*

[24] *Companies Act, art. 92.*

c) Financial transactions

Financial transactions are contracts or any act concluded between individuals and financial institutions for business/commercial purpose. Regulation No 14/2017 of 23/11/2017 on accreditation requirements and other conditions for external auditors for financial

institutions defines "financial institution" to refer to: a bank, an insurer, an insurance broker, a limited microfinance institution, a large Savings and Credit Cooperative (SACCO), a credit bureau, a pension scheme or a foreign exchange bureau. The financial transactions are in most cases conducted using written documents of monetary value know as negatable instruments.

i) Negotiable instruments

Definition

According to the law No. 060/2021 of 14/10/2021 governing negotiable instruments (Negotiable Instruments Act), negotiable instruments are defined as written documents of monetary value which creates a right, that is transferable to different persons. As mentioned above, a negotiable instrument is any financial document that directs payment to its holder or a named party. More specifically, a negotiable instrument must be written, signed by the maker, include an unconditional promise or order to pay a sum of money to the holder or specific party, and be payable any time or on a specific date. It is a transferable, signed document that promises to pay the bearer a sum of money at a future date or on-demand. The payee, who is the person receiving the payment, must be named or otherwise indicated on the instrument.

Types of negotiable instruments

Negotiable instruments as they are provided for by the Rwandan law are bill of exchange, cheque and promissory note.

- **Bill of exchange:** this is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time, a specified amount of money or to the order of a specified person, or to the bearer.
- **Cheque:** a clear and unconditional order in writing that is addressed by its signatory to a financial institution and requires to pay on demand a specific amount of money to the drawer or to a specified person or to the bearer.
- **Promissory note:** is an instrument in writing containing an unconditional undertaking, signed by the maker, to pay a specified sum of money to or to the order of a specified person, or to the bearer of the instruments.

Figure 16: Comparison between different types of negotiable instruments

Item	Bill of exchange	Promissory note
Nature	It is issued when an order needs to be given to the debtor to pay the due amount to the creditor within a stipulated period of time	It is a written contract between the drawer and the drawee, where the drawer promises to pay off a certain amount within a stipulated time
The parties involved	Drawer, drawee, and payee	Drawer and payee/drawee
Acceptance as Validity condition	The debtor's acceptance is required	No need for acceptance from the drawee

Example of bill of exchange

Company Trust ltd purchases auto parts from Car Supply Nyota ltd for $25,000. Car Supply Nyota ltd draws a bill of exchange, becoming the drawer and payee in this case. The bill of exchange stipulates that Company Trust ltd will pay Car Supply Nyota ltd $25,000 in 90 days. Company Trust ltd becomes the drawee and accepts the bill of exchange and the goods are shipped. In 90 days, Car Supply Nyota ltd will present the bill of exchange to Company Trust ltd for payment. The bill of exchange was an acknowledgment created by Car Supply Nyota Ltd, which was also the creditor in this case, to show the indebtedness of Company Trust ltd, the debtor.

Payment regime

A negotiable instrument is payable to order when the payee is indicated on the instrument itself with reasonable certainty. However, a negotiable instrument payable to order cannot contain words prohibiting its endorsement. According to article 35 of the Negotiable Instruments Act, a negotiable instrument payable to order is negotiated by endorsement. The bearer is a person in possession of a negotiable instrument on which the name of the payee is not indicated and that bears indications "payable to the holder". A negotiable instrument is payable to bearer where it is expressed to be so payable, or where the last endorsement is blank.

According to Article 34 of the Negotiable Instruments Act, a negotiable instrument payable to bearer is negotiated simply by delivery to the payee. Such instruments are considered payable on demand if they are expressly stated to be payable on demand, at sight, or upon presentation, or if no specific payment time is mentioned[25]. Conversely, an instrument is payable at a determined time if it is payable at a fixed period after a specified date, on or after a fixed or determinable future time, or at a fixed period after the occurrence of a specified event that is certain to happen, even if the exact timing of the event is uncertain[26].

[25] *Article 35- Negotiable Instruments Act*

[26] *Article 47- Negotiable Instruments Act*

An amount of money for which a negotiable instrument is shown must be clearly indicated, including possible interests, stated instalments, default interests and the rate of exchange if need be. However, apart from the amount of money, Article 20 provides for other details to be mentioned on a negotiable instrument but such details do not apply to a cheque[27]. On a negotiable instrument, the amount of money is expressed both in words and figures.[28] If the amount of money for which the negotiable instrument is drawn is expressed differently in figures and words, the sum denoted by the words is the amount payable.

According to article 107, a bearer of a cheque or any other authorised person can present the cheque to a financial institution or its branch for payment. However, the financial institution may receive the cheque of its client for payment in another financial institution in accordance with clearing rules. A cheque does not lose its validity by the fact that the date written on it is before or after the actual date of its issuance where both parties agree.

A cheque bearer is entitled to all rights on that cheque from the date of its issuance by the drawer. Hence, a financial institution cannot pay the cheque before the date indicated for its issuance. A cheque remains valid for sixty (60) days as from the date of issuance.[29] A cheque is non-negotiable if it is crossed by drawing two parallel lines on it. Crossing a cheque is general if two parallel lines are obliquely drawn on it. Between the two lines, mention of the words "not negotiable" is optional. A crossed cheque is payable to a financial institution or only at the account of the client. A crossing is part of the cheque. Therefore, it is not lawful for any person to alter, in any manner, the crossing except as authorised by the Companies Act.

Issuing a bouncing cheque is a criminal offence punishable under Rwandan Law. Article 126 provides that any person involved in one of the following acts commits an offence: knowingly, issues a bouncing cheque; withdraws after issuing a cheque for all or part of the funds or prevents payment except in the case of loss or fraudulent withdrawal, bankruptcy or incapacity to receive payment; issues a cheque to another person knowing that there are no funds on his or her account or that the funds are insufficient to pay the debt.

e) Financial Service Consumer Protection

i) Definition and scope

The rights of the financial services are provided for and protected by the No. 017/2021 of 03/03/2021 (Financial Service Consumer Protection Act). The law applies to the financial services such as *inter alia*: deposits, savings, obtaining loans; credit reporting; obtain funds through treasury bills; financial investment; capital market, collective investment schemes; insurance, pension; payment and money transfer; leasing; money exchange; or any other activity approved by the Rwanda Central bank as regulator of financial sector.[30]

[27] *Negotiable Instruments Act. Art.20.*

[28] *Negotiable Instruments Act, art.21.*

[29] *Negotiable Instruments Act, art.109*

[30] *Financial Service Consumer Protection Act, art. 3*

The law defines a financial service consumer as individual, group of individuals or enterprise that enter, or may enter, into a business relationship or a contract with a financial service provider for the purpose of acquiring or providing a financial product or service.

ii) Principles of financial consumer protection

Proper treatment of a financial service consumer

The law requires financial service providers to treat consumer of a financial service with fairness honesty, without discrimination and exercise due care, skill and diligence with regard to their financial products. Hence, they have to put in place strategies and policies to educate their employees for fair treatment of financial service consumer.[31]

Transparency

All communications with a financial service consumer about the financial product, the service or related cost shall be done in a transparent way.

This principle of transparency applies to all levels of engagements between a financial service provider and a consumer and disclosures around cost of the financial service. The key principles of consumer protection in the financial services sector include;

- Fair and transparent pricing- Avoiding unfair or detrimental pricing practices
- Fair recovery practices- Ensuring fair and equitable methods of debt collection,
- Prevention of corruption- Maintaining ethical and honest business practices,
- Protection of vulnerable consumers- Providing appropriate safeguards for vulnerable consumer groups
- Timely refunds- Promptly processing refunds to consumers when applicable
- Excellent customer service- providing good and timely service to consumers.

Protection of consumers' data and privacy:

Consumers' data is private, and should not be shared without consent. Mechanisms to gather, process, store, share, and destroy data must be in place.

Protection of Consumer Assets

The law protects the financial service consumer's assets and funds held by the financial services provider. It stipulates that no transaction on customer account unless allowed by the contract, laws and regulations or authorized by the customer and the service provider has to act quicky on the customer's payment instruction, failure can lead to compensation. The laws put in place some safeguards in case of errors. For example, it restricts account freezing without lawful reasons, the service provider is liable for its errors and the customer will bear the loss of his/her errors but the financial service provider has the obligation to assist to rectify and recover the lost funds. However, the assistance here does not entail any responsibility of the service provider to repair or to repay. If the error was committed by the financial service provider, the reversal will require the customer's consent that cannot be unreasonably withheld. For other errors, the Financial Service Provider (FSP) shall seek the consent from the client.

[31] *Financial Service Consumer Protection Act, art. 4*

iii) Complaints handling

The law requires that the internal, external and general consumer complaints handling should be transparent, efficient and fair.

iv) Fair pricing

The general pricing principle in the financial sector in Rwanda is that the prices are determined by the forces of supply and demand. However, in accordance with the consumer protection legal and regulatory framework, the National Bank ensures the following:

- Transparency around interest rates and tariffs applied by financial service providers;
- Existence of the pricing methodology in financial service providers and its transparency;
- The National Bank of Rwanda may prohibit fees and charges deemed detrimental to consumers.

Every Financial institution is required to have a pricing policy as well as a pricing model that clearly explain the factors considered that may include but not limited to cost of funds; operating cost; risk associated to specific macroeconomic factors, products, individual clients and others; and profit margin. Each of the above factors shall be given a weight based on the tangible factors considered in the pricing policy.

v) In Duplum Rule

The rule is meant to protect the customer against the service provider's abuse of power and accumulate normal interests and penalties on bad debts. Hence, a financial service provider must not exceed the following amount of outstanding debt: [32]

- Outstanding principal debt, in case of repayment default by a financial service consumer;
- Interests not exceeding the outstanding balance of principal debt, in case a financial service consumer fails to repay as per his or her contract with a financial service provider.
- Cost incurred while recovering the total amount from the debtor of the financial service provider.
- Where the loan contract has undergone amendments due to repayment default, the latest contract applies. No penalties on written off loans.

Example	
Outstanding principal at default (Frw)	5,345,000
Interest to be paid (Frw)	5,345,000
Recovery expenses (Frw)/must be justified by recovery costs	1,000,000
Total amount to pay (Frw)	11,690,000

[32] *Financial Service Consumer Protection Act, art. 20.*

This example shows that in whatever circumstances, the maximum recoverable amount cannot exceed the double of the principal amount plus recovery cost (i.e., expenses incurred by the financial service provider to recover the debt).

f) Dispute resolution in commercial matters

The commercial disputes can be resolved through two ways: Alternative Dispute Resolution (ADR) -conciliation/mediation, or arbitration or court process. Some national laws require litigants to conciliate or mediate prior to court action.

i) Alternative Dispute Resolution

The term "Alternative Dispute Resolution" or "ADR" is often used to describe a wide variety of dispute resolution mechanisms that are short of, or alternative to, full-scale

court processes. The term can refer to everything from settlement negotiations in which disputants are encouraged to negotiate directly with each other prior to some other legal process, to arbitration systems or mini-trials that look and feel very much like a courtroom process. The word "alternative" refers to looking outside the courtroom setting to resolve some disputes. ADR systems may be generally categorized as negotiation, conciliation/ mediation, or arbitration systems.

Negotiation

Negotiation systems create a structure to encourage and facilitate direct negotiation between parties to a dispute, without the intervention of a third party. Direct Negotiation is not itself an ADR process. Negotiations only fall under ADR when they are facilitated or aided by a third party neutral.

Conciliation and mediation

The mediation systems create a structure to encourage and facilitate direct negotiation between parties to a dispute, without the intervention of a third party. Mediation and conciliation systems are very similar in that they interject a third party between the disputants, either to mediate a specific dispute or to reconcile their relationship. Mediators and conciliators may simply facilitate communication, or may help direct and structure a settlement, but they do not have the authority to decide or rule on a settlement.

Mediation refers to a facilitative, consensual and confidential process, in which parties to the dispute select a neutral and independent third party to assist them in reaching a mutually acceptable negotiated agreement". On the other hand, a Conciliation is an advisory, consensual and confidential process, in which parties to the dispute select a neutral and independent third party to assist them in reaching a mutually acceptable negotiated agreement.

The fundamental difference between mediation and conciliation is the degree of involvement by the neutral and independent third party in the respective processes. While both processes incorporate the principle of self-determination and are non-determinative processes, conciliation allows the third party (the conciliator) to advise on substantive matters through the issuing of formal recommendations and settlement proposals.

Arbitration

Arbitration systems authorize a third party to decide how a dispute should be resolved after a fair trial procedure. Arbitration produces a third-party decision that the disputants must follow even if they disagree with the result, much like a judicial decision. Hence, arbitration consists of an adjudicative, extra-judicial dispute resolution mechanism activated by means of a submission by the parties of the issues in dispute to this process. It is often preceded by an express written agreement to that effect between the parties who thereby impliedly undertake to be bound by the ultimate decision of a third-party intervenor called an arbitrator as a result of a fair trial procedure.

The agreement sets the foundation for an action in arbitration. This means that the parties must have agreed that arbitration be the process to which a dispute between them is to be referred. With this agreement in place, a claimant can then bring his or her claim, perhaps to the administering institution of arbitration. Under the rules of the Kigali International Arbitration Centre (KIAC), a claim is called a request for arbitration. The arbitration agreement can take one of the two forms. It might be what is called an 'arbitration clause' or it might be a 'submission agreement'.

An arbitration clause subjects future potential disputes to arbitration while a submission agreement refers existing disputes to arbitration. Arbitration produces a third-party decision called "arbitral award" that the disputants must follow even if they disagree with the result, much like a judicial decision. An arbitral award, irrespective of the country in which it was made, is recognized as binding and without prejudice to provisions of the law. However, this is not respected if the country in which the award was issued does not make it reciprocally. The party relying on an award taken or applying for its enforcement shall supply the duly authenticated original award or its duly certified copy, a copy of the original arbitration agreement or duly certified copy. If the award or agreement is not made in an official language of the Republic of Rwanda, the party shall supply a translated copy in one of the recognized languages in Rwanda.

Appeal against arbitral award

The subject matter of a dispute must be arbitrable in order for legitimate arbitration to take place. According to article 47 para 5 of Rwandan law on arbitration provides that a party can appeal against an award if:

- The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration;
- or contains decisions on matter beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside.

Figure 17: Comparison between arbitration, conciliation and mediation

Arbitration	Conciliation	Mediation
Arbitration is like litigation which is outside the court and which results in an award like an order.	A conciliation is a form of mediation but it is less formal in nature as compared to arbitration. It is the process of providing a harmonious resolution of disputes between the parties.	Mediation is when a neutral third party aims to assist the parties in arriving at a mutually agreeable solution
It is binding on parties whether they agree with it or not.	There is no right to enforce the decisions of the parties.	There is no binding decision without both parties agreeing to one.
An arbitrator has the power to enforce his decision (arbitral award).	A conciliator does not have the power to enforce his decision.	The decision is made by the parties and is not enforceable by the mediator.
Prior agreement is required.	Prior agreement is not required.	Prior agreement is not required.
The result is the award given and it is appealable.	Result is agreement between the parties and not appealable.	The result is settlement agreement and not appealable
No communication between the parties.	Communication is permitted.	Optimal communication is permitted.
Consent of party is essential.	Consent of party is essential.	Consent of party is not required to quote the case for mediation.
An arbitrator plays the role of a neutral person, who makes decisions on a dispute based on evidence presented by the parties as a judge.	The conciliator is more active than the mediator who also intervenes and act as an evaluator. He proposes a solution.	The mediator only facilitates parties themselves find a solution.

ii) Litigation and competent courts

Commercial court and Commercial High court are the courts having jurisdiction to settle commercial matters. However, it is possible that these matters can be settled by the arbitral tribunal once there is an arbitration agreement for that purpose. Apart from the matters

as provided by article 81 of the law governing jurisdiction of courts, the Commercial High Court hears at first instance, applications seeking execution in Rwanda of decisions and judgements rendered by foreign courts on commercial, financial and fiscal cases. The Commercial High Court has jurisdiction to hear petitions seeking execution in Rwanda of authentic deeds issued by foreign authorities. The condition that ought to be fulfilled however is that the authentic deeds are not contrary to public order and legal principles of Rwandan laws or they must be in accordance with laws of the country in which they were written, and have all necessary evidence to prove their authenticity.

E.4. Insolvency

Under Rwandan law, the insolvency and bankrupt matters are governed by the law N° 075/2021 of 06/12/2021. The law was enacted to implement the government policy on investment (doing business policy) and aims to protect companies with financial distress.

a) Definition of insolvency

Insolvency proceedings commence when: the debtor is unable to pay its debts when they fall due in the normal course of business; or the assets of the debtor are less than its liabilities plus its stated capital. The law uses two main terms: insolvency which is applicable to companies and bankrupt to natural/private individuals.

b) Commencement of insolvency proceedings and legal effects

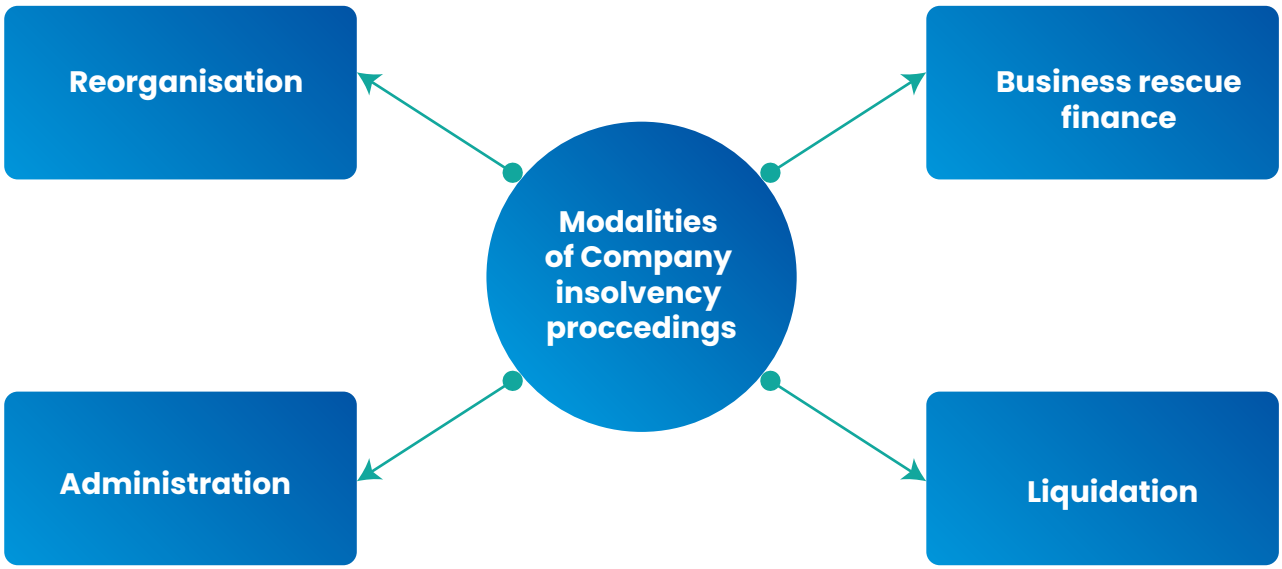
An application for commencement of insolvency proceedings may be filed by creditors with interest in the company, the debtor; the Directors or one of them; the Registrar General; shareholders or partners (in case the company is a partnership), or the regulatory authority of the company. The latter case occurs is where the company is running regulated services, such financial services regulated by the National Bank of Rwanda; energy, transport and telecommunication under regulatory power of Rwanda Utility Regulatory Authority (RURA) or cybersecurity by National Cybersecurity Authority or other services regulated by Capital Market Authority.

Upon the date of commencement of the insolvency proceedings, all claims and legal actions pending or future against the company are stayed. These include: the commencement or continuation of individual actions or proceedings concerning the debtor's assets, rights, obligations or liabilities; the execution of judgments related to the assets of the debtor's property; the right of counterparty to terminate any contract with the debtor; the right to transfer, mortgage or otherwise dispose of any assets of the debtor.

c) Modalities of insolvency proceedings

The insolvency proceedings can be made through Arrangement with Creditors; Compromise with Creditors, putting the company under administration, company's reorganisation, liquidation and bankruptcy. This section will discuss the insolvency proceedings applicable to companies.

Figure 18: Modalities of company insolvency proceedings



i) Administration

The administration of a company starts with the approval of the administration deed. The administrator issues a notice of administration deed to the General Public, all known creditors and the Registrar General.[33]

Upon the issuance of the notice, the administrator takes over the management of the company's business and company's directors and secretary may not continue to perform their duties and they have the duties of cooperation and information.[34] During the administration, the property of the company shall not be disposed unless the disposal is in the ordinary course of the company's business.[35] The administrator is supervised by the commercial court and he/she is personally liable for the administration of the company.

ii) Reorganisation

The court can order for the commencing of reorganization proceedings and appoint a provisional administrator if the court is satisfied that there is a reasonable prospect for saving the company. This arises where it is clear that the company will likely meet its future financial obligations as they become due and payable and it is clear that dissenting creditors will receive as much under the reorganization plan as they would in the company's liquidation. From the commencement of reorganization (the commencement is from the time the order of reorganization is granted by the court) company proceedings, no legal proceeding, including enforcement action, against the company, or in relation to any property belonging to the company, or lawfully in its possession, may be commenced or continued. The duties of the appointed provisional administrator include[36]

- To take custody and control of the company's business, property and affairs;

[33] *Insolvency Law, art. 63.*

[34] *Insolvency Law, art. 70.*

[35] *Insolvency Law, art. 72.*

[36] *Insolvency Law, art. 93.*

- Investigate the company's business and take possible measures for rescuing the company's business in the interests of creditors and shareholders;
- Carry on the business and manage the property of the company with the objective of rescuing business in the interests of creditors and shareholders;
- Perform any function that the company or its officers could perform if the company was not in reorganization.

Within forty-five (45) days from the reorganization order, the administrator, after consultation with the creditors and directors of the company, prepares a reorganization plan to be considered and approved by the creditors. A reorganization is approved by creditors if voted by not less than seventy-five per cent (75%) of creditors or class of creditors having taken part in the vote. Shareholders are considered to have passed a special resolution for the winding up of the company, if the creditors resolve that the company be wound up at a creditors' meeting or an administration deed is not executed within the execution period. In this case the provisional administrator becomes the liquidator.[37]

iii) Business rescue finance

According to article 97, upon the commencement of debt arrangement, compromise between the company and its creditors and administration or reorganization, a debtor may apply for financing from his or her existing creditors or other persons for the purposes of maintaining his or her business activities. This enables two possibilities: the business can continue to operate and generate cash for creditors; or it can be sold as a going concern if assets have a much higher realisable value and there is a greater return to creditors.

iv) Liquidation

Liquidation of a company starts with the appointment of a liquidator which can be done by the shareholders in a special resolution, Directors, or by the court.[38]

The liquidator's consent is required before he/she assumes office.

d) Winding up and liquidation of a company

i) Trigger reasons of liquidation

Under the meaning of Article 104, the court can appoint a liquidator upon application made by the company, a director of the company, a shareholder of the company, a creditor of the company or by the Registrar General:

- When the company is unable to pay its debts; when the company or its directors have persistently or seriously failed to comply with the Law governing companies;
- When the company does not comply with the essential features of a private company or public company;
- When it is just and equitable that the company be put into liquidation.

[37] *Insolvency Law, art. 79.*

[38] *Insolvency Law, art. 103.*

ii) Powers and duties of a liquidator

Some duties of the liquidator of a company include:

- Collecting, realizing and distributing assets or the proceeds of the assets of the company;
- Taking custody and control of all the company's assets;
- Keeping the company's money, separate from other money which he or she holds or is under his or her control;
- Keeping, in accordance with generally accepted accounting procedures and standards, full accounts and other records of all receipts.

The liquidator of a partnership has the duties to realize the partnership property; to pay the debts and discharge the liabilities of the partnership whether or not the partnership agreement provides otherwise; to distribute the surplus; and to ensure that all trust property is transferred to the person entitled to the property or a trustee for that person.

The liquidation of a company is complete when the liquidator delivers to the Registrar General a final report and final accounts of the liquidation. The liquidator's report must contain a statement that indicates: all known assets have been disclaimed, realized or distributed without realization, all proceeds of realization have been distributed; and the company is ready to be removed from the register.

iii) Prohibitions during liquidation

Where a company is in liquidation or an application has been made to the court for an order that a company be put into liquidation, any person concerned is not allowed to do the following:

- Leave or attempt to leave Rwanda with the intention of avoiding payment of money due to the company, avoiding examination with respect to the affairs of the company or avoiding compliance with an order of the court or some other obligation under the Companies Act with respect to the affairs of the company.
- Conceal or remove property of the company with the intention of preventing or delaying the assumption of custody or control of the property by the liquidator.
- Destroy, conceal or remove records or other documents of the company.

During the liquidation process or an application has been made to the court for an order that a company be put into liquidation and that there are reasonable grounds for believing that there is a likelihood of committing a related offense. The court may issue a warrant authorizing the person named in the warrant to search for and seize property, books, documents or reports of the company and deliver them to the liquidator.

Unit E key terms

Administration E.3
Annual return E.3
Arbitral award E.3
Arbitration E.3
Articles of associations E.1
Board of Directors E.3
Commercial courts E.3
Consumer protection E.3
Cooling period E.3
Core capital E.2
Corporate veil E.2
Debenture E.2
Good faith E.3
Incentives E.3
Insolvency E.4
Investment E.2
Limited Company E.2
Liquidator E.4
Mediation E.3
Ordinary meeting E.
Primary market E.3
Priority sectors E.2
Private company E.2

Provisional Administrator E.3
Public Company E.2
Registration E.1
Reorganisation E.5
Settlement Agreement E.3
Special resolution E.3
Stock exchange E.3
Ultimate Beneficial Owners E.2
Unlimited company E.2
Winding up E.2

Summary of Unit E and key learning outcomes

Learning outcomes	Summary
Legal entities	The term business law describes a wide body of laws that govern business transactions. Also called commercial law, it deals with principles of business and commerce. It covers matters like business or bank transactions, loan and guarantee; matters and other things related to the laws of trade, commerce, company and insolvency matters. The expression "company law" may be defined as a branch of law governing the companies. It deals with all aspects relating to companies, such as incorporation of companies, allotment of shares and share capital, memberships in companies, borrowing by companies, management and administration of companies, winding up of companies. The difference between company and other legal entities is created for profit purpose while other juristic organisations are non-profit entities.
Formation and constitution of companies	Upon incorporation, a company acquires its own legal personality separate from that of its shareholders, a body corporate and a legal entity in its own rights and obligations separate from its shareholders (corporate veil principle) or members and continues in existence until removal from the register of companies. However, a court may pierce the corporate veil to hold a shareholder liable for obligations of the company if the court finds that the shareholder has abused the company status form for fraudulent or illegal purposes or abused the company's assets as if they were personal assets. Company incorporation is a legal process used for a company to be formed and have legal personality separate from that of its owners. The application for registration of a company is done electronically and all required documents are also sent electronically to the Registrar General for his/her consideration. The Office of the Registrar General is one of the departments of Rwanda Development Board (RDB). An incorporation can be a private company, public company, a company limited by shares, a company limited by guarantee, a company limited by both shares and guarantee and unlimited guarantee. A company can be terminated by Shareholder's resolution, removal from the company's register, amalgamation with or acquisition by another company or liquidation.

Learning outcomes	Summary
Capital and financing, including sources of capital and capital maintenance	A company raise its capital from its shareholders (equity capital), borrowings (tier 2 capital or debt equity) and retained earnings. A share is one of the equal parts of a company's share capital issued to every shareholder or the company itself. Shareholders enjoy and exercise their rights in accordance with the company incorporation document or where the company does not have the articles of associations, the company law shall apply. Documents are exercised by shareholders' resolution that can be special resolution, ordinary resolution, or unanimous resolution.
Insolvency	Insolvency proceedings commence when: the debtor is unable to pay its debts when they fall due in the normal course of business; or the assets of the debtor are less than its liabilities plus its stated capital. The law uses two main terms: insolvency which is applicable to companies and bankrupt to natural/private individual. Upon the date of commencement of the insolvency proceedings, all claims and legal actions pending or future against the company are stayed. On a company, the insolvency proceedings can made though Arrangement with Creditors; Compromise with Creditors, putting the company under administration, company's reorganization or liquidation while on individual person is done through bankruptcy.

Quiz questions

1. Upon its registration, a company acquires a legal personality and the latter produce the following legal effects: (select all that apply)

   A. The company's legal personality is separate from the legal personality of its shareholders and has its own assets and liabilities different from those of its owners.

   B. The company's legal personality entails it a variety of rights and obligations which are totally distinct from the ones of its shareholders.

   C. A company with legal personality becomes a juristic person and hence can sue or be sued or conclude a contract with any party.

   D. A company with legal personally is restricted from owning a property, but may become a debtor or a creditor.

2. In which of the following grounds, piercing the corporate veil can work? (select all that apply)

   A. Act in the best interest of the company with due diligence and avoid any transaction that can harm the company's business.

   B. Failure to keep separate accounts.

   C. Misuse the company's assets for shareholders' or directors' private gain.

   D. Mismanagement or management of the company's assets as personal ones.

3. Which of the following make difference between private company and public company? (select all that apply)

   A. A private company has a name ended by the word "Limited or Ltd) while public company company's name is ended by "Public Limited Company or PLC".

   B. The number of shareholders cannot exceed 100 shareholders in a private company while for public company, the number of shareholders is unlimited.

   C. Private company is restricted from inviting the public to subscribe for shares or debentures in the company and prohibited to transfer its shares to public while the shares of a public company are fully transferable.

   D. A private company can be listed while a public can be listed on stock exchange under capital market.

4. Which of the following statements define a Limited liability partnership?

   A. It is a relationship between two (2) or more partners carrying on a business in common with a view to making a profit under a partnership agreement.

   B. It is a type of partnership in which all partners have unlimited liability.

   C. A type of partnership in which the liability of the partners for the debts of the

partnership is limited to their capital contribution.

D. It is a partnership which has one or more partners each with unlimited liability and one or more partners each with limited liability for the debts of the partnership.

E. It is a partnership formed in a foreign country and registered and carrying on business in or from Rwanda.

5. Which of the following legal circumstances can terminate a company? (select all that apply)

A. Special resolution of shareholders entitled to vote passed by a at least a majority of seventy-five percent (75%) of votes by virtue of the Companies Act or by the company's incorporation documents.

B. Removal from the company's register or liquidation.

C. Amalgamation of two or more companies and acquisition by another company.

D. Ordinary resolution of shareholders entitled to vote passed by a majority of votes.

6. Which of the following are part of the requirements for application for investment certificate? (select all that apply)

A. A certificate of incorporation.

B. Five-year business plan that clearly shows implementation plan and strategies as well projected cash flow.

C. Project environmental impact assessment certificate, projection on employment creation, and the license issued by the Sector regulator.

D. Evidence of the investment capital which is equivalent or more than Frw 20 billion.

7. What is the difference between a share and debenture? (select all that apply)

A. Share is part of the company capital while a debenture is a loan.

B. A shareholder has a right to vote at the meetings of the company while a denture-holder has no right to vote at any meeting of the company.

C. A shareholder has right to control company's affairs but a debenture-holder no right to interfere with the company affairs.

D. A shareholder has no charge over the company assets while a debenture-holder has generally a charge of the company assets.

8. Shareholders have the following rights and powers in a company: *(select all that apply)*

A. Right to share in the distribution of the dividends of the company.

B. Right to share in the distribution of the surplus assets of the company upon its liquidation.

C. The power to appointing or removing an auditor or director.

D. The authority to approve a major transaction – that is acquisition of an asset

equivalent to more than 10% of the company's total assets, dispose of asset of a value more than a half of the company's total assets, or a transaction that can create rights, obligations or labilities of more than half of the company's assets.

E. Issue a resolution dissolving the company or take a decision/ resolution approving an amalgamation or acquisition.

9. Negotiable instruments as they are provided for by the Rwandan law are bill of exchange, cheque and promissory note. Which of the following statements describe a cheque? *(select one)*

A. It is a clear and unconditional order in writing that is addressed by its signatory to a financial institution and requires to pay on demand a specific amount of money to the drawer or to a specified person or to the bearer.

B. it is an instrument in writing containing an unconditional undertaking, signed by the maker, to pay a specified sum of money to or to the order of a specified person, or to the bearer of the instruments.

C. it is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time, a specified amount of money or to the order of a specified person, or to the bearer.

D. It is a written contract between the drawer and the drawee, where the drawer promises to pay off a certain amount within a stipulated time.

10. In which time limit a cheque is valid from the issuance? (select one)

A. Thirty (30) days

B. Sixty (60) days

C. Ninety (90) days

D. One hundred twenty (120) days

11. Which of the following statements describe the in duplum rule in terms of consumer protection perspective (select all that apply)?

A. A financial service provider can recover interests not exceeding the triple of outstanding balance of principal debt, in case a financial service consumer fails to repay as per his or her contract with a financial service provider.

B. A financial service provider must not exceed outstanding principal debt, in case of repayment default by a financial service consumer.

C. A financial service provider must not exceed interests not exceeding the outstanding balance of principal debt, in case a financial service consumer fails to repay as per his or her contract with a financial service provider.

D. A financial service provider must not exceed cost incurred while recovering the total amount from the debtor of the financial service provider.

12. In which circumstances the insolvency proceedings can commence over a company? (select all that apply)

A. When the debtor is unable to pay its debts when they fall due in the normal course of business.

B. When the assets of the debtor are less than its liabilities plus its stated capital.

C. When the company's assets are misused by the shareholders or directors especially in their own interests.

D. When some of the assets of one company are transferred to another related company and the acquiring company does not pay the price and related tax due.

13. Which of the following can apply to the insolvency proceedings over a company? *(select all that apply)*

A. Bankruptcy

B. Administration

C. Business rescue finance or reorganisation

D. Liquidation

14. Which of the following can be the trigger grounds of company liquidation? (select all that apply)

A. When the company is unable to pay its debts.

B. when the company or its directors have persistently or seriously failed to comply with the Law governing companies.

C. When the company does not comply with the essential features of a private company or public company or when it is just and equitable that the company be put into liquidation.

D. When a company is running into loss for more than two years consecutive.

Unit F: Corporate governance

Learning outcomes

F.1. Purposes, scope and approaches to corporate governance

F.2. Directors and officers

F.3. Fraudulent behaviours

Introduction to unit F

In Rwanda, the first specific domestic law to elaborate on the company's formation, functioning and procedures for its business and its dissolution was passed in 1988. As the business was too dynamic, it was occasionally amended or changed to adapt the new business developments. The subsequent laws also put more emphasis on corporate governance principles of transparency, disclosures and accountability. This unit explores the principles of corporate governance and fraudulent behaviour.

F.1. Purposes, scope and approaches to corporate governance

a) Understanding corporate governance

Under these different legislations, a company is a corporate body (legal person) composed of one or more persons for making profit. In other words, a company is a legal entity registered under the Companies Act provisions with predefined objectives, its own properties and acquires legal personality, legal rights and obligations after its registration by the Registrar General. Thus, corporate governance can be defined as a system by which companies are directed and controlled. It is most often viewed as both the structure and the relationships which determine corporate direction and performance.

Corporate governance system is the combination of mechanisms which ensure that the management (the agent) runs the firm or company for the benefit of one or several stakeholders (principals) such as shareholders, creditors, suppliers, clients, employees and other parties with whom the firm conducts its business. Corporate governance mainly deals with the distribution of rights and responsibilities among different participants in the corporation such as *inter alia*, the board of directors, managers, shareholders, creditors, auditors or regulators.

b) Principles of corporate governance

Corporate governance is a guideline on the company governance, its relationships with its shareholders and stakeholders. With the right organisational structure, good corporate governance enables companies to create the environment of trust, transparency and accountability which promotes long- resilient capital while supporting economic growth and stability.

The business and affairs of a company are managed by or under the direction of the Board of Directors of the company except where the company's incorporation documents or the Companies Act expressly reserve those powers to the shareholders or any other person. Where a private company has one director, he/she exercises the powers and carries out the duties of a Board of Directors as provided for in the Companies Act governing companies in Rwanda.

The Company Law effectively safeguards the rights and powers of shareholders. The law specifically provides fundamental rights attached to shares. These rights include: the right to share in the distribution of the dividends of the company; the right to share in the distribution of the surplus assets of the company upon its liquidation, right to approve major transactions, right to appoint/remove auditor and director. A shareholder is not liable for the obligations of a company only by virtue of being a shareholder. For example, liability is limited to any amount unpaid on a share held by the shareholder. However, the law puts exceptions in which shareholders' liability can be extended beyond the shares held in the company. Article 92 of the company law states that "[a] court may pierce the corporate veil to hold a shareholder liable for obligations of the company if the court finds that the shareholder has abused the company status form for fraudulent or illegal purposes or abused the company's assets as if they were personal assets."[39]

Moreover, the law recognises the shareholders' right to sue the company and its officers. For example, the law stipulates that the company directors owe duties to shareholders personally to comply with the Company's Act and the company's incorporation documents. A shareholder may sue the company or its directors in respect of any breach of a duty owed to the shareholder personally, but not for breach of a duty owed solely to the company. If the company is administered in a manner which is unfair to the interests of the shareholders, the affected person or likely to be affected may apply to a competent court to stop the unfair prejudice.

c) Company record keeping and filing with relevant authority

The company has the obligation to keep at its registered office, or at any other place in Rwanda all key records related to its business, operations, meeting minutes, decisions and copies of all annual accounts, auditors and directors' reports, the register of beneficial ownership, and written correspondence for at least the previous ten years.[40] The new Companies Act introduced a new requirement of maintaining the data related to the company beneficial owners. Beneficial owner refers to the natural person(s) who ultimately owns or controls a legal person and/or the natural person on whose behalf a transaction is being conducted. It also includes those natural persons who exercise ultimate effective control over a legal person or arrangement. Only a natural person can be an ultimate beneficial owner, and more than one natural person can be the ultimate beneficial owner of a given legal person or arrangement.[41]

In the context of this definition, reference to "ultimately owns or controls" and "ultimate effective control" refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control". Control means the ability to take relevant decisions within the company and to impose those decisions. However, persons appearing in the incorporation documents of a company as holding controlling positions within the company, but who are acting on behalf of someone else

[39] *Companies Act, art. 92.*

[40] *Companies Act, art.111.*

[41] *Rwanda Development Board, The Registrar General "Guidelines for the identification of beneficial owners of legal persons and arrangements, March 2023, p.4.*

are not considered beneficial owners because they are being used to exercise effective control over the company.

Under articles 116 and 117 of the Companies Law, companies registered in Rwanda must comply with the following requirements regarding beneficial ownership transparency:

- Give notice to a member or shareholder of that company requiring that member or shareholder to disclose whether they are holding their interest in that company for their own benefit or the benefit of another person, and, if not, the beneficial ownership information.
- Maintain an up to date internal register of beneficial owners at the registered office of the company.
- File a copy of the internal register of beneficial owners with the Registrar General and inform the latter within fourteen (14) days of any changes thereto from the date of the changes.

Figure 19: Steps to identify beneficial owners

Three steps to identify beneficial owners:

Step 1: The identity of the natural persons, who directly or indirectly, whether acting alone or together, ultimately have a controlling ownership interest in a legal person should be obtained and verified.

Step 2: If there is any doubt as to whether the persons with controlling ownership interest are the beneficial owners, or where no natural person exerts control through ownership interests, then the identity of the natural persons (if any) exercising control of the legal person through other means should be obtained and verified.

Step 3: Where no natural person is identified under Step 1 or Step 2 above, the reporting person should identify the relevant natural person who holds the position of senior managing official.

The first and second steps are mandatory and a reporting company will only proceed to step 3 if no natural person(s) has been identified as beneficial owner(s). In addition to submission of the beneficial owner's information, a company is required to file its annual return reports with the Registrar General and such a report has to be signed by two directors or one if the company is a sole proprietorship.[42]

F.2. Directors and officers

The corporate governance differs in the financial companies and non-financial company companies. This also applies on the appointment of Directors and officers of the company as well as their role and responsibilities.

[42] *Companies Act, art. 143.*

a) Corporate governance of financial institutions

i) Conceptualising financial sector

In the financial sector, corporate governance is defined as a set of relationships between a company's management, its board, its shareholders and other stakeholders which provides the structure through which the objectives of the company are set, and the means of attaining those objectives as well as monitoring performance. It helps define the way authority and responsibility are allocated and how corporate decisions are made.[43]

Financial sector has a significant role in the economic development of the country. Financial sector development leads to economic growth by easing investors' funding concerns.[44] Financial sector development can also lead to a reduction in disparities in the prices of loans in line with the implementation of more efficient business practices, improved information conduits, and the use of technology as well as increased competition among financial institutions.[45]

The financial sector is divided into two segments: banking sector and Non- Banking Financial sector. According to their services, financial institutions include Deposit-taking institutions, risk pooling institutions, contractual savings, market makers, specialised sectorial financiers and financial service providers. In Rwanda, Financial sector is regulated by National Bank of Rwanda (BNR). BNR has regulatory mandate to supervise and regulate the activities of financial institutions. These include banks, Micro-Finance Institutions (MFI), Non-deposit taking lending institutions, finance lease institutions, insurance institutions, social security institutions; pension funds/schemes institutions, discount houses and other financial institutions that are not supervised by any other institution under specific laws.[46]

On other hand, a non-bank financial institution (NBFI) is an organisation that provides financial services, but is not a licensed bank and is not allowed to accept deposits from customers. These include insurance, pension funds, insurance brokers, and finance lease institutions among others. From this point of view, Rwanda Social Security Board (RSSB) is considered as hybrid. RSSB is a public insurer (medical insurer and Medical Health Insurance Scheme/MS) and a public pension scheme because it has inherited the CSR and RAMA missions as insurer. It has various schemes some are short term while others are long term. Long term includes mandatory pension scheme, maternity, occupational hazard and short-term scheme: medical insurance (former RAMA- MS) and Military Medical insurance (MMI).

ii) Principles applicable to banking

The principles applicable to banking are based on relationship between banker and customer, which is seen as contract, and such principles govern the rights, duties and obligations of either party. Before discussing the duties and obligations of the banks and customer, this section will first discuss the meaning and definition of a banker and a customer.

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[43] *Regulation No.01/2018 of 24/01/2018 on corporate governance for banks (Corporate Governance Regulation), art.2.*

[44] *Schumpeter, J. A., The theory of economic development: An inquiry into profits, capital, credit, interest, and the business cycle, Transaction publishers (1934).*

[45] *Lynch, D. (1996). "Measuring financial sector development: A study of selected Asia-Pacific countries." Developing Economies (1996) 34 (1): 3-33.*

[46] *See Law No. 48/2017 of 23/09/2017 governing the national bank of Rwanda, in Official Gazette No. 41 of 09/10/2017 (BNR Law), art. 6.*

Bank customer

A bank is understood as a public company limited by shares or a cooperative licensed by the Central Bank to undertake activities of accepting deposits and granting loans for its own account.[47] However, the Rwanda legislator puts the development banks among

those that are prohibited to collect deposits from the public. This meaning of the bank was incorporated in different case law with additional aspects.

For example, in the case *United Dominions Trust v Kirkwood (1966) 2 Q.B 431, Lord Denning MR. spelt out that* bank or banker is: *"A corporation or a person or group of persons, who accept money on current accounts, pay cheques drawn upon such accounts on demand and collect cheques for customers".*[48]

The deposits that a bank holds are funds collected from customers whether or not in the form of cash or negotiable instruments, with the right to dispose of them on its own account and on the condition that they must be returned.[49] On the meaning of a bank customer, "for a person to be a customer he or she must have some kind of account in the bank".[50] In the case of Ladbroke v Todd (1914) 19 Com. Cas 256, it was argued that a person does not become a customer of the Bank until the first cheque is collected.[51] Contrary to the position expressed in the above old English cases, in a later case of *Woods v Martins Bank Ltd (1959) 1 QB 55,* it was decided that to make a person a customer, it is not necessary that an account should be opened. According to this case, a mere likelihood that an account will be opened is enough to make a person a customer provided that the bank has agreed to offer services to such person. Furthermore, the duration of the relationship is similarly not relevant to the question whether a person is a customer or not.[52]

Banker- customer relationship

The relationship between a banker and a customer is contractual in nature. This means that at the time of starting the relationship, the parties must expressly agree on the terms that they intend to govern their relationship. The contract between a banker and a customer is embedded with a number of legal rights and obligations. The banker's duties include inter alia, the obligation to pay on demand and to comply with the customer's express mandate, duty to receive and collect bills/cheques on customer's account and duty to exercise proper skill and care. This implies that a banker has a duty to exercise proper skill and care in any service delivery to its customers.

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[47] *Regulation n° 2310/2018 – 00013 [614] of 27/12/2018 of the national bank of Rwanda on licensing conditions of banks, Official Gazette no. 01 of 07/01/2019, art.2.; See, B.M. Friedman, The use and meaning of words in central banking: inflation targeting, credibility, and transparency, National Bureau Of Economic Research, Cambridge (2002), p.2.*

[48] *United Dominions Trust v Kirkwood (1966) 2 Q.B 431; See also K. K, Mwenda, Legal construction of the term 'bank': a comparative study, Tilburg Law review 8 (2002) 113-120.*

[49] *Law N0. 47/2017 of 23/9/2017 governing the organisation of banking, in the Official Gazette n° 42 of 16/10/2017, art.3 (4). The same definition was incorporated verbatim in the Regulation no. 2310/2018 – 00013 [614] of 27/12/2018 of the national bank of Rwanda on licensing conditions of banks, in the Official Gazette no. 01 of 07/01/2019 art.2 (1).*

[50] *Great Western Railways v London and County Banking Company (1809)*

[51] *Ladbroke v Todd (1914) 19 Com. Cas 256*

[52] *Commissioner for Taxation V. English, Scottish and Australian Bank (1902)*

These include ensuring the safety of the customer's deposits and necessary due diligence in every transaction.[53]

The Bank's obligations also include a duty of secrecy. This duty emanates from the fact that the banker-customer relationship is built on trust. The bank therefore has an obligation to safeguard that confidentiality. This confidentiality is not only applied to account transactions; it also includes all the information that the bank has about the

customer. However, in the case of Tournier v. National Provincial & Union Bank of England (1924) 1 KB 461, the court stated the duty of secrecy is not absolute and it is subject to some exceptions.

These include *inter alia*, the disclosure under the compulsion of law, a duty to the public to disclose, where the interest f the Bank requires disclosure or disclosure with the express or implied consent of the customer.[54] The banker also has a duty to give notice before closing a credit account and a duty to provide the customer with accurate accounts statements.

On the other hand, the customer also has duties and obligations. These include for example duty to draw cheques carefully. A bank customer has a legal duty to draw his or her cheques in such a way as not to mislead the bank and facilitate forgery. For example, a customer filling a cheque carelessly while leaving gaps between figures and words hence enabling another person to alter the cheque by filling in the gaps.[55] Moreover, the customer has a duty to disclose or report forgeries. The customer has the obligation to report to the banker any forgery case that comes to his or her knowledge. For example, in the case of breach of the duty of care in drawing cheques, the failure by the customer to inform the bank about forgeries he/she is aware of, would relieve the bank of the liability to repay money paid out on that forged cheque.

Example:

This duty was reiterated in the case of Greenwood v. Martins Bank Ltd (1932). The court held that Greenwood had a duty to disclose the forgeries to his banker as soon as he discovered them. His failure to report the forgery deprived him the right to challenge the bank for paying the forged cheques.[56]

The customer also has an obligation not to issue cheques when there are insufficient funds on the account and duty to read bank statements and notices.

iii) Role of the National Bank of Rwanda (BNR) as regulator in corporate governance

A central bank is an independent national authority that conducts monetary policy, regulates banks and provides financial services including economic research. The

[53] *Regulation n° 32/2020 of 08/06/2020 determining administrative sanctions applicable to financial institution for non-compliance with the prevention of money laundering, financing terrorism and financing of proliferation of weapons of mass destruction requirements (AML/CFT Regulation), in the Official Gazette no 18 of 22/06/2020, Appendix (c) (3) and (4). The regulation imposes administrative and pecuniary sanctions against financial institutions for the failure to implement CDD measures for Customer Identification (whether permanent, occasional, natural or legal persons, or legal arrangements, etc.).*

[54] *Idem. See also Standard Bank of West Africa v Attorney General of The Gambia (1972) 3 ALR Comm 449.*

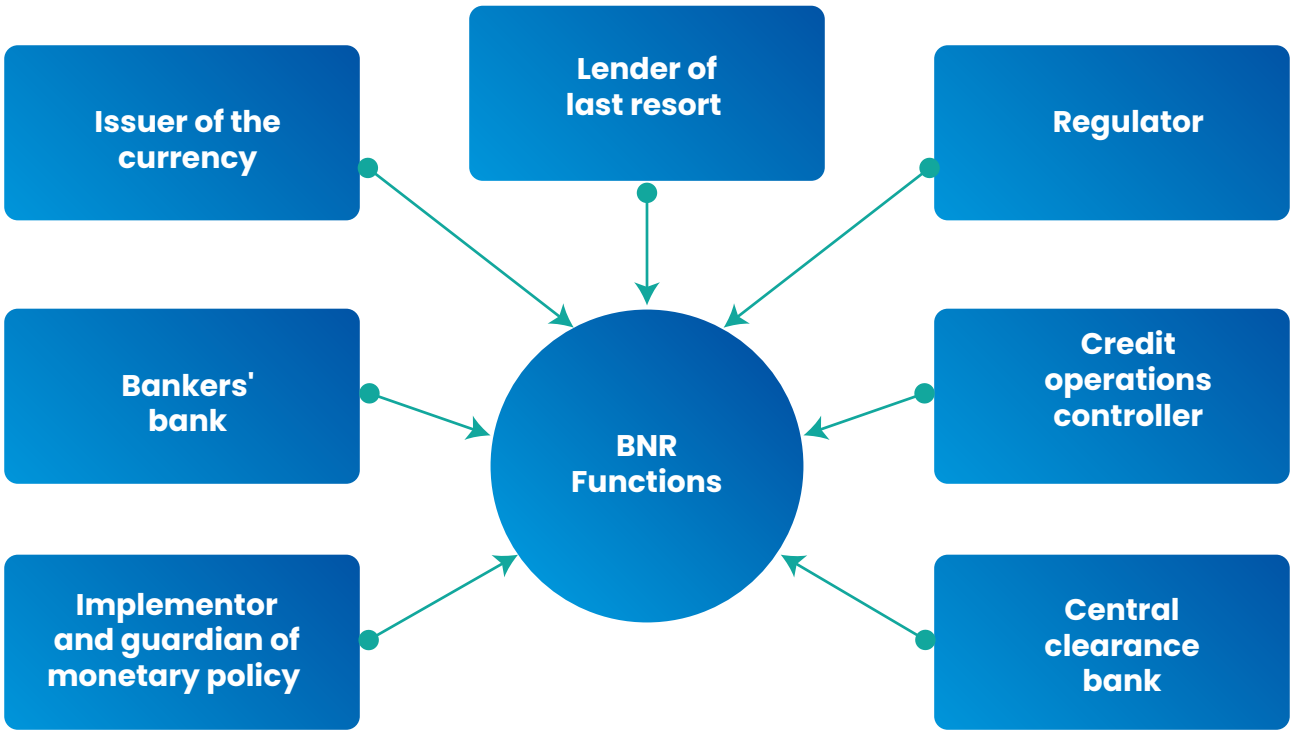
[55] *In the case of Mobil Uganda Ltd v Uganda Commercial Bank (1982) HCB 64.*

[56] *Greenwood v Martins Bank Limited CA [1932] 1 KB 371.*

general mission of BNR is to ensure price stability and sound financial system.[57] The BNR ensures financial stability in a free market economy as it embraces innovations, diversity, inclusiveness and economy integration.

This section explores the role and responsibilities of the BNR in regulating the Banking Business in Rwanda.

Figure 20: Key functions of National Bank of Rwanda (BNR)



Implementor and guardian of Monetary policy

BNR affects economic growth by controlling the liquidity in the financial system. It has three monetary policy tools to achieve this goal. First, they set a liquidity requirement. BNR requires banks to manage its assets and liabilities, as well as its off-balance sheets assets and liabilities to ensure it maintains the liquidity needed to meet its financial obligations as they fall due.[58] It further obliges banks to establish a robust liquidity risk management framework that ensures they maintain sufficient liquidity, including a cushion of unencumbered, high quality liquid assets, to withstand a range of stress events, including those involving the loss or impairment of both unsecured and secured funding sources. [59] Thus, a bank must have a formal contingency funding plan (CFP) that clearly sets out strategies for addressing liquidity shortfalls in emergency situations.[60]

[57] *Law No. 48/2017 of 23/09/2017 governing the national bank of Rwanda, in Official Gazette No. 41 of 09/10/2017 (BNR Law), art. 6.*

[58] *Regulation No. 2310/2018 -00017[614] of 27/12/2018 of the national bank of Rwanda relating to liquidity requirements for banks, in Official Gazette No. Special of 16/01/2019 (Regulation on Liquidity requirements), art. 4 (1).*

[59] *Regulation on Liquidity requirements, art. 4 (2).*

[60] *Regulation on Liquidity requirements, art. 9.*

Secondly, BNR uses open market operations to buy and sell securities from member banks and individuals. These operations change and manage the amount of cash on hand without changing the reserve requirement. This is done through issuance of treasury bills and treasury bonds.

Thirdly, BNR sets targets on interest rates they charge their member banks. Recently, BNR reduced its interest from 5% to 4.5% to support commercial banks to continue financing the economy as part of the economic recovery fund.[61]

However, it was raised to 6.5% due to inflection and Rwandan franc depreciation vis-à-vis the foreign currency especially US Dollars, Euro and English Pound.

Bankers' bank

A central bank accepts deposits from commercial banks and will, on order, transfer them to the account of another bank. In this way, the central bank provides each commercial bank with the equivalent of a checking account and with a means of settling debts to other banks. The commercial banks maintain a current account with the central bank and can borrow money short term.

Issue of the country's currency

The central bank enjoys the monopoly of the issue of a country's currency. No bank other than the central bank is authorised by law to print currency notes. This allows the central bank to have control over the excessive credit expansion by commercial bank and allows for the issuance of uniform currency, thereby achieving the homogeneity characteristic. The currency notes printed and issued by the central bank are declared unlimited legal tender throughout the country.[62]

Lender of last resort

BNR acts as a lender of last resort to commercial banks and other financial institutions when they run out of cash. In its capacity as the lender of the last resort, the central bank meets all reasonable demands from commercial banks by providing temporary liquidity to commercial banks by making short-term loans to them. During this COVID-19 crisis, BNR reduced its interest from 5% to 4.5% to support commercial banks to continue financing the economy.[63] The banks that face the liquidity challenges can borrow from the Central Bank. This is last resort borrowing. The normal borrowing is interbank borrowing and fixed deposits. More importantly, the BNR put in place the Economic Recovery Fund (ERF) with the main objective of supporting businesses severely impacted the COVID-19pandemic. This initiative was aimed at helping businesses survive the crisis and resume operations, ultimately safeguarding employment, and mitigating the pandemic's economic effect on the workforce.[64]

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[61] *National Bank of Rwanda, Press release- National Bank of Rwanda reduces the Central Bank rate (CBR) to 4.5%, 30 April 2020*

[62] *See BNR Law, art. 6 (7).*

[63] *National Bank of Rwanda, Press release- National Bank of Rwanda reduces the Central Bank rate (CBR) to 4.5%, 30 April 2020*

[64] *See Directive No.0300/2020-00015 [613] of the National Bank of Rwanda determining requirements for accessing the Economic Recovery Fund (ERF) by Banks and Limited Microfinance Institutions (ERF Guideline), art.1.*

Supervisory and regulatory body

The National Bank of Rwanda has a mandate to supervise and regulate the activities of financial institutions notably banks, micro finance institutions, non-deposit taking lending institutions, finance-lease institutions, insurance institutions, social security institutions, pension funds/schemes institutions, discount houses and other financial services providers that are not supervised by any other institution under specific laws.[65] This regulatory power enable BNR to set regulations, directives and take decisions on maters provided by the Companies Act and other specific laws. [66]

The breach or non-compliance with the BNR regulations, directives and decisions result in administrative sanctions.[67] Furthermore, BNR establishes requirements on corporate governance, identifying responsibilities in the managerial and operational structure of the banks and reinforcing key components of risk governance.[68] Thus, any Board member or bank senior management member is to be approved by BNR before he or she takes up his or her position.[69] BNR has the power also to disqualify or remove the same people from office.[70]

Controller of credit operations

This is one of the major functions of a central bank. The control or adjustment of credit of commercial banks by the central bank is accepted as its most important function. Commercial banks create alot of credit which sometimes results in inflation. The expansion or contraction of currency and credit may be said to be the most important causes of business fluctuations. The need for credit control is obvious. It mainly arises from the fact that money and credit play an important role in determining the level of incomes, output and employment. The central bank controls credit by means of various monetary policy instruments such as open market operations, bank rate, legal reserve requirements, moral suasion, selective credit control and special deposit. This is done by supervising the activities of commercial banks and other financial institutions.

To implement this role, the National Bank of Rwanda issued a Regulation on credit classification and provisioning. This regulation provides guidelines to ensure that banks promptly identify and monitor their nonperforming credit facilities and undertake adequate measures to manage credit risk in their portfolios.[71] Credit facilities must be objectively or subjectively classified into five categories: Normal, watch, substandard, doubtful and loss.[72] Furthermore, banks are required to maintain general provisions for credit facilities classified as "Normal" and "Watch" Risk and specific provisions for all non-performing loans (NPL). [73]

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[65] *See BNR Law, art.6 (3).*

[66] *See BNR Law, art. 8.*

[67] *Regulation No. 2100 /2018 - 00010[614] of 12/12/2018 of the National Bank of Rwanda on administrative sanctions and fines applicable to banks, in the Official Gazette n° 51 of 17/12/2018, art. 3.*

[68] *See Regulation No. 01/2018 of 24/01/2018 on corporate governance for banks, in Official Gazette No. 6bis of 05/02/2018 (Regulation on Corporate Governance), art.1.*

[69] *Regulation on Corporate Governance, art. 18 and 34.*

[70] *Regulation on Corporate Governance, art.19.*

[71] *See Regulation No. 12/2017 of 23/11/2017 on credit classification and provisioning, in Official Gazette No. 49 bis of 04/12/2017 (Regulation on Credit Classification), art. 1.*

[72] *See Regulation on Credit Classification, art.9.*

[73] *See Regulation on Credit Classification, art. 15 and 16.*

Bank of central clearance, settlement and transfer

Central clearance implies that it settles the differences of a financial nature between the various commercial banks by making transfers of accounts at the central bank since commercial banks keep their surplus cash reserves with the central bank. It is easier to clear and settle claims between them by making transfer entries in their accounts maintained with the central bank than if each commercial bank entered into separate clearance and settlement transactions with other banks individually.[74] Thus, Central bank acts as a clearing house for the settlement of accounts of commercial banks. BNR, is where mutual claims of banks on one another are offset, and a settlement is made by the

payment of the difference. Central bank being a bankers' bank keeps the cash balances of commercial banks and as such it becomes easier for the member banks to adjust or settle their claims against one another through the central bank.

iv) shareholders responsibilities

Shareholders of a bank shall jointly and solely protect, preserve and actively exercise the supreme authority of a bank in general meetings. Shareholders have the following responsibilities:

- Ensuring that only persons who are trustworthy and competent are elected as members of the Board of Directors.
- Ensuring that the Board of Directors are regularly held accountable for the efficient and effective governance of the bank.
- Changing the composition of the Board of Directors in case of inefficiency or in accordance with the mission of the bank.
- Ensuring that members of the Board of Directors are qualified and possess a variety of skills.

A shareholder with significant holding shall not be appointed as the chair of the Board of Directors or the Deputy chair, as the Chief Executive Officer (CEO) or Managing Director (MD), and shall not form part of the senior management of the bank or its holding company.

v) Board of Directors

Composition and requirements

The board members are appointed by shareholders in the ordinary meeting and approved by National Bank of Rwanda. No director shall take up his/her position before being approved by the Central Bank. The board must be comprised of at least seven (7) directors, of which at least four (4) of them must be independent directors. Should a bank decide to have more than seven (7) directors, the 4/7 ratio must be maintained at all times. Tier II banks are allowed to have 5 board members and 3 of them have to be independent. The Board of Directors must be comprised of individuals with a balance of skills, diversity and expertise, who collectively possess the necessary qualifications commensurate with the size, complexity and risk profile of the bank. Each individual board member shall satisfy the fit and proper criteria and shall not present potential conflicts of interest in relation to board members' role in the bank.

[74] *See BNR Law, art. 6 (4).*

The Central Bank reserves the power to evaluate these requirements when assessing the application for approval of a proposed board member and at any time in the course of the board's term it may require appropriate action against any board member no longer fit, in accordance with relevant legal and regulatory provisions. An individual shall not hold the position of a director in more than one institution licensed under the Law concerning the organisation of banking. A director who moves to another bank, as either a board member or a member of the senior management, is prohibited to act in a way that might harm, in any manner, the business of the previous bank.

Director's term and removal from office

A board member shall be appointed for a term of 3 years renewable only twice. The renewal of a Director's term must be approved by the Central Bank.

A director shall not be recommended for renewal if he/she has not been helpful to the board in particular and to the bank in general, or if he/she no longer satisfies the fit and proper criteria.

At any time in the course of the board term, the Central Bank is entitled to disqualify any board member if adverse information is later revealed or if he/she acts in any manner contrary to the requirements of the Banking Law and/or any regulation of the Central Bank, or acts in any manner detrimental to or not in the best interest of the depositors and the public in general. The board is entrusted with the daily management of the bank and shall hold accountable management that perform the bank daily transactions under delegated power of the Board. Hence, the Board of Directors main responsivity is to the bank's business strategy and financial soundness, key decisions on personnel, internal organisation and governance structure and practices, and risk management and compliance obligations.

The Board of Directors must establish to their satisfaction the bank's organisational structure which enables the board and senior management to carry out their responsibilities and facilitate effective decision-making and good governance. It has the role of actively and critically overseeing and monitoring the implementation of the bank's strategy, business objectives and policies, as well as the management of the compliance function. The responsibilities of the board are outlined in the corporate governance regulation from article 6 to 12.

b) Corporate governance in non-financial companies

i) Shareholders' powers and rights

As mentioned above, once it is registered, a company's separate legal personality grants it a variety of rights and obligations which are totally distinct from the ones of its shareholders. Thus, a company may sue as it may be sued, it can contract with any other party, including any of its shareholders, etc. A company may own a property, as it may become a debtor or a creditor. Shareholders have rights to right to share in the distribution of the dividends of the company; the right to share in the distribution of the surplus assets of the company upon its liquidation; and the right to vote on shareholders' resolution.

With the exception of an unlimited liability company, a shareholder is not liable for the obligations of a company unless there is an unpaid amount on the share held by the shareholder or in the event of recovery of distribution received by a shareholder. Subject to the company's incorporation documents, the shareholders may pass a resolution relating to the management of the company. However, the Board of Directors may refrain

from complying with such a resolution if satisfied that the resolution is contrary to the company's interests. The company holds a General assembly of shareholders on the date agreed upon by directors on annual basis subject to a notice of at least 21 days. Shareholders can discuss on the management of the company and pass a resolution thereon. A shareholders' general assembly other than the annual general meeting is a shareholders' extraordinary meeting. The Board of Directors or any other person so authorised in the company's incorporation documents, may convene a shareholders' extraordinary meeting.[75]

ii) Board of Directors

The business and affairs of a company are managed by or under the direction of the Board of Directors of the company which has all powers necessary for the management except where the company's incorporation documents or the Companies Act expressly reserve those powers to the shareholders or any other person. Where a private company has one Director, he or she exercises the powers and carries out the duties of a Board of Directors provided for in the Companies Act.

The Board of Directors may delegate any of its powers to its committees or to the Managing Director or executive Director appointed by them. A Board member has the obligation to act in good faith in a manner that he or she believes on reasonable grounds is in the best interests of the company, and use reasonable diligence in the discharge of the duties of his or her office in accordance with the incorporation documents or the Companies Act. A private company must have at least one director and a public company shall have at least two (2) directors where at least one director must be a resident of Rwanda. Directors must act in a collegial administration and must be of a sufficient number provided for in incorporation documents of the company for a meeting to be attained. Directors are appointed by shareholders in the ordinary annual general meeting and by ordinary resolution.

A company appoints a natural person as a director when the person meets the following requirements: [76]

- Being at least sixteen (16) years of age;
- Being a discharged bankrupt, if applicable;
- Not being subject to a disqualification by a court's order;
- Not having been sentenced in the immediately preceding five (5) years to a penalty under the Companies Act or the Law regulating Capital Market or for economic crimes;
- Complying with any qualification for directors contained in the company's incorporation documents;
- Not having a mental disability as certified by a recognised medical doctor.

In public companies, the roles of Chairperson of the Board of Directors and Chief Executive Officer cannot be held by the same individual.

Moreover, the law requires the Board to put in place an audit committee consisting of at least three (3) independent non-executive directors. The audit committee's functions include review of the company's accounting and financial practices, the integrity of its

75 *Company Law, art.103.*

[76] *Company Law, art. 156*

financial controls and financial statements, and its compliance with legal requirements. Those functions also include recommending the appointment and compensation of the company's independent auditor, and monitoring and oversight of that auditor. In a public company, majority of directors must be non-executive directors and at least one-third (1/3) of the directors must be independent directors.

The law defines A non-executive director as a person who does not form part of the management team of the company and who is not an employee of the company or affiliated with it in any other way, but who can own shares in the company.

Furthermore, an independent director is a person who does not have a material or pecuniary relationship with the company or related persons, is compensated through sitting fees or allowances, and does not own more than two per cent (2%) of shares in the company.[77]

iii) Company secretary

Under the Companies Act, a public company is required to have a company secretary who must be a Rwandan resident while it is optional for a private company.[78] Subject to the company's incorporation documents, the company secretary may be appointed by the directors for such term, at such remuneration and upon such conditions as they think fit; and any company secretary so appointed may be removed by the appointing authority. A company secretary has the following duties:

- Advise directors on their responsibilities and powers.
- Inform directors about all the necessary regulations or those which may affect the meetings of shareholders and of the Board of Directors, reports thereof and submission of all company documents required by the law to relevant organs as well as consequences due to the failure to comply with such regulations.
- Ensure that minutes of the meetings of shareholders or the Board of Directors are well prepared and that registers provided for by the incorporation documents are accurately kept.
- Ensure that annual balance sheet and other required documents are submitted to the Registrar General as provided for by the law.
- Ensure that copies of annual balance sheet and activity reports are transmitted to relevant destinations in accordance with the Companies Act and to any person as provided by the law.
- Perform such other duties as may be assigned by the Board of Directors.

Under corporate governance, the company secretary acts as a channel of communication between management and the Board.

A company must not indemnify director, secretary, auditor or employee of the company in respect of any liability for his or her acts or omission in respect of his or her capacity as director, secretary, auditor or employee of the company or for costs incurred by him or her in any proceedings. Any indemnity given in breach of the law is void.

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[77] *Company Law, art. 158*

[78] *Company Law, art. 172.*

F.3. Fraudulent behaviours

a) Essentials of criminal liability

i) Definition of an offence

A Crime (an offence) is defined as an act or omission that breaches public order and which is punishable by law.[79] It is a wrong act defined by society and perpetrated against society. An offence (or an infraction) is defined as an act or omission which is considered as an attack against the social order, and which the law punishes by issuing a sentence. A discussion of criminal law is appropriate to a study of business law because the prevention of crime and the effort of capturing and prosecuting those accused of crimes are time-consuming and costly activities. Consequently, it is important to understand the nature and extent of such activities and their impact on business.

The sanctions used to bring about a peaceful society, in which individuals engaging in business can compete and flourish, include those imposed by the civil law, such as damages for various types of tortious conduct and damages for breach of contract. Courts of equity may restrain certain types of unlawful conduct or require that things done unlawfully or having certain unlawful effects be undone by issuing injunctions.

ii) Elements of a criminal offence

An offence requires the existence of three elements, which are legal element, material element (*actus reus*) and mental/moral element (*mens rea*).

The legal element

The legal element of an infraction refers to a legal text providing for an act or an omission considered as an infraction and for its penalty as well. It follows that one cannot talk about the legal element of an infraction without talking about the principle of legality of infractions and penalties. This principle comes from a Latin adage "***Nullum crimen, nulla poena sine lege***".

The material element (actus reus)

The material element of an infraction can be defined as the external (exterior) element by which the mental element is revealed. Actus reus refers to the criminal act or omission that occurred. It can also include words like threats, perjury and conspiracy among others.

For example:

If we consider "murder", the material element is the fact of killing somebody. If we consider, theft, the material element is made of the fact of removing or abstracting something from somebody else.

Embezzlement: the material element is the fraudulent conversion of property or money owned by one person but *entrusted* to another.

[79] *Law No68/2018 of 30/08/2018 determining offences and penalties in general as amended to date (2018 Criminal Law), art 2 (1).*

Most of the time, the material element consists of a positive action, i.e., the fact of doing something prohibited by the law (offence by action or offence by commission. Most of the provisions of the Rwandan penal code deal with this kind of infractions. Sometimes, the material element consists of a negative act (an omission), which is the fact of not doing what the law orders.

Example:

Failure to assist a person in danger is an offence by omission.

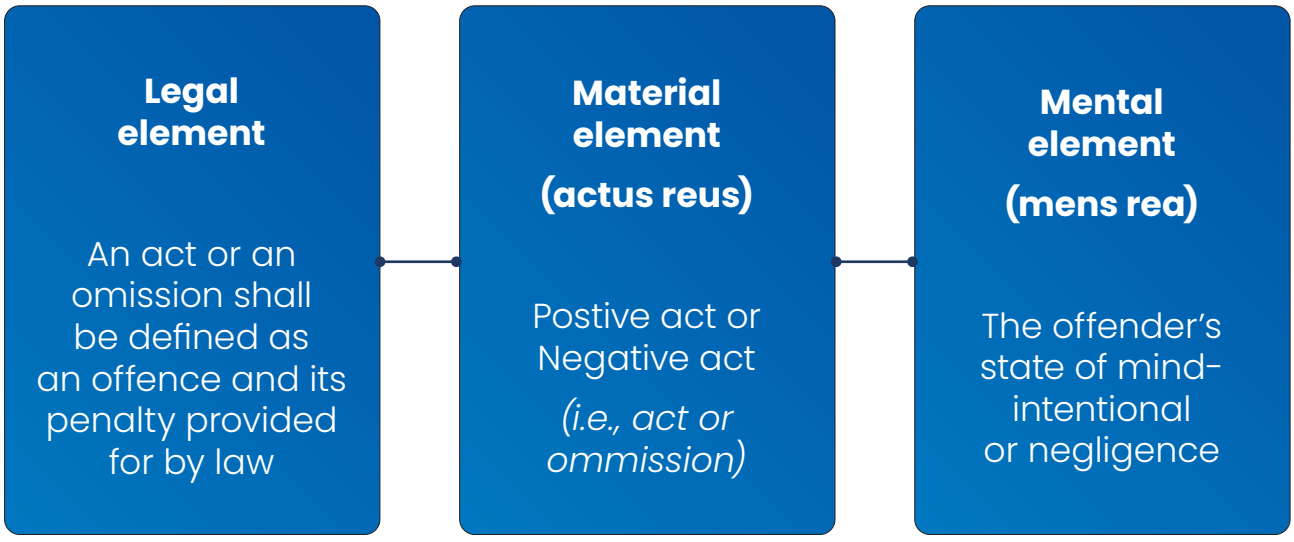
This is an offence provided for by article 244 which states "Any person who fails to assist or seek assistance for a person in danger while in a position to do so and when there could be no risk either for his/her personal action or for the third party, commits an offence".

The mental element (mens rea)

The offence exists, when, in addition to the two elements already studied, the moral element exists. In other words, the material act must have been a deed of the will of the author. That link between the act and the author, called by English law ***mens rea*** (state of mind) by opposition of ***actus reus*** (criminal act), constitutes a moral element. In the absence of that will, there is no infraction. However, the will does not have always the same intensity or the same extent.

When the author has wanted the act and its consequences, and has accomplished that act, one talks about criminal intention. This is the case for theft, murder, etc... On the other hand, when the author has wanted the act and not its consequences that he should have avoided, one will talk about a criminal fault. This is the case for unintentional offences resulting from recklessness, imprudence or negligence e.g. involuntary homicide.

Figure 21: Elements of an offence (criminal conduct)



Note: The three elements are cumulative, if one element is missing, there is no offence.

b) Key Financial Criminal Acts

i) Corruption

Corruption is defined as "Any act performed or caused to be performed in public organs, private institutions, civil society and international organisations operating or wishing to operate in Rwanda, which is aimed at soliciting, receiving or offering an illicit benefit in order to unlawfully obtain illicit enrichment or a given favour of sexual nature to unlawfully render a service or carry out an activity whether carried on by himself or herself or through another person..."[80]

Corruption can also be abuse of power or position for private illegal benefits. This is stipulated in article 15 which states that any public servant or any other person holding a public office who abuses his/ her position or powers he/she holds by virtue of that position and performs or omits to perform an act, in violation of laws, for the purpose of obtaining an illegal benefit for himself/herself or for another person, commits an offence. Upon conviction, he/she is liable to imprisonment for a term of not less than seven (7) years but not more than ten (10) years and a fine of not less than five million Rwandan francs (Frw 5 million) but not more than ten million Rwandan francs (Frw 10 million). Where the offence is committed with the aim of getting a profit valuable in money, the penalty becomes imprisonment for a term of not less than seven (7) years and not more than ten (10) years and a fine of three (3) to five (5).

Offence of corruption can also be committed by companies, cooperatives, institutions and organisations with legal personality. Companies, cooperatives, institutions and organisations with legal personality convicted of the offence of corruption are liable to a fine of seven (7) to ten (10) times the value of the illicit benefit received or accepted, solicited, given or promised.

ii) Other offences related to corruption

These offences include: acts of demanding, receiving in excess of the justified, exempting from tax or non-taxation, giving away for free or at very low price, public property by public servants, trafficking of influence, favouritism, seeking of benefits by employees from activities outside of their attributions, Illicit enrichment, tax invasion, and money laundering.

iii) Money laundering

Definition

Money laundering consists of the conversion, transfer or handling of property or funds whose perpetrator knows or is likely to know that such property or funds is the proceeds of crime or it derives from an act of participation in such crime.[81] The proceeds of an offence refer to property or funds derived from or obtained, directly or indirectly, through the commission of an offence. When there are reasons to suspect property or funds are proceeds of crime, the authority having the power to freeze or seize property or funds must immediately freeze or seize property or funds.

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[80] *Law n° 54/2018 of 13/08/2018 on fighting against corruption, art.2 (1).*

[81] Law No. 75/2019 of 29/01/2020 on prevention and punishment of money laundering, financing of terrorism and financing of proliferation of weapons of mass destruction (Anti-money laundering Law), art. 3 (9).

The law extends the freezing to property or funds used in, or intended for use in, the financing of terrorism, terrorist acts or terrorist organisations, as well as the financing of proliferation of weapons of mass destruction.[82] The authority either on its own initiative or on the request of a person claiming rights to the property or funds may lift the freezing or seizure decision.

The competent court may also issue a lifting order of freezing or seizure if it's established that the property or funds are clean or the grounds of freezing are not substantiated. The freezing period shall not exceed 3 days unless the case was referred to the criminal investigator.

Compliance requirements

The reporting persons have the obligation to:

(i) identify, assess, monitor, manage and take appropriate measures in mitigating risks of money laundering, financing of terrorism and financing of proliferation of weapons of mass destruction and apply risk-based approach;

(ii) develop and maintain programmes for combating money laundering, financing of terrorism and financing of proliferation of weapons of mass destruction;

(iii) identify and assess the money laundering, financing of terrorism and financing of proliferation of weapons of mass destruction risks that may arise from the new products, new technologies, and new business delivery.

The anti-money laundering law outlines the reporting persons that mainly operates in the most vulnerable activities targeted by the money launderers. [83] When a reporting person is dealing with high-risk customer, he/she has the obligation to conduct the enhanced due diligence. The same process applies to political exposed persons (PEP), occasional customers, and suspected client.

Definition of a PEP:

A politically exposed person means any person who is or has been entrusted with prominent public functions in Rwanda or in other countries, including his or her family members or other persons who are his or her close associates or have business or financial relationships with him or her.

A reporting person has also the obligation to report to the financial Intelligence Centre (FIC):

(i) all cash transactions equal or above the threshold set out by the Centre in an appropriate form and time determined by regulations set by the Centre;

(ii) any transaction equivalent to the amount less than the threshold set by the Centre, if such a transaction is part of a whole of transactions which are or seem to be linked and the total is less, equal or exceeds the threshold, and

(iii) make declaration of suspicious transactions.[84] The law requires also the reporting persons to keep records of the transactions for a period of 10 years.

[82] Anti-money laundering Law, art.5.

[83] *The list is enumerated under article 7 of the Anti-money laundering Law.*

[84] *Anti-money laundering Law, art.16 and 17.*

Criminal and administrative sanctions

The sanctions for money laundering include criminal sanctions and administrative sanctions. Money laundering acts are punishable by imprisonment for a term of not less than seven (7) years but not more than ten (10) years and a fine of Rwandan francs of three (3) to five (5) times the amount of money laundered.

The acts aiming at facilitating another person to benefit from laundered property or funds of a terrorist or of someone who may be a terrorist, by concealing, shifting from one place to another, transferring to other people the property or funds or by any other way are punishable by imprisonment for a term of not less than ten (10) years but not more than fifteen (15) years.

A legal entity that conducts money laundering, financing of terrorism and financing of proliferation of mass destructions acts through their representatives or members, commits an offence. Upon conviction, it is liable to a fine of Rwandan francs of ten (10) to twenty (20) times the amount of money laundered or given, without prejudice to the liability for complicity of its representatives. The funds and properties related to money laundering offences are subject to confiscation and the decision of confiscation indicates the concerned property or funds and the details necessary for their identification and location.[85]

iv) Fraudulent conducts criminalised under Companies Act

The criminalised acts criminalised by the company law include among other things: [86]

- Simple fraudulent bankruptcy: these are acts committed by an insolvent business person that can aggravate his/her insolvency status.
- Grave fraudulent bankruptcy: these include for example misappropriation or concealment of all or part of his or her assets; accepting debts that someone does not owe, or concealment of the books of accounts.
- Embezzlement or misuse of the assets of a company under insolvency.
- Poor book keeping.
- Refusal to provide information about an insolvent company.
- Concealment of real owner of property or pretending to be a debtor.
- Removal or fraudulent concealment of assets in favour of the bankrupt.
- Fraudulent dealings with a bankrupt.
- Contradicting a court disqualification order.
- Misuse and destruction of company's property.
- Carrying on business fraudulently.
- Disclosing false information on shares, abuse or misuse of power by a director.
- Disclosing information that may jeopardise investigation.

Any person who is convicted for any of the above offence can be liable for an imprisonment ranging between 6 months and 5 years and a fine that can amount up to Frw 10 million.

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[85] *Anti-money laundering Law, art.16 and 36.*

[86] *See Company Law, Chapter XVII, art. 339 et seq.*

Unit F key terms

Accountability F.1
Board of Directors F.2
Corporate governance F.1
Criminal conduct F.3
Delegation of power F.2
Due diligence F.1
Fax avoidance F.3
High risk F.3
Insider dealing F.3
Money laundering F.3
Responsibility F.1
Shareholders F.2
Suspicious transaction F.3
Tax invasion F.3
Transparency F.1

Summary of Unit F and key learning outcomes

Learning outcomes	Summary
Purposes, scope and approaches to corporate governance	Corporate governance mainly deals with the distribution of rights and responsibilities among different participants in the corporation such as inter alia, the board of directors, managers, shareholders, creditors, auditors or regulators. The business and affairs of a company are managed by or under the direction of the Board of Directors of the company except where the company's incorporation documents or this Law expressly reserve those powers to the shareholders or any other person. The National Bank of Rwanda plays a critical role in establishing corporate governance of financial companies by putting in place regulations and guidelines thereon. The corporate governance of non-financial companies complies with the company's incorporation documents or the Company Law.
Directors and officers	A private company must have at least one director and a public company shall have at least two (2) directors where at least one director must be a resident of Rwanda. Directors must act in a collegial administration and must be of a sufficient number provided for in incorporation documents of the company for a meeting to be attained. Directors are appointed by shareholders in the ordinary annual general meeting and by ordinary resolution. The law prohibits that in a public company, the functions of the chairperson of the Board of Directors and the Chief Executive Officer be exercised by the same individual. A public company is also required to have a company secretary who shall be a Rwandan resident.
Fraudulent behaviours	We explored the essentials of the criminal liability that include elements of offence and financial crimes. The elements of an offence are the legal element, material element (actus reus) and mental element (means rea). We also explored as the financial crimes that include corruption and related offences, money laundering and reporting requirements as well as their punishments. The company law also determines some fraudulent conducts that are criminalised by the law as well as their punishment.

Quiz questions

1. Which of the following outlines the role or importance of corporate governance? *(select one most correct answer)*

   A. Corporate governance ensures the distribution of rights and responsibilities among different participants in the corporation such as *inter alia*, the board of directors, managers, shareholders, creditors, auditors or regulators.

   B. Corporate governance defines only how the business and affairs of a company are managed by or under the direction of the Board of Directors of the company.

   C. Corporate governance explains only how a private company with one director is managed and how he/she exercises the powers and carries out the duties of a Board of Directors.

   D. Corporate governance provides only fundamental rights attached to shares.

2. Arrange the below steps of identifying the company ultimate beneficial owners i.e., which step is conducted before another? *(select the correct combination under I, ii, iii, iv, v, iv)*

   A. where no natural person is identified under other steps, the reporting person should identify the relevant natural person who holds the position of senior managing official.

   B. if there is any doubt as to whether the persons with controlling ownership interest are the beneficial owners, or where no natural person exerts control through ownership interests, then identiy the natural persons (if any) exercising control of the legal person through other means should be obtained and verified.

   C. Identify natural persons, who directly or indirectly, whether acting alone or together, ultimately have a controlling ownership interest in a legal person should be obtained and verified.

   (i) A, B, C

   (ii) A,C,B

   (iii) B,C,A

   (iv) C,B,A

   (v) C,A,B

   (vi) C,A,B

3. Which of the following are part of the functions of the National Bank of Rwanda as regulator of the financial sector? *(select all that apply)*

   A. Implementor and guardian of monetary policy

   B. Issuer of the currency

   C. Lender of last resort

   D. Credit operations controller

   E. Central clearance bank

4. What is requirement for the Board of Directors composition in the banking sector? *(select all that apply)*

   A. The board must be comprised of at least seven (7) directors, of which at least four (4) of them must be independent directors. Should a bank decide to have more than seven (7) directors, the 4/7 ratio must be maintained at all times.

   B. The Board of Directors must be comprised of individuals with a balance of skills, diversity and expertise, who collectively possess the necessary qualifications commensurate with the size, complexity and risk profile of the bank.

   C. A bank is allowed to have any number of Board members provided that the majority are non-executive Directors with different skills and academic level.

   D. Tier II banks are allowed to have 5 board members and 3 of them have to be independent.

5. The term of Directors' office in banking sector is: *(select one)*

   A. Three (3) years renewable only once

   B. Three (3) years renewable only twice

   C. Five (5) years renewable once

   D. Four 4 years renewable twice

6. What is requirement for the Board of Directors composition in non-financial company? *(select all that apply)*

   A. In a public company, a majority of directors must be non-executive directors and at least one-third (1/3) of the directors must be independent directors.

   B. A public company shall have at least two (2) directors where at least one director must be a resident of Rwanda.

   C. A public company can have one (1) Director provided that he/she is a resident of Rwanda.

   D. Directors must act in a collegial administration and must be of a sufficient number provided for in incorporation documents of the company for a meeting to be attained.

7. Which of the following statements is correct? *(select one)*

   A. Under Rwanda Companies Act, a public company is required to have a company secretary who must be a Rwandan resident while it is optional for a private company.

   B. Under Rwanda Companies Act, a private company is required to have a company secretary who must be a Rwandan resident while it is optional for a public company.

   C. Under Rwanda Companies Act, both a public company and private company are required to have a company secretary who must be a Rwandan resident.

   D. Under Rwanda Companies Act, both a public company and private company may have a company secretary who may be a Rwandan resident.

8. Under Rwanda Law, the criminalisation of business fraudulent behaviour as an offence requires to fulfil the following elements: *(select one)*

   A. Legal element and material element (actus reus)

   B. Legal element, material element (actus reus) and mental element (mens rea).

   C. Legal element, and mental element (mens rea).

   D. Material element (actus reus) and mental element (mens rea).

9. What is the meaning of a Political Exposed Person (PEP) under anti-money laundering reporting guidelines? *(select one)*

   A. A politically exposed person means any government official who is paid as public servant and have public finance management in their responsibilities.

   B. A politically exposed person means the five-government official that is President of the Republic, Speaker of Senate, Speaker of the Deputies Chambers, President of Supreme Court and Prime Minister.

   C. A politically exposed person means any person who is or has been entrusted with prominent public functions in Rwanda or in other countries, including his or her family members or other persons who are his or her close associates or have business or financial relationships with him or her.

   D. A politically exposed person means any member of cabinet.

10. Which of the following statements constitute fraudulent behaviour criminalised under Company Law? *(select all that apply)*

   A. Embezzlement or misuse of the asset of a company under insolvency.

   B. Poor book keeping.

   C. Refusal to provide information about an insolvent company.

   D. Disclosing false information on shares, abuse or misuse of power by a director, and

   E. Disclosing information that may jeopardise investigation

Unit G: Ethical principles

Learning Outcomes

G1. Ethics, law and compliance
G2. Ethics and professionalism
G3. Corporate codes of ethics
G4. Ethical dilemmas

G.1. Ethics, law and compliance

a) Definition of professional ethics

The accountancy profession like any other profession is not an ordinary vocation or an occupation as it is a self-dedication to act in the public interest. This is a profession that can be achieved with the highest professional standard only through the dedication, determination and discipline.

In one sense, the term ethics refers narrowly to the system of professional regulations governing the conduct of professionals. In a broader sense however, it is understood as the central traditions of philosophy and religion.[87] A man is wired to do many things but among those things there are bad things. That is human nature. The judgment of any human being is different from others. The judgment is individual. In the career there are things we do to kill the professional or to lift the profession and that is why it is important to have ethics.

Integrity is rooted in ethics. Normally integrity is supposed to be positive and not a vice. Integrity without knowledge is weak and useless, and knowledge without integrity is dangerous and dreadful. It is not easy to define ethics but, in the definition, there are some elements to include like, accountability, honesty, honour, trust, truth, openness, hard work, resilience, competence, diligence, proficiency, perseverance, charity, sacrifice, selflessness, self-denial and self-esteem among other.

b) Relationship between ethical, legal and compliance requirements

As mentioned under unit one, the government enacts legislations to protect the rights of individuals and to ensure peace, security and order, functioning and existence of the society as well as protection of the public interest. Legal instruments are codified to provide answers to the various daily problems that can arise in society. Given a professional accountant has the obligation to act in the general interest, he/she is a servant of the law. In his/her duties, he/she has to make sure that he/she complies with laws, internal policies/procedures and relevant standards.

Therefore, ethics ensure full implementation of the legal enactments and alignment with compliance requirements. Moreover, the accountancy profession is provided for

[87] *Deborah L. Rhode and David Luban, Legal Ethics, Fourth Edition, Foundation Press, New York, 2004, p 3*

and protected by the law and the latter is the main source of the ethics besides the morals rules to act under professional conscience without necessarily fearing the legal consequences. On the other hand, the compliance in accountancy profession is a choice to make in order to uphold one's reputation. This is a key principle for members of the profession. Everyone is responsible to maintain the reputation of the profession so that people can have confidence in his/her services.

c) Profession and other occupations

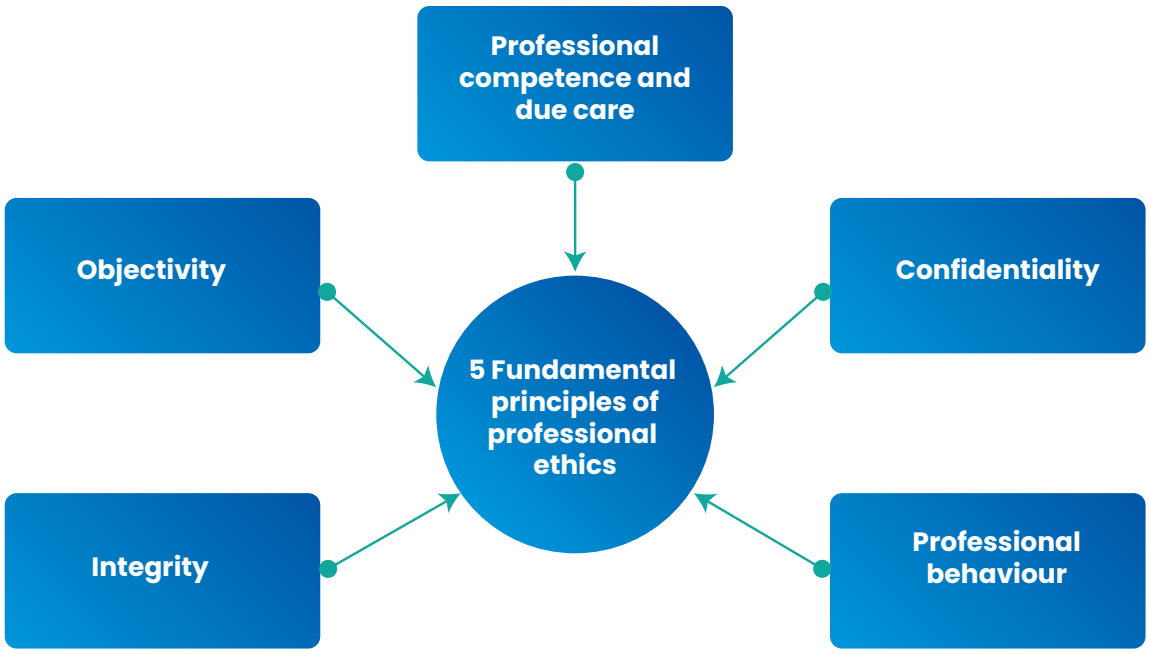
The main difference between accountancy profession and other occupations is the accountant's dedication and acceptance of the responsibility to serve and act in the best interest of the public. In is in this respect the responsibility or obligation of a professional accountant is not only limited to the satisfaction of the needs of an individual client or his/her employer but also to preserve and serve the common good. Hence, in acting in the public interest, a professional accountant shall be guided by his/her ethical judgment while observing and complying with relevant laws, regulations, internal rules and code of ethics.

G.2. Ethics and professionalism

a) Fundamental principles of professional ethics

A professional accountant shall comply with the following fundamental principles: Integrity, objectivity, professional competence and due care, confidentiality and professional behaviour.

Figure 22: Fundamental principles of professional ethics



i) Integrity

The principle of integrity imposes an obligation on all professional accountants to be straightforward and honest in all professional and business relationships. Integrity also implies fair dealing and truthfulness. A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the professional accountant believes that the information contains a materially false or misleading statement or data or statements or information furnished recklessly; or the information contains material omissions or misleading statements or any kind of misrepresentation.

When a professional accountant becomes aware that he/she is being or has been associated with such information, he/she shall take immediate tangible steps to be disassociated from that information such as reporting the matter to the line manager, informing the concerned person and sending a modification, amendment or corrective note/alert to all recipients of the information while working on correcting information if the act would take time. Once the document or information is published, an erratum or amendment of the same shall be also published subject to internal approval procedure.

ii) Objectivity

The principle of objectivity requires all professional accountants to act with objective judgement, avoid bias, conflict of interest or external and internal influence. A professional accountant has to make sure that he/she produces an objective financial report or financial statements. This will raise the credibility of the reports and the objective personality of the accountant within the organisation or in the eyes of other stakeholders. When it comes to auditing, the professional accountant shall review the financial records with due care and professional analysis to detect the accuracy of any document on his/her table. A professional accountant has to know his/her boss (Know Your Boss rule) and adopt useful strategies to deal with situations that may impair his/her objectivity.

iii) Professional competence and due care

Under this principle, a professional account is under obligation to maintain professional competencies and required skills to discharge of his/her duties to serve the employer and customer with high professionalism; and act with high due diligence in the compliance with relevant technical and professional standards.

iv) Confidentiality

Confidentiality refers to non-disclosure or non- exchange of sensitive information without authorisation or protection of sensitive data and privacy. All information that comes to the knowledge of a professional accountant shall be treated as confidential information unless expressed otherwise or the same information was made public.

The confidentiality principle imposes also the use of the information for the intended purpose and prohibits the accountant from exploiting the information for private gain. The obligation of confidentiality shall also be extended to the staff working with the professional accountant or under his/her supervision. Hence, he/she shall take reasonable steps to ensure his/her confidentiality obligation is upheld in all circumstances. It is important to note that this duty of confidentially persists even after the termination of the employment relationships.

v) Professional behaviour

Professional accountants must not knowingly engage in any business, occupation or activity which impairs or might impair the integrity, objectivity or good reputation of the profession, and as a result would be incompatible with the fundamental principles. Therefore, the professional accountants' acts must be in compliance with the applicable laws, regulations, guidelines, internal policies and procedures and relevant standards. They must avoid any behaviour that can tarnish or impair their professional and protection their image inside and outside the organisation.

G.3. Corporate codes of ethics

To ensure ethical conduct, organizations and professional accountants must adhere to fundamental ethical principles. This necessitates establishing an internal code of conduct, implementing relevant policies such as anti-fraud measures, and fostering a strong whistleblowing culture within the organization.

i) Internal organisation code of conduct

A code of conduct includes policies and rules for employees and employers to follow in the workplace. Often, a company uses its core values, including its mission, to guide the creation of these codes. These guidelines outline how people can appropriately interact with one another at work. The code of conduct should clearly define what is allowed, prohibitions, restrictions, protections and consequences in the event of breach. It has to indicate the ways to address the breach such as disciplinary procedure and sanctions that are objectively proportionate to the severity of the breach.

ii) Anti-fraud policy

Some organisations have defined fraud in their policies as a number of activities including theft, false accounting, embezzlement, bribery, deception. false representation failure to disclose information and abuse of position for private or personal benefits. Hence, putting in place an anti-fraud policy will serve as an accountability tool where each act of the employees in general and the professional accountant in particular will be free of any kind of fraud. The policy should provide for regular training to all staff to ensure full implementation and compliance. The policy must also share the procedure of identifying the fraud, fraud detection mechanisms, investigation of the suspected fraud, and reporting procedures. The organisation shall have the organisation to conduct fraud risk assessment and vulnerable areas of business or activities and take preventive measures; and remain alerted of the emerging threats.

iii) Whistleblowing culture

Whistleblowing is an act of reporting perceived unethical conduct of employees, management of the organisation and/or other stakeholders by an employee, or any other person to relevant authority (ies). In putting in place the whistleblowing culture, an organisation shall put in place anonymous reporting facility and protection of a whistle-blower against retaliation, harassment, and unfair treatment.

G.4. Ethical dilemmas

a) Ethical threats and safeguards

Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances and relationships. The nature and significance of the threats may differ depending on whether they arise in relation to the provision of services to an audit client and whether the audit client is a public interest entity, to an assurance client that is not an audit client, or to a non-assurance client.

Example:

Threats fall into one or more of the following categories: self-interest, self-review, advocacy, familiarity and intimidation among others.

A professional accountant in public practice shall exercise judgment to determine how best to deal with threats that are not at an acceptable level, whether by applying safeguards to eliminate the threat or reduce it to an acceptable level or by terminating or declining the relevant engagement. In exercising this judgment, a professional accountant in public practice shall consider whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude that the threats would be eliminated or reduced to an acceptable level by the application of safeguards such that compliance with the fundamental principles is not compromised.

This consideration will be affected by matters such as the significance of the threat, the nature of the engagement and the structure of the firm. In the work environment, the relevant safeguards will vary depending on the circumstances. Work environment safeguards comprise firm-wide safeguards and engagement-specific safeguards.

b) Ethical conflict resolution

A professional accountant may be required to resolve a conflict in complying with the fundamental principles. When initiating either a formal or informal conflict resolution process, the following factors, either individually or together with other factors, may be relevant to the resolution process: relevant facts, ethical issues involved, fundamental principles related to the matter in question, established internal procedures; and alternative courses of action.

Having considered the relevant factors, a professional accountant shall determine the appropriate course of action, weighing the consequences of each possible course of action. If the matter remains unresolved, the professional accountant may wish to consult with other appropriate persons within the firm or employing organisation for help in obtaining resolution. Where a matter involves a conflict with, or within, an organisation, a professional accountant shall determine whether to consult with those charged with governance of the organisation, such as the board of directors or the audit committee. It may be in the best interests of the professional accountant to document the substance of the issue, the details of any discussions held, and the decisions made concerning that issue. If a significant conflict cannot be resolved, a professional accountant may consider obtaining professional advice from the relevant professional body or from legal advisors.

The professional accountant generally can obtain guidance on ethical issues without breaching the fundamental principle of confidentiality if the matter is discussed with

the relevant professional body on an anonymous basis or with a legal advisor under the protection of legal privilege. Instances in which the professional accountant may consider obtaining legal advice vary. For example, a professional accountant may have encountered a fraud, the reporting of which could breach the professional accountant's responsibility to respect confidentiality. The professional accountant may consider obtaining legal advice in that instance to determine whether there is a requirement to report.

If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a professional accountant shall, where possible, refuse to remain associated with the matter creating the conflict.

Note:

The professional accountant shall determine whether, in the circumstances, it is appropriate to withdraw from the engagement team or specific assignment, or to resign altogether from the engagement, the firm or the employing organisation.

c) Conflict of interest management

A professional accountant in public practice shall take reasonable steps to identify circumstances that could pose a conflict of interest. Such circumstances may create threats to compliance with the fundamental principles.

Example:

A threat to objectivity may be created when a professional accountant in public practice competes directly with a client or has a joint venture or similar arrangement with a major competitor of a client.

A threat to objectivity or confidentiality may also be created when a professional accountant in public practice performs services for clients whose interests are in conflict or the clients are in dispute with each other in relation to the matter or transaction in question.

A professional accountant in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate the threats or reduce them to an acceptable level. Before accepting or continuing a client relationship or specific engagement, the professional accountant in public practice shall evaluate the significance of any threats created by business interests or relationships with the client or a third party.

Where a conflict of interest creates a threat to one or more of the fundamental principles, including objectivity, confidentiality, or professional behaviour, that cannot be eliminated or reduced to an acceptable level through the application of safeguards, the professional accountant in public practice shall not accept a specific engagement or shall resign from one or more conflicting engagements.

Where a professional accountant in public practice has requested consent from a client to act for another party (which may or may not be an existing client) in respect of a matter where the respective interests are in conflict and that consent has been refused by the client, the professional accountant in public practice shall not continue to act for one of the parties in the matter giving rise to the conflict of interest.

Unit G key terms

Confidentiality G.2
Conflict of interest G.4
Conflict resolution G.4
Declaration G.4
Due Care G.2
Ethical values G.1
Expert G.1
Fraud G.3
Integrity G.2
Liberal professional G.1
Objectivity G.2
Professionalism G1
Reporting G.3
Whistle-blowing G.3

Summary of Unit G and key learning outcomes

Learning outcomes	Summary
Ethics, law and compliance	The accountancy profession like any other profession is not an ordinary vocation or an occupation as it is a self-dedication to act in the public interest. In his/her duties, he/she has to make sure that he/she complies with laws, internal policies/procedures and relevant standards. Therefore, ethical is there to ensure full implementation of the legal enactments and alignment with compliance requirements. Moreover, the accountancy profession is provided for and protected by the law and the latter is the main source of the ethics besides the morals rules to act under professional conscience without necessarily fearing the legal consequences. On the other hand, the compliance in accountancy profession is a choice to make in order to uphold reputation.
Ethics and professionalism	A professional accountant shall comply with the following fundamental principles: Integrity, objectivity, professional competence and due care, confidentiality and professional behaviour.
Corporate codes of ethics	The implementation of the fundamental principles of professional ethics needs to put in place the internal code of conduct, relevant policies such anti-fraud and embed a whistleblowing culture in the daily activities within the organisation.
Ethical dilemmas	Threats fall into one or more of the following categories: self-interest, self-review, advocacy, familiarity and intimidation among others. A professional accountant in public practice shall exercise judgment to determine how best to deal with threats that are not at an acceptable level, whether by applying safeguards to eliminate the threat or reduce it to an acceptable level or by terminating or declining the relevant engagement. When initiating either a formal or informal conflict resolution process, the following factors, either individually or together with other factors, may be relevant to the resolution process: relevant facts, ethical issues involved, fundamental principles related to the matter in question, established internal procedures; and alternative courses of action.

Quiz questions

1. Which of the following can describe the relationship between ethics, law and compliance? *(select all that apply)*

   A. A professional accountant has the obligation to act in the general interest and the letter is one of the functions of the law. Hence, an accountant is a servant of the law and he/she has to make sure that he/she complies with laws, internal policies/procedures and relevant standards in discharging of his/her duties.

   B. The accountancy is an independent profession, hence, a professional accountant has only the obligation to act in the interest of his /her organisation in compliance with the internal rules and procedures even though the latter are not in compliance with the relevant laws.

   C. Ethical is there to ensure full implementation of the legal enactments and alignment with compliance requirements.

   D. The accountancy profession is provided for and protected by the law and the latter is the main source of the ethics besides the morals rules to act under professional conscience with fearing the legal consequences.

2. Which of the following are the principles of professional ethics? *(select all that apply)*

   A. Integrity

   B. Objectivity

   C. Professional competence and due care

   D. Confidentiality and

   E. Professional behaviour.

3. Which of the following statements describe the integrity of a professional accountant? (*select all that apply)*

   A. The principle of integrity imposes an obligation on all professional accountants to be straightforward and honest in all professional and business relationships.

   B. When a professional accountant becomes aware that he/she is being or has been associated with materially false or misleading statement or data or statements or information, he/she shall not disclose the matter to his line manager as it can have adverse impact on his/her employment and reputation.

   C. Integrity implies fair dealing and truthfulness.

   D. A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the professional accountant believes that the information contains a materially false or misleading statement or data or statements or information furnished recklessly; or the information contains material omissions or misleading statements or any kind of misrepresentation.

4. Objectivity of a professional accountant means: *(select all that apply)*

   A. A professional accountant has to act with objective judgement, avoid bias, conflict of interest or external and internal influence.

   B. A professional accountant has to make sure that he/she produces an objective financial report or financial statements.

   C. A professional accountant shall comply with his/her boss commend and act accordingly regardless of whether the commend can jeopardize his/her objectify or lead to a false reporting.

   D. A professional accountant shall review the financial records with due care and professional analysis to detect the accuracy of any document on his/her table when it comes to auditing.

5. Which of the following define the confidentiality of a professional accountant? *(select all that apply)*

   A. The obligation of confidentiality shall not be also extended to the staff working with the professional accountant or under his/her supervision as the responsibility is individual.

   B. The confidentiality refers to non-disclosure or non- exchange of the confidential information without authorisation or protection of confidential data and privacy.

   C. The congeniality means that all information which comes to the knowledge of a professional accountant shall be treated as confidential information unless expressed otherwise or the same information was made public.

   D. The confidentiality principle imposes also the use of the information for the intended purpose and prohibits the account to exploit the information for private gain.

6. Which of the following statements mean professional behaviour? *(select all that apply)*

   A. Professional accountants must not knowingly engage in any business, occupation or activity which impairs or might impair the integrity, objectivity or good reputation of the profession.

   B. The professional accounts' acts must be in compliance with the applicable laws, regulations, guidelines, internal policies and procedures and relevant standards.

   C. Professional accountants can engage in any business that would be incompatible with the fundamental principles subject to get approval of his line manager or direct supervisor.

   D. Professional accountants must avoid any behaviour that can tarnish or impair their professional and protection their image inside and outside the organisation.

7. Which of the following are main categories of ethical threats? *(select all that apply)*

   A. self-interest,

   B. Friendship or enmity

   C. self-review or advocacy

D. familiarity or intimidation

8. Which of the following are the safeguards to ethical threats? *(select all that apply)*

   A. A professional accountant in public practice shall exercise judgment to determine how best to deal with threats that are not at an acceptable level, whether by applying safeguards to eliminate the threat or reduce it to an acceptable level or by terminating or declining the relevant engagement.

   B. A professional accountant shall ensure not to disclose the information to any person and eliminate the threat in a confidential manner.

   C. In exercising this judgment, a professional accountant in public practice shall consider whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude that the threats would be eliminated or reduced to an acceptable level by the application of safeguards such that compliance with the fundamental principles is not compromised.

   D. A professional accountant shall first report any threat through any whistleblowing facility before taking tangible steps to eliminate avoid repercussions thereon.

9. Which of the following are the relevant factors to be taken into account in initiating either a formal or informal ethical conflict resolution process? *(select all that apply)*

   A. Relevant facts

   B. Self-reporting process

   C. Ethical issues involved

   D. Fundamental principles related to the matter in question

   E. Established internal procedures; and alternative courses of action.

10. Where a conflict of interest creates a threat to one or more of the fundamental principles, including objectivity, confidentiality, or professional behaviour, that cannot be eliminated or reduced to an acceptable level through the application of safeguards, the professional accountant in public practice shall do the following to manage the conflict of interest: *(select all that apply)*

    A. Not accept a specific engagement

    B. Ignore the conflict of interest and proceed in the normal procedure provided that he has informed his/her line manager of the potential conflict.

    C. Shall resign from one or more conflicting engagements.

    D. Not continue to act for one of the parties in the matter giving rise to the conflict of interest.

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