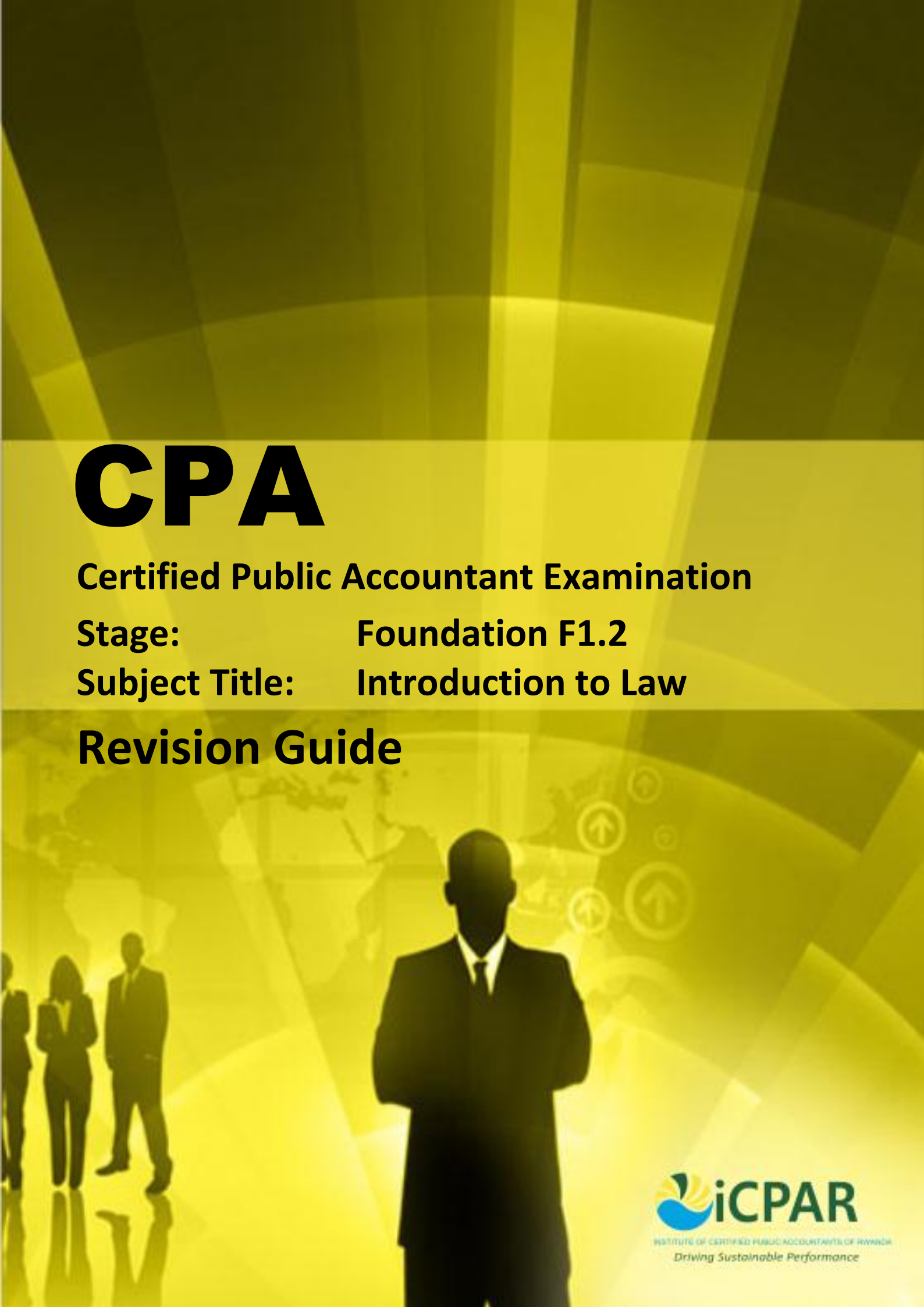
CPA

Certified Public Accountant Examination

Stage: Foundation F1.2

Subject Title: Introduction to Law

Revision Guide



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INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF RWANDA
Driving Sustainable Performance

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STUDY TECHNIQUE

What is the best way to manage my time?

- **Identify all available free time between now and the examinations.**
- **Prepare a revision timetable with a list of "*must do*" activities.**
- **Remember to take a break (approx 10 minutes) after periods of intense study.**

What areas should I revise?

- **Rank your competence from Low to Medium to High for each topic.**
- **Allocate the least amount of time to topics ranked as high.**
- **Allocate between 25% - 50% of time for medium competence.**
- **Allocate up to 50% of time for low competence.**

How do I prevent myself veering off-track?

- **Introduce variety to your revision schedule.**
- **Change from one subject to another during the course of the day.**
- **Stick to your revision timetable to avoid spending too much time on one topic.**

Are study groups a good idea?

- **Yes, great learning happens in groups.**
- **Organise a study group with 4 – 6 people.**
- **Invite classmates of different strengths so that you can learn from one another.**
- **Share your notes to identify any gaps.**

EXAMINATION TECHNIQUES

INTRODUCTION

Solving and dealing with problems is an essential part of learning, thinking and intelligence. A career in accounting will require you to deal with many problems.

In order to prepare you for this important task, professional accounting bodies are placing greater emphasis on problem solving as part of their examination process.

In exams, some problems we face are relatively straightforward, and you will be able to deal with them directly and quickly. However, some issues are more complex and you will need to work around the problem before you can either solve it or deal with it in some other way.

The purpose of this article is to help students to deal with problems in an exam setting. To achieve this, the remaining parts of the article contain the following sections:

- Preliminary issues
- An approach to dealing with and solving problems
- Conclusion.

Preliminaries

The first problem that you must deal with is your reaction to exam questions.

When presented with an exam paper, most students will quickly read through the questions and then many will … **PANIC!**

Assuming that you have done a reasonable amount of work beforehand, you shouldn't be overly concerned about this reaction. It is both natural and essential. It is natural to panic in stressful situations because that is how the brain is programmed.

Archaeologists have estimated that humans have inhabited earth for over 200,000 years. For most of this time, we have been hunters, gatherers and protectors.

In order to survive on this planet we had to be good at spotting unusual items, because any strange occurrence in our immediate vicinity probably meant the presence of danger. The brain's natural reaction to sensing any extraordinary item is to prepare the body for 'fight or flight'. Unfortunately, neither reaction is appropriate in an exam setting.

The good news is that if you have spotted something unusual in the exam question, you have completed the first step in dealing with the problem: its identification. Students may wish to use various relaxation techniques in order to control the effects of the brain's extreme reaction to the unforeseen items that will occur in all examination questions.

However, you should also be reassured that once you have identified the unusual item, you can now prepare yourself for dealing with this, and other problems, contained in the exam paper.

A Suggested Approach for Solving and Dealing with Problems in Exams.

The main stages in the suggested approach are:

1. Identify the Problem
2. Define the Problem
3. Find and Implement a Solution
4. Review

1. Identify the Problem

As discussed in the previous section, there is a natural tendency to panic when faced with unusual items. We suggest the following approach for the preliminary stage of solving and dealing with problems in exams:

Scan through the exam question

You should expect to find problem areas and that your body will react to these items.

PANIC!!

Remember that this is both natural and essential.

Pause

Take deep breaths or whatever it takes to help your mind and body to calm down.

Try not to exhale too loudly – you will only distract other students!

Do something practical

Look at the question requirements.

Note the items that are essential and are worth the most marks.

Start your solution by neatly putting in the question number and labelling each part of your answer in accordance with the stated requirements.

Actively reread the question

Underline (or highlight) important items that refer to the question requirements. Tick or otherwise indicate the issues that you are familiar with. Put a circle around unusual items that will require further consideration.

2. Define the Problem

Having dealt with the preliminary issues outlined above, you have already made a good start by identifying the problem areas. Before you attempt to solve the problem, you should make sure that the problem is properly defined. This may take only a few seconds, but will be time well spent. In order to make sure that the problem is properly defined you should refer back to the question requirements. This is worth repeating: Every year, Examiner Reports note that students fail to pass exams because they do not answer the question asked. Examiners have a marking scheme and they can only award marks for solutions that deal with the issues as stipulated in the question requirements. Anything else is a waste of time. After you have re-read the question requirements ask yourself these questions in relation to the problem areas that you have identified:

Is this item essential in order to answer the question?

Remember that occasionally, examiners will put 'red herrings' (irrelevant issues) into the question in order to test your knowledge of a topic.

What's it worth?

Figure out approximately how many marks the problem item is worth. This will help you to allocate the appropriate amount of time to this issue.

Can I break it down into smaller parts?

In many cases, significant problems can be broken down into its component parts. Some parts of the problem might be easy to solve.

Can I ignore this item (at least temporarily)?

Obviously, you don't want to do this very often, but it can be a useful strategy for problems that cannot be solved immediately.

Note that if you leave something out, you should leave space in the solution to put in the answer at a later stage. There are a number of possible advantages to be gained from this approach:

1) It will allow you to make progress and complete other parts of the question that you are familiar with. This means that you will gain marks rather than fretting over something that your mind is not ready to deal with yet.

2) As you are working on the tasks that you are familiar with, your mind will relax and you may remember how to deal with the problem area.

3) When you complete parts of the answer, it may become apparent how to fill in the missing pieces of information. Many accounting questions are like jigsaw puzzles: when

you put in some of the parts that fit together, it is easier to see where the missing pieces should go and what they look like.

3. Find and Implement a Solution

In many cases, after identifying and defining the problem, it will be easy to deal with the issue and to move on to the next part of the question. However, for complex problems that are worth significant marks, you will have to spend more time working on the issue in order to deal with the problem. When this happens, you should follow these steps:

Map out the problem

Depending on your preferred learning style, you can do this in a variety of ways including diagrams, tables, pictures, sentences, bullet points or any combination of methods. It is best to do this in a working on a separate page (not on the exam paper) because some of this work will earn marks. Neat and clearly referenced workings will illustrate to the examiner that you have a systematic approach to answering the question.

Summarise what you know about the problem

Make sure that this is brief and that it relates to the question requirements. Put this information into the working where you have mapped out the problem. Be succinct and relevant. The information can be based on data contained in the question and your own knowledge and experience. Don't spend too long at this stage, but complete your workings as neatly as possible because this will maximise the marks you will be awarded.

Consider alternative solutions

Review your workings and compare this information to the question requirements. Complete as much of the solution as you can. Make sure it is in the format as stipulated in the question requirements. Consider different ways of solving the problem and try to eliminate at least one alternative.

Implement a solution

Go with your instinct and write in your solution. Leave extra space on the page for a change of mind and/or supplementary information. Make sure the solution refers to your workings that have been numbered.

4. Review

After dealing with each problem and question, you should spend a short while reviewing your solution. The temptation is to rush onto the next question, but a few moments spent in

reviewing your solution can help you to gain many marks. There are three questions to ask yourself here:

Have I met the question requirements?

Yes, we have mentioned this already. Examiner Reports over the years advise that failure to follow the instructions provided in the question requirements is a significant factor in causing students to lose marks. For instance, easy marks can be gained by putting your answer in the correct format. This could be in the form of a report or memo or whatever is asked in the question. Likewise, look carefully at the time period requested. The standard accounting period is 12 months, but occasionally examiners will specify a different accounting period.

Is my solution reasonable?

Look at the figures in your solution. How do they compare relative to the size of the figures provided in the question?

For example, if Revenue were 750,000 and your Net Profit figure was more than 1 million, then clearly this is worth checking.

If there were some extraordinary events it is possible for this to be correct, but more than likely, you have misread a figure from your calculator. Likewise, the depreciation expense should be a fraction of the value of the fixed assets.

What have I learned?

Very often in exams, different parts of the solution are interlinked. An answer from one of your workings can frequently be used in another part of the solution. The method used to figure out an answer may also be applicable to other parts of your solution.

Conclusion

In order to pass your exams you will have to solve many problems. The first problem to overcome is your reaction to unusual items. You must expect problems to arise in exams and be prepared to deal with them in a systematic manner. John Foster Dulles, a former US Secretary of State noted that: *The measure of success is not whether you have a tough problem to deal with, but whether it is the same problem you had last year.* We hope that, by applying the principles outlined in this article, you will be successful in your examinations and that you can move on to solve and deal with new problems.

Stage: Foundation 1

Subject Title: F1.2 Introduction to Law

Examination Duration: 3 Hours

ASSESSMENT STRATEGY

Examination Approach
Students are required to demonstrate their understanding of the legal principles, concepts, case law and legislative provisions that are relevant to the work of an accountant.

Students are presented with both essay and scenario questions. In answering essay-type questions they are required to demonstrate an ability to analyse and discuss the relevant concepts. With scenario-based questions, students should identify the material or relevant facts, discuss the relevant rules of law, apply these rules to the facts and draw appropriate conclusions. Questions are framed so that students have the opportunity to integrate case law and/or statutory provisions, as appropriate, in their answers.

Examination Format
The examination is unseen, closed book and 3 hours' in duration. Students are required to answer 5 questions out of 7.

Marks Allocation
Each question carries 20 marks. The total for the paper is 100 marks.

Learning Resources – Core Texts
The Contribution of the Rwanda Tribunal to the Development of International Law — Larissa J. Van Den Herik - Martinus Nijhoff Publishers

International Criminal Law – Antonio Cassese

Manuals
F1.2 Introduction to Law – Institute of Certified Public Accountants of Rwanda

Useful Websites
(as at date of publication)
http://www.icparwanda.com/
http://www.rra.gov.rw/
http://org.rdb.rw/
http://www.hg.org/1table.html
http://www.un.org/en/law/index.shtml
http://www.geneva-academy.ch/RULAC/national_legislation.php?id_state=185
http://www.minijust.gov.rw/moj/default.aspx?UR=http://www.google.co.uk/url?sa=t&rct=j&q=ministry%20of%20justice%20rwanda&source=web&cd=1&ved=0CEYQFjAA&url=http://www.minijust.gov.rw/&ei=6LL6T7miDoel0AWJlKj8Bg&usg=AFQjCNFQpYHWUIZJOA6pOVDbAKBna5Gn0g
http://www.amategeko.net/index.php?Parent_ID=3&Langue_ID=An

REVISION QUESTIONS AND SOLUTIONS

Stage: **Foundation F1.2**

Subject Title: **Introduction to Law**

F1.2 – Introduction to Law

Revision Questions & Solutions

Question 1

Explain the differences between criminal and civil law

Solution 1

Criminal law consists of rules prohibiting anti-social conduct as well as certain deviant behaviour. It aims to shape people's conduct along lines which are beneficial to society, by preventing them from doing what is bad for society. In Rwanda as elsewhere, these prohibitions are listed in the penal code and a number of subsidiary legislation. Also forming part of the criminal justice system are courts, which adjudicate questions of criminal liability, as well as the police force and other enforcement agencies which exist not only to maintain law and order but also to detect and prosecute violations against the criminal law. It is the society through Government employees called public prosecutors that bring court action against violators. If a person is found guilty of the crime such as theft, the person will be punished by imprisonment and or a fine. When a fine is paid, the money goes to the side of the government, not to victim of the crime.

Civil law lays down rules, principles and standards which create rights and duties and specifies remedies to back up those rights. The duties are owed by one person (including corporations) to another. Actions for the breach of civil duty must be brought by the injured party himself or his representative. Generally, the court does not seek to punish the wrongdoer but rather to compensate the injured party for the harm he or she has suffered. For instance, if someone carelessly runs a car into yours that person has committed a civil wrong (tort) of negligence. If you have suffered damages you will be able to recover to the extent of the damages suffered.

Note that although civil law does not aim to punish, there is an exception. If the behaviour of someone who commits a tort is outrageous, that person can be made to pay punitive damages (also called exemplary damages). Unlike a fine paid in a criminal case, punitive damages go to the injured party.

Sometimes, the same behaviour can violate both the civil law and the criminal law. For instance, a person whose careless driving causes the death of another may face both a criminal prosecution by the state and a civil suit for damages by survivors of the deceased. If both suits are successful, the person would pay back society for the harm done through a fine and or a sentence, and compensate the survivors through the payment of the money damages.

Question 2

Sources of national laws in Rwanda are ranged according to their hierarchy, what are the hierarchy laws and explain each of them in detail?

Solution 2

The laws are ranged, according to their hierarchy, as following:
- The constitution;
- The organic law;
- The ordinary law;
- The Decree law, etc.

The constitution

At the national level, the constitution comes at the first position. The constitution is a set of rules which form the fundamental law of a state with which all other laws have to be in conformity. This means that when there is a conflict between constitutional provisions and any other law of the country, the former prevails.

For G. Burdeau, the constitution occupies a central place in a system of the rule of law. A certain philosopher M. Kamto wrote:

"A democracy should not be a government by peoples, but a government by the law". This is what is called the rule of law. In this sense, it coincides with a "democratic state" on condition that "the law really expresses the general will of the public".

Rwanda has only one constitution, which was adopted through the referendum of 26th May, 2003.

The organic laws

Besides the constitution, there are organic laws, which rank immediately below the constitution. Within the hierarchy of laws, organic laws come after the constitution.

An organic law is adopted with a view to specifying or completing the constitution and other laws. There are organic laws in Rwanda. This is the case of the organic law No 08/96 of 30/08/1996 on the organization of prosecutions of crimes constituting the crime of genocide or crimes against humanity committed between 1st October 1990 and 31/12/1994, the organic law on the organization and functioning of Gacaca jurisdictions, and so many others.

According to 93(6) of the Rwandan constitution, organic laws shall be passed by a majority vote of three fifths of the members present in each chamber of Parliament.

Organic laws have a legal force superior to ordinary laws. It is the constitution, which determines the areas reserved for organic laws. We can cite the:

- Conditions of acquisition, retention, enjoyment and deprivation of Rwandan nationality (art. 7 const.)
- The organization of education in Rwanda (art. 40 const.)
- The modalities for the establishment of political organizations, their functioning, the conduct of leaders, the manner in which they shall receive state grants as well as the organization and functioning of the forum of political organizations (art. 57(2) const.)
- The internal regulations concerning each chamber of parliament (art. 73 const.) i.e. each chamber of parliament shall adopt an organic law establishing its internal regulations.
- The conditions and the procedures by which parliament controls the actions of the government.

- The organization and jurisdiction of courts.

Ordinary laws
Ordinary laws, which are most frequent, are voted by the absolute majority of seating parliamentarians of each chamber. It is the constitution that determines the relevant areas for ordinary laws. These areas are many compared to those of organic laws. The quorum required for each chamber of parliament is at least three fifths of its members (art.66(1) const.).

Decree Law

In case of the absolute impossibility of parliament holding session, the president of the republic during such period promulgates decree laws adopted by the cabinet and those decree laws have the same effect as ordinary laws (art. 63(1) Const.).

These decree-laws become null and void if they are not adopted by parliament at its next session. This is in conformity with article 63(2) constitution.

Question 3
What are the auxiliary sources of law within Rwanda?

Solution 3

AUXILIARY SOURCES OF LAW

The auxiliary sources of law are jurisprudence, doctrine, general principals of law and equity.

1. Custom (as a source of law)

A custom is generally defined as a set of a people's way of doing things which has acquired an obligatory force in a given social group and which is practiced over a relatively long time period. Customs are practices or usages of a given society. Customary law is unwritten. It has to be considered as legally binding on (obligatory by) the people in the society.

A custom is not created as a written law, a unique act, but by a repetition of similar practices especially with the conception that it has a binding (obligatory) force. The essential elements of a custom are therefore.

- The usage

- Binding force

- The social consensus

- The time in which it is applicable

But the first two are the ones that are most frequently cited as the ones that form a custom. It is also important to point out that custom can inspire the legislator when modifying or completing an existing law or when judges are regulating new cases where the existing laws are not clear or incomplete. Custom can also help for the comprehension of a legal text. However, it is important to indicate that custom is applicable in the absence of law; and when they are not contrary to the constitution, laws, regulations, public order and good morals.

These laws are the principal sources of law. Custom is just a subsidiary source of law, in the sense that they can inspire the judge and help him in the comprehension of legal texts.

2. General principles of law.

These are principles of law common to the legal systems of the world. In Rwanda, examples of general principles of law are:

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

In hierarchy, general principles of law are inferior to the Law. Some of them are already part of the Rwandan penal code. In general, general principles of law are not as direct a source of law as the laws they inspire the judge and they are resorted to in the absence of the law.

3. Jurisprudence (Decided case law)

Jurisprudence means the set of decisions rendered by courts and tribunals. In Romano-Germanic legal systems, jurisprudence doesn't bind the judge. The decisions of courts and tribunals don't have a general field of application. Judges' decisions are only binding on those parties involved in the case. If a judge is seized with a new case, he is not obliged to comply with decisions made on similar cases in the past (precedent). This means that in a new case, he may rule differently from his previous decision.

This led some people to say that jurisprudence is not strictly speaking a source of law.

However, even though the jurisprudence doesn't have a legal value or a legal binding force, it exercises an unquestionably factual influence that guides the judge to rule in a given way. We refer to this influence as *defacto* authority of jurisprudence .

In a common – law legal system, the situation is different. Jurisprudence does constitute a binding source of law .we refer to it as Precedent. A common – law precedent has a binding force on the judge. He cannot easily depart from it.

4. Doctrine

By doctrine, we mean legal scholars' opinions on critical questions of law. In the wider sense, doctrine refers to publications of persons deeply involved in the study of law. These are law professors, senior judges, eminent lawyers, etc.

Doctrine serves to understand the positive law better, which means those rules applicable in a given society at a precise time. Doctrine serves also to inspire possible law reforms by proposing rules that should be enacted by the legislator. Although doctrine is not a principal source of law, it constitutes a subsidiary impact on the law. It exercises an important influence even though it is not a binding source of law. It guides the judge by promoting reasons for deciding in a certain way. On the other hand, doctrine guides the legislator when enacting laws. He can either consult legal works (publications) of scholars or ask them to participate in the legal process as experts. The authority attached to doctrine relates somehow to the reputation of the scholar himself. The more reputable he is in his field and publications, the more his opinion will be of influence.

In conclusion, one can say that although doctrine is not a principle source of law, it plays a significant role, as the opinion submitted by eminent lawyers on a subject of law can be useful in case it is put forward and followed in courts, because it can help in the comprehension of a legal text.

5. Equity

The regulation of 14 May 1886 foresees that in case there is a matter that is not provided by a legal text, the disputes without solutions in local customs will be solved according to general principles of law and **equity**.

Equity, which is based on the general feelings of justice, allows the judge, in case of silence of law or a legal gap, to make judgements conforming to common sense and feelings of justice. The notion of equity has a vague character and the judge is not bound by any certain precise rule but he has the power to decide according to the circumstances but without arbitrariness (unfairness) . This means that he has to apply equity with fairness. Certain legal provisions give examples of how equity can be applied (art 34,142, of the civil code iii , art.82 of the penal code)

Equity is not itself a source of law. It is a means available to the judge when he is supposed to give a judgement without applying a determined legal rule.

Question 4
Write a paragraph on any 3 of the following:-

1. *Role of Lower Instance Courts*
2. *Role of Higher Instance Courts*
3. *Role of Higher Court*
4. *Role of Supreme Court*
5. *Role of Specialized Court*

Solution 4

Lower instance courts

There is established a lower instance court for sector councils. The court is to exercise jurisdiction within the administrative boundaries of the sector council. In criminal matters lower instance courts are competent to hear offences whose sentence a term of imprisonment does not exceed five (5) years. They are not competent to hear offences relating to the violation of traffic rules.

As regards civil disputes lower instance courts have original jurisdiction to hear and determine:

- Disputes between natural or artificial (legal) persons whose monetary value does not exceed three million (3,000,000Rwf), except civil actions related to insurance as well as those seeking damages for loss occasioned by an offence tried by another court:
- Disputes related to land and livestock and their succession:
- Disputes related to civil status and family
- Disputes related to immovable property other than land which does not exceed 3 million Rwf of monetary value and its succession.
- Disputes related to movable property which does not exceed 3million Rwf of monetary value and its succession.

Note that judgments rendered by lower instance courts in both criminal and civil matter can be reviewed by the same court or appealed to the higher instance courts. The exception is cases whose monetary value does not exceed Rwf fifty thousand (50,000). In this case the lower instance court shall serve as the final court of appeal.

Higher instance courts

There is a higher instance court in district councils. Each court has specialized chambers: the juvenile chamber, the administrative chamber and the labour chamber.

In criminal matters higher instance courts shall have jurisdiction to try offences whose sentence is a term of imprisonment exceeding five (5) years except where the law reserves the offence to other courts; they have jurisdiction to try traffic offences and person placed in the first category accused of crimes of genocide and other crimes against humanity committed between 1st Oct. 1990 and 31st Dec. 1994.

In civil cases, higher instance courts have jurisdiction to hear cases on the first instance that are not triable by other courts. They shall have competence to hear on first instance case related to insurance regardless of the value of the claim.

Note that the specialized chambers of higher instance courts shall hear administrative cases relating inter alia, to actions for damages arising from contractual liability, government officials and its parastatals.

In its appellate jurisdiction the court can hear appeals against judgment rendered on first instance by lower instance courts within their respective jurisdiction.

The provincial or city of Kigali court can review its judgment or appeal to the Higher court.

The Higher court

There is established a higher court whose seat is in the city of Kigali. Its jurisdiction covers the entire territory of the republic. The higher court shall have four (4) chambers in other parts of the republic namely: Musanze, Nyanza, Rwamagana and Rusizi. The jurisdiction of the chamber that operates at Musanze is equal to the jurisdiction of the higher instance court in Musanze and Rubavu. The jurisdiction of the chamber that operates at Nyanza is equal to the jurisdiction of the higher instance court Muhanga, Huye and Nyamagabe. The jurisdiction of the chamber that operates at Rwamangana is equal to the jurisdiction of the higher instance court of Ngoma and Nyagatare. The jurisdiction of the chambers that operates at Rusizi is equal to the jurisdiction of the higher instance court of Rusizi and Karongi. Finally cases originating from the territorial jurisdiction of the higher instance court of Nyarungenge, Kabuga and Gicumbi shall be tried at the seat of the high court of the republic.

The high court exercises both original appellate jurisdictions. In the exercise of the original jurisdiction, the high court has competence to hear specific criminal cases, administrative cases and civil matters; its jurisdiction is limited to the execution or enforcement of authentic deeds executed by foreign authorities as well as foreign judgments. In the exercise of its appellate jurisdiction, the higher court has jurisdiction to hear appeals from civil cases heard on first instance by a higher instance court. It also hears specific appeals on second instance from higher instance courts. In addition, it hears appeals from decisions taken by arbitration tribunals.
The high court also hears appeals from criminal cases tried on first instance or appellate level from higher instance courts.

Note that the high court of the republic has competence to review its own decision. A dissatisfied party can party can appeal to the Supreme Court.

Supreme Court

The Supreme Court is the highest court in the Republic of Rwanda. The Supreme Court directs and co-ordinates the activities of the lower courts. The court has jurisdiction over the territory of the Republic of Rwanda. Its decision is not subject to appeal except in terms of a prerogative of mercy or the revision of a judicial decision.

The Supreme Court exercises ordinary and special jurisdiction. In the exercise of ordinary jurisdiction the court is the court of last resort for appeal for trials heard by the high court of the republic in the first degree and in the second degree provided inter alia, the award of damages equals or exceeds twenty million francs (20,000,000) or the subject matter in disputes equals or exceeds twenty million francs (20,000,000).
In the exercise of its special jurisdiction the supreme court has, inter alia, exclusive jurisdiction to try in the first and final degree, the president of the republic, the president of the senate, the president of the chamber of deputies, the president of the supreme court and the prime minister for offences committed during their terms of office, whether such offences relate to the exercise of their public duties or their private matters, regardless of whether they are still or have ceased to hold office.

Specialized courts
a) Military courts

Military tribunals have competence to try all offences committed by all military personnel except offences which constitute a threat to national security and murder committed by soldiers. They also have competence to try all military personnel accused of the crime of genocide and crimes against humanity committed between October 1st and December 31st 1994 that places them in the first category.

Judgments rendered by a military court may be reviewed by the same court or appealed to the military high court.

The military high court exercises both original and appellate jurisdiction. In that exercise of its original jurisdiction, the military high court shall try all offences which constitute a threat to national security and murder committed by soldiers. However, if, during judgment, the court finds that the elements of the offences constitute manslaughter instead of murder, it shall nonetheless hear the case.
In its appellate jurisdiction the court hears appeals from cases tried by the military court. Cases heard in the first instance by the military high court may be reviewed by the same court or appealed to the Supreme Court. If the case was heard in the second instance by the military high court, the case will be appealed to Supreme Court provided the sentence passed by the military high court is equal to or exceeds ten (10) years of imprisonment.

b) **Commercial courts**

Commercial courts have a limited jurisdiction. Such courts are competent to try commercial cases. In order to determine the jurisdictional scope of commercial courts, the Law provides a list of commercial matters. According to Article 3 of the Law establishing commercial courts, commercial matters refer to commercial, financial, fiscal and other matters closely related to them regarding:

- disputes arising from commercial contracts or commercial activities between persons or business entities;
- disputes arising out of the use of negotiable instruments such as cheques, bills of exchange and promissory notes;
- disputes relating to transactions between persons and financial institutions;
- disputes related to liquidation, dissolution and recovery of limping business firms;
- cases related to insurance litigation but not including compensation claims arising out of road accidents by litigants who have no contract with the insurance firms;
- claim related to fiscal disputes;
- claims related to transport litigation;
- any dispute that may arise between persons who own or manage registered entities and commercial institutions and these include:
- members of the Board of directors;
- directors;
- shareholders;
- auditors;
- liquidators;

- managers of the property of a bankrupt business firm.
- cases arising from bankruptcy;
- cases related to intellectual property including trademarks;
- cases related to registration and deregistration of businesses;
- cases related to appointment or removal of auditors responsible for auditing the books and accounts of a firm;
- cases related to competition and consumer protection.

Problems may arise from the determination of the jurisdiction of commercial courts based on a commercial list. Indeed, a list of commercial issues is not comprehensive and question of jurisdiction may arise in some cases so as to decide jurisdiction. Thus, it is necessary to formulate clear and efficient rules in order to avoid such problems.

As to the in-value jurisdiction of commercial courts, the Law provides that Commercial Courts deal with all commercial disputes with a value below 20 million Rwandan francs and non-monetary commercial matters. The Commercial High Court decides at first instance all cases with a value above 20 million Rwandan francs and hears appeals from interlocutory interim orders and judgments of the Commercial Courts at the first level. The Supreme Court hears appeals against decisions of the Commercial High Court.

The territorial jurisdiction of the Commercial High Court and Commercial Courts is provided in an annex to the Law establishing Commercial Courts.

Question 5

Arbitration can be defined as "a procedure applied by parties to the disputes requesting an arbitrator or a jury of arbitrators to settle a legal, contractual or another related issue", Explain in detail the arbitration process

Solution 5

Introduction

In Rwanda, new law on commercial arbitration and conciliation was established in 2008 as Law n° 005/2008 of 14/02/2008 on arbitration and conciliation in commercial matters.

Article 3 (2) of Rwandan law on arbitration defines arbitration as "a procedure applied by parties to the disputes requesting an arbitrator or a jury of arbitrators to settle a legal, contractual or another related issue".

Arbitration refers to a process in terms of which the parties to a dispute voluntarily and jointly ask a third party, the arbitrator, to hear both sides of their dispute and make an award that they undertake in advance will be final and binding. The fact that the arbitrator settles the dispute by making a legally binding award distinguishes arbitration from mediation and negotiation. For this reason, arbitration is more similar to litigation, as both are command processes where a decision is imposed on the parties, in contrast to negotiation, which is consensual in nature. But,

in contrast to litigation, the arbitrator`s award arises from the consent of parties to accept the award, not from the power of the court imposing an order.

Significant features of arbitration

Four significant features of commercial arbitration are singled out for now, although they will be the subject of a brief comment later. These features are :

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

The agreement to arbitrate

An agreement by parties to submit to arbitration any dispute or difference between them is the starting point of the process in both national and international arbitration. If there is to be a valid arbitration, there must first be a valid agreement to arbitrate. Arbitration is a contractual process in the fact that it is based on an agreement between the parties, by opposition to some cases where arbitration is imposed in statute, such as provided for in Switzerland by article 89 of the Statute on health care insurance for disputes between doctors and health insurers, or as provided in France by Article 761-5 of the labour law code for certain disputes in the field of journalism.
The Rwandan law on arbitration defines the arbitration agreement. The long Article 9 of the above-mentioned law provides:

> "*Arbitration agreement is an agreement by both parties to submit to arbitration all or certain disputes which arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. The arbitration agreement shall be in writing. An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, in a written form basing on the conduct of the parties themselves, or based on other means. The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be used for subsequent reference; Electronic communication refers to any communication that parties make by means of data message; Data message refers to any information written, sent, received or stored by electronic, magnetic, optical and other means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegraph, telex or telefax. Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other. The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract".*

The choice of arbitrators

One of the features of that distinguishes arbitration from litigation is the fact that the parties to an arbitration are free to choose their own tribunal. Sometimes, it is true; this freedom is unreal, because the choice may be delegated to a third party such as an arbitral institution. However, where the freedom exists, each party should make sensible use of it. A skilled and experienced arbitrator is one of the key elements of a fair and effective arbitration.

The decision of the arbitral tribunal

It is not uncommon for a settlement to be reached between the parties in the course of arbitral proceedings. However, if the parties cannot resolve their dispute, the task of arbitral tribunal is to resolve the dispute for them by making a decision, in the form of a written award.

An arbitral tribunal does not have the powers or prerogatives of a court of law, but it has a similar function to that of the court in this respect, namely that it is entrusted by the parties with the right and the obligation to reach a decision which will be binding upon them.

The power to make binding decisions is of fundamental importance. It distinguishes arbitration as a method of resolving disputes from other procedures, such as mediation and conciliation which aim to arrive at a negotiated settlement. The procedure that must be followed in order to arrive at binding decision by way of arbitration may be described as judicial. An arbitral tribunal is bound to act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent.

The enforcement of the award

Once an arbitral tribunal has made its award, it has fulfilled its function and its existence comes to an end. The tribunal`s award, however, gives rise to important and lasting legal consequences. Although it is the result of a private arrangement and is made by a private arbitral tribunal, the award constitutes a binding decision on the dispute between the parties. If it is not carried out voluntarily, the award may be enforced by legal proceedings both locally (that is to say, in the place in which it was made) and internationally.

The registration or deposit of award is a *sine qua non* requirement for an award to be recognized an enforced in Rwanda. However, no fee is paid for that registration or deposit for recognition of arbitral awards sought in Rwanda.
According to article 395 of the law establishing Commercial, civil, social and administrative procedure code, the party seeking recognition shall deposit the duly authenticated original award or duly certified copy thereof; and the original agreement or duly certified copy thereof award at the president of the higher instance court`s office and request the executory stamp on the deposited award. Article 396 of the same law, states that the President has 8 days to make a decision concerning that recognition.

In 2008 Rwanda ratified the New York convention on Recognition and Enforcement of foreign arbitral awards and became the 143rd State party to the convention.

The New York convention provides for a simpler and effective method of enforcement of obtaining recognition and enforcement of foreign awards. It is mainly due to the provisions of the New York convention that arbitration has become a very attractive alternative to traditional

litigation. It is one of the widest accepted international conventions. It has significantly simplified the enforcement of foreign awards and harmonized the national rules for the enforcement of foreign awards.

Matters excluded from arbitration

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".*

Arbitration is not permissible in following matters:

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

Question 6.
Discuss the distinction between civil law and criminal law in the Rwandan law

Solution 6

Criminal law is a set of rules that prohibit anti- social conduct as well as certain deviant behaviour. This law aims to shape people's conduct along lines which are beneficial to society, by preventing them from doing what is bad for society. In Rwandan law, these prohibitions are listed in the penal code and a number of subsidiary legislation. Also forming part of the criminal justice system are courts which adjudicate questions of criminal liability as well as the police force and other enforcement agencies which exists not only to maintain law and order but also to detect and prosecute violations against the criminal law. It is society through Government employees called public prosecutors that bring court action against violators. If a person is found guilty of a crime such as theft, the person will be punished by imprisonment and or a fine. When a fine is paid, the money goes to the government, not to the victim of the crime.

Civil law consists of rules, principles and standards which create rights and duties and specifies remedies to back up those rights. The duties are owed by a physical or a moral person to another. Actions for the breach of civil duty must be brought by injured party or her/his representative. In a civil matter, the court does not seek to punish the wrongdoer but rather to compensate the injured party for the harm they have suffered. For instance, if someone carelessly runs a car into yours that person has committed a civil wrong (tort) of negligence. If you have suffered damages you will be able to recover to the extent of the damages suffered.

However, although civil law does not aim to punish, there is an exception. If the behaviour of someone who commits a tort is outrageous, that person can be made to punitive damages (also called exemplary damages). Unlike a fine paid in a criminal case, punitive damages go to the injured party.

In some cases, the same behaviour can violate both the civil law and the criminal law. For instance, a person whose careless driving causes the death of another may face both a criminal prosecution by the state and a civil suit for damages by survivors of the deceased. If both suits are successful, the person would pay back society for the harm done through a fine and/or a sentence, and compensate the survivors through the payment of the money damages.

Question 7

Explain the nature of negotiable instruments with particular reference to Bills of Exchange, Cheques and Promissory notes.

Solution 7

Negotiable Instruments are property which is acquired by anyone who acquires it on a bona fide basis, and for "value", notwithstanding any defect of title in the person from whom they obtained it. Negotiable instruments are transferable by delivery or by endorsement and delivery, without notice to the party liable, in such a way that a) the holder of it for the time being may sue upon it in his own name, and b) the property in it passes to a bona fide transferee for value free from any defect in the title of the person from whom he obtained it.

The negotiable instrument refers to a promissory note, bill of exchange or cheque payable either to order or bearer. These three instruments are usually characterised as negotiable instruments.

A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, another specified person or to the bearer of the instrument.

A promissory note is an unconditional promise in writing made by one person to another, signed by the marker, engaging to pay on demand or at a fixed or determinable time in the future, a sum of money to, or to the order of, a specified person or bearer. A promissory note therefore has two parties to it, the promissory and the promisee; this is in contrast to for example a bill of exchange which has three. It is a promise to pay, not an order for someone else to pay. A promissory note is complete when it is delivered to the promisee.

A cheque is a bill of exchange drawn on a specified banker and expressed to be payable otherwise than on demand. In ordinary usage cheques have generally taken the place of bills of exchange; however their use is still important as cheques are generally not intended to be negotiated, though there are instances where cheques may be.

Question 8

Discuss, with respect to real property, the concept of ownership in Rwanda law

Solution 8

Ownership is defined by the article 14 of the civil code book II as the right of disposing of things in the absolute and exclusive manner, subject to any restriction of the law and the real rights belonging to other persons. The same article also provides that "Restrictions of the right of ownership resulting from the relationship between neighbours are established in the title concerning charges on Land".

The concept of the right of ownership is considered as a total and an exclusive right strictly reserved to the usage and enjoyment of individuals. The Rwandan constitution recognizes ownership rights where it says "Every person has a right, to private property, whether personal or owned in association with others" (Art. 29 of Rwandan constitution).

The inviolability of the right of ownership is provided for by the Rwandan Constitution. "Private property, whether individually or collectively owned, is inviolable. The right to property may not be interfered with except in the public interest, in circumstances and procedures determined by law and subject to fair and prior compensation".

Ownership rights are the most complete real rights one can talk about because they are the only ones that accord to their owner all the three prerogatives; i.e. *Usus, Fructus* and *Abusus.* Art.1 of the civil code Book II makes an introduction of the concept of ownership and the related sub-rights such as the superficiary, emphyteusis, and servitudes. The full owner of a property must have all the three mentioned sub-rights which together form the ownership right (*Usus, Abusus* and *Fructus*).

Question 9
Describe the concept of risks in Rwandan Insurance Law.

Solution 9

The concept of risks are very important in any insurance contract. There are three main categories of risks: technical risks, asset risks and other risks.

Technical risks arise from the very nature of the insurance business hinging on the determination of liabilities. Insurance liabilities are estimated using actuarial or statistical techniques, based on probability using past experience and making assumptions about the future. If these calculations are incorrect, liabilities would be understated or premiums would be undercharged, both would distort the insurer's true financial position and lead to liquidity or even solvency problems. Underpricing, unforeseen or inadequately understood events and insufficient reinsurance are all examples of technical risks. As an example of asset risks, insurers face market risk, credit risk and to a lesser degree, liquidity risk. Other risks include legal and operational risks.

Question 10

Briefly outline the following concepts in Rwandan Law governing contracts

A) Minors
B) Consideration

Solution 10

A minor (also called an infant) is a person who has not attained the age of legal majority. In Rwanda, unless specifically provided otherwise, the age of majority for a valid contract is twenty-one years. Exceptions are that in commercial matters, the majority is sixteen years while for employment contracts, the majority is eighteen.

A minor's contract, whether executed or executory, is voidable at his/her guardian's option. Thus the minor is placed in a favored position by having the option to disaffirm the contract or to make it enforceable.

The exercise of the power of avoidance, called disaffirmance, releases the minor from any liability under the contract.

On the other hand, after the minor comes of age, they may choose to adopt or ratify the contract, in which case they surrender their power of avoidance and become bound by their ratification.

A minor may disaffirm a contract within a reasonable time after coming of age as long as they have not already ratified the contract. Determining a reasonable time depends on circumstances such as the nature of the transaction and 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; furthermore it 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 are suitably and reasonably supplied for their personal needs.

Consideration

The concept of consideration is new in Rwandan Law. It is slightly different from the concept of cause known in the Rwandan Civil code.

The doctrine of consideration ensures that promises are enforced only where the parties have exchanged something of value in the eye of the law. Gratuitous promises those made without consideration are not legally enforceable except under some circumstances.

A performance or a promise by the promisee is a consideration if it is established as such by the promisor and is given by the promisee in exchange for that promise. The consideration exchanged for the promise may be an act, forbearance to act, or a promise to do either of these.

The law does not regard the performance of, or the promise to perform a preexisting legal duty, public or private, as a consideration.

The consideration for a promise must be either a legal detriment to the promise or a legal benefit to the promisor. The promisee must give up something of legal value, or the promisor must receive something of legal value in return for the promise.

Legal benefit means the obtaining by the promisor of that which he had no prior legal right to obtain.

Consideration must not be in the past: If one party voluntarily performs an act, and the other party then makes a promise, the consideration for the promise is said to be in the past. Past consideration is regarded as no consideration at all.