



**UNIVERSITY OF RWANDA**  
**COLLEGE OF ARTS AND SOCIAL SCIENCES**  
**SCHOOL OF LAW: LLB YEAR 1, 2024-2025**

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**MODULE: LAW OF PERSONS AND FAMILY**

**LECTURER: UWINEZA Odette.**

**PRACTICAL FAMILY LAW GROUP ASSIGNMENT**

**Done by Team 3**

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## **Q1. Iris's Case**

- a) **Legal action is to be lodged by Mary on behalf of Iris**, Mary will log petition for correction or annulment of maternal filiation.
- b) **Who is normally qualified to file such a petition?** Normally the law provides that the child may log such petition in case he/she attained the majority age. When the child is a minor, his/ her mother can do so.
- c) **Competent court is Primary Court** in the domicile of her grandmother, **Nyiramiyonga**.
- d) **Validity of Nyiramiyonga's act of recognition**. No, because Nyiramiyonga is not the mother of Iris.

## **e) Q2. Adoption of Gitego by Mr. and Mrs. Rugamba Case**

- (a) **Possibility of adoption** Yes. Under family law—as reflected in the adoption provisions of the articles 312–326—a legally married couple may adopt provided that they meet the requirements (e.g. being of sufficient age and demonstrating the capacity to care for the child and acting in the best interest of the child) because she is even an orphan therefore caring for Gitego over many years supports a showing that the child's welfare is being well looked after.
- (b) **Nature of adoption (civil vs. judicial act)**. The Civil Registrar issues the adoption record, the final approval is rendered by a court after investigation into the best interests of the child.
- (c) **Adoption:** – Creates a full legal parent–child relationship that severs (in full adoptions) or reshapes (in simple adoptions) the original filiation. – Confers the rights, duties, and inheritance status as if the adoptee were the biological child of the adoptive parents.  
  
**Guardianship:** – Is typically a temporary measure for the care and protection of a child. – Does not alter the legal filiation or inheritance rights; the biological parent(s) remain the source of parental authority.

### **Q3. Establishing Paternity in the Jacob–Olga Case**

(a) **Legal action.** Olga should initiate a **paternity petition** by petitioning the court, she can ask that Jacob be formally declared the legal father of the child so that he becomes liable for child support and other parental duties.

(b) **Evidence required** To support her claim, Olga should supply:

- Testimony regarding their cohabitation and the circumstances surrounding conception.
- Documentation such as any written communications or the birth certificate.
- Expert evidence (for example, a DNA test) if available.
- Witness statements, if any, that corroborate the nature of their relationship and Jacob's involvement.
- Testimonies from friends and family.

(c) **Competent court is the Primary Court** in domicile of Jacob.

### **Q4. The Donatha–Ignace Marriage Crisis Case**

(a) **Annulment of marriage.** No, the annulment may be sought when there is a defect in the marriage's consent or when essential conditions are absent. Donatha continued welcoming him into her new residence which makes the grounds for annulment weakened. **See Article 226 family law 2024**<sup>1</sup>.

(b) Concerning **divorce**, Donatha may file for **divorce on the grounds of domestic violence and/or mental incapacity resulting in breach of marital duties**. The repeated aggressive episodes and the husband's failure to meet matrimonial obligations allow her to seek dissolution of the marriage under **Article 248** of the law-governing persons and family.

(c) **Protecting family property while remaining married.** Donatha can demand court to be vested in guardianship of her adult-husband by legally incapacitating him, because of his mental disability. To avoid that her husband can misuse their properties due to his mental illness. **(Art 142, 143)**<sup>2</sup>

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<sup>1</sup> (1) Causes of relative nullity of marriage are the following: (a) vitiated consent of one of the spouses; (b) clandestine marriage celebration; (c) incompetence of the civil registrar or usurpation of power by any other person; (d) any other reason that may be related to lack of fulfilment of formal requirements for marriage. (2) There is vitiated consent if consent of one of the spouses has been given by mistake as to the person, trapped by fraud or extorted by violence. (3) Relative nullity of marriage is impossible in case there has been a continuous cohabitation for at least six consecutive months from the date the cause for nullity was known.

<sup>2</sup> Article 142: Guardianship of a married adult with mental disability and that of an adult with mental disability living with his or her parents The guardianship of an adult with mental disability is exercised by the other spouse or by his or her parent if he or she is still living with him or her parent, unless otherwise determined by the court. In this case, the guardianship council is not necessary. However, the guardianship for another adult with mental disability not provided for in this Article is exercised by a guardian determined by the court upon application by the

**(d) Marital duties when residing separately.** Even when Donatha was living apart, certain marital duties remained in force. For example:

- The duty of mutual assistance.
- The duty of loyalty
- The duty to contribute to household expenses
- The duty of cohabitation.

## **Q5. Role of the Marriage Certificate**

The role of marriage of marriage certificate include the following:

- The marriage certificate is the **public, legal record** that confirms a legally valid union has been entered into by the spouses.(art209)<sup>3</sup>
- It serves as evidence of the formation of marriage and is essential for establishing the rights and duties of the spouses and for resolving **disputes relating to inheritance, custody, and other matrimonial matters.**
- Establishment of legitimate filiation.

## **Q6. Advice on “Kwahukana” (De Facto Separation)**

Because judges may interpret de facto separation (kwahukana) as abandonment of family responsibilities, women are advised to maintain a demonstrable record meaning that they should always inform the nearest local administration before leaving the matrimonial home.

## **Q7. Sophia’s case of Claiming for Alimony from Her Brother**

Under Rwandan family law as outlined in the slides, the obligation to contribute alimony typically falls on parents (or spouses) rather than on collateral relatives such as siblings. There is no statutory basis obligating a 45-year-old brother to supply financial support in the same manner as a parent would. Therefore, Sophia is not entitled to force her brother to pay alimony.

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family council. Article 143: Management of property of an adult with mental disability a guardian of an adult with mental disability primarily manages the property for the benefit of the person under guardianship.

<sup>3</sup> Article 209: Evidence of marriage is certified by a marriage record. However, if the marriage record is not obtained for any reason, it may be replaced by a judgment.

## **Q8. The Agnes–Andrew Dissolution Case**

Agnes and Andrew were married without the payment of inkwano, and later Agnes' father sought dissolution on two grounds: lack of parental consent and non-payment of inkwano.

(a) **Concerning court's jurisdiction**, family law matters, including disputes over marriage registration and dissolution, are addressed by the local **Primary Court where the marriage was celebrated** (see the rules on publication and formalization in **Article 203** and related procedures).

(b) **Concerning grounds for dissolution**, the legal validity of the marriage in Rwanda depends primarily on the free and mutual consent of the spouses. Parental consent is not a statutory requirement for a valid civil marriage, and the payment of inkwano is not legally essential under the current law (Article 196(2)).

(c) **Concerning standing of the party filing the case**, dissolution of marriage is fundamentally a matter for the spouses themselves. A parent (even one aggrieved by traditional customs) does not have independent standing to dissolve a legally valid marriage.

## **Q9. Parental Authority and Consent for a Minor's Marriage**

A parent who has been deprived of his or her **parental authority loses the legal capacity to represent minors in acts of civil life including marriage**. Unfortunately, minor's marriage is not valid because if marriageable age has not yet attained. (**Art197**)<sup>4</sup>

## **Q10. Emmanuel's Discovery of a Cousin Marriage**

Emmanuel's case reveals that he has unknowingly married his first cousin.

(a) **Degree of kinship** Since Joseph (the man who raised him) is in fact his maternal uncle, Emmanuel's wife (Godiliva, Joseph's daughter) is his first cousin. This is a collateral relationship within the 4<sup>th</sup>-degree. (**Article 151**)<sup>5</sup>

(b) **Appropriate remedy** Given that Rwandan family law (**Article 198**)<sup>6</sup> prohibits marriage in the direct ascendant/descendant line and, in the collateral line, bans marriage up to the seventh degree (with first cousins falling well within this prohibited range), the marriage is fundamentally

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<sup>4</sup> Article 197: Marriageable age (1) The minimum age for marriage is 21 years.

<sup>5</sup> Calculation of degree of kinship to determine the degree of kinship on collateral line, one should start by counting generations up to the common ancestor, and by adding to it the number of generations which separate the common ancestor from the person with whom they want to establish family ties.

<sup>6</sup>(1) Marriage between persons with the following relationships is prohibited: (a) direct lineal kinship; (b) collateral kinship up to the seventh degree; (c) a person and his or her parents-in-law; (d) the adoptive parent and the adoptee; (e) the adoptive parent and the descendants of the adoptee; (f) the adoptee and the spouse of the adoptive parent; (g) the adoptive parent and the spouse of the adopted person.

voidable. The appropriate remedy is to obtain **annulment of the marriage** because of an **impermissible** kinship. (Art223)<sup>7</sup>

### (c) Consequences of annulment (Article 225)

**For the spouses:** The annulment renders the marriage **null ab initio (as if never existed)** so that legally there is no marital relationship.

- **For the children:** In general, children born during a void or annulled marriage are protected; they remain legitimate and retain rights of inheritance under the **“best interest of the child” principle**.

- **For property:** Concerning the matrimonial regime, if the marriage is not legally valid, the usual marriage property rules don't apply. Instead, any mixed-up property has to be sorted by figuring out who owned what before the relationship and whether one person unfairly benefited.

**(d) Moment of effect.** The consequences typically take effect from the date the final judicial decision annulling the marriage has rendered.

## **Q11. The Corporal's Proxy Marriage Case**

In this scenario, a twin substituted for the corporal at the marriage ceremony. Under Rwandan law of persons and family, the personal presence of the spouses is mandatory (**Article 207**). The substitute appearance constitutes an error and a lack of true consent.

**Advice:** The corporal has no audacity to claim for the annulment of the marriage of his former wife, he can't force reunion with his former wife. He can find someone else because reunion is totally impossible.

## **Q12. Scope of the Obligation of Assistance vs. Contributing to Household Expenses**

– The **obligation of assistance** is a broad duty under family law. It encompasses not only the payment of money but also the provision of physical and emotional support, care during illness, and overall mutual help (**Article 235(2)**) in contrast, the **obligation to contribute to household expenses** is a specific financial duty whereby each spouse provides for the day-to-day household costs in proportion to his/her income and ability (**Article 239**).

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<sup>7</sup> Article 223: Causes of absolute nullity of marriage (1) Causes of absolute nullity are the following: (a) marriage entered into when either of the spouses is under the age of 21 unless if the authorisation was granted; (b) marriage between relatives by kinship or in-laws up to the prohibited degree;

### **Q13. The extent the spouses have to contribute to the household expenses**

The law provides that each of the spouses contribute to the household expenses in accordance with his or her capacity and means. (**Article 223(2)**)

### **Q14. Legal Separation vs. De Facto Separation**

– **Legal Separation:** This is a court-ordered state in which the spouses cease cohabitation but other conjugal duties are maintained. Though the marriage remains legally intact. It is formally recognized, and its provisions (such as maintenance and custody orders) are enforceable by law. (**Art271 (p1)**)<sup>8</sup>

– **De Facto (Factual) Separation:** This refers to an actual, physical separation without any judicial intervention. Although the spouses live apart, no legal declaration has been made; therefore, they remain fully married and the rights and duties of marriage continue to apply in **theory**.

**Q15. No**, this divorce cannot be granted to Clement on the ground of desertion of marital home of his wife since he know the reasons of leaving.

### **Q15. The Andrew–Agnes Divorce case**

**Andrew–Agnes dispute:** Both alleging grounds for divorce—Andrew based on adultery (supported by the incriminating letter) and Agnes based on family abandonment. Since both spouse want to separate this case will fall under the scenario of divorce by mutual consent and the law provides that divorce by mutual consent is jointly applied for by both spouses after they agree on dissolution of their marriage and its effects and **submit to the competent court an agreement regulating the effects of divorce on the maintenance of children and their property. (Art 258 (p1))**

### **Q16. Mr. Nsoro and his Wife case**

a) We can advise this woman to file a case to the primary court of their residence for divorce on ground of Excess and abuse against Husband Nsoro’s faults. Because she is regularly abused and mistreated by his husband. This is supported by **article 255(1)** of family law 2024, during divorce proceedings, one of the spouses, whether as an applicant or respondent, may, by way of ex parte application, apply to the court for an order to leave the matrimonial home and live in a separate residence. He or she may also ask the court to order the other spouse to leave the matrimonial home. If the court orders one of the spouses to leave the matrimonial home, it

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<sup>8</sup> The divorce of parents does in no ways deprive children of any benefits recognised to them by law or matrimonial regimes of their parents.

decides on the means of enabling him or her to find a separate residence, and on his or her alimony, if necessary. However, the spouse being granted provisional custody of children remains in the matrimonial home pending the final judgment of divorce.

**b)** If the verdict of divorce is not in favor of husband the effects will be as follow:

**-The children:** this woman will ask for child custody because she has parental qualities and moral and developed psychological bond with children than her husband –Nsoro. Regardless of which person the children are placed with, parents retain the right to supervise the maintenance and education of their children. They must also contribute to the alimony in proportion to their means. (**Art 269 family law 2024**)

**-Spouses:** both spouses will be divorced but continue their parental authority and legitimate filiation to their children, so Nsoro will pay Alimony for children and remain with other rights of visiting or being visited by children when needed. (**Article 270**)<sup>9</sup>

**-Property:** they will share their properties (assets and liabilities) according to their matrimonial regime. (**Art 268**)<sup>10</sup>

### **Q17. Effect of a Spouse's Death during Divorce Proceedings**

If one spouse dies while divorce proceedings are pending, the divorce claim also stops on that moment because the death of a spouse automatically dissolves the marriage. There is no continuing marital bond to be dissolved, and any pending divorce claim must be terminated. (**Art246 (p1)**)<sup>11</sup>

### **Q18. Celestin–Cecile Custody Dispute**

Cecile, after divorcing Celestin due to the wife's adultery, had custody of Ange. Later, Celestin's child was entrusted to his sister Madeleine. When Celestin died, Cecile now wishes to have her child returned.

**Advice:** Cecile can petition the court to review and modify the custody arrangement this is because the current caregiver—the child's aunt—has never been legally appointed as a custodian, particularly following the death of the legal custodian, the father. The best interest of the child remains paramount. Even if Madeleine was entrusted with care, Cecile (as the biological and legal

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<sup>9</sup> Divorced parents retain the right to supervise the maintenance and education of their children regardless of which person the children are placed with. They also have obligation to contribute to the alimony in proportion to their means.

<sup>10</sup> The divorce entails the dissolution of marriage and matrimonial regime of spouses. Sharing of the property is done according to provisions governing the matrimonial regime chosen by the spouses.

<sup>11</sup> If one of the spouses dies, the marriage is dissolved.



parent) retains the right to seek the return of her child. **Legal Basis:** Provisions on custody in Articles 269 and 231 preserve the rights of the natural parent even after divorce arrangements.

Furthermore, since matters concerning child custody following divorce are considered provisional, a non-custodial parent has the right to request modifications to custody arrangements when new circumstances arise. Given the death of the custodial parent and the fact that the child is currently being cared for by someone who is not legally authorized, Cecile may lawfully request custody of her child. **Article 269(4) family law 2024**<sup>12</sup> supports this position.

### **Q19. Effect of Granting Custody to a Third Person**

Placing a child in the care of a third person (for example, a foster parent or a family member) does **not automatically deprive the biological parent of parental authority**. The parent retains other rights and duties (such as decision-making authority, visitation rights, and responsibility for the child's welfare) unless a court has expressly revoked parental authority due to the grounds for deprivation of parental authority. (**Article 352 p(1:a, b)**)<sup>13</sup>

### **Q20. Kinship and Degrees (Using the Provided Labels)**

a) To which degree of parental relationship is P and L:

**P compared to L is 9th degree in collateral kinship.**

**Q compared to G is 4th degree in collateral kinship**

c) Which person are in the ascending line compared to K and G?

**The ascending persons in direct line of K are X-1-A**

**The ascending persons in direct line of G are X-3-C-E**

d) Which persons are in descending line compared D and A

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<sup>12</sup> Measures ordered by the court by virtue of this Article are provisional and may be revoked upon application by an interested person by way of unilateral claim.

<sup>13</sup> (1) Upon request by an interested person, the court may temporarily or permanently deprive a person with parental authority for one of the following grounds: (a) if the person with parental authority abuses his or her parental authority or ill-treats the child; (b) if the person with parental authority is no longer worthy of exercising parental authority due to his or her notorious misconduct.

**The persons are in descending line compared D and A the descending persons in direct line of D is F**

- e) Four examples of persons having parental relationship in direct line and four examples in collateral line.

**The examples of persons having parental relationship in direct line are, X-3-c-d-f,**

**The examples of persons having parental relationship in collateral line are, X -1-2-3**

- f) Can N marry D?

**Yes, N and D can marry each other because they fall in 8th degree.**

- g) can O marry C

**Yes, O and C can marry each other because they are also in 8th degree.**

***Legal Basis: Law n° 71/2024 of 26/06/2024 governing persons and family in Articles 149–151 (calculation of degrees) and Article 198 (prohibitions based on kinship).***

## **Q21. Robert (de cujus) and the Family Tree**

- i. Persons are in descending paternal line compared to Robert **are –Serge- Thomas – Vincent**
- ii. ii. Persons are in Ascending maternal line compared to him **are Marguerite – Francois-Emile.**
- iii. iii. Ascending line according to Robert, **are Peter-Gems-Gaston.**

## **Assessment-Style Questions**

### **1. Does Rwandan Family Law Forbid:**

- a) **Polygamy?** Yes. The law recognizes only the civil monogamous marriage (**Article 195(1)**)<sup>14</sup>.

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<sup>14</sup> Civil monogamous marriage contracted between a man and a woman upon mutual consent is the only recognised marriage. Marriage is publicly officiated by the civil registrar of the domicile or residence of one of the intending spouses.

**b) Homosexuality?** Yes— but tacitly, within the context of legal marriage and family formation the law requires a marriage to be between a man and a woman.

**c) Bigamy?** Yes. Entering a subsequent marriage while a prior marriage remains valid is prohibited, **Article 199 of family law 2024** provides that a person is not allowed to contract a new marriage if the first marriage is still valid.

**d) Incest?** Yes. Marriage (and sexual relationships) are forbidden between persons in direct line and in close collateral relationship up to the 7<sup>th</sup> degree (**Article 198**) supports this.

**e) A marriage of an emancipated minor?** No, Rwandan family law only recognizes marriageable Age of 21 capacity Art 197. Family law 2024. It further says that marriageable age i.e minimum age for marriage is 21 years but a person with minimum age of 18 years but who has not yet attained marriageable age may be authorised to get married for reasonable grounds if he or she applies for it in writing to the civil registrar at District level.

## **2. Mr. Magorwa's Case**

Mr. Magorwa celebrated a legal marriage (adequately recorded and celebrated before a civil registrar) and then was sent abroad. On his return, he learns his wife has a baby that likely is not his.

– **Divorce: No,** Magorwa cannot log case for divorce on the ground of adultery because the baby was conceived before celebration of legal marriage where the spouse were not bound to the duty of cohabitation.

– **Nullity of the Marriage:** He, instead log case for relative nullity of marriage on the ground of error of facts.

– **Legal Separation:** This does not dissolve the marriage; it merely suspends cohabitation and does not allow him to remarry.

*Legal Basis:* the grounds for divorce (**Article 248 (1(a),**

## **3. Legal Effects of the following on the Children's Legitimate Status**

**a) Divorce of parents:** Divorce does not affect the legitimacy of children; they remain legitimate and enjoy all corresponding rights (inheritance, status, etc.).

**b) Nullity of marriage of parents:** Even if the marriage is declared null, the child's legitimacy is protected by law and is generally "saved" as if the marriage had existed in good faith.

*Legal Basis:* **Provisions in Articles 269–271** ensure protection for children regardless of the parents' marital status.

#### **4. Kanyoni's Birth Certificate Issue**

Kanyoni's certificate erroneously identifies his grandparents as his parents.

– **Legal Action:** the legal action to be lodged by kanyoni is **claim for denying a father or a mother and paternity petition to establish her biological father. (Art 311 and 304 family law 2024)**<sup>15</sup>

– **Against whom:** the Claim for denying a father or a mother is against non-biological parents kanyankore and nyiraminani who recognized him.

-The competent court to hear this case is Primary court of residence or domicile of grandparents who recognized him.

-**Fate of Prior Recognition:** The act of recognition by his grandparents is void because it did not reflect the true biological filiation; it must be set aside by the court and corrected so that the record reflects his true biological parent (Nyirandeya).

#### **5. Kanyombya and Nyirakamana Property Issue**

Based on the facts of this case, the marriage could not have legally taken place because one of the spouses left for the United States in January 2015, while the marriage is claimed to have occurred in November 2015. Since a valid marriage requires the physical presence of both parties, such a marriage is legally impossible and therefore cannot be submitted to any court.

However, if a marriage ceremony was held but was not followed by cohabitation, then in the event of divorce, as provided for in **art 268 of family law 2024** divorce entails the dissolution of marriage and matrimonial regime of spouses. Sharing of the property is done according to provisions governing the matrimonial regime chosen by the spouses.

#### **6. Establishing Legitimate Status for Children Born out of Wedlock**

Rwandan Family Law offers several methods: – **Voluntary Recognition** by the natural parent before the civil registrar. – **Judicial Action (Petition for paternity/maternity)** to establish

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<sup>15</sup> Article 311: Claim for denying a father or a mother a child may deny his or her father or mother in case there is evidence that his or her presumed father or mother is not his or her true father or mother. The claim for denying a father or mother is filed in the same procedure as the claim seeking paternity or maternity.

Article 304: Claim to establish paternity or maternity a claim to establish paternity or maternity is the one filed by a child born out of wedlock to have his or her filiation established by the court.

filiation when recognition has not been made. – **Legitimation by Subsequent Marriage** of the parents. – **Possession of Status:** If the child is treated as the legal child by society and family, that status may be recognized.

**Legal Basis:** See Articles 281–288 and Articles 295–296.

## **7. Kagabo’s Paternity Denial Issue**

### **Advice to Kagabo and the Child’s Rights under the Family Law 2024**

We can advise Kagabo that he is precluded from filing a paternity denial petition because the legally prescribed time limit has expired. Under **Article 301(1) of the Family Law 2024**<sup>16</sup>, any petition seeking to deny paternity or maternity must be filed within six months from the date on which the husband or wife becomes aware that the child does not biologically belong to them. Since this six-month period has lapsed in Kagabo’s case, the action is now time-barred, and he cannot challenge the paternity.

On the other hand, the law protects the child’s right to have her true parentage recognized. When the child reaches the age of majority (18 years old), she or he is entitled to initiate a legal process to contest her current, non-biological paternity. This petition—filed in the primary court in the residence or the domicile of the presumed father (Kagabo)—would serve to invalidate the previously acknowledged paternity. Following such an invalidation, she would then have the right to file a further petition to establish her legal filiation with her actual biological father and to have her birth record duly amended.

## **BIBLIOGRAPHY**

**Law used:** Law n° 71/2024 of 26/06/2024 governing persons and family, Official Gazette n° Special of 30/07/2024

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<sup>16</sup> The claim to deny paternity or maternity is filed within six months from the date the presumed father or mother found that the child does not belong to him or her.