

# **INTRODUCTION TO PRIVATE LAW**

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# Laws to be consulted

- Law n° 007/2021 of 05/02/2021 governing companies
- Law n° 66/2018 of 30/08/2018 Law regulating Labour in Rwanda
- Law n° 22/2018 of 29/04/2018 Law relating to the civil, commercial, Labour and administrative procedure
- Law n° 32/2016 of 28/08/2016 Law governing persons and family
- Law n° 27/2016 of 08/07/2016 Governing Matrimonial Regimes, Donations and Successions.
- Law n° 45/2011 of 25/11/2011 Governing Contracts.
- Law n° 030/2021 of 30/06/2021 Governing the Organisation of Insurance Business

- **Nº 27/2021 of 10/06/2021** Law governing land
- Decree Law nº 20/75 of 20/06/1975 relating to insurance in general, as modified and complemented to date;
- Decree Law nº 32/75 of 07/08/1975 relating to the compulsory civil liability insurance with regard to automotive vehicles, as modified and complemented to date

# PLACE OF PRIVATE LAW IN THE SYSTEM OF LAW

- Private Law refers to the legal rules that govern the relationships between individuals. It regulates the relations of private individuals conceived in their private dealings

# Concept of Private Law

- Private Law is a body of legal norms that involves equality between the players: legal subjects are free to enter into the legal relations of their choice, and they have the power to mutually influence the contents of their relation: their rights and obligations
- It actually deals with legal duties owed by individuals to one another

# Example

- When Muguzi and Mugurisha agree that Muguzi will buy Mugurisha's watch, they have the power to determine the price of the watch, the date of payment privately with no any other interference. Likewise, when Muhashyi went to the local boutique to buy a TV and finds out that it is sold at Frw 300,000. He has the right to bargain and start with Frw 200,000 etc. The Boutique owner may refuse to sell his/her TV at Frw 200,000 to Muhashyi and the latter is not compelled to buy the TV at the indicated price.

# Concept of Private Law

- Private Law, being the regulator of private individual relationships does not entail the absence of the State in this area. It intervenes in two folds. Firstly, the state acts as *legislator*: it provides the necessary legal framework for private relations by compulsory (cogent) and non-compulsory (dispositive) norms. In the latter case the parties may freely change the rules applicable to their relationship, so that the provisions offered by the lawmaker are simply options. In case of contract, the law intervenes only in case the parties fail to regulate a given situation. This is the case of marriage contract whereby the parties to the contract cannot provide for the requirements and consequently the law intervenes to regulate the situation

# Concept of Private Law

- The fact that the state acts as lawmaker and has the power to regulate the private relationships of legal subjects even with compulsory norms *does not change the fact* that the legal relationship is theoretically between persons of equal capacity. In this sense the legislator is *not part* of the legal relationship. The legal relationship remains between the private parties: the marriage is between wife and husband and not between the married couple and the state, even though the state provided the normative rules of marriage. A sale of goods contract is between the seller and buyer, even though the state has the power to regulate specific contracts, etc.

# Concept of Private Law

- Secondly, the state, through its organs, may *become a party* to some private law relationships. For example a ministry of the government may need to purchase office furniture for its offices and thus make a contract for the sale of goods. Or the state may inherit if some individual names it as beneficiary or in cases where there is no beneficiary or heir to an estate. Or the state, through the improper actions of its organs, may cause damage to private individuals and thus be financially liable in a non-contractual liability (tort) case. In all these situations the state acts in a capacity *not different from that of any private individual* (natural person, private company, and other legal persons). To all these cases the body of private/civil law applies but as if the legal relationship was between regular private entities.

# Scope and importance

- Private Law covers a wide scope. It includes the Law of Family ad Persons, the Matrimonial Regimes, Liberalities and Successions, the Law of Obligations, the Law of Property and Land Law, the Labour Law, the Law of Securities, the Commercial Law, the Company Law, the Law of Insurance, the Private International Law, etc.

# Roles of PL

- One of the roles of Private Law **is to impose restrictions on this freedom.** The restrictions are justified even outside the classic cases of procedural unfairness such as mistake, fraud, duress and exploitation of a party's circumstances to obtain excessive advantages. Grounds for restrictions are inter alia inequality of information (about either facts, such as the characteristics of the goods or services to be supplied, or the terms of the contract, or both); and lack of bargaining power (small business vs large business).

# Roles of PL

- The Private Law also promotes the economic welfare. The rules of Private Law have a double fold aim: promote general welfare by strengthening market forces and allowing individuals to increase their wealth by regulating the market, the competition and protecting the consumer.
- **Private Law must in addition aim to the protection of Human Rights:** the rules of non-discrimination in contract law and the rules of non-contractual liability for damage have this function. The twin role to this is the establishment of solidarity and social responsibility. Private Law must demand a minimum of solidarity among the members of society and allow for altruistic and social activities. The provisions on good faith and donation are of prime concern in this perspective.

# **Demarcation of Private Law in Regards to Public Law**

- Private Law and Public Law
- Mixed branches of law

## **STRUCTURE OF PRIVATE LAW:**

**Civil law : Law of persons and family, property and land law, law of contracts, law of obligations, Law of Matrimonial Regimes, donations and successions.**

**Commercial law**

**Company law**

**Insurance law**

**Law of securities,**

# CHAPTER II. CIVIL LAW

Civil Law is composed of inter alia:

- Law of Family,
- Matrimonial Regimes, Liberalities and Successions,
- Law of Obligations and
- Property and Land Law.

# Law of Persons and Family

- The Law of Persons and Family deals with both the essential legal aspects of the person from his birth until his death and family relationships: the legal relationships between man and woman, parents and children, persons related by kinship or alliances (marriage, filiation). The principles governing this branch of Rwandan Law are enshrined in the Preliminary Title and the Book I of the Civil Code.

# The Law of Persons

- The Law of Persons deals with the essential legal aspects of the person from his/her birth to his/her death. The rights of personality arose with the advent of liberal economy. The aim of these rights was to protect the human personality against the abuse, the infringement, etc.
- The Constitution of the Republic of Rwanda grants these rights: human person is sacred and inviolable while the right to privacy is also guaranteed under the Constitution . All these attributes are recognised to person during his/her life.

# Legal Personality

- In principle, any human being is a subject of rights although this does not mean any individual is *in fact* owner, creditor, debtor, etc. It simply means he/she can detain these 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 obligations*. Note also that among all the being, sole the human being has the quality of being subject of rights. A part from the legal personality recognised to human being, moral persons also have legal personality. 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 moral persons**.

# Natural person

- Compared with other beings, human beings are the only legal subjects recognised by the law. 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 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.

# Natural person

- According to Art. 9 of the Family code (FC), 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 (art.10FC). Provisions of this article enable the child born alive to claim his 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; we can mention the right to life. From the time of conception, the unborn child is recognised the right to life, hence the punishment of abortion (Article 326 of the Rwandan Penal Code).

# Natural person

- The legal personality of a person is terminated by *death* or by *disappearance*. In law, if the missing person has been absent for 7 to 9 years, he is confirmed to be dead by the court. The legal personality, recognised to a person alive, ends by death; the human being is considered as legal subject from birth to death and persons cannot possess (have) rights.

# Natural person

- Nevertheless, Rwandan law admits:
  - Protection of the deceased's body and burial place;
  - Respect of the deceased's names and protection against defamation;
  - Respect of the deceased's will after his death

# Moral persons

- Moral persons, called also “juristic persons”, are social associations representing a group of interests. Such organisations can be either a group of individuals such as a state, companies and associations, or a group of properties such as foundations. The moral personality therefore, groups natural persons in a community having a specific purpose and whose legal existence is different from the existence of its members

# Moral persons

- There are several categories of moral persons. These categories are however classified into two major types.  
*Moral persons of public law:* these are moral persons established for public interest. The *State* is the most famous and known moral person although it could not have assimilated to moral person. It is an assimilation by which reference is made to *commodatis causa*, because the State is a concept which is implacable to any other. The *district* also falls under this category. Parastatals are also in this category. The examples are many: the University of Rwanda, EUCL, National Bank of Rwanda (BNR) See.

# Moral persons

- *Moral persons of private law:* this category includes inter alia associations, cooperatives, companies, etc. *Associations* is a grouping of natural or moral persons governed by civil law aiming at promoting social works, while a cooperative is an association of natural or moral persons based on the values of promoting their members, and a company is a corporate body composed of one or more persons for making profit See Article 1 of the Law N° 20/2000 relating to non-profit making organisation, O.G. N° 7 of 01/04/2001.
- See Article 2 of the Law N° 50/2007 determining the establishment, organisation and functionning of cooperative organisation in Rwanda.

# Moral persons

- By *legal measures*: the juristic person created by a statutory provision shall be terminated by a new law that replaces the former. Example: the public transport authority established by Act of January 26, 1967 ended with the Decree Law of May 8, 1978 creating the National Office of Transport (ONATRACOM).

# Moral persons

- By a *decision of the Court*: the decision of the court may dissolve an association by ending its legal personality especially when it can no longer fulfill its objectives. The claim may be brought by a member of an association, one third or the prosecutor.
- By a *decision of members of the association*: if the majority of members may ask to end their association, according to what is provided in the Articles.
- By a *statutory measure*: often the Articles of association or the law provides the duration of specific juristic person and it stops at the end of this period. The law also may end the moral
- *Legal Personality*: the legal personality of a natural person takes effect upon birth (Article 15 CCBk I). It can also be extended to the period conception if the interests of the infant so requires (Article 16). The legal personality ends upon natural death and confirmation of death by court in case a person disappeared (Article 28 CCBk I)

# Identification

- Identification of a person serves to distinguish people from others while exercising their rights. According to article 35 of the family code, “a physical person is **identified by gender, name, given name, residence and domicile**”. On these elements, we must add “**nationality**” in order to distinguish a Rwandan citizen from a foreigner. It is also important to add “**the place and date of birth (age)**”.
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# *Gender and age*

- There are legal effects related to gender and age
- marriage is only allowed between two persons of different sexes
- The incapacity of a person of minor age;
- Under the former Family Code, the incapacity of the married woman; the new code gives a man and a woman full capacity without distinction.

# Name and Given names

- Name is a term used to specify a person in his/her social and legal life in exercising his/her rights and fulfilling his/her duties. This means of individualisation is composed of various elements having different importance, and governed by different regulations :
- A **surname** and one or more potential **given names** (Art.36 FC) ;
- In practice, individuals are sometimes given nick names ;
- Individuals also may decide to use **pseudonym** or pen-name ;
- In some societies, there are **qualifications based on either religion** (e.g. Muslims), or **nobility** (e.g. In European feudalism : Prince, Duke, Count, Viscount, Baron, Knight).

# *Surname and given name*

- Unlike some societies where the individuals take up family surnames, in Rwanda, a personal name is given to an individual upon his/her birth: **surname**.
- The legislator gives **reasons to justify why a personal name is maintained instead of a family name**:
- Most of Rwandan names are closely related to previous circumstances of their parents' life;
- Some names are ridiculous and are against good morals;
- There are some names which are not suitable for females (e.g. *Mfizi* – Bull, *Gasekurume* – Goat, *Semubi* – The Ugly, *Bendantunguka* – Bastard, etc.);
- Attribution of family surnames is no more than a blind obedience to foreign traditions.
- It is unanimously known that Rwandan culture, regardless of potential nicknames, officially attributes one surname and if need be one given name

- A surname is given within a period of 15 days after birth. The given name(s) is (are) not compulsory. The given name(s) is (are) given at the same time as the surname.
- In the same family, given name are personal. It is not allowed to take one's father', mother', brothers' or sisters' given names while they are still alive so as to avoid confusion among individuals.
- The name given to a child is communicated to the civil status officer at the time of birth declaration. In practice a surname is given to a new-born child by his/her father on the 8<sup>th</sup> day after birth, in case of father's absence, this is done by one of the close male relative, member of the family council.
- Birth declaration (notice) is done (given) by the father, in his absence by the mother, in their absence by one of the ascendants or close relatives, or any person having assisted in the birth, or any other person that finds a new-born. The married woman retains her maiden name on official documents. She may however, for personal reasons, use her husband's name if she so wishes.

- Clergymen and religious personnel also retain their surnames and given names on official documents. Surnames and given names must not be against morality and good morals. Examples: *Semubi* – The Ugly, *Bendantunguka* – The Bastard, *Ntibanyendera* – referring to the adulterine child, *Rwasubutare* – The rock splitter (referring to hard sexual intercourse with his wife), ...

# *Nickname*

- A nickname is a term used to call an individual by the public, and adds to his/her name.
- Nicknames are very common. They are not official, therefore cannot be written on certificates of civil status. However, as they make people more identified, they are sometimes mentioned on official documents or on notified papers, and often started by the word “alias”; e.g. *Harerimana alias Rusisibiranya*.

# Pseudonym

- Pseudonym is a borrowed name that a person uses to conceal his/her real name. This is often done by artists, writers, sportsmen, warriors and politicians. Pseudonym has no regulation and has no official value. Because it is useful in completing identity, people are used to mentioning it on certain certificates. Pseudonym can lead to birth of a right similar to commercial names and be protected against usurpation.

# *Legal characteristics of a name*

- The name is characterised by the following three elements:
- Immutability;
- Imprescriptibility;
- Unavailability.

# Domicile and residence

- *The domicile of a person is “a place where he/she has his/her principal establishment, and where he/she can possibly be reached at any time either directly or through an intermediary, or where he/she is registered”.*
- **Domicile** is the place where a person is legally deemed to be permanently present for the purpose of exercising his/her juridical activities. In a way it is the person's registered office.
- a person's residence is “*a place where a physical person is habitually based*”. It is actually the permanent place where a person lives.
- A place where a person lives is assumed to be his/her residence unless it is proved that he/she has another residence elsewhere

# Domicile and residence

- The meaning that emerges from those two definitions is that residence is a factual notion. Domicile is a legal notion and it is determined by legal provisions. **Registration in “population register” and an “identity card” provide an official evidence of a domicile.**
- A domicile can be a residence. In this case, the domicile and the residence are interchangeable. But the domicile can also be located in other place different from that of residence. The terms “domicile and residence” in their current usage, or in their official usage or juridical usage, are very often confused. For example, in the field of criminal law, when we talk of ‘violation of domicile’, it can be taken to mean violation of domicile, as well as residence, housing or lodging of a person, even for a single night.

# Nationality

- This is the right to belong to a particular nation and in principle; every person has the right to nationality (Article 7 of the Constitution of the Republic of Rwanda 2003). Under Rwandan Law, nationality is by parental descent or by acquisition (naturalization

# Jus soli

- Any foreigner born on Rwandan territory from alien parents residing in Rwanda may, from the age of eighteen (18), acquire Rwandan nationality provided he or she applies for it to the Director General;
- Any child born in Rwanda from unknown or stateless parents or who cannot acquire the nationality of one of his or her parents shall be Rwandan;
- New born baby found on the Rwandan territory shall be considered as born in Rwanda in case of lack of proof to the contrary;
- A foreigner or stateless person who marries a Rwandan may acquire Rwandan nationality after 3 years since the date of celebration of marriage upon application to the Director General of Immigration;
- Adoption of a child who is a foreigner or who is stateless by a Rwandan automatically accords Rwandan nationality.

- Rwandan nationality can also be acquired by *naturalization* upon application to the Director General of Immigration (Article 13 of the Rwandan Nationality Law).
- Marriage
- Filiation

# The Law of Family

- The family generally refers to a group of persons descending from a common ancestor. This family includes ascendants, descendants and collaterals. In the strict sense, the family is made up by the father, the mother and their children-nuclear family. Even though the CC. Book I, reinstates the extended family in the formalities of marriage and matters relating to alimony, it protects only the nuclear family described in the provisions of article 27 of the Constitution: "The family is the natural foundation of society, is protected by the State. Parents have a right and duty to educate their children."

# Marriage

- The marriage is an essential element of the Family. It is a solemn legal act. The civil marriage is the voluntary and consensual union of a man and a woman in accordance with mandatory rules established by the law. The Rwandan law (Constitution of the Republic of Rwanda 2003 [Article 27] and CCBk I [Article 168]) recognize monogamous marriage and prohibits then polygamy and bigamy. For a marriage to be valid, the contract of marriage must be concluded between two people of opposite sex aged at least 21 years.

# Conditions for a valid marriage

- Substantive conditions:
- - age 21
- Marriage is prohibited, in the direct line, between ascendants and descendants, and in the collateral line, up to the seventh degree
- *Marriage is prohibited between a person and his/her parents-in-law.*
- *Marriage is prohibited between:*

*The adopter and the adoptee;The adopter and the descendants of the adoptee;The adoptee and the spouse of the adopter;The adopter and the spouse of the adoptee;The adopted children from same adopter;The adoptee and the children of the adopter.*

- No one is allowed to contract a new marriage before the cancellation or dissolution of the previous marriage.
- A woman is prohibited from re-marrying until 300 days have elapsed from the dissolution or cancellation of marriage of the previous marriage.
- Where the ground for divorce was adultery, the guilty spouse cannot remarry his/her accomplice

# Formal conditions

- Marriage is celebrated after twenty days starting from the day the marriage was publicised(Publication of the marriage project)
- Physical appearance by spouses and witnesses
- Consent by both spouses
- Role of inkwano

# Filiation

- Legitimate children
- Legitimised children
- Natural filiation
- Adoption

# Property and Land Law

- “And now we will make human beings; they will be like us and resemble us. They will have power over the fish, the birds, and all the animals, domestic and wild, large and small.”“...blessed them and said, “Have many children, so that your descendants will live all over the earth and bring it under their control. I am putting you in charge of the fish, the birds, and all the wild animals.” Genesis 1:26, Good News Bible.

# Concepts of Property and Property Law

- What is Property? How should we identify and describe the ownership of property? If someone owns property, what is the range of things he may do with it? **Possess it? Use it? Sell it? Destroy it?** What limits does the law place upon a person's enjoyment of property in order to protect the interests of other members of the community?

- Consider, for example, a type of property important to most of us. Notice a car that Mr. Mugabo drives. **If we describe him as the "owner", does that tell us everything we may want to know about his legal rights with respect to that car? Who else may have a claim to that car?** Perhaps his parents loaned or gave it to him, or perhaps he bought it from an auto dealer. If a bank loaned Mr. Mugabo some money to finance his purchase of the car, does that bank own an interest in a car? If Mr. Mugabo lends his car to his friend for a week while he is on vacation or in a mission outside the country, does his friend have a property right in the car? If Mugabo is married, does his wife have any legal right with respect to the car? To what extent may the state, on behalf of Mr. Mugabo's fellow citizens, regulate Mugabo's use of the car? Should we take it as an infringement on Mr. Mugabo's property rights? Such are the questions to be answered by this course-Property law.

- *Property*: In a popular lay sense, the term "property" usually refers to tangible things. A person's property, we say, consists of his car, furniture, clothing, tools, and the like. Land ownership and intangible property, such as bank deposits, stocks, and bonds are also often imagined as ownership of things. In the study of law, the term "property" is often used in a legal sense different from the popular image as referring to a thing.

# Classification of Property

- As seen before, the ordinary meaning of the word “Property” are things or a thing that serves to the usage of man by allowing him to satisfy his daily needs ( which are endless) by using them directly or by using them through exchange. In the legal meaning of the term, which itself does not completely ignore the contents of the first definition, one understands the rights that a person exercises over a thing, which thing exists to the benefit of a person, physical or moral.

# *Classification of property ( things) in relation to who owns them*

- *The Res Communes (things which are common to all –ownership)*
- *The Vacant property that has no master*
- **=Res nullius:** these are things or (properties) that belong to none, that is, things that can be appropriated, but which have no proprietor at the moment. Such things in the present civilized world are very rare
- **Res derelictae:** these are moveable property /things which have been voluntarily abandoned by their original owner , making such property free to be acquired by the immediate person who will land on it/ them
- **Treasury:** one can say that treasury means something of value which can be underground (e.g. under the soils), or elsewhere in an extended sense of the term – something is hidden in any way , but to the extent that nobody knows its existence and so ,it belongs to no body

# Treasury

- In other words, no body claims its ownership. For it to be qualified a treasury, two conditions must be fulfilled: **(i) No person should be able to justify any right of ownership over that thing (property)**. It might have had an owner some time ago, but at present, no one can be identified as an owner or even, none alive can claim an attachment to that property through the claim of succession transmissions which are caught up by extinctive prescription. **(ii) Such property must have been discovered by chance / luck not by specific search or investigations destined for that cause /purpose.** Thus, where such property (treasury) has been discovered by someone who knew it was there or by someone who is sent by another who knew it was there, will not qualify to be a treasury.

# *Classification of property basing on the rights over it*

- ***Real property*** (or realty) is referred to property for which the owner could obtain specific relief the right to get the property (thing) back from a wrongful possessor. Such an action is called an action (*in rem*), or real action. Thus, for "real property" it means that the owner is entitled to restitution of the thing from the wrongdoer (Right over building, plants, etc).
- ***Personal property***: this was for actions to protect possessions; the owner had only "personal" actions to recover damages (Right to claim, etc). Such property, protected by personal actions, was therefore called "personal property" or personality".

# *Classification of property basing on their nature*

- **Corporeal or incorporeal:** From the analysis of our civil code, you find that, property Law is envisaged in terms of prerogatives on the corporeal things or to make it more clearly, on the objects. The civil code does not draw a clear distinction between corporeal and incorporeal property. Our laws seem to have been, influenced by the Roman law which gave little concern to the «**res incorporales**» since for them, the right of ownership was based on things-things here to mean tangible objects only.

- **Movable and Immovable property:** In civil law systems, personal property is often called movable property or movables-to mean any property that can be moved from one location to another (e.g. furniture). Such a term is in distinction with immovable property which is the fixed property that generally cannot be moved, such as land and buildings.
- Rwandan Law gives the constituencies of the concepts of movable and immovable property without defining them. Under Article 3 CCB II “***Are immoveable, all the real rights which have for object immoveable and the rights of claim for acquiring or recovering a real right over an immoveable***” while Article 4 referring to the constituencies of movable property reads: “are movables all other patrimonial rights and notably the shares or interests in companies, associations or communities having legal personality”

# Ownership

- « Ownership is the right of disposing of things in the absolute and exclusive manner, subject to any restriction by the law and the real rights belonging to other persons»

# *Characteristics of ownership*

- The right of ownership is an absolute right as so:
  - It is exclusive in a sense that only the owner exercises his/her right over the property (thing) save for **usufruct** and **servitudes**;
  - It is individual or personal in that only the ownership has the right. However, there are some cases of collective ownership like in successions or in co-ownerships;
  - It is a right that gives freedom to the owner to use his/her property in any way he/she feels fitting. **But see the restriction from the law.**
- The right of ownership is perpetual in that it lasts as long as the property upon which this right is exercised still exists.

# *Prerogatives of the ownership right*

- 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; i.e. *Usus*, *Fructus* and *Abusus*

# *Acquisition and loss of ownership right*

- Acquisition or loss of ownership as it is used in civil law jurisdictions is traditionally effected through common means of **contract to transfer the ownership like through; sale** (consensual transfers), donations, succession (gratuitous consensual transfers), and to mention a few.

- The modes of acquisition under Rwandan law have been divided or classified into 4 categories:  
**succession** (*ab intestate* and *testamentary*);  
**obligation effects that is**, by onerous title contracts (sale or exchange, etc) or by gratuitous title (donations);  
**prescription or possession** in general (acquisitive) and;  
**accession**

# Law of Obligations

- The Law of obligations covers two major parts. It on the one hand deal with the contractual relationships between the parties and to the other hand it deals with torts.

# Concept of obligations and Law of obligations

- The concept “obligation” in its ordinary meaning refers to what one ought to do, or all that laws and morals command to an individual (Going to church, taking your son to school, going to vote, etc). In civil law, the **“obligation” is a legal bond between two persons which allows one party (creditor) to request another (debtor) to perform or abstain from performing something.**

# *Characteristics of an obligation*

- **An obligation is a legal bond:** This means that the debtor must accomplish his/her undertaking (what agreed upon), and failure to comply, the creditor has a right to a legal remedy. Note there exist moral obligation and juridical obligation whereby moral obligation is non-enforceable while juridical obligation is enforceable

- **An obligation has a patrimonial character:** It is an element of property. For a creditor, it is one of his/her assets, while on the side of the debtor; it is one of his/her liabilities.
- **An obligation is a personal right:** The creditor has a right which he/she exercises against the debtor. It is normally called creditor's right as opposed to real right which is attached to a thing and not a person.

# *Classification of obligation:*

- **Object:** The obligation of the debtor can be : obligation to give something, to do something or not to do something.
- **Warranty attached to their performance (Obligation of means and obligation of result):** Obligation of means\_is that by which the debtor commits himself using the adapted means, to be careful and diligent in the achievement of a service, without guaranteeing a given result *The obligation of result to* the contrary is, that by which the debtor commits himself/herself to provide the promised service which consists of a given result

# Civil obligation and natural obligation

- Non-compliance of a civil obligation can be enforced by courts, whereas a natural obligation (give dowry to someone, supply food to a cousin) is not enforceable under the law.

# LAW OF CONTRACTS

- The contract is one of the principal sources of the obligations; it is also one of the most significant institutions by which resources circulate and are distributed in the economy. The contractual phenomenon is omnipresent in the everyday life: (contracts for the acquisition of food, clothing, means of housing, contract of carriage, medical care, etc).

- A contract is an agreement in which one or more persons undertake for one or more persons to give, to do or not do something. an *exchange relationship* created by oral or written *agreement* between *two or more persons*, containing at least one *promise*, and recognised in law as *enforceable*

# Evolution of the contract

- *Principle of Freedom of contract:* In principle, the contract is formed by sole the force of human initiative: it is the fundamental principle of the autonomy of the will. This theory puts the individual at the center of the creation of the obligation. The principle of the autonomy of the will means that the will creates obligation on its own. Under Rwandan law, the principle of freedom of the contract is provided under Article 64 of the law on contracts: “A legally formed contract becomes a law between the parties to it”.

# Consequences of the principle

- Any person is free, to do what he/ she wants and is free to regulate the contents of the contract as well as its effects.
- Once it is freely concluded, freely conceived, this contract is equivalent to the law and is called convention-law or the law of the parties. Except legal causes, a party cannot modify the contract with its own way. This contract cannot govern the foreign people with him i.e. the thirds.
- The principal source of the obligations is the contract.
- The majority of laws regulating contractual matters are suppletive, interpretative of will.
- Consensualism: The contract is the work of the wills of the contractors, and these wills only. No form of expression of this will is necessary in theory.

# Classification of contracts

- Traditional classification:
- *Bilateral contract and unilateral contract*
- *aleatory ( random) contract and commutative*
- *gratuitous contract and onerous contract*
- *Real, consensual and solemnial contract*

# Modern classification of the contracts

- **contracts of free discussion:** in this contract, the parties freely discuss the clauses of their contract (traditional classification). It is also called, private contract. Here, the parties freely negotiate the contents of their agreement and arrive in theory, with a balanced agreement.
- **contracts of adhesion (Standard form contract in Common Law):** Here the two parties do not discuss anymore the clauses of their contract. The party economically strong writes a contract and that weaker party comes to adhere to the other

- **standard contracts:** in Civil Law system, “Standard contracts” sometimes, associations representing "weaker parties" make standard contracts intended to be opposed to certain contracts of adhesion.
- **general conditions of businesses:** this expression concerns, in general, clauses pre-established before the individual contract in which they are intended to integrate in principle.

# Conditions of formation of a contract

- Article 4 of the law of contracts provides for four essential conditions for the existence of the contract:
- The consent of the parties to the contract;
- The capacity to enter into contract;
- The object;
- The licit cause

# Effects of the contract

- A contract produces effects as for the parties to it. As for the third parties it produces no effect. This assertion is explained as follows:
- *For the Parties to it*(article 113)
  - Between the contracting parties (**Pacta sunt servanda**), a contract is a law: it binds the parties and even the judge has no right to change it if it is consistent with the imperative/mandatory rules;
- *For the Third parties*:
  - Contract produces effects only between contracting parties; they cannot harm the third parties, they only profit to him in the cases laid down [**Res inter alios neque iron pan acta nocere neque prodess potest**].

# **Termination of the Contract**

- **Payment/performance**
- **Breach**
- **Novation**
- **Compensation or Set-off**
- **Nullity**
- **Release**
- **Loss or destruction**
- **Limitation or prescription**

# TORT LIABILITY

- ***Personal liability*** :The violation by a person of a duty not to harm another by an act or behaviour that an ordinary diligent person placed in similar circumstances would not have committed and the law orders the wrong doer to redress
- Three conditions are required to assess the existence of this liability:*A wrongful act or fault, negligence , The fault, A prejudice or damage to the victim, A causal link between the fault and the prejudice*

# **Vicarious liability**

- *Omissions or damages caused by the other(Parents, Employers, Artisans, Teachers)*
- *Damages caused by the things*
- *Animals (Art 261 CCBk III):* 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

# Law of Matrimonial Regimes, Liberalities and Successions

- Matrimonial Regimes, Liberalities and Successions deal with the pecuniary relationships among families and they are unconcerned about individuals' pecuniary interests.

# Matrimonial Regimes

- Three types of matrimonial regimes exist under Rwandan Law (Article 2 MLS):
- *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 charges; 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.

# Donations

- There are two types of donations: Article 29
- *Donations inter vivos*: a beneficial contract by which the donor irrevocably transfers a patrimonial right to another person who accepts it.
- *Legacy*: 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.
- *Ascending partition*: an act accomplished by parents while they are still alive, by which they share their patrimony between their children or their descendants who acquire, each for the portion devolved to him or her, full ownership. This partition shall be regarded as the accomplishment of parents' duties to educate their children and to provide them with a personal patrimony.
- *Promised donation*: a contract of donation based on prospective property.

# Successions

- There are two types of successions:
- *Testamentary succession*: a testament is an act by which a person decides on the destination of his/her patrimony after his/her death and fixes provisions of his/her last will and it 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*: an intestate succession is a succession which is legally made where no testament was made.

# Succession under the regime of separation of properties

- The heirs are ranked as follows: Article 73
- the children of the de cujus ;
- the father and mother of the deceased ;
- the full brothers and full sisters of the deceased ;
- the half- brothers and half -sisters of the deceased;
- the uncles and aunts paternal as well as maternal of the deceased.
- Note: Each rank excludes the others in the succession order.

# Under the regime of community of property and limited by acquests

- Community of Property : Article
- Limited community of property :

# LAW OF SECURITIES

- A security protects the creditor against the risk of insolvency of the debtor. The idea of “security” is easy to understand: It means giving to the creditor an increased guarantee, an additional chance of payment.
- The security is a creditor’s prerogative added to others by the contract, the law, judgement and conservatory measures and its particular objective is to protect the creditor against the insolvency of the debtor

# REAL SECURITIES

- 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 earmarking the asset for the payment of the debt that it is guarantying.
- Pledge: Law N°34/2013 of 24/05/2013 on security interest in movable property
- Mortgage: law No.10/2009 of 14/05/2009 on mortgages

# PRIVILEGES

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- In its wide sense, the term “privilege” derives from the latin maxim « *privata lex* », the law adopted or made for an individual, and in law it indicates any prerogative, any advantage reserved for a person or for a limited category of people.
- Classification of privileges:
  - on salaries: superprivilege
  - Social security privilege
  - The privilege of public treasury
  - The privilege of the carrier

# The suretyship

- suretyship is a contract by which a person engages himself towards the creditor to guarantee the execution of the debt contracted by another person, in committing himself to pay in case the debtor fails to do it.

# COMMERCIAL LAW

- The term commercial law describes a wide body of laws that govern business transactions. Also called business law, it deals with principles of business and commerce. It covers matters like trading and sale of goods, bank transactions, loan and guarantee; matters and other things related to the laws of trade and commerce.
- As for the law of international trade, it may generally be described as that part of the law which is concerned with international commercial transactions, that is, transactions between nationals of one state and those of another.

## ~~Characteristics of the commercial law in comparison with the civil law~~

- the civil law dominates the commercial law insofar as its rules are so fundamental that they govern necessarily all the judicial acts: the regime of goods, the obligations, and the responsibility. There is a strong co-penetration between the two disciplines. The civil law constitutes the common law (*droit commun*) and the commercial law remains a law of exception. It is a group of all particular rules laid down in the interest of the business

## **Characteristics of the commercial law in comparison with the civil law**

- In spite of this co-penetration, the business life has been emancipated from the civil law for two principal reasons: speed of the trade operations and the reinforcement of the credit.
- **A. Speed in the trade operations**
- *The freedom of evidence*
- *Formalism in many operations*
- **B. Reinforcement of the credit**

# Company law

- 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. Thus, the company law is that law which exclusively deals with all matters relating to companies

categories of persons which are not regarded by this as body corporate:

- a) a statutory corporation;
- b) a sole proprietorship;
- c) a registered co-operative society;
- d) a trade union;
- e) a registered organization.

# Categories and types of companies

- The company act provides for two categories of companies, namely Public and private companies.
- **Private Company:** The law does not define what a private company is. However, it enumerates the characteristics of a private company. In case of a private company, some restrictions should be imposed on members' right to transfer their shares, the maximum number of members should be one hundred (100), and there should be no invitation to the public to subscribe for its shares or debentures.

# Public company

- The law relating to commercial companies says that any company is considered to be public, except if it is recorded as private company.
- A public company is a company whose number of shareholders is not limited and which has the authorisation to issue prospectus, that is, to collect money from the public and use it.
- Whether a company is public or private is taken more generally as an indication of the social and economic importance of the company, so that the public company is more tightly regulated than the private company in a number of ways which do not directly concern the offering of shares to the public

# Types of the companies

**A company limited by shares:** the vast majority of companies, are companies limited by shares. In such company the capital is divided into shares, for example capital of RFW 5,000,000 divided into 100 shares of Rfw 50,000 each.

The members of the company are liable to pay for their shares, either in money or money's worth (ie non-cash assets, goodwill or know-how).

Once they have paid for their shares they are under no further liability. The company is therefore said to be limited by shares. It follows from the fact that a corporation is a separate person that its members are not as such liable for its debts. The members are completely free for any personal liability. The rule of non-liability also applies in principle to obligations other than debts; the company is liable not the member.

- **A company limited by guarantee:** such companies are usually formed for educational or charitable purposes. They usually raise their funds by subscription. Limitation of liability by guarantee is not appropriate for trading companies. The liability of each members is limited to the amount he has agreed to contribute in the event of winding-up. The amount will be specified in the memorandum.

- **Company limited by both shares and guarantee** : these are companies whose liability of members is limited by both shares and guarantee
- **Unlimited company**: in case of this company, there is no limit to the liability of the members of such companies. Thus although the company is a separate legal entity, the members' liability resembles that of partners, except that technically their liability is to the company itself and not to the creditors. In other words in an unlimited company the shareholders are liable for the company's debts and other obligations. Unlimited companies are not so popular in Rwanda because of this personal liability. However, unlimited companies do have the advantages of greater privacy since they are not required to deliver copies of their accounts to the registrar general of companies.

# Insurance law

- Insurance is a mechanism for mitigating the risk of loss. Houses burn down. Property is stolen. Courts order people to pay damages. People who face the possibility of occurrences such as these can team up with others in the same position. They can contribute to a fund from which money will be available to pay for losses when they occur. Each contribution or premium is much less than the potential loss the contributor faces. Among a relatively large number of people facing similar risks, only a relative few will actually suffer loss. The contributions of the many pay for the losses of a few.

# The notion of Risk

- The fundamental and essential element of insurance law is the risk. risk may be defined as the uncertain element that prompts the intervention of the insurer. There are three aspects related to risk: the uncertain event, fortuitous event and non-intentional fault.
- **Uncertain events:** The element of uncertainty can be based on the happening of an event itself or the date of the event. For instance, if one enters into a contract of insurance to insure a house against the risk of fire, the insured is not in a position to foresee whether or not the house will ever be destroyed by fire.

- **Fortuitous event and non-intentional fault:** “Risks resulting from fortuitous events and faults committed by the insured are covered by the insurer, unless otherwise provided. Notwithstanding any clause to the contrary, the insurer cannot cover risks resulting from the intentional fault committed by the insured.”
- In the context of insurance law, the important element is the absence of the intention to do harm, which in itself removes all certitude regarding the realisation of the risk. Consequently, the absence of the element of incertitude, i.e. the certitude regarding the happening or the date of the risk, will lead to the impossibility to insure.

# Things which have already perished and cannot be exposed any more to risk

- Article 31 of the Insurance Law prohibits the insurance of things which have already perished and cannot be exposed anymore to risk. Any such insurance contract is void. The said article provides: “The insurance is void (null) if, at the moment of the conclusion of the contract, the thing insured has already perished or cannot be any more exposed to risks. Premiums paid must be restituted to the insured.”

# Intentional fault

- Article 11 (3) of the Insurance Law provides: “Notwithstanding any clause to the contrary, the insurer cannot cover risks resulting from the intentional fault committed by the insured.” This is logical given that the risk which is at the core of the insurance is an uncertain element. By the fault being intentional, the risk loses all aspects of uncertainty.

# Excluded risks

- Unless otherwise stated, the insurer does not meet the losses or damages caused by either the foreign war or civil war, by riots, strikes or upheavals by the nationals and or by insurrection, rebellion or by revolt. Proof of the origin of the loss or the damage is incumbent upon the insurer who intends to free himself/herself from his/her obligation

# LABOUR LAW

- Labour law, is concerned with *private sector*; not with the public sector. The legal position and the rights of civil servants are part of administrative law. The demarcation between private and public sectors becomes less and less clear however, given the continual intervention of the Government in the economy and particularly when the Government creates or controls commercial enterprises.

# Employment law is divided into two parts

- **Contract of employment:** any contract, either oral or written, by virtue of which a person agrees to work for an employer in return for pay
- The Main characteristics of a Contract of employment are:
- **Employee's activity:** work allocated to the employee by virtue of the contract
- **Remuneration:** all payments allotted to the employee including salary, allowances,...
- **Subordination position of the employee:** the fact that an employee works under the command, the authority and the control of an employer.

# *Different types of individual labour contract*

- **Contract for indefinite period (open-end contract):** it comes into existence solely through the agreement of the parties: **a written form is not needed.** It is however self-evident that it is best to have a written agreement and that certain stipulations of the contract, such as the trial clause and the covenant of non-competition, need to be put in writing for their own sake.

# Contract for a definite period

- a contract for precise period or indicated work. This contract must be in writing indicating the work (job to be performed) or for the replacement of an employee who is to be identified in the contract. *Contravention to these requirements is sanctioned; the contract will be regarded as being for an indefinite period and the employer will have to respect a term of notice in order to terminate it, or else pay the corresponding damages .*

- Parties to this contract may renew it as many times as they wish. The following specific means of termination are applied to the termination of a labour contract for a definite period:
- the expiration of the period for which the contract for a definite period was concluded;
- the completion of the precisely indicated work for which the appropriate type of labour contract was concluded;
- the termination by mutual consent
- the death of the employee;
- An Act of God (*force majeure*).

# 2. Collective employment relations

- Collective labour relations include such subjects as:
- **Trade unions and employers' associations:** the right to form trade unions for the defence and the promotion of legitimate professional interests is recognized.
- **Collective bargaining:** 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.
- **industrial conflicts:** this includes individual labour dispute (i.e. “a disagreement between a worker and his/her employer, or between several workers and their employer, but for motives relating to non observation of a clause of a labor contract which binds each worker and his/her employer, where this clause is likely to vary from one worker to another”) and collective labour dispute (“a disagreement between one or several employers on one hand, and on the other hand, some or all workers where the disagreement arises in relation to labor conditions and jeopardize the smooth running or the social peace of the institution”).

# Private int'l law

- **What is Private International Law?**
- PIL is the part of domestic law which provides for rules on how to deal with situations containing a foreign element
- "***Foreign element***" simply means a contact with some system of law other than that of the forum state
- E.g. Marriage between a Rwandan national and Belgian citizen in Malawi; a Swiss couple intending to adopt a Burundian child; a sale contract between a Malaysian seller and an American buyer in Singapore; etc

- In Common Law countries, these rules are referred to as “**conflict of laws**” (e.g. USA, UK, Canada, former colonies of UK, etc)
- While “**Private International Law**” is mostly used in Civil Law countries (e.g. France, Italy, Spanish speaking countries, Portuguese speaking countries, Belgium, countries which inherited civil law system through colonization, etc)
- In Germany and German speaking countries, this set of rules is called **International Private Law** “*internationales Privatrecht*”

# Why do we need PIL?

- We need PIL because there are many legal systems in the world and all deal with the same things: birth, marriage, death, contracts, etc. but each in its own way
- Sometimes these laws may collide on some issues, thus creating a conflict (conflict of laws, conflict of jurisdictions, etc)

- Thus, PIL is needed when there is a legal situation which has connections with more than one country
- E.g. a car-accident which involves a Rwandan and a Ugandan cars; a marriage between a Burundian and a Congolese citizen to be celebrated in Tanzania; or an international sale between a Rwandan buyer and a Kenyan seller

# **Effect of foreign laws, judgments and agreements**

- Article 6 of the PT says that Foreign laws, judgments, international agreements and private agreements having effect in foreign countries shall not have any effect in Rwanda when they are contrary to public order, social interest or Rwandan public morals.

# Law applicable to status and capacity of persons

- The status and capacity of Rwandans, both living in and outside Rwanda are governed by Rwandan laws.
- The status and capacity of a foreigner residing in Rwanda, as well as his/her family relationships, are governed by the law of his/her country provided it is not contrary to public order and good morals consistent with Rwandan law. In case of unknown nationality, his/her status and capacity are governed by Rwandan laws.

# Law applicable to civil rights with respect to property

- Civil rights with respect to movable and immovable property are governed by the law of the place where the property is located.

# Law applicable to inter vivos deeds

- Inter vivos deeds are governed:
  - as to the form, by the law of the place where they are made. However, private deeds may be made in compliance with the standards legally acceptable under laws of the country of origin of parties;
  - as to the substance, effects and evidence, by the law of the place where the deeds are made unless otherwise agreed by the parties.