CPA

Certified Public Accountant Examination

Stage: Foundation F1.2

Subject Title: Introduction to Law

Examination Format Revision Pack

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INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF RWANDA
Driving Sustainable Performance

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F1.2 INTRODUCTION TO LAW

FOUNDATION 1

EXAMINATION FORMAT REVISION PACK

NOTES
You are required to answer 5 questions. If you provide answers to more than five questions, you must draw a clearly distinguishable line through the answer(s) not to be marked. Otherwise, only the first five answers to hand will be marked.

TIME ALLOWED:
3 hours, plus 10 minutes to read the paper.

INSTRUCTIONS:
During the reading time you may write notes on the examination paper but you may not commence writing in your answer book.
Marks for each question are shown. The pass mark required is 50% in total over the whole paper.
Start your answer to each question on a new page.
You are reminded that candidates are expected to pay particular attention to their communication skills and care must be taken regarding the format and literacy of the solutions. The marking system will take into account the content of the candidates' answers and the extent to which answers are supported with relevant legislation, case law or examples where appropriate.
List on the cover of each answer booklet, in the space provided, the number of each question attempted.

Editor's note: Your answer should show that you understand the subject matter displayed in the question. The longer the answer (the more verbose it is) the harder it will be for the examiner to mark. So be succinct and leave out the padding unless you deem it really necessary!

THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF RWANDA

FOUNDATION 1.2 - INTRODUCTION TO LAW

EXAMINATION FORMAT - REVISION QUESTION AND SOLUTIONS

Time Allowed: 3 hours, plus 10 minutes to read the paper.
Number of Questions to be answered: FIVE
(If you provide answers to more than 5 of the questions, you must draw a clearly distinguishable line through the answer(s) not to be marked. Otherwise, only the first five (5) answers to hand will be marked.)

All questions carry equal marks.

Question 1

Please answer, briefly.

a) Why are Laws necessary?

b) What are the differences between Ethics and Law

Make reference to Rwanda and the Rwanda legal system where you can.

20 Marks

Question 2

In Rwanda Laws come from several historical sources; what are they and why does business need to be aware of these?

20 Marks

Question 3

What are the main divisions of Law and why are they important? 20 Marks

Question 4

Define the following terms: Law, International Law, Law of Property, Contract Law, Civil procedure and Common Law. 20 Marks

Question 5

Discuss the jurisdiction of Commercial courts in Rwanda; 20 Marks

Question 6

Fred has been asked by Joseph to build him a shed. This will be a substantial shed as Joseph wants to start a small fabrication workshop. Joseph has planning permission for a shed measuring 25metres by 15metres and the level ground on which to build it. It will not require

any plumbing or special supply for utilities as Joseph already has a shed and the relevant supplies can be extended or, as in the case of washrooms, the existing facilities can be used.

Fred has been a builder for some years and has learned a few pitfalls. He appreciates this should be a relatively simple job, but he asks Joseph to put his request in writing and invite him, Fred, to quote or at least to give a formal estimate.

Joseph is happy-go-lucky as well as successful and says "Oh it will be alright. Don't worry – I'll pay you the right price".

Should Fred insist on the more formal approach or go along with Joseph?

20 Marks

Question 7

Define the term" negotiable instrument".
Explain the characteristics of a negotiable instrument.

20 Marks

End of Paper

Suggested Solutions

Solution 1 - Laws and Ethics

a) As has been shown during history, without sets of defined rules, humankind can behave in unsociable ways and can cause mayhem. The establishment of laws in society is necessary to protect the rights of individuals and to ensure the good order, functioning and survival of the society. In effect, what the law is trying to do is to provide answers to the myriad of everyday problems that can arise in society. The solutions to such problems must accord with objectives that are judged by the community to be socially desirable. The problems arise in the first place because of the conflicting interests of individuals and groups within the society and the necessity to ensure the functioning and survival of the society itself. The more civilized a community becomes, and the greater the industrial and scientific progress it makes, the more laws it must have to regulate the new possibilities it is acquiring.

What the law does, in attempting to prevent and resolve conflict in society, is to:

- control social relations and behaviour;
- provide the machinery and procedures for the settlement of disputes;
- preserve the existing legal system;
- protect individuals by maintaining order;
- protect basic freedoms;
- provide for the surveillance and control of official action;
- recognize and protect ownership and enjoyment of the use of property;
- provide for the redress (compensation) of harm;
- reinforce and protect the family;
- facilitate social change.

b) An ethic is a set of moral principles, and Ethics *(also known as Moral Philosophy)* is the science of the rules of moral conduct. People in-general are more comfortable with dichotomies (two opposites) and with things which are easily differentiated. However, in ethics the issues are seldom clear cut. The answer to a question concerning ethics is almost never a simple "yes or no", "right or wrong" statement. Law on the other hand does require Yes/No answers; i.e. was he guilty or wasn't he?

There is a close relationship between Law and Ethics, but there are important differences.

First of all, whereas law is enforced by the organs of the state, ethics are not. While the commands of the law are imposed from without (heteronymous) and enforced by primarily exterior sanctions, the final decision in moral issues is left to each person's personal conscience except in some circumstances, public pressure may be brought to bear.

Secondly, law concerns itself primarily with the external behaviour of a person, his overt acts. Ethics on the other hand, concerns itself primarily with the state of a person's mind, with thoughts and desires, and how these affect one's behaviour.

Thirdly, whereas law imposes its commands in the interests of the community, the laws of ethics are imposed for their own sake, to achieve virtue. While the Law aims at the doing of

justice and the maintenance of peace and order in the community, the aim of ethical theory is the perfection of character; institution of law has to do with the regulation of conduct.

To a large extent law and ethics overlap, but the breach of the former can result in a fine or custodial sentence, the breaking of an ethical rule may result in nothing, bad dreams, or worse being shunned by society.

Much of what business does is not regulated by law and business operates within a community and affects this community considerably. A community may be in our own village or town, but many successful businesses operate country-wide and even world-wide. It has been said that " if it is legal, it must be benign". We all know this is not always so and this is where ethics is important and can affect ffect the way we and businesses behave.

Editor's note: The examiner will also be looking for the relative importance of Ethics, so a reference to business ethics should add marks

Solution 2 Historical sources of Rwandan Law

a) Rwanda was colonised by the Germans and then the Belgians a century or two ago and they brought with them "laws" or sets of rules based on what is known as Roman Law.

This Civil law system originated from continental Europe developed 2,000 years ago by the Romans. It was further developed by the French and it stands out as the prototype of the civil law systems.

The main features of the civil law system are:

Firstly, all civil law jurisdictions adopted the legal technique of "condition".

Secondly, the legal rule seeks to formulate a general rule of conduct as opposed to address the case in hand (cf Common Law).

b) Customary Laws

From even further ago than the 19th century, each tribe and kingdom developed its own sets of rules from morals and a sense of equitable justice. Over time these developed into, often un-written, rules or laws and became customary laws. These should be compared with Common Law – see next. The government is gradually developing a legal system which formally incorporates customary laws or supersedes them.

c) Common Law.

The English developed a sense of equity, justice and rules which came from each individual case submitted to the sheriff or court. The outcome of a court case is not the result of a comparing the actions being questioned against a set of formal and written laws, but looking at the merits or otherwise of each case itself and using the reasoning behind the decisions of previous cases tried. Where there is no comparable or relevant previous case, a precedent may/can be set. Much international and business law has been developed from this type of case law. Much has been formalised, such as the various "Sales" acts around the world which were developed from the Common Law and which were formalised in Britain in the 19th century into the Sale of Goods Act 1893. This may well have been the start of the formal sales acts. Most businesses must know how Sales of Goods Acts affect the way they do

business as the conditions written into a contract it cannot over-write or make invalid a condition/section of the laws of the country in which the parties to the contract may operate.

d) Criminal Law is a set of rules defining behaviour and the sanctions where the rules are broken is a statutory fine or custodial sentence rather than civil damages or compensation.

e) The Civil Code Books. These are a most important part f Rwandan Law. Whilst the laws as contained in the civil code books are being superseded by laws passed by Parliament, much of the civil code books are extant

Businesses need to be aware of these aspects of Law. Most business contracts are drawn up using the Law of Contract as developed from common law as the historical basis. Also businesses are now being expected to conform to what "in the west" is known as CSR – Code of Social Responsibility, not to be confused with Caisse Sociale du Rwanda. This Code of Social Responsibility incorporates ethics as well as a statement stating that the business organisation will abide a country's laws

Not only that, but as Rwanda develops its own laws especially relating to employment and safe practices, the more will business behaviour be governed in terms of Criminal Law and statutes governing aspects of Civil Law.

Solution 3 – Divisions of law

Broadly, law can be divided into two broad categories

A. International law is the set of rules generally regarded and accepted as binding in relations between states and nations. It serves as the indispensable framework for the practice of stable and organized international relations. International law differs from national legal systems in that it only concerns nations rather than private citizens per se. The basic principles are recognition of the sovereign state, known as *pacta sunt servanda (Latin for "agreements must be kept")* Public international law is the most well-known branch of International law which regulates legal relations between states and the manner in which international organizations operate.

B. National law is the law of a particular country and it is divided into various branches:

a) Public law

Public law is that branch of the law concerned with the organization of the state and state agencies and corporations as well as their relations with private individuals. Constitutional law, tax law, public finance, public liberties, administrative law, criminal law is all public law.

b) Private law

Private law on the other hand, is that branch of the law which governs the relationship of individuals inter se. There are divisions in this branch of law:

- Law of persons (including family law): This branch of law deals with the legal status of natural persons, such as minors and insane persons, and involves factors influencing capacity, such as age, marriage and nationality. Family law deals with the

law of domestic relations and the legal rules for family relationships, such as marriage, divorce, guardians.

- Law of "things". This branch is divided into categories:
    1) Law of property: this is a branch of law that is concerned with real rights and deals with ownership and possession, and various real rights in a thing belonging to another, such as servitudes, mortgages, pledges and liens.
    2) Law of succession**:** This deals with what happens to a person's estate upon death. In testamentary succession, the deceased leaves a valid will. In intestate succession, there is no will at all, or part of the estate of the deceased was not disposed of by will.
    3) Law of obligation: This branch of law deals with personal rights, and is divided into two categories.
    4) Law of contract: a contract is defined as a binding agreement between two or more persons by which one or more of them agrees to give something, or to do something, or not to do something. It is therefore an agreement intended to create or extinguish personal rights between persons.
    5) Civil liability. This is a branch of general duty imposed by law which will ground an action for damages by any person to whom the duty was owed who has suffered harm in consequence of the breach. The duty is owed to persons generally and is imposed independently of the will of the parties.
    6) Business law: There is no simple categorization of laws that fall under business law, since much of this law also falls into other categories. However, business law may include laws relating to insurance, labour law, bankruptcy, and agency, sale of goods, taxation, negotiable instruments, company law, carriage, and law of banking.

c) <u>Procedural law.</u>
This branch of law deals with the rules that govern how actions may be brought under the law. There are two divisions:

- Civil procedure: This sets out the rules of how persons can bring action against others in a civil court.
- Criminal procedure: This sets out procedure on how a criminal court operates, the powers of judges in criminal matters, and how persons can be brought before a criminal court.

d) <u>Law of evidence</u>: This sets out the rules of how evidence may be introduced and proved in a civil or criminal court.

e) <u>Conflict of laws</u>
This branch of law prescribes rules for settling an issue before a Rwandan court if the events at issue are so connected to a foreign country that the foreign country's system of law has to be considered in resolving the matter.

Laws govern much of we as individuals, employers and businesses do that it is important for managers to know the basis of legal procedures etc.

Solution 4 branches/types of law

- Law in its general sense, is a set of rules of conduct prescribed by a controlling authority and having a binding force.
  Objective law is a set of rules governing a person's conduct in a society, enacted and sanctioned by the public authority. Subjective law refers to the prerogatives or rights bestowed (given) to a person by the objective law. The reason why we call it a subjective right is because a right cannot exist on its own. It needs somebody or a subject who has the right. It is an issue of who owns what. The one who owns is the subject and what is being owned is the right.

- International law - . International law is the set of rules generally regarded and accepted as binding in relations between states and nations. It serves as the indispensable framework for the practice of stable and organized international relations. International law differs from national legal systems in that it only concerns nations rather than private citizens.
- Law of Property - this is a branch of law that is concerned with real rights and deals with ownership and possession, and various real rights in a thing belonging to another, such as servitudes, mortgages, pledges and liens.
  Law of Contract - a contract is defined as a binding agreement between two or more persons by which one or more of them agrees to give something, or to do something, or not to do something. It is therefore an agreement intended to create or extinguish personal rights between persons. Parliament has in 2011 enacted a Law governing contracts. It is Law 45/2011 of 25/11/2011.
  Civil procedure – Civil law is a branch of general duty which will ground an action for damages by any person to whom the duty was owed who has suffered harm in consequence of the breach. The duty is owed to persons generally and is imposed independently of the will of the parties.
- Common law is basically judge made law. The common law was formed primarily by judges who had to resolve individual disputes. Secondly, the legal rule in the common law system is one which seeks to provide the solution to the case in hand. It does not seek to formulate a general rule of conduct.

Solution 5 Commercial courts in Rwanda

Commercial courts are only 4 years old as it were. The laws enacting the jurisdiction of commercial courts became fully operational in March 2008
The Law 59/2007 of 16/12/2007 establishing commercial courts and determining their organization, functioning and jurisdiction declares all the actions which are subjected to the commercial courts:

- 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.

Proceedings are:

A. Initiation of a case

The registrar receives and registers the claim in the commercial case register.

The plaintiff or his or her legal representative shall file a written commercial claim in form of a Plaint.

The Plaint shall:

1) specify in form of conclusions the remedies sought;
2) identify the names of the parties to the suit or other persons connected to it;
3) contain a summary of the nature of the claim in form of short numbered paragraphs and indicating the grounds on which it is premised;

The plaint is accompanied by the following documents depending on their availability:

1) a list of witnesses and a brief summary of evidence each witness shall give;
2) an expert report that the plaintiff wishes to use as evidence;
3) any other document the plaintiff wishes to refer to.

The defendant must deliver a written statement of defence within 14 days of receiving the initial complaint.

B. Preliminary hearing

The judge has a duty to organize, within 21 days of receiving the defendant's answer to the complaint, a preliminary hearing with both parties. The preliminary hearing aims at making interlocutory orders on issues that may hinder the hearing of the case; it allows the judge to prepare for the proceedings and for the admittance of evidence. Also in the preliminary hearing, the judge may refer the parties to arbitrators or mediators in commercial matters; refer the matter to the mediation committee if the subject matter lies within its competence or jurisdiction; and pass a judgment in respect to a matter without going into the substantive hearing after consulting the parties.

After the preliminary hearing, a date for the substantive hearing is fixed and communicated to the parties.

C. Substantive hearing

At the substantive hearing the parties present their evidence. The trial judge may during this hearing, after examining the evidence of witnesses or their opinions, make an order whether such evidence is sufficient. He may also encourage skilled people on the subject matter to seek dialogue with the parties with the view of making them settle the matter or appoint an expert to examine on behalf of the court any report of skilled persons or other evidence presented to court and to report to court on a date fixed by the trial Judge. Upon request by the parties, the trial judge may pass judgment based on the written submissions or written submissions or any other evidence without a hearing.

Adjournment

The rules on adjournments – extra time to comply with procedural requirements – are meant to avoid delaying tactics. It is in this line that there shall be no adjournment of a preliminary hearing unless a sufficient reason is presented to court at least five working days before the hearing date.

The law also addresses the issue of the adjournment of a case in general. In this regard, the trial judge may at his or her own discretion or upon request of any of the parties adjourn the case. If the judge grants a party extra time and it later turns out the request was not genuine and meant only to delay the process, the judge can impose damages, which must be paid before the next hearing. If they are not paid, a further penalty applies.

The Supreme Court president and his/her committee are monitoring the success of the commercial courts and making recommendations to help with their efficiency.

Solution 6 Contracts – should they be formal and written - discuss

Fred and Joseph are about to enter into a business contract. This is so because Fred will do something for Joseph where Joseph gains and Joseph will give up something in return, namely financial consideration.

For a contract to be legal certain criteria have to be met. Capacity - in this case I am going to assume that both Fred and Joseph are of sound mind and legally old enough to enter into a contract. I shall also assume there is legality of purpose i.e. The building of the shed will not infringe any laws.

A contract is a promise for a consideration – Fred will build and Joseph will pay him.

Article 2 of the new Law governing Contracts[1] says: "… **"contract":** a promise or a set of promises the performance of which the Law recognizes as obligation and the breach of which the Law provides a remedy";

If one or the other were to break this agreement, however made, the other could seek damages and compensation.

A contract does not have to be in writing. It could be oral. Parties to a contract may indicate their assent by conduct implying such willingness. Such a contract formed by conduct is an implied contract or more precisely, an implied in fact contract. In contrast, a contract in which the parties manifest assent in words is an express contract.

Both are contracts, equally enforceable. The difference is merely the manner in which the parties manifest their assent. If Fred were to go ahead as Joseph asked, a contract could be assumed to exist between them. And if Joseph were to make a down payment then a contract would certainly be in existence.
No formal assent need have been given, their acts confirmed the contract.

However, this is a substantial shed and should Fred build it of materials not wanted by Joseph or in the wrong place because either clear instructions were not given or the other did not listen or take accurate notes, what redress does either have?

Let us look at this in more detail.

A contract can be repudiated or can be sued upon because:

It was not completed in time – was a time limit set or what is a reasonable time?

The product/good is not fit for the purpose for which it was intended;

The consideration was insufficient – did they formally agree a price in the end,? If so, then sufficiency of the consideration may be incontestable under the contract;

If the promise, Joseph, prevents the promisor, Fred, from performing his obligations under the contract, this will excuse the promisor from performance and the promisee cannot thereafter rely on non-performance as a basis for a contractual claim or as a defence to a claim brought by the promisee. This is the principle of "*exceptio non adimpleti contractus"*;

Breach of the terms, implied by custom or by the actions of either pary or explicit – according to the terms of the written document;

Repudiation – where by action or otherwise one party shows his intention to break the agreement.

As can be seen from the foregoing, an agreement to do something for a consideration can go wrong in many ways and Joseph and Fred would be well advised to put their agreement into writing and sign it and date.

The agreement should include (but not be limited to):

The description of "good" complete with technical details such as exact size, location, materials to be used etc.;

[1] ITEGEKO N° 45/2011 RYO KUWA 25/11/2011 RIGENGA AMASEZERANO
Or LAW N° 45/2011 OF 25/11/2011 GOVERNING CONTRACTS

How much is to be paid;

When should the consideration be paid. For instance, Lump sum implies that all monies will be due on completion. Usually for a building contract, stage payments are agreed when certain things happen, such as "75% less 5% retention will be due when the roof is completed – excluding guttering and down pipes" and the 5% retention will become due 12 months after acceptance;

What to do if there is a dispute – Commercial court or arbitration?

For simple promises, such as the repair to a patch of the wall after damage the rules of the contract can be governed according to the contract and common/customary law or what is common practice in the "trade", but complicated promises are well served by complicated and formal agreements.

Solution 7 Negotiable instruments

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.

Some writers have attempted to define a negotiable instrument as: " the property in which it is acquired by anyone who takes it bona fide, and for value" notwithstanding any defect of title in the person from whom he took it.

Another useful definition is given by Thomas who states that " an instrument is negotiable when it is, by a legally recognised custom of trade or by law, 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".

In other words a negotiable instrument is a transferable document either by the application of the law or by the custom of the trade concerned. The special feature of such an instrument is the privilege it confers on the person who receives it bona fide and for value, to possess good title thereto, even if the transferor had no title or did have effective title to the instrument.

Negotiable instruments are a practical creation by merchants to facilitate transfer of funds and payment. They serve as a medium of payment more convenient than the traditional silver and gold coins. Today, negotiable instruments have become more sophisticated and modernized. The legal relationship created by negotiable instruments is similar to those of debtor and creditor. The issuer is a debtor, i.e. agrees to pay the particular sum of money, while the recipient is in turn a creditor, i.e. the negotiable instrument is a proof of his entitlement, against the issuer, of the particular sum specified in the negotiable instrument.
The creditor: holder of the bill: can negotiate the bill, i.e. exchange the value specified in the bill as a consideration for the conclusion of a contract, e.g. use of the bill to pay for a business transaction. The new holder of the bill acquires the same rights against the original issuer not so much different from the first holder.

Different kinds of negotiable instruments

Bill of exchange - 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, a certain person or, to the bearer of the instrument.
The essential requisites of bill of the exchange are:

1 - It must be in writing;

2 - It must be containing an "order to pay";

3 - The order to pay must be unconditional.

4 - It must be signed by the maker or drawer

5 -The drawee must be certain. The drawee is the person who will pay the money to the payee. The drawee on a Bill of Exchange does not have to be a bank

6 - The sum payable must be certain.

7 - The order must be to pay money only

8 - The payee must be certain. A person is certain although his/her name has been miss-pelt or designated by description only - the identity of the payee must not be ambiguous

The following shows the wording of a Bill of Exchange:

Place Kigali *Date 31 October 2011*

Amount: Rwf. 10,500

On demand pay to M/s Mugenzi Enterprises Kigali, or order, the sum of Rwandan Francs Ten Thousand Five Hundred only for Value received.

Signed/-Ngirimana

To
M/s Gakire.
Mount Road,
Kigali.

2) A promissory note is a basically a formal IOU or instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

Like a Bill of Exchange the essential requisites of a promissory note are:

1 - it must be in writing

2 - it must contain an undertaking to pay.

3 - the undertaking to pay must be unconditional

4 - it must be signed by the maker.

5 - it must undertake to pay a certain sum

6 - the undertaking must be to pay in money only.

7 - the payee must be certain.

But it is not drawn on a drawee.

This could be a promissory note:

I, Mr R R A promise to pay B or order Rwandan francs Five Hundred (Rwf 500)

And signed and dated

Cheques

A cheque is really a Bill of Exchange drawn on a bank (the drawee). It does not have to be paid on demand.

All these negotiable instruments are unconditional. The payee or bearer is entitled to the value contained in the cheque, bill or promissory note without have to do anything further except hand it to the drawee in the case of the cheque or payer in the case of the promissory note or bill of exchange.

The Cheque and Bill of Exchange are instructions or orders. They are not requests, though words of courtesy such as please would not of themselves invalidate such an instrument.

The promissory note is simply a promise to pay money.

The Government of Rwanda has passed and enacted laws concerning negotiable instruments:

N°32/2009 of 18/11/2009: Law governing negotiable instruments