COLLEGE OF ARTS AND SOCIAL SCIENCES
SCHOOL OF LAW

MODULE: INTRODUCTION TO LAW
COMPONENT: GENERAL INTRODUCTION TO LAW

Class: LL.B I/School of Law
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Module: Introduction to Law  
Component: General Introduction to Law  
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Targeted students: Undergraduate Law Students – LL.B I  
Language of instruction: English

Course description and scope:  
This course is intended to provide to students a general overview on law studies. It attempts to provide to law studies beginners the general knowledge and skills so that at the end a student who followed on the required standard should be able to explain the general principles that regulate law in its entirety. Additional to this, students shall well be familiarised with the basic concepts and principles of law and able to carry out a specific study in different fields of law.

To this purpose, this course will mainly focus on the explanations relating to the scope, characteristics and branches of law, sources and origin of law, interpretation of rules of law, subjective laws and their holders as well as on application of rules of law with emphasis to the rule of law.

Prerequisites:  
The general prerequisites for this course are the basic general knowledge from most of social sciences and a good reasoning capacity to the level of a medium university student.
Materials:
During the class lectures, reference will be made to different books, articles and websites. Students are responsible to make note of these references and review them depending on the extent of emphasis put on each reference in the lecture. Any useful or recommended material shall either be given to the students or precisely directed as to where it can be found.

Teaching methodology and attendance:
This is a combined lecture and student-presentation course as well as student self-study. The format of sessions varies, but basically relies on lectures and question/answer-teaching by the instructor to introduce a new subject plus emphasis on active participation of students. All in all, reference made to the nature of legal professionals, much emphasis shall be put on practical aspects of the course, which will enable students to familiarise with reading and understanding of legal texts and case laws.

Attendance at lectures and assignments is obligatory and shall be monitored according to the University general academic regulations as lastly adopted.

Evaluation/Grading:
Pursuant to the University general academic regulations into force, there shall be an assignment at 25%, a partial assessment test at 25% and a final assessment test at 50%. The three evaluations are compulsory, and each student is expected to do them, otherwise the student will receive a grade of zero for the missed evaluation, except if the absence is adequately justified to the School Management. As relevant and enough materials are already availed before to students, the partial and final assessments will be closed-books and notes.

Course Objectives:
At the end of the course, the students should be able to explain the general principles that regulate law in its entirety, understand and interpret legal rules and case laws and be able to carry out a specific study in different fields of law.
Course Content:
This course is divided into six chapters:

- Scope, characteristics and branches of law
- Sources and origin of law
- Legal reasoning, Application and Interpretation of laws
- Subjective rights and their holders
- Application of rules of law
- Introduction to the principle of rule of law

Study recommendations

- Formation of informal groups for studying and discussing the materials.
- Engage yourself in a rigorous debate by taking opposing positions, which will greatly assist the learning process.
- Be free; ask questions and more questions because when something is unclear to you, it is most likely unclear to many others.
- Academic honesty: Originality of each done work is required. Cheating in exams or during assignments shall never be tolerated. Therefore, it is imperative to properly provide reference of sources and not plagiarize.
- Respect in class: An important line exists between challenging an idea and challenging the person who expresses that idea. We should treat each other with dignity and respect. Conflicting views will create dynamic discussions and help each of us refine our thinking.

Preliminary remarks
The teaching of an “Introduction to Law” is of paramount necessity, specifically for beginners of Law related studies/courses as everything seems to be new: the vocabulary, the purpose, the reasoning techniques, even the understanding of the Law.

Most importantly to bear in mind first, is that the concept and the practice of Law are based on the use of the “vocabulary” which is partly borrowed from the ordinary language. But,
for the major part, it is composed of sayings, terms, concepts and specific formulae, which may lead to misinterpretations.

The Law is somehow as a foreign language, to which the study of the vocabulary if you want to analyse the realities is required. The approximation is very dangerous in Law. Hence, the use of the notebook is required to allow law beginner student eliminate the imprecision which generates gross misinterpretation. Thus, it is extremely necessary to know the used concepts in any case.

Also importantly, Law is not an isolated course. It is not a product of abstractions. It originates from the traditions, from the history, from the daily life. This means that every aspects of abstracted concept of law is concretised/materialised by a given fact of living world.

This course will turn around the fundamental concepts of the Law, the nature and the purpose of the Law, the knowledge of sources of the Law, different sources of Law, different branches of Law, major families of Law, the language and the reasoning of lawyers, etc.

I would like to take this opportunity to thank my colleague Habimana Pie who has been teaching this course before I took over; his note have been so instrumental as a base for me to discuss with students. Not many things have changed in this syllabus but of course one of the characteristics of laws is that they are dynamic. For example the Constitution of the Republic of Rwanda has changed and this has been taken care of during editing.
CHAPTER ONE
DEFINITION, ROLE, AIMS, CHARACTERISTICS OF LAW AND ITS COMPARISON WITH OTHER RULES OF SOCIAL ORGANISATIONS

Introduction
For a better understanding of the course, some key words need to be defined, the first being law itself. The word “law” is susceptible of several meanings depending on the point of view on which we envisage it. Some of them are to be examined in this course due to their importance in any study of law.

People view law in many different ways. Some think of the police, while others think of rules governing day-to-day behavior. Each perception is partially correct. To truly comprehend law and a legal system, one must understand the nature of the underlying society. Law is a reflection of the people, organizations, and values it simultaneously serves and controls. To survive and effectively guide, it must draw from the past, reflect the present, and pave the way for the future, and this phenomenon is mostly referred to as the dynamism of legal system.

Law is very much a social phenomenon to the extent that it appears naturally in any society. As for the role and aims of law which is also to be shown in this part, one might say that 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. Indeed, what the law is trying to do is to provide answers to the myriad of everyday problems that can arise in society. Nevertheless, in doing so, one might think that there can be confusion between
legal laws laid down by a state and certain other norms of behaviour known as rules of morality, religion and politics. Indeed, it can be argued that there is a connection between them but from a legal perspective, there is an essential difference between them. One of the most sounding differences between them is on the characteristics of Law. This difference as well as others will be drawn as we go along in this part.

**Definition**

Inspired by Greek philosophy, Romans defined law as the “art of the Good and the Just” i.e. *Jus est boni et aequi*. They took into consideration its purpose, the achievement of the ideal of justice and equity. Today, the law is the expression of the “will of the legislator”: law, regulations...Indeed, nowadays some scholars consider the law as a „social phenomenon”, the product of the milieu, the product of the community.

Along the time, different specific definitions of the law have been discussed:

1. The term law refers to a body of written and unwritten rules largely derived from custom and formal enactment which are recognised as binding among those persons who constitute a community or state, so that they will be imposed upon and enforced among those persons by appropriate sanctions¹ during a given period and for a defined society.

2. The law refers to a scientific course. When we talk about the Faculty of Law, the School of Law, reference is made to this definition.

3. The law may be defined as ‘justice’. When someone says: fight for justice, reference is made to the notion of natural law, universal law. It is the law that was taken as basis by St Thomas of Aquino while affirming that „natural law reflects the divine law;  

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4. The term law refers to the prerogatives recognised to a person to accomplish a legal act or to require the accomplishment of a service sanctioned by the public authority. In this case, reference is made to rights.

5. Implicitly, the concept law carries the idea of the appropriate means, a concept implying the use of force in some instances. Taken from its social side, it also implies the idea of direction, government, authority: *lex, legis*, the king; and evokes generally the idea of directives, rules, norms, orders.

**Role and aims of Law**

Summarily, as far as the **role and aims** of law are concerned, one might say that the establishment of laws in society is necessary to protect the rights of individuals and to ensure law and order, functioning and survival of the society. Indeed, what the law is trying to do is to provide answers to the myriad of daily problems that can arise in society. Nevertheless, in doing so, one might think that there can be confusion between legal laws laid down by a State and certain other behaviour norms known as rules of morality, religion and politics.

**Law as a regulatory phenomenon of life in society**

Aristotle said the „Man is a social animal. These wise words of Aristotle insinuate that man was not born to live solitary. Man needs others. Living with others is a must. That is the reason why man is always in search of companions: family, association, State,… Pursuant, living in society inevitably requires the existence of rules to regulate it. There must therefore be legal norms to determine the minimum of principles to organise members of the society: the principles regulating the appropriation of the property, the organisation of the family, the organisation of work…

These rules provide for what is allowed and what is prohibited, and the respect of these rules is a must, a necessity for the existence and the survival of the society. Consequently,
the violation of these laws exposes the violator to the sanctions. In fact, wherever there is
the society, there is the law and this situation is translated as “Ubi societas, ubi jus”.

All in all, the law is indispensable to settle the antisocial behaviour and establish the
harmony among the members of the group in the society.

Functions of Law
The traditional approach to the functions of law is that it has two main functions, namely,
(i) to do justice, and (ii) to preserve peace and order. Although legal theories are divided on
the proper role of law, this traditional approach is a useful starting point to understanding
the various functions of law. Summarily, the basic four functions of law are:

• Keeping the peace.
• Enforcing standards of conduct and maintaining order.
• Facilitating planning.
• Promoting social justice.

In fact, basic functions of law are summarized into keeping peace and enforcing standards
of conduct and maintaining order. Those two functions - *keeping the peace* and *enforcing
standards of conduct and maintaining order* - help further another function of law which is
especially important: *facilitating planning*. Contract law\(^2\) is an example of this function. In
making the courts available to enforce contracts, the legal system ensures that parties to
contracts either carry out their promises or pay for the damages they cause. For example,
through contracts, a manufacturing company can count on either receiving the raw
materials and machinery it has ordered or else getting money from the contracting supplier
to cover the extra expense of buying substitutes.

\(^2\) Under Rwandan law, contracts are governed by the law n° 45/2011 of 25/11/2011 governing contracts, in *O.G.* n° 04
*bis* of 23/01/2012.
While all societies use law to keep peace and maintain order, societies such as ours also use the law to achieve additional goals. The tax laws, for example, seek not only to raise revenue for government expenditure but also to redistribute wealth by imposing higher taxes on wealthy people. The competition laws seek to prevent certain practices that might reduce competition and thus increase prices. Consumer laws also have a wide range of purposes, from prohibiting the sale of unsafe products to providing more information to shoppers.

Presently, some other functions of law are developed and emphasized such as: i)

**To do justice**

Law must serve the ends of justice, and this function is accepted by all legal systems. The problem with justice now lies in the difficulties to say what justice is. Moreover, what is just for one person may not be just for another. Accordingly, to say that law must serve the ends of justice is to promote the view of justice shared by those whose perceptions dominate a given society.

Whatever the prevalent notion of justice, what is undeniable is that law ought to serve the ends of justice. Given that different persons or groups of persons have different conceptions of justice, it is legitimate for those who view existing law as unjust to seek to achieve what they perceive as a just law through political debate or, if that fails, by attaining political power by democratic means and using that power to enact what they believe to be just law.

**ii) To preserve peace & order**

This purpose is regarded as the first and foremost purpose of law or at least the important function of law. In fact, the first and foremost purpose of law is to maintain peace and order in the community. Man must live in society if he is to achieve his full development.
Society, however, cannot exist without law, for without rules of conduct there cannot be order, and without order there cannot be peace and progress.

Even though, the preservation of peace and order must be sought with due regard to justice and respect for fundamental human rights. For instance, many autocratic regimes defend their resort to draconian laws that infringe basic human rights by appealing to the “overriding need to preserve peace and order”. This example shows to what extent it is unacceptable for law to be justified solely by reference to “peace and order”. Indeed, in the majority of cases, law must seek to attain peace and order by conforming to acceptable notions of justice. All in all, a just law is more likely to be observed than an unjust one as an unjust law invites disobedience and may ultimately lead to disorder.

iii) To enforce morality

This purpose of the law is separate from that of promoting justice in one respect: justice is merely one component of morality. There are other components of morality that the concept of justice does not embrace and it is these other components that are covered here.

In fact, justice constitutes one segment of morality primarily concerned not with individual conduct but with the ways in which classes of individuals are treated. And, worth to mention is that principles of justice do not exhaust the idea of morality and not all criticism of law made on moral grounds is made in the name of justice. Laws may be condemned as morally bad simply because they require men to do particular actions which morality forbids individuals to do, or because they require men to abstain from doing those which are morally obligatory.
iv) To protect the interests of the ruling class

According to the Marxist theory of law, law has one main purpose: to protect and promote the interests of the ruling class. This theory is founded on the thesis that it is the material conditions of society that determine everything else in human institutions. These material conditions find expression in the economic structure of society. Marx distinguished between the economic structure of society (which he called the “base”) and the superstructure, which was determined by the base. Law is a component of the superstructure and is controlled by the base (the economic structure).

Consequently, as the ruling class owns the means of economic production, it controls the base and uses the law to protect its interests. The ruling class suppresses other classes and deploys the law as an instrument of suppression and exploitation.

In this regard, we consider the Marxism theory exaggerating the extent to which law is an instrument of ruling class interests. While law is, in many respects, an instrument of class rule, it is also, in other respects, a phenomenon that has life outside the realm of class struggle.

Types of rules: Legal rules vis-à-vis other rules of social organization

Various and multiple types of rules coexist for the life in the community: societal rules, moral rules, religious rules, legal rules...

A. Societal rules

The societal rule is the one that is enacted by the authority that leads a given small community during a given period and in accordance to his/her conception. It is applicable to this small community (individuals or a group of individuals). It comprises disciplinary and statutory rules. Disciplinary rules determine the sanctions. Statutory rules fix the prerogatives or rights and duties of the members of that small community.

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3 The Marxist theory was developed by Karl Marx (1818–83) and Friedrich Engels (1820–95).
B. Moral rules
These are universal morals whose principles are accepted by all although their extent differ and sometimes with questionable basis e.g. “not to tell lies”. The morals are recognised in law but the legal rule is different from the morals by its essential utilitarian prospect; i.e. the legal rule has immediate application, it is applicable *hic et nunc* (here and now). The moral rule to the contrary, remits the sanction to the Heaven, the next world. You sin and you wait the final judgment of the God.

C. Religious rules
It is the one enacted by a religious authority who leads the confessional organisation for members of that confessional organisation.

D. Legal rules
It is the rule enacted and sanctioned by the sovereign authority (State) to reign and serve in accordance with the design of the global and particular objectives of this State. It designates every norm which is legally binding (normally covered with the obligatory force), whatever its source (law, custom), its degree of generality (general or special rule) and its scope (prohibitive, soft rule).

Comparison between legal rules and other rules

A. The legal rule and the societal rule

*Difference*

The legal rule differs from the societal rule by its general scope i.e. the jurisdiction of the legal rule is general while the jurisdiction of societal rule is limited.

*Similarities*
The two are run by the authority who leads a given community during a given period.

**B. Comparison between legal rules and moral rules (morality)**

Law is law, regardless of its moral content. However, most legal rules are derived from morality. This means that in such instances, the law is used to enforce morality. Lawmakers seeking to enact new laws to regulate human conduct usually convert into law their deeply held moral convictions.

Morality is the bedrock of law but it is not law. Take, for example, the following rule: “You shall not kill”. This is a rule of morality. If the state decides to recognize and enforce it, it also becomes a legal rule. If the state decides not to convert it into law, it remains a moral rule only. This leads us to three main ways to covert a moral rule is converted into law:

- First, a moral rule that is considered by a given society as so important as to require legal backing is converted into law by the simple device of enacting a piece of legislation incorporating that moral rule. Once enacted, the piece of legislation becomes the source of the legal rule, but this does not take away the fact that its real source is morality. For example, most people in Rwanda would regard it as immoral for any person to engage in any form of sexual activity with an animal. This moral perception has been converted into law through the creation of the crime of bestiality, which is provided for by article 186 of the Organic Law nº 01/2012/OL of 02/05/2012 instituting the penal code⁴, according to which “Any person who engages in sexual relations or any practice of a sexual nature with a domestic animal shall be liable to a term of imprisonment of six (6) months to two (2) years”.

- The second way in which a moral rule may be converted into law is in the so-called “grey areas” of the law, i.e., where the law is unclear and the courts resort to moral principles in interpreting the law. In this way, moral principles are converted into law via the device of being utilized in the interpretation of unclear legal provisions.

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⁴ Official Gazette nº Special of 14 June 2012.
• The third way in which a moral rule may be converted into law is through custom. Some moral rules, by sheer force of their wide acceptance and observance, may graduate into a binding custom. As is explained later, custom is a source of law.

_Difference between legal rules and moral rules (morality)_

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

Compared from their object, moral rule has a vaster domain than the legal rule. From the objective point of view, a moral rule is more demanding, tends to the perfection and imposes charitable duties that rebel to the legal techniques somehow considered to be rudimentary.

The sanction of legal rule is immediate, present and emanate from the external authority while the sanction of the moral rule is of internal consideration i.e. the conscience and it refers to the next world, the Heaven. Again, the authority of legal rule is defined, precise while the authority of the moral rule is vague.

_Position of the law in relationship with the moral rules_

Three positions are of paramount interest:

1. There are some legal rules that are also moral rules. E.g. the term “fault” has a moral significance and it is the basis of tort liability (art. 258 CC.B. III).
2. There are some legal rules that are not moral rules. E.g. traffic law, law on customs.
3. There are some moral rules that are not legal rules. Not all inconsistent behaviours with the morals are punishable by the law. For instance, the Rwandan penal code does not punish the homosexuality, the suicide (art. 147 Penal Code), etc.

C. The law and the religion

Between the law and the religion, there are similarities and differences. Either the legal rule is not a religious rule (prescription, traffic law), or the religious rule shall never be sanctioned by the law (obligation to go to Mass). There are some legal rules that have actual relationships with the religious rule. E.g. in civil matters: marriage, divorce, criminal matters: death penalty, banishment, etc.

In addition, there exists reciprocal influence between the law and the religion. The study of major legal systems testifies that the religion influences heavily the law so that to proceed with the comparative study of the influences of various religions over legal systems may be useful, e.g. in sharia-governed territories.

D. The law and the politics

The law suffers direct influence of the politics. However, this does not mean that the law ceases to be the law to become the simple instrument of political powers although the interactions between the politics and the religion are inevitable.

In summary, what distinguishes a legal rule from any other rule is that a legal rule is one that is recognized as law and is enforceable by the state.

From the above discussion, it becomes obvious that legal rules are distinct from other rules and from a deep discussion of the pertaining differences and similarities, specific characteristics of legal rules can be drawn.
Characteristics of Law (legal rule)
The law is obligatory, general, authoritative and oriented to the common good.

The law is obligatory
In principle, the law is compulsory. However, the intensity of the compulsoriness differs depending on whether the concerned rule is prohibitive or suppletive. Prohibitive rules are those rules that are binding overall and no one can turn around them. E.g. Tax laws. While the suppletive rules leave room to the persons to turn around them. Such rules leave the room to the will of the parties and they are only binding if the parties did not decide. In fact, they supplement to the silence (inaction) of the parties e.g. art. 64 of the law on contracts.5

Four types of rules are considered as prohibitive rules:
1. They are some cases where the law contains in itself an indication of prohibitive nature, e.g. … any inconsistent agreement is void (art. 305 CC.B III).
2. Must also be considered prohibitive the provisions relating to public order and goods morals (morality), e.g. criminal law, laws relating to sexual behaviour, laws relating to the respect of natural person.
3. Law organising the conditions for legal acts, e.g. see art. 4 law on contracts.
4. Protecting rules of a defined group of persons, e.g. law relating to the protection of the children, the woman.

The law is authoritative
A law is enacted to be respected. It must be observed even by the persons who did not vote for it or who don’t agree with its philosophy. A legal rule is a norm whose obligatory force

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5 This article reads as follow: “Contracts made in accordance with the law shall be binding between parties. They may only be revoked at the consent of the parties or for reasons based on law. They shall be performed in good faith”.
is guaranteed by the actual intervention of the sanctions from the public authority. These include civil sanctions, which aim at protecting the private interests of the persons, criminal sanctions protecting the society and disciplinary sanctions aiming at adjusting the conduct of the employees.

The law is general
The law is applicable to all. Individual consideration is not taken into consideration and once the persons are individually considered, the law is applicable to this group in an abstract way.

Law is oriented towards a public good
The law protects the public good. It deals with the economic, cultural and social development of the members of the society. The overall goal or purpose of legal rules is to establish a best attainable possible society to live in.

Relationship between law and justice
The term justice is confusing and is associated with various theories and perceptions. Some people assimilate justice to equality, but are the two terms really similar?
Law is law, regardless of whether it is just or unjust. Most legal rules are designed to achieve the ends of justice. Law-makers seeking to enact laws to regulate human conduct usually justify their enactment on the basis of justice. However, the fact that a rule is law does not necessarily mean that it is just. Justice is an external standard against which law may be measured and an “unjust” law is as much law as a “just” law.

The difficulty with justice is that it is almost impossible to state exactly what justice is. It is said that justice is fairness and fairness lies at the core of justice as it is reflected in almost all attempts to define justice. The *Oxford English Reference Dictionary* (2003) defines just as acting or done in accordance with what is morally right or fair and justice as just conduct; fairness. *Black’s Law Dictionary* (2004) states that justice is the fair and proper administration of laws.

It should be clear; therefore, that whenever justice is regarded as an external measure of the law, law may be considered just or unjust. Accordingly, one may follow the law to the letter, but the outcome may still be unjust because the law itself is unjust. Given that law is law regardless of its fairness, a court of law is obliged to enforce the law *as it is*, regardless of that court’s perception of justice.

By the same vein, the court’s duty is to the law and to the law alone. Judges, as individuals, have their own political, legal and social views and opinions. But it is the sworn duty of every judge to apply the law, whatever he or she may think of the law. If a law is patently unjust, the courts can seek to better matters as far as possible, within the law, but they may never subvert the law. The remedy for an unjust law lies, not with the courts, but with the legislature.

**Study questions:**
1. Discuss the following questions: Is law really a basis of the social order? Is law necessary and found in every society? Can’t we really have a society of anarchical type without anything of rule of law? Can’t we find primitive society completely ignoring law?

2. With examples, mentions different aims of law.

3. What is the difference between laws laid down by a state and certain other norms of behaviour known as rules of morality?

4. If there is a difference between different rules, can we say that this difference is absolute? If not absolute which are the possible link between the two kinds of rules?

5. Give an example of a legal rule that is at the same time a moral rule.

6. What is the difference between laws laid down by a state and certain other norms of behaviour known as rules of religion?

7. Does the Rwandan law take into consideration any religious element? If yes, to which extent and if no why and is it that fair?

8. What does the authoritative or the binding force of law means?

9. The Rwandan criminal code punishes the Adultery but only upon the request of the victim. Is this an imperative or suppletive law? What is the difference between imperative rules and suppletive rules?

10. Under Rwandan law, is it allowed for a person to walk naked. Is to walk naked contrary to Public order or to good morals? What is the difference between Public order and good morals?
CHAPTER II: BRANCHES OF LAW

Introduction

The most important classification of law is the division into public law and private law, mostly referred to as summa divisio. This is to say that legal rules are either of public law or of private law except some few rules that constitute a mixed branch of law. Domestic law is the positive law applicable within the territory of a country whereas International law is basically the law regulating international relationships.

The distinction between public and private law will help students to know how the legal system is built and to be able to familiarize with placing each case at its right place. This being said, it is important to add on this that it is of a high interest to students to know for instance that public law fixes the status of public entities and regulates relationship among themselves and/or with individuals while the private law is the set of rules governing the relations amongst individuals themselves.

If students are aware of the above mentioned brief difference, it will be an easy thing for them to also see the difference between the two branches by their object and sources. Hence, as far as the object is concerned, while the public law regulates public entities i.e how they are created, organized and how they function, private law fixes status of private persons and regulates relationship that these person entertain among themselves.

Apart from the two classifications, customary law may also be opposed to written law. As well, substantive laws may be opposed to procedural laws.

National Law and its branches

Customary rules vs written rules

Customary law is a set of rules originating from the usages and repeated practices (habits) in a given milieu without the intervention of the authority. These rules are generally
unwritten; they are orally transferred from generation to generation. Contrary, written law comprises a set of written rules enacted by a competent body in a given State.

**Public law vs private law**
Public law may be described as that law in which the state is a party to the relationship or the dispute, whereas private law regulates the rights and duties of persons among themselves. The state has direct matters over which it is involved in the day-to-day life of citizens. This is the province of public law. Another way of expressing the distinction between public law and private law is to say that if one of the parties to the legal relationship is the state then it is public law and if it is not, it is private law.

**Substantive Law versus Procedural Law**
Substantive law sets out the rights and duties governing people as they act in society. *Duties* tend to take the form of a command: “Do this!” or “Don’t do that!”. Substantive law also establishes *rights and privileges*. Procedural law establishes the rules under which the substantive rules of law are enforced. Rules as to what cases a court can decide, how a trial is conducted, and how a judgment by a court is to be enforced are all part of procedural law.

**National law vs international law**
National law refers to the body of rules peculiar to a particular country or state, while international law refers to rules that are binding on states in their relations with each other. International law is sometimes described as public international law so as to distinguish it from private international law (conflict of laws). Private international law deals with the exercise of jurisdiction by national courts in matters involving a foreign element, such as jurisdiction over a foreigner or where the cause of action arose in a foreign state.
It has been argued that international law is not law because there is no supra-national body to enforce it. This argument is misplaced. Modern jurists regard it as law and the courts refer to it as such. It is important to emphasize that the primary focus of international law is to regulate relations among states, not create rights for individual citizens. However, states may agree to create individual rights for their citizens and when this happens national law may be involved in the enforcement of those rights.

**Public Law and its components**

Public law is the law that is concerned with matters that affect the State as a Community. In other terms, public law is that body of rules regulating relationships involved in its capacity of public authority. The components of Public law are mainly the constitutional law, administrative law, tax law, criminal law and criminal procedure law, etc.

**Constitutional law**

This sets out the principles on which the society rests. It lays down how the power of the state is divided between legislators, government ministers, officials, judges and others. Constitutional law is said to be the law of the constitution. It is the law that gives the State its main characteristics and fundamental rights to the citizen. According to the Oxford Dictionary of Law, *the Constitution comprises the rules and practices that determine the composition and functions of the organs of central and local governments in a State and regulate the relationship between individuals and the State*.

**Administrative law**

It can be defined as a set of legal rules and principles that aim to regulate the organization, the functioning and the control of the executive administration. Administrative law covers those rules of law that relate to the executive government’s power and privileges. In other words, administrative law deals with the relations between officials and citizens and the
ways in which people can object official decisions. The scope of administrative law includes purely the actions of the administration and also litigations involving State agencies.

**Criminal law**

This defines crimes or offences, wrongs that the State thinks it should take steps to prevent, such as treason, murder, theft, driving without licence, etc. The state treats these offences as its own concern even when the victims are individuals, as they obviously are when someone is murdered or has his property stolen. Criminal law is concerned with the suppression of behaviour that disturbs the order and wellbeing of the community. Its main objects are to punish criminals and to deter others from committing crimes.

A criminal action is brought by the government against an individual who allegedly has committed a crime. Crimes are classified depending upon the gravity of the act. Since a crime is an act against society, the criminal court punishes a guilty defendant by the imposition of a fine or imprisonment or both. Criminal proceedings are completely separate and distinct from the civil action and rules of court procedures differ. In order to meet the burden of proof to find a person guilty of a crime, guilty must be proved by the state (represented by the prosecution) beyond a reasonable doubt. When the same act gives rise to both a criminal proceeding and a civil suit, the actions are completely independent of each other.

There are a number of principles that govern the field of criminal law likes the principle of legality often expressed in the words of a latin maxim *nullum crimen nulla poena sine lege* (no crime, no punishment without law), the principle of double jeopardy also known as *no bis in idem*, etc. A crime/offence to be considered as a crime/offence, three cumulative elements must exist namely the legal element, the material/physical element and the moral/mental element.
**Criminal procedure law**

While the substance of crimes is governed by the criminal law, the criminal procedure concerns the procedures applicable to the investigation and punishment processes i.e. how these offences are to be investigated, prosecuted and tried, what sentences can be imposed on those found guilty, and how the sentences are to be carried out (served). Criminal procedure is, as the term suggests, concerned with the enforcement of criminal law. It deals with such matters as the identification and collection of evidence of crime, the apprehension and indictment of criminals, and finally the procedure of criminal trials and selected proceedings. The outcome of criminal cases is supposed to take the form of a fitting punishment for those found guilty of crime or declaration of innocence for those found innocent. For a judge to pronounce a guilty verdict there must be evidence presented which puts this verdict “beyond reasonable doubt” i.e. it must be plainly clear that the defendant is guilty – there can be no uncertainty involved in the decision to give a guilty verdict by any one of the given parties.

**Tax law**

By definition, tax law or the law of taxation is a branch of public law dealing with taxation mechanisms by determining taxable objects, tax rates, tax payers, tax procedures and the adjudication of fiscal disputes. The Rwandan fiscal law is made up by several different laws: the direct income tax law, the value added tax (VAT) law, the property tax, etc.

**Law of public finance**

The law of public finances is a discipline with multiple legal aspects (political, economic, social), and aims at studying the rules and operations relating to expenditures and revenues of public entities or organs. In other words, it is a branch of law governing the resources of public organs and more generally ways and means, processes and techniques relating to the financial activity of public legal persons.
Private Law and its components
Private law refers to legal rules that govern the relationships between individuals. The Rwandan private law is mainly composed of civil law gathered in the Civil Code consisting of a preliminary title (containing general principles) and five books covering the law of persons and family (Book I), the law of property (Book II), the law of obligations or general contracts (Book III) the law of specific contracts (Book IV) and the law of succession, matrimonial regimes and liberalities (Book V). With adoption of new laws and modification of some others, this old classification of the Civil Code in five books seems relaxing a bit as it continues losing interest.

Law of Family and Persons
Family law is that part of private law which regulates the legal relationship between spouses (that is, husband and wife) as well as the legal relationship between parents (or guardians) and children. It also governs such matters as marriage and divorce as well as the rights of parents and children.

Matrimonial regimes, liberalities and succession
The matrimonial regime is a body of rules that govern the agreement between spouses on the management of their property and the Rwandan law recognizes only three types of matrimonial regimes, namely the community of property, the limited community of acquests and the separation of property. The community of property is the legal regime.

The liberalities concern an act by which a person transfers to another by gratuitous act a patrimonial right.... The only accepted liberalities under Rwandan law are the donation inter vivos, the legacy, the ascending partition and the promised donation.

As far as the succession is concerned, there exist two types of succession: statutory/interstate succession i.e. devolution and distribution in the statutory order
(succession *ab intestat*) and testamentary succession; the former being considered as legal succession.

**Property and Land Law**

Book II of the Civil Code concerns property law. Property rights may consist of claims (obligations or personal rights) and intellectual rights (patents or copy rights dealt with special legislation) or patrimonial rights. Property law is concerned with property rights in the more narrow sense, that is, ownership and related notions concerning things, be they moveable or immovable.

**Tort law**

This is a study of tort liability that results in a combination of three elements, set as conditions for a tort liability to stand. These conditions are: act/omission, damage, causal link between the two.

**Law of specific contracts**

These refer to specific rules that govern specific contracts like the sale contract, the lease contract, etc.

**Commercial (Trade) Law**

Commercial law can be defined as the law relating to commercial activity and transactions. Originally, the distinction between commercial and civil transactions was made in order to facilitate simpler rules of evidence and procedure for commercial litigations; the overall purpose being to speed commercial transactions.

**Civil and commercial procedure law**

This is the law of the procedure for bringing a lawsuit to recover your rights or claim compensation. A civil suit involves a dispute between private individuals involving either
a breach of an agreement or a breach of a duty imposed by the law. In a civil suit the court attempts to remedy the controversy between individuals by determining their legal rights, awarding damages to the injured party, or directing one party to do or refrain from doing a specific act.

**Mixed branches of law**

As we have mentioned above, outside the classifications into public law and private law, there are certain other branches of law that have different rules, some being classified in public law and others in private law.

**Social law**

This law is generally said to be public or private because of its legal characters, which make it a “mixed branch of law”. Social law encompasses two separate law disciplines that have a common origin and cover quite some common ground: labour law and social security law. Labour law is the name given to those rules of law that govern the relationship between employee and employers, thus becoming a field of private law. On a different side, the social security law concerns the security of employee at working place and after working capacity, and concerns on one side the employee and the social security schemes on the other side.

**The economic law**

The economic law concerns the laws relating to organization of the banking system and monetary control, price controls and internal trade, the savings system, and many other laws related to the law of development.

**International law**

International law comprises public international law and private international law.
Public international Law

Public international law consists of the rules and principles of general application dealing with the conduct of States and of international organizations in their international relations with one another, during the period of peace and to some extent during the time of war. Public international law has, at least historically, been viewed as the system of legal norms governing relationships between sovereign States. In the twentieth century however, this somewhat narrow view has been enlarged so that international law also governs relations between individuals and the States particularly in the field of international human rights and international humanitarian law. International law prevails over domestic law in relations between States. In other words, where a State is bound by an international legal obligation, it may not invoke its domestic law in order to avoid this obligation with respect to another State.

Private international Law

Private international law regulates the relationship between the private individuals with a foreign element. Private international law refers to a system of legal rules that solves conflicts between competing legal systems. We can also say that private international law is a body of rules governing private (individual) relationships of international character. E.g. where a marriage takes place in one State and divorce in another, private international law determines which national legal system applies to the division of the marital property. One can imagine the following scenarios: A Rwandan who marries a Burundian and both living in Spain. In case of divorce, which law will be applicable? You are in Butare and you want to visit Ngozi. Arriving there you hire a car and unfortunately during your trip you hit a Chinese. How should this Chinese get indemnified?

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6 International Humanitarian law is that set of rules applicable in armed conflicts. It is also referred to as the Law of war.
What is the scope of international law?
Historically international law was said to be a system of rules governing the relations only between states (mainly European states for that matter) and was limited to certain areas, such as diplomatic relations and wars, and was underpinned by the idea of sovereignty of states. Things have changed dramatically, and today we have a system of international law that has begun to be infused by the need for interdependency. Today, international law covers a vast range of topics which all states of the world have an interest in (or should have an interest in) like terrorism, international crimes, international trade, environment and development, human rights, the problem of refugees, etc.

Study questions:
1. What is public law?
2. On the 10th of January 2014, the government held a cabinet meeting and decided on many important issues. Which branch of law covers this? What distinguishes constitutional law from administrative law?
3. What are the fundamental principles in criminal law?
4. The Rwandan law guarantees the presumption of innocence as one of the fundamental principles? In which specific branch of public law this principle is guaranteed. Give another example of fundamental principles in that specific branch.
5. What is private law?
6. A is a Rwandan national who, while using B’s car hits C’s son on the street. C wants to bring a claim before the court. Do you think this is covered by Public or Private law? What is the difference between public and private law?
7. Kayumba is 15 years old who interred into contract of sale of his car. He sold the car that he inherited from his farther who died 2 years ago. This contract is contested for not fulfilling the conditions of validity of contract. What is the likely violated condition?
Is this covered by civil law or commercial law? And what is the difference between civil law and commercial law?

8. What characterizes the mixed branches of law?

9. The Democratic Republic of Congo brought a case before the International Court of Justice for having violated its sovereignty. Which branch of International law covers this case?

What is the difference between Public international law and Private international law?
CHAPTER III: SOURCES OF RWANDAN LAW

Introduction:
Sources of law are material, documentary or formal (real sources). Material sources refer to different factors that led to the adoption of a legal rule. This is the case of political beliefs of a society, its ideology, economic and social status, historical and cultural phenomena, etc. All these factors are considered to form what is called sociological basis of law. Documentary sources are official publications in which authentic texts of enacted laws are contained. There are constitution, codes, official gazettes, official bulletins, etc., while formal sources are techniques or forms that give to rules a legal character.

In Rwanda, most of Laws are codified. That is why the main source is the Statute, and the Rwandan Constitution is the highest law to which other laws must be in conformity. Like in other counties where civil law system is applied, the real or formal sources of Rwandan law can be classified into two main categories: Primary sources and secondary sources. Primary sources are binding, while those in second category may have weight when primary sources are absent, unclear or incomplete. The sources in first category are norms classified in respect of their hierarchy, while it would be difficult to arrange sources of the second category in hierarchical order. Those sources can be summarised as follow:

- Primary or obligatory sources of law: law and custom (to some extent);
- Subsidiary or auxiliary sources of law: jurisprudence, doctrine, general principles of law, equity.

Also, Rwandan has ratified a number of International conventions and treaties. These are also included in the broad definition of laws and are therefore used on national level as sources of law as far as they do not conflict with the provisions of the Constitution. 8

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7 M.A. Glendon et al., Comparative legal traditions, text, materials and cases, 2nd ed., USA, West publishing co, 1994, p.192.
8 Read art. 190 of the Constitution of the Republic of Rwanda of 04th June 2003 as amended to date.
are also other international conventions known as *Jus cogens* that don’t need ratification by states to be applied.⁹

**Formal sources and hierarchy of norms**

Formal sources are techniques or forms that give to rules a legal character. They build law. Formal sources are classified into two categories:

1. Obligatory or compulsory sources of law: law and custom (to some extent);
2. Auxiliary or subsidiary sources of law: jurisprudence, doctrine, general principles of law, equity.

**Domestic law**

**Primary sources**

In countries with civil law system, like Rwanda, the primary sources of law basically refer to statutes or simply referred to as legislation. Importantly is also to know that article 47 *in fine* of the Organic Law no 03/2012/OL of 13/06/2012 relating to organization, competence and functioning of the Supreme Court¹⁰ brings an issue of precedence as it reads that “Judgements and decisions of the Supreme Court shall be binding on all other courts of the country”.

**Statutes or legislation**

Legislation is also referred to as statutory law and covers those rules of law made directly by the legislature. Each state has an organ responsible for law-making, and this is what is referred to as the legislature. The legislative authorities of the state promulgate law in

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⁹ These are principles of international law so fundamental that no nation may ignore them or attempt to contract out of them through treaties.

¹⁰ Official Gazette nº 28 of 09 July 2012.
various statutory forms such as laws (sometimes referred to as Acts of Parliament), decreelaws, presidential orders and ministerial orders. Statutes are categorised in their hierarchy as follow:

_The constitution_\textsuperscript{11}: this is the supreme law of the State\textsuperscript{12}. All laws of Rwanda shall be in conformity with the constitution and any inconsistent law is void (art. 200 of the Const.). The constitution of the Republic of Rwanda regulates the State and the sovereignty (arts.19), the fundamental liberties and rights and duties of the citizen (arts. 10-51), political parties (arts. 52-59) and the _trias politica_, the Executive, the Legislative and the Judiciary (arts. 60-168), the security and defence of the State (arts. 169-175), etc.

The reason why any Constitution is given this special place in the hierarchy of laws is that, in principle, it is considered to be the word of the people themselves. In other words, it is legislated by the people. In many democratic systems of government, constitution-making involves the direct participation of the people through a referendum, thus reducing the role of the legislature to the mere formality of „enacting the Constitution as approved by the people” . In countries where a referendum is not provided for, it is common for the enactment of a Constitution, or amendments to it, to require a special procedure such as approval by a two-thirds majority of the total membership of Parliament.

_International treaties and conventions:_ According to art. 190 of the Constitution, upon their publication in the official gazette, international treaties and agreements that have been conclusively adopted in accordance with the provisions of law shall be more binding than organic laws and ordinary laws except in the case of noncompliance by one of parties.\textsuperscript{13}

\textsuperscript{11} In Rwanda, the actual constitution is the Constitution of the Republic of Rwanda of 04/06/2003 as amended to date, _O.G., n°_ special of 4 June, 2003.
\textsuperscript{12} Art. 200 par. 1 of the Constitution of the Republic of Rwanda of June 4, 2003 as amended to date.
\textsuperscript{13} There are also other international conventions known as _Jus cogens_, norms that do not need ratification by States to be applied. These are principles of international law so fundamental that no nation may ignore them.
Organic Law: Organic laws govern all matters reserved for them by the Constitution as well as matters that require related special laws. An organic law may not contradict the Constitution. Neither may an ordinary law or decree-law contradict an organic law nor may an Order or Regulations contradict law. Organic laws are passed by a majority vote of three fifths of the members present in each Chamber.

Law (ordinary law) & Decree law: “The law is sovereign in all matters”. This means that in matters of regulating, the law has the universal application except only some matters governed by other laws in a specific way. Ordinary laws are passed by an absolute majority of members of each Chamber present.

In the event of the absolute impossibility of Parliament to hold session, the President of the Republic during such period promulgates decree-laws adopted by the Cabinet and those decree-laws have the same effect as ordinary laws. However, these decree-laws become null and void if they are not adopted by the Parliament at its next session.

Regulations: These are rules enacted by the Executive and are ranked the last in the hierarchy of primary legal sources in Rwanda. These are:

1. **Presidential order**: it is a unilateral administrative act made by the President of the Republic to regulate a defined situation;
2. **Prime Minister’s order**: it is a unilateral administrative act enacted by the Prime Minister to regulate a defined situation;
3. **Ministerial order**: it is a unilateral administrative act enacted by a Minister to regulate a defined situation

or attempt to contract out of them through treaties. For example, fight against genocide and participating in slave trade are thought to be *jus cogens*.

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14 Art. 93 par 2 and 3 of the Constitution of the Republic of Rwanda of June 4, 2003 as amended to date.
**Auxiliary or subsidiary sources of law**

*Custom:*

Customs are rules that become binding in the course of time through observance by the community in question. They are not necessarily written down. In other words, the community becomes accustomed to regulating its relationship in a particular way, with many of its members regarding that particular way of doing things as legally binding.

Custom is also known to be subordinate source of law. Custom plays a major role in a legal system and, in developing and applying the law, legislators, judges, and authors are, as a matter of fact, more or less consciously guided by the opinion and the custom of the community. Custom is not a fundamental and primary element of the law; it is however the element involved in establishing acceptable solutions.

The custom is actually a branch of law that involves usages and practices of a given community and which have become socially acceptable norm with the force of law. Such custom must generally be acceptable by the members of the concerned society. Thus, the custom has two constitutive elements: *usus + opinio juris*.

A custom can be *secundum legem, praetor legem or contra legem*. A custom is said to be *secundum legem* when written law expressly refers to it. It is *praeter legem* when it comes to fill in the vacuum in written law. It is finally *contra legem* when it is inconsistent with the law.

The difference between the law and custom is essential but it ought not to be exaggerated. It is more formal than substantial. Customary law presents some undeniable inconveniences compared to written law.
1. Written law is more precise due to its fixedness that cannot be found in customary law.

2. The written law ensures its widespread dissemination and makes it easy to find which rule of law shall be applicable.

**General principles of law:** Some unwritten principles are generally accepted in legal community as exercising influence even to the legislator. He/she cannot depart from them easily and they inspire while making laws. If the general principles have not been incorporated in law, the law is above them but if they have been incorporated in a given law they acquire force of that law. Examples of general principles of law recognised under Rwandan Law are:

- *Nemo censetur ignorare legem:* Ignorance of law is no excuse;
- Principle of non-retroactivity;
- *Nemo auditur suam turpitudinem allegans:* One’s own turpitude is no excuse;
- *Fraus omnia corrumpit:* Fraud annihilates all;
- One should not render justice to him/herself;
- *Non bis in idem:* No one shall be punished twice for the same acts;
- *In dubio pro reo:* the doubt is profitable to the suspect;

**Decided cases/jurisprudence:** Generally, jurisprudence means the decisions of the courts and tribunals. Courts decisions as well as legislation may have a lot of authority and strong influence on the way the law is perceived and interpreted in legal practice. Strictly thinking, the jurisprudence refers to the way a given legal problem has been addressed or solved by the court.

In Romano-Germanic legal system, the jurisprudence does not bind the judge. He may rule differently to his previous decision. Even though the jurisprudence does have a legal value or a binding force, it exercises an unquestionable influence that determines the judges to rule in a given way. Contrary, jurisprudence constitutes a binding source of law in the
Common Law Legal System under the form of *precedent*. The Common Law precedent has a binding force to the judge and cannot depart from it.

**Legal doctrine:** Legal doctrine refers to the writings of eminent jurists. It is the legal scholars’ opinions on critical questions of law. Legal doctrine refers to the publications of persons deeply involved in the study of law: Professors of law, eminent Lawyers and Judges... Doctrine exercises an important influence even though it is not a binding source of law. It guides the judge by proposing to him/her the reasons to decide in this or that way. The legal doctrine also guides the legislator when enacting laws through the consultation of the publications or the call up of these eminent Professors of Law, eminent Lawyers... to participate in the law making process as experts.

**Equity:** This is a body of rules created on the basis of the fairness and *bona fide* of the judges. Equity allows the judge in case of silence of the law, to render a decision in the conformity with his/her conscientious good faith and the reasoning of the justice.

**Sources of international Law**

Article 38 of the Statute of the International Court of Justice stipulates what should be the sources of International law. This article sets out the three principal sources:

- International conventions, whether general or particular, establishing rules expressly recognized by the contesting parties;
- International custom, as evidence of a general practice accepted as law;
- The general principles of law recognized by civilized nations.

Apart from the above three sources of international law, one may also add the judicial decisions, doctrine and equity but taken from international context.
International conventions, whether general or particular, establishing rules expressly recognized by the contesting states: Conventions or treaties are agreements between subjects of International law that are intended to be binding upon the parties on the international scene. Treaties are regarded as primary sources of the International law and an International tribunal will usually look at treaties first before looking at any other sources of International law.

Primary sources of international law

International custom, as evidence of a general practice accepted as law: Customary international law comes into existence when states commonly behave in a particular way and do so in the belief that they are legally obliged to behave in that way. Two requirements must be met:

- The practice must be uniform, constant, and widely adopted by various states (usus): condemnation of apartheid which although rejected by South Africa did not prevent international community from imposing sanctions to South Africa;
- The practice must be accepted as a law by the states involved (opinio juris): the states must have in their mind the feeling of that practice as the law.
- General principles of law recognized by civilized nations: These are principles recognized in the national legal systems of the States that may attract the interest of the International Courts.

These are for example:

- States must be treated equally regardless of their size or strength (sovereignty);
- Consent of the State before being bound to an international agreement;
- Obligation to make reparation in case of the breach of contract…
Subsidiary sources

Judicial decisions: These are decisions of the International Court of Justice (as well as other international courts depending on the circumstances) that are not binding over the States save only those that were parties to a dispute before the court in which the judgment was handed.

Teachings of the most highly qualified publicists of the various nations: These writings constitute the evidence of law and are often used by the Judges of the ICJ in their judgments. The opinion of the International Law Commission, which is a body of academicians and international law experts tasked by the UN with codifying international law is of particular importance.

Equity: in case of absence of any other source of international law.

Study questions:

1. In Rwanda, formal sources are classified into two categories: Primary sources and secondary sources.
   a. Explain what primary sources and secondary sources mean;
   b. Give and explain the components of each category.
2. Compare the importance of case law in common law and civil law systems.
3. Give at least 10 general principles of law recognized in Rwandan law.
4. It is said that “Equity is not a source of law in itself. It is rather an instrument used by the judge even when there is no legal rule to apply to a given case.” Discuss this.
5. What is the difference between Public international law and Private international law?
6. Talk about the various sources of international law and analyse the hierarchy of these various sources of international law.
7. Explain the historic development of the scope of international law and cite some examples of topics/subject areas regulated by international law.

8. Discuss the legal importance of international law.

9. Do judicial decisions and the teachings of the most highly qualified publicists of the various nations (doctrine) have the same value as other sources of International Law? Explain your answer.”
CHAPTER IV
LEGAL REASONING, APPLICATION AND INTERPRETATION OF LAWS

Legal reasoning
Some of law schools and law studies are spent learning how to “think like a lawyer.” Many non-lawyers view this thought process with suspicion as if it were somehow a distortion of reality. However, that is far from the truth. Legal reasoning is a useful tool for understanding and persuading. It combines basic analytical thinking with recognition of the special features of the underlying legal system. Legal reasoning is a type of critical thinking that proves useful in both legal and non-legal situations. In fact, legal reasoning is different from other reasoning and law students must be aware of existence of legal reasoning and have a duty to start initializing themselves to think reason and act as lawyers. Reasoning as a lawyer, is nothing else other than reasoning with law in mind and with the law only.

Application and interpretation of laws
As far as the application of laws is concerned, two questions have to be examined. Can a law be applied outside the boundaries of Rwandan territory? Or at all, can a law apply to foreign situations? This goes with questions of territorial jurisdiction of law. Normally, the territory constitutes the material foundation of a State, the setting inside of which the state power is called to spread out.

It is inside the territory that the sovereignty of the State recovers its significance. Within its limits, the state exercises fullness and exclusive rights of its competences, laws included. This is because every State is sovereign on its territory and cannot therefore tolerate that foreign country’s laws be applicable on its own territory. This is the principle of “Territoriality of laws”. However, this is a general principle that has some exceptions.
The second question as to the application of laws relates to their duration or time-period. It is generally accepted that from the moment a law is promulgated, and enter into force it governs immediately all the legal situations happened thereafter. This is the immediate effect of the law, to mean that a promulgated law has no retro-active effect. This is the principle of “Non-retroactivity of laws” but which also has some limitations.

Lawyers are concerned not only with application of laws but also with their interpretation. Interpretation can be defined in stricto sensu as the process of determining precise meaning, defining the scope, limits and effects of a legal text. In its broader sense, interpretation is a set of intellectual steps to be taken in searching for solution to a particular case. Some lawyers prefer to give priority to the letter of the text; others to its spirit or purpose while others in this way or that.

**Application of laws in space: Territoriality of laws**

Two questions at this point have to be examined. Can a law apply to the situation with out-of-country aspects? Or at all, can a law apply to foreign situations?

It is a general principle that laws are only applicable within the boundaries of the country. The principle of territoriality under Rwandan law is provided for by article 7 of the Preliminary Title of the Civil Code. It is worthy to mention that the principle of territoriality accepts some limitations like for instance:

- Article 10-12 of the Preliminary Title of the Civil Code: the civil status\(^{18}\) and family situation of foreigners are governed by their laws as far as the substance is concerned;

- The immovable property is governed by the law of the place it is located, *lex rei sitae* or *lex situs* (articles 13-14 of the Preliminary Title)\(^{19}\);

\(^{18}\) Status and capacity.

\(^{19}\) It is what is meant by *lex rei sitae* or *lex situs*.
- Legal acts are subject as to their substance on the autonomy of parties’ will. They are governed by the law of the location where they were performed as to their form\(^{20}\);
- Legal facts are governed by the law of the place they happened.

**Application of laws in time: Non retro-activity of laws**

The second question as to the scope of laws relates to their duration or time-period. It is generally accepted that from the moment a law is promulgated, and enter in force it governs immediately all the legal situations happened thereafter. This is the immediate effect of the law. Article 2 of the Code Napoleon considered as a general principle of law stipulates that the law provides only for the future. It has no retro-active effect. This is the principle of “**non-retroactivity of laws**”.

In most cases, the promulgation and publication day are those of entering into force of laws. But sometimes, a law can be published in the Official Gazette but enter into force sometime after. This happens when the legislator deems that there is need of making it known to the public before it can be applied. The principle that none is presumed to be ignorant of law requires that all laws be published before coming into force.

The non-retroactivity of laws is dictated by the desire to maintain order and social stability. It would be in fact creating a legal insecurity to apply a new law to a past activity. Consequently, it is unquestionably accepted that laws have effect in future i.e. applicable to the situation happened after they entered into force. The major question however remains that of on-going situation when the law is enacted. Will a new law remain applicable to them? It is generally accepted by modern theorists that a new law will be immediately applicable to on-going situations but with no effect on the consequences produced in the past. For example, if a new law is enacted today and prohibits minors to accomplish an act

\(^{20}\) *Locus regit actum* meaning the location governs the act.
that they could do under the former law, that law will be applicable to minors but not to acts that they did in the past.

However, there is a limitation of this position. Even though new laws are applicable to ongoing situations, they are not applicable to on-going contracts. They will continue to be governed by the former law in order to avoid the trouble in the relationships of parties to the contract. The effect of the contracts will therefore remain governed by the former law even though repealed (abrogated).

The principle of non-retroactivity of laws itself is not absolute. It accepts some limitations/exceptions:

- **The legislator can expressly declare some laws retro-active**

- **Interpretative laws are always retro-active**: Interpretative laws are those by which the parliament precise the meaning of previous laws considered to be ambiguous or much debated. Interpretative law is considered to be incorporated to the former law and is therefore applicable to the situation that happened before its enactment.

- **Retroactivity in mitius**: The principle of non-retroactivity of laws is designed to protect fundamental freedoms and rights. The field of criminal law is more concerned. Article 12 of the Penal Code prohibits the punishment of conduct or facts that were not punishable at the time they were committed. But when new criminal laws are soft (in favour of the accused person), they are applicable to the facts happened in the past.
Interpretation of laws

To interpret is to determine an exact meaning of a legal text, to determine what can and could be its sense by determining what are its scope, its application, its limitations and effects.\(^{21}\)

Objectives of interpretation

The objective of interpretation is to arrive at the legal meaning of a statutory provision, i.e., the meaning intended by the legislature. This is not the same as its verbal or grammatical meaning. If that were not so, there would be little purpose in training lawyers. It is generally accepted that the object of statutory interpretation is to arrive at the intention of Parliament or the legislature. To this end, the courts have adopted rules, maxims and presumptions of statutory interpretation and these three (rules, maxims and presumptions) may loosely be described as „principles” of statutory interpretation. There is, however, no rule or principle that tells the court what rule or principle to apply. Rather, the courts tend to adopt that rule or principle which is convenient for the case and the decision intended. The natural and reasonable desire that statutes should be easily understood is doomed to disappointment.

Rules of statutory interpretation

Courts determine law through a process of legal interpretation. Many words are ambiguous by nature. Further, most statutes are written in very broad and general language. Thus, the court’s power to interpret is an important one. It is especially important when a case involves a situation the legislature did not foresee when it passed the law. Through such interpretation judges can broaden or narrow the reach of a law.

In interpreting legal rules, courts generally:

- Look to the plain meaning of the language.

\(^{21}\) Interpretation of contracts is done reference made to article 66 and the following articles of the Law of contracts.
• Examine the legislative history of the rule.
• Consider the purpose to be achieved by the rule.
• Try to accommodate public policy.

**Plain Meaning**
Generally, the first step in interpreting a statute or other source of law is to look at the plain meaning of the words. A judge would not say the legislature meant to establish a 60 kilometers per hour speed limit when the statute says 40. Some courts refuse to go beyond this step and claim that they should apply a rule according to its literal language and not concern themselves with anything else. To do otherwise, in their minds, would result in their imposing their will on the legislature.

**Legislative History**
Most courts refer to a statute’s legislative history when the language is unclear. This involves an examination of investigative committee reports, legislative hearings, and press announcements. They also may look at discrepancies between how a bill was first introduced and how it finally was enacted for guidance on how to interpret its meaning.

**Purpose**
Part of the court’s investigation into a law’s legislative history is to determine the purpose of the rule. This is because judges generally do not wish to interpret a law in a manner that conflicts with the objectives of the original lawmakers.

**Public Policy**
Judges also may look to general concepts of public policy when interpreting legal rules. Of course, there is no firm and fast definition of what constitutes public policy.
From the above, there exist different rules that govern the interpretation of laws/legal rules:

**1st rule: fidelity to the legal text**
This refers to a direct interpretation of a legal text basing strictly on the words of it. This occurs when a legal text is clear and understandable enough.

**2nd rule: comparison**
This occurs when a legal text is not clear, old or silent.

When a legal text is not clear: in this case, it becomes important to consult the preparatory documents, the discussions of the members of the legislative body, analysis of the *ratio juris* i.e. the *raison d’etre* of the law into question, analysis of surrounding circumstances such as social, political or ideological motives, comparison with foreign similar laws, etc. All these constitute an indirect and logical method of interpretation.

When a legal text is old: in this case, attention should be taken with regard to the formal application of a legal text and real application of a legal text. To this regard, one may extend the will of the legislator (extensive interpretation) or reduce the scope of the will of the legislator (restrictive interpretation). However, the real meaning of the law must always be kept.

When a legal text is silent: in this case, there is no other choice except making interpretation by analogy and similarity methods, i.e. looking for a comparative or analogous solution. If need be, reference may also done to the general principles of law and equity.

Apart from these methods, different techniques are also useful:

1. Analogous or *a pari* argument: giving a hypothetical solution to a similar case.
2. *A fortiori* argument: this consists in extending the scope of a legal text because motives that pushed the legislator to adopt such a legal text also refer to the concerned situation. This may be done by extending or reducing the scope of a legal text.

3. *A contrario* argument: this consists in applying a hypothetical contrary solution to a contrary situation.

**Enactment and abrogation of a law**

**Abrogation of a law**

There exist only one way of repealing a law: the enactment of a new one modifying expressly or tacitly the former. There is a tacit abrogation when the provisions of the new law are inconsistent with the former law. But laws can also repealed by falling into abeyance. They are said to become obsolete when they have not been applied for a long time even though not repealed. The non-application may originate from the change of opinion of the issue or from the fact that circumstances that dictated that law have disappeared.

**Publication, Notification and Commencement of official acts**

Under Rwandan law, the publication, notification and commencement of official acts are done in accordance with the law n° 22/2012 of 15/06/2012 determining the publication, notification and commencement of official acts.²²

**Publication**

Laws, other instruments with the power of law, orders and regulations of public interest are published in the Official Gazette and also by electronic means.

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²² In *O.G.* n° 31 of 30/07/2012.
Administrative acts of public interest issued by authorities of local administrative entities in a limited territorial jurisdiction are published by posting them at the office of the concerned administrative entity, in any other place as well as by electronic means. For administrative acts of individual interests, these are notified to the concerned parties. As far as the commencement is concerned, where acts published by means of posting do not indicate the date of commencement, they enter into force after ten (10) calendar days following their publication.

**Commencement**

Laws, orders and other regulations of public interest come into force on the date provided therein, determined in relation to the date of their publication in the Official Gazette of the Republic of Rwanda.

Acts of individual interest, orders and regulations of individual interest, have effect upon their notification to the concerned parties. Such orders and regulations may have effect from the date of their signature and they may be published in official gazette.

Where acts published in the Official Gazette of the Republic of Rwanda do not indicate the date of commencement, they enter into force after ten (10) calendar days following the publication of the Official Gazette in which they are published.

As far as EAC acts are concerned, laws and regulations adopted by the East African Legislative Assembly (EALA) come into force in Rwanda on the date of their publication in the Official Gazette of the EAC and shall also be published in the Official Gazette of the Republic of Rwanda.
Study questions:

1. In Rwandan law, two principles, territoriality and non-retroactivity of the law, must be taken into account when talking about the application of law. Explain each of these principles and give their exceptions if any.

2. In order to correct the injustice done to women in the sphere of inheritance law, a political party proposes to redress the inequality in inheritance status of women in the past, by changing the law not only in the future, when the law will come into force, but from the moment the proposal is discussed in parliament: form then on everyone knows what will happen. Do you agree with the proposal of the political party?

3. D damaged C's goods that fell from a forklift truck whilst being moved from a vehicle at an airport. C argued that the law which limited the compensation recoverable, did not apply as the term "aerodrome" used within it had a distinct meaning from "airport". Aerodrome" was merely an older word for "airport", the carriage of goods by air applied when the goods had been lifted by the forklift truck within the airport with the result that the law applied. C won. Which interpretation was it?

4. Explain different ways of abrogating a legal rule.
CHAPTER V
SUBJECTIVE RIGHTS AND THEIR HOLDERS

Introduction
Whereas objective law has been defined as a body of legal rules (deriving from different sources) that govern the individuals’ relationships within a given society during a given period, subjective law refers to prerogatives or rights conferred to persons by legal rules (objective law) in a particular situation and which he or she enjoys under the protection of law (legal protection).

At the primary level, the obligation to respect entails that the State should refrain from interfering in the enjoyment of all fundamental rights; it should respect rights-holders, their freedom, autonomy, resources and liberty of their actions. At the second level, the State is obliged to protect right-holders against other subjects by legislations and provisions of effective remedies. This obligation requires the State to take measures to protect beneficiaries of the protected rights against political, economic and social interferences.

The owner of rights can be a single individual (physical person) or a group of individuals even a group of other groups recognised by the law (Legal persons). Rights are generally classified into two main categories: patrimonial rights and extra-patrimonial rights. Patrimonial rights are those rights susceptible of being evaluated in money. They have financial value like property rights, intellectual rights (copyrights), etc. Extra-patrimonial rights are those with no financial value such as right to life, right to get married with a person of your choice, right to vote, etc.
The concepts of legal rights and legal personality

Legal right
A legal right may be defined as “an interest conferred by and protected by the law”. There are, of course, other rights such as moral rights, which entitle persons to claim from others that they do or not do certain acts. But a right is a legal right if – and only if – it is conferred and protected by law.

A legal right entails either a positive or negative duty on another. It entails a positive duty when the claim is that the other must perform an act. It is negative when the other person is restrained from doing an act. In general, this leads to two groups of legal rights: personal rights and real rights.

A personal right is directed at a particular individual to do or refrain from doing an act. For example, X may have a right to claim that Y deliver a bicycle to him/her or that Y shall not interfere with his/her contractual relations. A real right is not directed at any particular person but is binding erga omnes, i.e. on all persons, requiring them all to refrain from doing an act. It is called ‘real’ because it arises from a person’s exclusive interest in or benefit from a thing. All other persons are bound to respect this interest in or benefit from the thing in question. A typical real right is ownership of property. The owner of a piece of property is entitled to prevent all other persons from interfering with his/her enjoyment of the privileges of ownership.

Legal personality
Legal rights are enjoyed only by “legal persons”. A human being is a “natural person” and is a person at law (therefore, a legal person). However, a human being is not the only person recognized by law. The law endows other entities with the capacity to acquire rights
and incur obligations. A legal person is also defined as “somebody who, or something which, can have legal rights and can also be bound by legal rights, i.e., be subject to legal duties”.

Other entities endowed with legal personality are generally referred to as “juristic” or “artificial persons” or “legal entity”. A company is the most notable example of a juristic person. Even non-lawyers know that a company is a separate legal person from its shareholders and officials.

Hereunder are the details on the rights and their holders.

**Subjects of rights**
Bearers of rights are persons. Before the law, a person is a being that can play a role in legal life by becoming an active or passive subject of law (creditor or debtor of an obligation). Persons are divided into physical persons (human beings) and moral persons (companies or corporations, associations, etc).

**Physical/natural persons**
Physical or natural persons are human beings, i.e. individuals who represent themselves. According to the Rwandan Civil Code Book I, all persons have the legal personality and thus considered to be persons before the law. The legal personality is acquired at the time of birth and lost at the death. However, an unborn child who is simply conceived is deemed to have personality if it is in his interest; for example for succession purposes. As to the status of a person, it is defined as a position that an individual occupies before the law. It may be a political status (a citizen or a foreigner), a civil status (married or single, a minor or adult, etc). Physical persons are subject of all patrimonial and extra-patrimonial rights whereas moral persons are subject to patrimonial rights. Although legal personality
begins at birth and ends in death, minors are a select group of „natural persons” who are governed by a reduced number of the laws applicable to other natural persons.

**Moral/artificial persons/entities**

Besides physical persons, there are also moral persons. These are corporations (groups of people) that have acquired legal personality. Moral persons can be made up not only by individuals but also by other moral persons. A moral person has an independent legal existence, different from that of its members. As physical persons, they are identified by names, domicile, nationality, etc.

There are public law moral persons and private law moral persons. Public law moral persons are State owned corporations. For example: UR, RRA, RSSB, RCS, etc. Private law moral persons are individuals owned corporations. They are considered to be serving individual interest not public interest. Within private law moral persons, we have profitmaking corporations (commercial companies) and non-governmental organizations; (associations, syndicates and civil societies).

**General classification of rights**

All rights are generally classified in patrimonial rights and extra-patrimonial rights. Patrimonial rights are those rights susceptible of being evaluated in money. They have financial value. Example: property rights, intellectual rights (copyrights), etc. Extra-patrimonial rights are those with no financial value. Example: right to life, right to get married with a person of your choice, right to vote, etc.

**Extra-patrimonial rights**

As already mentioned above, extra-patrimonial rights are those with no financial value, no pecuniary value. They appear in one’s patrimony (estate) neither as assets nor as liabilities. They are not strictly speaking a property: rights to life, to physical and moral integrity,
marriage, to freedom, etc. These rights are inherent to human nature and are inseparable with one’s personality. This means that they are not transferable, not sizeable and imprescriptible. This means that none can make a donation or sell his/her extra-patrimonial rights; no creditor can seize them, and they cannot be extinguished or acquired due to a certain time period (prescription). Extra-patrimonial rights are mainly classified in political rights, family rights and personality rights.

**Political rights**

Political rights are prerogatives that citizens are endowed with and that enable them to participate in civic and political activities of their countries. The Universal Declaration of human rights in its article 21 states that everyone has the right to take part in the governance of his/her country, directly or through freely chosen representatives. Some of these rights are: right to vote, right to serve as civil servant, freedom of assembly, freedom of association, right to nationality, etc.

**Rights relating to personality**

These are rights aimed at protecting a person’s physical and moral personality. They are: right to life and right to physical integrity, right to moral integrity, right to freedom (of religion, of expression, etc), right to equality, etc. Right to life and physical integrity protect a person’s body against injuries and killings. The right to moral integrity is concerned with a person’s honour, his feelings and his privacy. It also includes the secrecy of correspondence, the respect of domicile, right to honour, etc. The right to privacy includes protection of correspondence, mail, telephone and telegraph and similar means of communication. Also, a home is protected against intrusion, which must be authorized by law. Examples of such authorization can be found in the Code of Criminal Procedure, which authorises search of homes, but only under rigorously controlled conditions\(^\text{23}\).

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\(^{23}\) See articles 32-33.
All citizens are free to move throughout the territory of the country, to leave it and to return. It is the right to freedom of movement. The exercise of this right is limited by law based on public order or State security\(^{24}\).

**Family rights**

These are rights more concerned with all extra-patrimonial prerogatives that a person enjoys in his/her family members. All legal systems recognize the family as an institution in which certain elementary needs of a person, such as children’s education and protection have to be provided for. The family members are entitled with some extra-patrimonial rights such as parental authority, right to parenthood, etc. All the rights based on family relationship and which cannot be evaluated in money, are called family rights.

**Patrimonial-rights**

Patrimonial rights are generally referred to as property rights. They have a common characteristic of being susceptible of evaluation in money. In other words, they have a financial value. Property rights may consist of claims or obligations (dealt with in the law of obligations), intellectual rights (patents or copyrights dealt with in specific legislation) and property rights in a narrower sense; that is ownership and related notions concerning things, be they moveable or immovable.

**Personal rights**

Obligations are also referred to as personal rights. An obligation may be defined as a legal bond between two persons by which one is bound to other to perform an act or to abstain from doing an act, or to create a right over something or to transfer its ownership. A personal right is thus the right that a person named creditor has against another person named debtor by which the former (creditor) may compel the latter (debtor) to do, to refrain from doing or to give something.

\(^{24}\) See in this regard the Constitution of the Republic of Rwanda as amended, article 23.
Real rights
Unlike personal rights that consist of a legal linkage between two individuals, property rights or real rights are exercised by an individual over a thing, movable or immovable. The bearer of a real right exercises it directly over a thing without interference of anybody on the thing on which he has custody\textsuperscript{25}, the property being movable or immovable\textsuperscript{26}. But everything takes considerable importance when it is necessary to establish ownership of property. In movable property, the rule of proof of ownership refers to article 658 of the Civil Code Book II according to which, the possession of a thing equals to the ownership, whereas in immovable property, the ownership is proved by a document or a title deed.

Intellectual rights
Whereas real rights and personal rights originate from the Roman law, intellectual rights are of modern creation. They refer to the right that an author or an inventor has on his work or invention. These rights are not actual real rights because they are not exercised on a material thing. They are exercised on a mind made (intellectual) work. Example: an author of a book has certain rights over that book. A company has rights over its trade mark, etc. Intellectual rights can be patrimonial and/or extra-patrimonial.

Study questions:
1. Classify the following rights:
   a. Right to vote
   b. Right to nationality
   c. Right to dispose of your property
   d. Right to a trade mark
   e. Creditor” s right against his/her debtor

\textsuperscript{25} Article 1 of the Civil Code Book II enumerates real rights.
\textsuperscript{26} See article 2 of the Civil Code Book II.
2. Identify major international human rights instruments and name those ratified by Rwanda.

3. A person’s rights to life and physical integrity, to moral integrity, to freedom and to equality are guaranteed by Rwandan Constitution. Provide relevant provisions of the above constitution on these rights.

4. Discuss intellectual property law in Rwanda.
CHAPTER VI
THE PRINCIPLE OF RULE OF LAW

Introduction

The rule of law does not have a precise definition, and its meaning can vary between different nations and legal traditions. Generally, however, it can be understood as a legal-political regime under which the law restrains the government by promoting certain liberties and creating order and predictability regarding how a country functions. In the most basic sense, the rule of law is a system that attempts to protect the rights of citizens from arbitrary and abusive use of government power.

The rule of law also used to be defined as a set of principles that require that the powers of the state be derived from and limited either by legislation enacted by Parliament or a legislature or by judicial decisions made by independent courts.

The rule of law exists when the government’s powers are limited by law and citizens have rights that the rulers are bound to uphold, and actually do uphold. This is therefore to say that the rule of law means that the executive and its officials must obey the law and should not act beyond the powers granted to it or without lawful authority.

Elements of the rule of law

In his book *The Morality of Law*, American legal scholar Lon Fuller identified eight elements of law which have been recognized as necessary for a society aspiring to institute the rule of law. Fuller stated the following:

1. Laws must exist and those laws should be obeyed by all, including government officials.
2. Laws must be published.

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3. Laws must be prospective in nature so that the effect of the law may only take place after the law has been passed. For example, the court cannot convict a person of a crime committed before a criminal statute prohibiting the conduct was passed.

4. Laws should be written with reasonable clarity to avoid unfair enforcement.

5. Law must avoid contradictions.

6. Law must not command the impossible.

7. Law must stay constant through time to allow the formalization of rules; however, law also must allow for timely revision when the underlying social and political circumstances have changed.

8. Official action should be consistent with the declared rule.

Standing alone, these eight elements may seem clear and understandable. But they are actually difficult to implement in the real world because governments are often compelled to prioritize one goal over another to resolve conflicts in a way that reflects society’s political choices. For example, making too many laws that are too detailed and specific may make the legal system too rigid. Inflexibility could cause the courts of a country (judiciary) to neglect the human element of each particular case. Additionally, instead of only applying prospectively, some laws are meant to apply retroactively, or to past conduct, because they were passed with the specific intent of correcting the conduct in question. Fuller recognized these conflicts and suggested that societies should prepare to balance the different objectives listed above.

Some also consider that the main elements of a complete rule of law are the following: An independent judiciary, an independent human rights institutions, government powers that are determined by laws, free and fair elections, transparent and accountable access to political power, police and detention systems whose powers are defined precisely by laws, military and security systems that function under the law and access to justice through
competent and affordable lawyers plus no prohibitive levies or delays which discourage seeking justice.

A number of constitutions across the globe give mouth to the ideal of the rule of law by means of the separation of powers, an independent judiciary, civil liberties, and the principle that no man is punishable except for the breach of specified legal provisions. They also make such a statement that States should be democratically ruled, that the law should be given its supremacy and the state be governed by its sovereign: the people. But what does the rule of law principle really entails?

**The supremacy of law**

The rule of law was established like fundamental principle by the Magna Carta of 1215 in the UK and figured in a number of Constitutions worldwide. In Belgium for example, Belgians in 1830 would like to live under the rule of law instead of living under the authority of one person\(^\text{28}\). They wanted a written constitution that would institute and limit powers of the State as well as all authorities. Hence, article 25 of the 1830 Constitution (corresponding to article 33 of the present Belgian Constitution) stipulated that all powers emanate from the people and have to be exercised according to the constitution. This Constitution also provided for fundamental human rights titled Bill of rights\(^\text{29}\).

The rule of law is different from the State of Police. In a State of Police, the public authorities have unlimited powers and are free of control. The rule of law is in contrary based on the supremacy of the law. Actions of the public authorities are disciplined by general impersonal rules conceived to avoid arbitrary actions. The Constitution of the


\(^{29}\) *Ibidem*. 
Republic of Rwanda recognizes the principle of rule of law. Its preamble states that Rwandans are committed to build a rule of law; a State based on law and respect of fundamental liberties as well as other human rights.

**The separation of powers**

The separation of powers is the pillar of the principle of rule of law. It is the principle and the necessary condition for a government that respects fundamental freedoms and human rights. The power must be hold by different persons in order to avoid the risk of oppression. The separation of powers is an antithesis of the despotism and necessary for organization of the power in a constitutional State.

The separation of powers has been first conceived by John LOCKE and then systematized in “L’esprit de lois” of Montesquieu. According to Montesquieu, there must be in each State three powers. The one in charge of enacting laws, another one in charge of execution and the other one in charge of judging and punishing contraveners.

From this doctrine, scientists distinguished the pure separation of powers and its modifications and they developed a doctrine of separation of powers within 4 concepts that are:

- The *trias politica*: a formal distinction must be done between three branches, which are the executive, the judiciary and the legislature.
- People/staff from the three branches must be different.
- Functions must be separated too.
- Each organ must have special powers designated to serve like control on the exercise of functions by the other in order to come up with “Checks and Balances and Judicial review”. This means that courts can abrogate a law enacted by the legislative in cases provided for by the law (Judicial Review) and each power has to exercise a certain control on other powers (Checks and Balances).
In Rwanda, the three powers are separated: the legislative, the executive and the judiciary. They are independent one another but they must collaborate and are then complementary\textsuperscript{30}. The legislative power is exercised by a parliament composed of two chambers, the chamber of deputies and the senate (article 64 of the Constitution). The executive power is vested in the president of the Republic and the Cabinet (art. 97 of the Constitution). The judicial authority is vested judiciary composed of ordinary courts and specialized courts (Art. 148 of the Constitution).

However, even if separate, the three powers are complementary and must collaborate. For example, the Parliament controls the government’s actions in ways provided by the Constitution (art. 128). The President of the Republic promulgates laws adopted by the Parliament within thirty (30) days of its receipt (art.106). The President of the Republic and the Prime Minister are informed of the schedule of each Chamber and their commissions. The President of the Republic can dissolve the Chamber of deputies. However, the president of the Republic cannot dissolve the senate (art. 134 of the Constitution). Courts apply laws enacted by the Parliament.

**The fundamental rights**

The fundamental rights have got various names worldwide. In Germany, the Constitution says of fundamental rights (Grundrechte). In Spain “fundamental rights and public liberties”, in Italy “rights and duties of citizens”, in Portugal “rights, liberties and personal guarantees”, in Austria “guaranteed constitutional rights”, in France “human and citizen’s rights and liberties”, in Holland “fundamental right”\textsuperscript{31}, in Rwanda “fundamental rights of the person and rights and duties of the citizen”.

\textsuperscript{30} Article 60 of the Constitution of the Republic of Rwanda of 04\textsuperscript{th} June 2003 as amended to date.

Human rights are in the centre of the fundamental rights and public liberties. Human rights are protected by the Constitution of the Republic of Rwanda and by other laws as well as international and regional instruments. One can mention the universal declaration of human rights (UDHR) adopted on 10th December 1948, adhered to by Rwanda on 18th September 1962, International Covenant on Civil and Political Rights (ICCPR) adopted on 16/12/1966, entered into force on 23/03/1976, adhered to and ratified by Rwanda on 12th February 1975, the International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted on 16/12/1966, entered into force the 23/03/1976, the international convention on the elimination of all types of racial discrimination, adopted by the General Assembly of the United Nations on 7th March 1966, etc.

The Constitution of the Republic of Rwanda enumerates fundamental principles and home grown solutions (articles 10 to 11), rights and freedoms (arts 12-43), duties of the State and of citizens (arts 44-53). Fundamental rights are in fact inviolability of the human person, the right to life, the interdiction of the torture, the principle of equality, the right to a fair trial, the right to private life, the freedom of movement, the right to asylum, the right to marriage, the right to family, the right of children to protection and education, the right to private property, the freedom of conscience, freedom of opinion and expression, the freedom of association, the freedom of meeting, the right to work, the right to strike, the right to education, the right to health, etc.

Among the rights of citizens, there is the right of access to public services, the right to disobey in certain circumstances, i.e. when the given order constitutes a serious breach to human rights and public liberties, the right to a healthy and satisfactory environment, the right to the nationality, the right to vote and to be elected, etc.

One cannot talk of citizen’s rights without talking of citizen’s duties. Citizen has the duty to consider his/her fellow without discrimination, to contribute by his/her work to the
prosperity of the country, to safeguard the peace, the democracy and the social justice, to participate in the defence of the country, to respect the Constitution and other laws and rules of the country, etc.

**The principle of constitutionalism**

In a democratic State, the Constitution determines the manner in which rights and liberties are exercised and the manner in which state organs exercise the power. It is the principle of constitutionalism. The principle of constitutionalism reflects the idea that in a democratic state, all must be done according to the Constitution and no one shall be above it.

**The principle of accountability**

As the powers are conferred to governors by the people through elections, the first are responsible to the second. That is why the people have the right to know what is being done by the administration. Since the people give mission to the government, the government must give account to the people of how it fulfills its duties. It is in this line that meetings of the administration must be held publicly and decisions of the administration must be published for information of the people. For instance, in Rwanda, there is the policy of “open day”. On this day, the people are invited to access offices of administration, especially local administration, and different authorities show them results of their activities. On this day, people are also allowed to ask questions on any issue.