FAMILY LAW AND MATRIMONIAL PROPERTY

Natural persons, Family, Matrimonial property regimes, Liberalities, Successions

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FORWARD

1. *The current book "FAMILY LAW AND MATRIMONIAL PROPERTY" is published by the "Ministry of Gender and Women Promotion". The book was written with the aim of putting in place an educative manual to help those interested in knowing, using or popularising the knowledge related to the law of family and family property in Rwanda.*

2. *The Ministry had in mind, as recommended by various organisations and institutions interested in the field of popularising the law relating to the family and family property, to put in place a current manual destined to teach those who will train other trainers and especially also to those:*
   - *In charge of legal affairs concerning local administration in the country;*
   - *In charge of legal affairs concerning structures of youth organisation;*
   - *In charge of legal affairs concerning structures of women organisation;*
   - *Judges, public prosecutors and judicial police.*

3. *Probably also the manual mentioned should be used by all practitioners of law, such as students of law and their lecturers, researchers, lawyers, administrators and other agents of legal professions.*

4. *The legal provisions related to the family and to the matrimonial property are found in the "first book of Civil Code". The first book is one of the three books which make up the "Civil Code" of Rwanda.*

   The first book of the Civil Code is made up of two complementary laws adopted by the legislator in different periods, viz :
   - *The law n° 42/1988 of 27 October 1988 instituting preliminary title and the first book of Civil Code; the law that is commonly known as "Family Code".*
   - *The law n° 22 supplementing book 1 of the Civil Code and instituting part five regarding matrimonial regimes, liberalities and successions, law commonly known as "Code of Matrimonial Property".*

5. *Although majority of people can read a legislative text not all can understand the means of utilising or teaching the content, given the fact that various branches of law overlap, this obliges the instructor or practitioner of law to be having a general idea on various branches of the law.*

   Equally, a law can be silent, simply because certain situations escape provisions of the law. This justifies the existence of various doctrines or legal writing prepared, practices and customs, general principles of law, the custom, the decided case law and equity.

   This is the reason as to why it is of importance to publish a book containing comments on law of family and their property especially in Rwanda where the writing of this law is a new idea.

6. *It has been deemed necessary to gather comments related to those laws, for the following reasons:*

- *The two legislative texts constitute together the same book, which is "the first book of Civil Code"; the above-mentioned law n° 42/1988 institutes the four first parts of that book, while the law n° 22/99 institutes the fifth and the last part.*

- *The whole first book of the Civil Code contains the rules related to the family and family property; one cannot understand one part of that code without understanding the other parts, and one cannot understand family property the last part without understanding the preceding parts, especially that related to family.*

- *The litigations related to successions are linked to those related to matrimonial regimes, to the family itself and marriage (including the extra-marital cohabitation), kinship and filiation.*

7. *Among current comments, there are those related to the legal status of an individual and his/her fundamental rights, civil status and its register, the nationality, the protection of a minor who has his/her parents and an orphan minor, the protection of mentally handicapped persons (insane, imbeciles and prodigals), the marriage and divorce, marital duties, kinship, the filiation and the education of children as well as the family council and illegal family (de facto). Also are found comments related to family property and its management, the various liberties, the ascendants partition, the will, testamentary succession and the intestate succession, to those who may succeed, the liquidation and the sharing out of succession or property.*

8. *In addition, within the framework of facilitating the reader and the popularisation of the law of family and family property, legislative text related to the family, family property and to successions as adopted by public authorities, are attached to the current book.*

9. *Concerning the presentation of the current book, the ideas are numbered from one to 484. Those numbers must not be confused with the articles of the law. The numbering of ideas is a normal practice in the presentation of a book on law to make it easier to the users in knowing the various ideas in the book. In addition, the articles of the legislative text on which the ideas are based, are pointed out by the numerals in bracket.*

Read, and understand
Kigali, September 2002

*The author**

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EXPLANATIONS OF ILLUSTRATIONS

I. The family council is an organ with a duty to protect the interests of the family members.

II. Fundamental rights of individuals.
Slavery is abolished for good. An individual is neither a thing nor a domestic animal, yet the latter even is well cared for.

III. Civil Status: Name and residence
1. *A baby abandoned receives the name of the one who finds it.*
2. *A decent residence is a necessity to all individuals.*

IV. Child protection
1. *Parental authority misused: "Stick does not educate"*
2. *Violence against children must be opposed*
3. *Child education is a parental duty.*

V. Protection of mentally incompetent person.
The mentally incompetent person (insane, imbeciles, prodigals) must be particularly protected by their families and the State

VI. Engagement and marriage
1. *Engagement*
2. *Marriage is a result of mutual consent of the boy and the girl. It is not about capture.*
Be warned, the marriage cohesion should be maintained for the rest of your life.

VII. Causes of divorce
1. *Drunkenness splits the family*
2. *Disputes splits the family. Sexual brutality against one's spouse is neither sign of bravery nor sign of honour.*

VIII. Adulterous cohabitation.
Adultery leads to family breakdown. Adultery is an act of sexual relations with someone other than one's spouse.
Be warned once again about it.

IX. Divorce procedure
Divorce is only declared by a judicial decision. "Ukwahukana" or abandoning home is not allowed.

X. A wife has a right to be honoured and utilise her aptitudes in contributing to the home management expenses.

XI. Matrimonial regimes.
Everyone must contribute to the prosperity of the home.

XII. Management of family property.
Marital authority does not imply squandering of family property.
Assent of the spouses is paramount in the management of their property.

XIII. Ascendants partition, will, succession.
1. *The ascendants partition and the will are meant to prevent family conflicts at the time of succession.*
2. *Both boy and girls have equal rights on the property of their parents.*

Abbreviations used:

1. FC : Family Code
2. MLS: Law related to Matrimonial Regimes, Liberalities and Succession
2. RNC: Rwandan Nationality Code
3. PC : Penal Code

FIRST PART – INTRODUCTION

I. PRELIMINARY CONCEPTS
II. ASPECTS AND STRUCTURE OF THE FAMILY
III. SOURCES OF FAMILY LAW AND MATRIMONIAL PROPERTY

CHAPTER I – PRELIMINARY CONCEPTS

In order to facilitate the explanations of the content of the current book, basic concepts need to be clarified, especially the terms of its title.

Section 1 : Notions of Family law and Matrimonial property

1. **Family law and Matrimonial property** is that part of private law which is composed of :

- the law of natural persons ;
- the family law *stricto sensu* ;
- the law relating to matrimonial property regimes ;
- the law relating to liberalities ;
- the law of successions.

2. **Civil Law** provides common rules about how individuals should interact with each other. These rules are concerned particularly with natural persons, the family itself, familial estate, things, contracts and obligations.

3. Rules relating to natural persons and the family itself form the part of law commonly known as « **Family Law** ».

Rules relating to matrimonial property regimes, liberalities and successions are the part of law commonly known as « **The law of Matrimonial property** ».

4. Family law is a branch of law which deals with familial relationships, implying legal relationships between parents and children and between persons having parental relationship or blood relationship.

5. « **Matrimonial property regimes** » is the totality of legal rules which deal with specific patrimonial relationships arising from marriage. More clearly, these rules deal with the estate of spouses, their authority on these patrimonies, their financial obligations between themselves and towards third parties.

6. **Liberalities** consist of rules dealing with acts by which people transfer gratuitously their property to other people, without any price or compensation.

7. **The law of succession** consists of rules which determine transmission (or transfer) of the assets of the deceased at the time of death.

Section 2 : Notions of Family, Parenthood and Blood Relationships

A. Notion of the Family

8. The term "**family**" can be understood in two different ways:

(1) In the strict sense, the term “family” designates a group of persons that is made up by the spouses and their children; it is called the nuclear family (***urugo***). The child who enters into marriage leaves his/her family of origin to create a new family.

(2) In the broader sense, the term “family” designates a group of parents and allies of the same person.

9. The family extends to ascendants, descendants and collaterals. As such, the nuclear family (***urugo*** or ***inzu***) develops towards the extended family (***umuryango***), the patriarchal family and the lineage (***igisekuru***), and to the clan or tribe (***ubwoko***).

B. Parenthood

10. Parenthood applies when a person descend directly from another, or when persons descend directly from a common ancestor. The first category of blood relationship is called parenthood by direct line (ascendants + descendants), and the second category is called parenthood by collateral line (brothers, sisters and their descendants).

11. The term "parents" has two meanings :

- In the strict sense, the term "parents" applies to a person’s father and mother.

- In the broader sense, the term applies to persons from whom a person has a relation of parenthood, meaning his parents in the narrower sense, his grand-parents and all their descendants, his paternal aunts and uncles, his maternal aunts and uncles and their brothers and sisters and their descendants.

12. The terms "paternal or maternal parenthood", depending on the given person, refer to blood relationship through one’s father or mother. Paternal parenthood includes all the parents of one’s father, and maternal parenthood refers to all the parents of one’s mother.

13. The **degree of relationship between a person and a particular relative by blood** may be calculated. Thus, the degree of relationship is the number of generations between a person and a particular blood relationship. Article 154 of the Family Code provides that *"the degree of relationship is calculated, in the collateral line, by calculating the number of generations between the blood relationship and the common ancestor plus the number of generations between that common ancestor and the given person wishing to establish a blood relationship."*

For example, in the collateral line, brothers and sisters are related by blood in the second degree, their children in the forth degree ; a given person with the child of his brother or sister are related by blood in the third degree.

14. In the direct line, blood relationships always have legal effects. In the collateral line, legal effects of blood relationships are calculated up to the seventh degree. Beyond that degree, the legislator considered blood relationship to be without any biological effect. Today, people are scattered to such an extent that the nearest blood relationships should be taken into account.

Blood relationship has many important legal effects, with respect to at least persons closely related, especially in the matters of marriage, parental authority, alimony, assistance and support and qualification to succession. **For example** : For the purposes of marriage, two intending spouses must not be closely related ; guardianship of children, assistance and support, qualification for succession, are the concerns of persons closely related.

15. Brothers and sisters can be divided into categories depending on the blood relationships between them :

- brothers and sisters can be full-blood : full-blood siblings have their father and mother in common ;

- brothers and sisters can be half-blood by father : half-blood siblings by father have the father in common, but not the mother ;

- brothers and sisters can be half-blood by mother : half-blood siblings by mother have the mother in common, but not the father.

C. Alliance

16. Alliance results from marriage. Alliance exists between a person and his or her parent's spouse or the parent of his or her spouse.
An unmarried person has the spouses of his or her married parents as his or her allies.

17. Alliance does not have legal effect, except in cases specified by law. Thus, there are legal prohibitions of marriage between a person and his mother-in-law or her father-in-law. Legal provisions require the son-in-law and daughter-in-law to provide for alimony to parents-in-law and *vice-versa*.

D. Family Council

18. The civil code introduced the traditional institution of « Family Council » under the provisions of Art. 455 of the Family Code. The law did not actually define the Family Council, whose composition and functioning mechanisms vary from region to region. The law realises that under normal circumstances, composition and functioning of the Family Council shall follow the common practice and custom.

The function of the Family Council is **to take care of all interests of the family members**.

19. In principle, **the Family Council consists of wise and well-behaved persons chosen from members of the extended family**. Members of the council are not permanent**. The council meets whenever there is a problem to be solved**, and it does not require a quorum. The Family Council meetings shall be convened and presided over by the Head of the Family. In his absence, it is initiated by any interested person. The Family Head is chosen by the parents among the children. He may also be designated by the Family Council, in case the parents died before designating whom the chief is. It may also be noted that it is not so required to have a Family Head.

Examples :

- In case of a dispute between two spouses, members of their families of origin, especially their fathers and mothers, grand-fathers and grand-mothers, maternal and paternal aunts and uncles, and brothers, sisters and common friends have to hold a meeting.

- In case of a dispute between brothers and sisters, it is the father and mother, their brothers and sisters, grand-fathers and mothers, maternal and paternal aunts and uncles and the friends of the family that are invited.

- In case of a dispute between children and parents, the adult brothers and sisters, their grand-fathers and mothers, aunts and uncles, and friends of the family are invited.

- In case of a problem pertaining to tutorship of orphans, are invited to meeting adult sisters and brothers, their grand-fathers and mothers, maternal ad paternal aunts and uncles, and the friends of their late parents.

20. Within its members, the Family Council elects a Successoral Council, a Tutorship Council for orphans, and a Tutorship Council for mentally ill persons (insanity, imbecility and prodigality).

CHAPTER II – ASPECTS AND STRUCTURE OF THE FAMILY

Section 1 : Rights pertaining to Family : General aspects

21. Rights arising from family relationships are of peculiar nature :

- Familial rights include extra-patrimonial rights ; they are not corporeal and they are exclusively attached to the bearer.

- Familial rights are not in trade ; rules regulating such a matter are of public policy. Examples : marriage, divorce, filiation, tutorship, succession, are regulated by law and order.

- In some cases familial rights are functions attributed to bearers in the interest of other persons ; they are rather duties than rights. Examples : parenthood, alimony to his father and mother, alimony to parents-in-law, son-in-law and daughter-in-law.

Section 2 : Evolution of the family structure

22. Throughout history, family structure was subject to evolution. Today, family structure has three basic characteristics :

(1) Substitution of the patriarchal family for the conjugal family

The importance of the patriarchal family was under-graded by many factors :

- Modern trends to new forms of economy, which are no longer based on agricultural farming only ;
- Money dominating exchange ;
- The basis of economic resources for the family is not anymore the agro-pastoral exploitation of the husband's patriarchal property ; the educational sector permitted both husband and wife to be wage-earners ;
- Progressive liberation of children from parents (salaried employment, independent life by separation from parents) ;
- State intervention in the protection of persons and their property, even in the case of deprivation of the family environment ;
- Decline of family unit and scattering of family members ;
- By the appearance of new forms of settlement, patriarchal land lost its central position with the creation of towns and suburbs. Today, transactions as to land are rendered possible ;
- Rise of sensitivity to non-discrimination of children by granting equal rights to girls and boys.

(2) Rise of individualism.

(3) State involvement in family matters (marriage, establishment of the acts of the civil status, separation of couples, divorce, tutorship, liberalities, successions, …).

CHAPTER III – SOURCES OF FAMILY LAW AND MATRIMONIAL PROPERTY

23. Legislation relating to family law and matrimonial property is provided for in the Civil Code.

The Rwandan Civil Code is a group of legal rules compiled into three books:

- The first book is made up of rules relating to family and family property;
- The second book is made up of rules relating to property;
- The third book is made up of rules relating to conventions and obligations.

24. Without ignoring the common sources of law which include custom, international conventions that Rwanda ratified, case law, doctrine, and general principles of law, the main source of family law is the code known as "**Family Code**", set out in "Law n°42/1988 of 27th October, 1988 bearing preliminary title and first book of the civil code (in *Official Gazette* n°1 of January 1, 1989).

The law relating to matrimonial property is established "Law n°22/99 of 12/11/1999 to supplement Book I of the Civil Code and to institute Part five regarding Matrimonial Regimes, Liberalities and Successions (in *Official Gazette* n°22 of 15th November, 1999).

The preliminary title of the law n° 42/1988 cited above contains norms of law of general aspects relating to all branches of the civil law, constituting the common law that is to be applied in case of non-applicability of a specific branch of law.

25. Book I of the civil code abrogated :

- The Decree of 4/5/1895 relating to Civil Code, Book I;
- The Decree of 5/7/1948 relating to indigenous monogamous marriage, rendered executed in Rwanda by Ordinance n°21/130 of 5th September, 1949;
- The Decree of 4/4/1950 relating to polygamous marriage, rendered executed in Rwanda by Ordinance n°21/132 of 11th December, 1951;
- The Decree of 17/5/1952 relating to Registration of Civil Status, rendered executed in Rwanda by Ordinance n°21/132 of 11th December, 1951;
- The Ordinance n°11/28 of 9/2/1955 relating to Civil Status of Foreigners;
- The Decree Law n°33/79 of 22nd October 1979 relating to the Changing of Names.

SECOND PART – NATURAL OR PHYSICAL PERSONS

I – NATURAL PERSONS AND MORAL PERSONS
II – JURIDICAL PERSONALITY
III – RIGHTS BESTOWED ON HUMAN BEING
IV – STATUS OF PERSONS
V – THE ACTS OF CIVIL STATUS
VI – INCAPACITIES AND PROTECTION OF INCAPABLES

CHAPTER I – NATURAL PERSONS AND MORAL PERSONS

26. In the eyes of the law a "**person**" is defined as a "being" that can have rights and duties or obligations, and that has therefore capacities to play a part in the life of a given community.

27. Rwandan law distinguishes between two classes of persons: **the natural persons** or human beings, and **the moral persons**. Moral persons, called also "juristic persons", are social associations representing a group of interests. Such organisations can be either a group of individuals such as a state, companies and associations, or a group of properties such as foundations.

These associations are governed :

- either by public law, in the instances of entities such as the state, provinces, districts, and public corporations;
- or by private law, such as companies, associations of natural persons and foundations.

Natural persons and moral persons are vested with juridical personality.

The chapter shall be confined to the examination of the natural persons, or human beings only.

CHAPTER II – JURIDICAL PERSONALITY

Section 1: Principle

28. "**Juridical or legal personality**" of a person refers to his ability to have rights and duties.

A human being, without any discrimination, is recognised as a legal subject who possesses legal personality, without distinction of sex, race, colour, religion, nationality or social condition.

29. **Human beings are the only legal subjects recognised by the law**. This principle implies that things and animals are legal objects and cannot be legal subjects (active or passive).

There was a time in history where a human being was considered as objects instead of a human being: Those were slaves. Slaves were legal objects like objects. Slavery was abolished in all over the world. A human being does not ask for juridical personality. It is recognised as a matter of right. But on the contrary, a moral person must always demand for juridical personality given by authorised organ . The moral person, as legal subject has only to carry on acts relating to its object.

Legal personality has a beginning and an end.

Section 2: The beginning of legal personality: birth of a natural person

30. According to Art.15 of Family code (FC), **a natural person's personality begins at birth**. However, the potential interests of the unborn child may be protected from his conception. Whenever there is a situation which can be to the advantage of a child, the child shall be deemed to have been born from the time of conception (art.16 FC). Provisions of this article enable the child born alive and viable to claim his rights from the time of conception, and that will be the case in matters relating to successive rights.

It appears thus that rights are conferred on the unborn child at birth, if he is born alive and viable. However, there are rights that are to be protected before birth; we can mention the right to life. From the time of conception, the unborn child is recognised the right to life. This being the reason for repression and punishment of medical abortion.

31. What about the date of conception? This is a complex question of proof. In other words, how can one determine the exact time of conception?

In trying to solve that complex question, the law established an irrebutable presumption: the child is presumed to have been conceived between the 300^{th} day and the 180^{th} day before his birth (Art.17 FC), so that his rights can easily be established.

Section 3 : The end of legal personality: death and absence

32. The legal personality of a person is terminated by death or by absence. In law, if the missing person has been absent for 9 to 12 years, he is presumed to be dead.

A. End of legal personality by death

33. **Principle.** The legal personality, recognised to a person alive, ends by death; the human being is considered as legal subject from birth to death (Art. 15 FC). Dead persons cannot possess (have) rights. Nevertheless, Rwandan law admits:

- Protection of the deceased's body and burial place;
- Respect of the deceased's names and protection against defamation;
- Respect of the deceased's will after his death.
-

But in fact, respect of the dead and his memorial celebration is done in the interest of survivors'honour.

34. **Banishment penalty (*ugucibwa*)**. In the past, under traditional law, there was a situation whereby a person was banished (*gucibwa*, *kuba igicibwa*). This went with his civil death, and consequently he could not pretend to be having legal personality, even if he was still alive. In the past, the physical integrity of a person was safe only within his/her extended family; out of that family, he/she could not pretend to protection, because at that time, the state was unable of controlling and ensuring security to everyone. In modern law the civil death was abolished and replaced by the "deprivation of capacity": this deprivation is related to capacity, and not to personality.

Examples of deprivation of capacity: a person discharged of being tutor, interdiction to exercise a profession, interdiction to be witness or expert in pleadings, interdiction to drive a car, interdiction to teach.

35. **Proof of death**. In principle, death is proved by the identification of the deceased's body. A situation can arise where a person disappears, but nevertheless there are circumstances justifying his death, even if his body was not found or not identified. In such a situation, any interested party may approach the competent tribunal to grant a presumption of death order with regard to the person. This is called "declaration of death"(Art.19-20 FC).

36. **Determination of the moment of death**. It is always important and obligatory to determine the moment of death. This is for practical reasons: for example succession falls open at the time of death. The date of death can be certain or presumed. The presumption is applied to cases of co-deceased persons (Art. 18 FC) and "declaration of death".

37. Death is also presumed in the case of long absence of a person and this presumption shall be followed by a judgement declaring his death.

B. Absence (Art.25-56 FC)

38. Notion. The term "absence" refers to a situation whereby a person goes missing from his/her domicile or residence and there is no news about his whereabouts, to the extent of doubting as to his/her being alive or dead.

Absence should not be confused with non-presence; the latter being a situation whereby a person has left his/her domicile or residence, but it is certain that he/she is still alive.

Absence should neither be confused with disappearance in such circumstances that the death of a person is certain though his/her dead body has not been found or identified. In this case, though the death is certain, the problem of proof solely arises.

However, nowadays, except in situations of war, absence has relatively become rare thanks to the means of communication that allow to be informed about deaths occurred even abroad (see obituary announcement by radio, …).

39. **Procedure**. In the family code, absence is taken as death, following a judicial procedure in three stages: absent person's presumed life, declared absence and declared death.

The period of life presumption is of 2 to 5 years, depending on whether he left behind a general mandatary or not. In practice, if he did not leave a general mandatary, this function is incumbent the missing person's spouse, or to one of his presumed heirs.

The period of the absence declaration is of 7 years after 2 years or 5 years of the life presumption. After a duration of 2 or 5 years without news about the absentee, the absence may be declared.

The period of death declaration. After 7 years following the absence declaration without positive news about the absentee's existence, his or her death may be declared.

In any case, absence or death declaration shall follow a judicial procedure, upon any interested person or the public prosecutor's request.

40. Administration of the absentee's patrimony

Be during the period of life presumption or of the absence declaration, each time measures concerning the administration of the absentee's estate shall be taken in accordance with the law. The Public Prosecution is particularly concerned with the protection of the absentee's interests.

(1) Period of life presumption

After one year without the absentee's news, and if he did not leave a general mandatary behind, any interested person or the public prosecution can ask the court to appoint an administrator of his property. As far as possible, the administrator is chosen among the absentee's presumed heirs.

Before the expiry of the first year of absence, an administrator may be appointed if there is danger in delay.

In the carrying out of his duties, the administrator is bound to the following obligations :

- Once appointed, he may draw up a stocklist of the personal estate, and, if need be, of the real estate, in the public prosecutor's presence or his delegate;
- If the court judges it useful, the administrator gives a guaranty for the sureness of his management and of the property restitution ;
- The administrator shall make an annual report of his management to the tribunal;

- The administrator gives definite account of his management to the absentee that reappears, or to his heirs.

(2) Period of absence presumption

- The judgement declaring absence may authorise the presumed heirs to enter into the provisional possession of the absentee's property on condition that they give a guarantee for sure administration.

- The existing testament is immediately executed on the condition that the beneficiaries who accept the inheritance give a guarantee.

- The present spouse may prevent the heirs or legatees from entering into possession of the absentee's property, and take up its administration. He should, however, give a guarantee too.

- The presumed guarantee may be given within a time limit of 3 months. Otherwise the tribunal takes other necessary measures judged useful for the protection of the absentee's property.

- Heirs, legatees and present spouse restricts themselves only to the provisional possession of the absentee's property.

Provisional possession of the absentee's property is no more than a deposit. In case the absentee's reappearance, restitution of all his property including the benefits thereof still existing shall be made.

41. Period of death presumption and its effects

(1) The absentee's death declaration gives ground to his succession as in case of certain death. The heirs enter into possession of the absentee's estate in accordance with the succession regime.

(2) The present spouse exercises the parental authority over the children born with the absentee.

(3) In case of inheritance normally devolved to the absentee, it is inherited as a matter of priority by his descendants, or otherwise, by his co-heirs.

(4) Those who inherit the absentee's property shall draw up a stocklist and give a guarantee. This guarantee is cancelled after 18 years.

(5) The declaration of the absentee's death gives to the present spouse rights on the common property and remarriage, in the same way as the surviving spouse.

42. Effect of the absentee's reappearance

(1) In case the absentee reappears before the declaration of absence, the administrator is required to make restitution of the property and give him a report of his management;

(2) In case the absentee reappears after the declaration of absence, the heirs and legatees possessing his/her property are required to make restitution of the property and benefit thereof still existing;

(3) In case the absentee reappears after the declaration of death, the heirs and legatees have to ensure restitution of the property conferred to them and still into their possession;

(4) In case the absentee reappears after the declaration of death, and before the present spouse remarries, the right to remarry given to him/her is declared invalid;

(5) In case the absentee reappears after the declaration of death, and after the present spouse remarried, the new marriage remains valid.

CHAPTER III – RIGHTS BESTOWED ON HUMAN BEING

Section 1 : Preliminary notions

43. **Rwandan legislation recognises to human beings rights and obligations. These rights are of various categories**:

- Some are exercised by the individual in his/her relationships with the community; these are political rights and social rights.

- Others are exercised *vis-à-vis* individuals in their relationships; These are civil rights. Among them, some have an economic character, they are patrimonial rights.

- Others do not have that character, at least as essential; these are, in the broadest sense, personality rights. Some of the personality rights are more linked to the person than others. There are two kinds of personality rights:

  (1) All human beings, if they have legal personality, do not all the time enjoy full rights. A person may be deprived of enjoying some rights as a result of criminal sentence. However, there is a minimum recognised to everyone as a mere human being, irrespective of his/he civil status: these are human being's fundamental rights. In principle, even the legislator should not infringe these rights.

  (2) Some rights tend to protect the human being and his or her own individuality: these are **the actual personality rights**.

In this chapter we shall only examine personality rights.

Section 2 : Personality rights

44. By "**personality rights**", we should understand the essential prerogatives conferred by nature to the human being, which tend to protect him or her against third party's infringement. They refer to some of the person's fundamental rights, that are protected by the law against third party's eventual infringement.

These rights lie in the following :

- A person's physical integrity;
- A person's fundamental freedoms.

§1. Protection of the person's physical integrity

45. A person has a right to protection of his body. The infringements to the physical integrity are penalised with two kinds of sanctions:

(1) **Penal sanctions.** The criminal law incriminates and punishes homicide and physical injuries as well as others whether voluntarily or involuntarily committed against a person, such as rape and illegal abortion. It therefore represses not only acts of a blatant violence but also simple carelessnesses or negligences having led to physical or moral damage.

(2) **Civil sanctions.** The civil responsibility. The convicted perpetrator of the offence has to pay damages to the victim (or his eligible parties in case of death) tending to repair not only the pecuniary consequences, but also the physical and moral suffering.

In principle, a person cannot be imposed an operation on his/her body. For example, a medical or surgical operation is in principle possible only if the interested person consents to, and yet such a consent is only valid in certain conditions.

Even when the court ordered for a medical expertise, the plaintiff cannot be forced to comply with. In case of refusal, the judge will probably take from his attitude unfavourable decisions for him, and it results into an constraint, but the direct constraint cannot be applied.

46. The law sometimes obliges individuals to endure injuries to their physical integrity. This may be the case for public health (in the case of compulsory vaccinations), or for public security (in the case of corporal sentence), or as measures of control for road traffic security (of which the breathalyser test).

§2. Protection of the person's moral integrity

47. Any person has a right to the protection of other aspects of his personality which actually are not physical, *vis-à-vis* other persons.

The elements of a person's moral personality that are generally under protection are:

- honour and reputation;
- image;
- private life.

The protection of the two last aspects intervenes especially for thwarting noted abuses committed by certain services and by "sensational" press.

A. Protection of a person's honour and reputation

48. Every individual has the right to protection of his moral personality, honour and reputation: infringement to the right to protection of honour or reputation constitutes, under certain conditions, a defamation or injury; that offences is punishable.

Apart from the penal sanctions, an action for damages will be granted to the aggrieved party.

The court often orders publication of the judgement at the expenses of the author of defamatory and injurious words. That publication is a form of public reparation particularly adequate in the matter.

Affection sentiments are also protected. For example: a beloved person's death may cause moral prejudice; from which result moral damages.

B. Protection of a person's image

49. The legislation on the press has agreed with the principle of not copying or distributing a person's image without his consent, for any reason, if it is a photo taken in a private place.

To the contrary, a photo may be copied and distributed without the concerned person's consent if taken in public or during the performance of a public activity.

50. The most delicate question consists of a photo taken in public but during the performance of a private activity.

If it is a known person, publication of his photo with the mention of his name may require his consent.

If it is an anonymous person, in principle such a photo can be published without authorisation. But if this publication may cause prejudicial consequences to the photographed person, precautions shall be taken to make the person unrecognizable.

51. The same protection extends even to the **voice**, considered as "the person's sonorous image", whether it is an incorrect use of an authentic sound recording, or simply its imitation. A person can oppose to the use of a sound recording of his voice without proving of a prejudice.

In the case of simple imitation or caricature, a prejudice should be proven; in that case, the rules relating to civil responsibility shall be applied.

C. Protection of private life

52. Each individual has the right to secrecy of his privacy, and to be protected against unhealthy curiosity and mischief to his privacy.

It can notably be about:

- Professional secrecy imposed on those who professionally have the opportunity of being aware of the intimate details (doctors, lawyers, ministers of worship, …);

- Correspondence secrecy. Disclosure of missive letters or mail to third parties in a debate can only be authorised by the addressee.

  Furthermore, in case of confidential letters, especially where the content refers to the sender's life, disclosure can only be authorised by the sender.
  Monitoring of private communications, such as telephone calls, is prohibited.

As a general rule, everyone has a right to the respect of his private life: privacy is to be protected against any disclosure or investigation.

53. If the private life, in its entirety, is protected against others' untimely interventions, sanction of disclosure concerns particularly the part of the private life, which, due to its

intimate character, should normally remain secret; familial life, sentimental and sexual life are mainly concerned.

Decided cases admit, for instance, that an extra-marital relationship, or a premarital agreement may not be disclosed.

Private life is not exclusively confined into the boundaries of a private residence; the right to protection of one's privacy extends to any location where a person thinks to be away from inquisitive ears or eyes.

§3. Protection of fundamental freedoms

54. Rwandan legislation recognises a set of fundamental freedoms to everybody: freedom of movement, free choice of domicile, freedom of expression, freedom of meeting, union freedom, freedom of work, freedom of association, matrimonial freedom, and more generally freedom of private life.

The law of public freedoms is that part of law which determines the protection of these freedoms with regard to the relationships between individuals and the State.

Criminal and civil sanctions should be applied in case of infringement of these freedoms by individuals. Civil sanctions are of two kinds: applicability of the civil responsibility and/or annulment of agreements conflicting with the fundamental freedoms.

CHAPTER IV – STATUS OF PERSONS

Section 1 : Notions and principles

55. Every physical person is legally characterised by a set of qualities or attributes to which legal consequences are attached. That set of qualities is known as **the civil status of a person**. The civil status of a person distinguishes him from all other entities. The **civil status of a person** therefore personifies him and determines his role in the society and distinguishes him from all other entities, as far as the enjoyment and exercise of civil rights are concerned. The civil status determines civil rights of a person.

The person's status is composed of political, familial, and individual elements.

56. The p**olitical elements** (or the **political status**) determine the legal status of a person towards the national collectivity. Hence, nationals (or citizens) are distinguished from foreigners within the national collectivity; and foreigners are not systematically recognised similar political rights as citizens. Citizenship gives the right to participate in public life and enables to take part in institutions exercising political power within the state.

Familial elements of the person's status determine his/her position *vis-à-vis* his/her family members. The legal status of a person confers upon him/her rights and obligations. The legal status of a person depends on his/her state of a spouse, father, child, brother or sister, married or single, aunt or uncle, grand-mother or grand-father, cousin, brother-in-law or sister-in-law, …

Individual elements of a person's status depend on factors such as age, gender, and mental state. Such elements influence the person's capacity of exercising his/her rights.

In some societies, race, religion, profession, social condition and wealth play a role in determining the person's legal status, nevertheless, this situation is no longer common with the growth of equality spirit among human beings. In Rwanda, such elements do not have legal effects.

57. **In the narrow sense**, civil status is the base of a person's identification ; it is at least made up (composed) of a name, age, filiation, gender and nationality.

In the usual administrative practice, the person's civil status is confused with his/her state of being married or single.

Section 2 : Possession of status

A. Notion

58. Generally speaking, possession is an act of exercising prerogatives related to a right regardless of whether the person is or not bearer of that right.

Possessing something is "to exercise prerogatives over it as the owner, whether one is or not legally the owner". Possession is, a factual state of affairs to which the law of things attaches legal consequences, in the case:

- Normally, the possessor is, for appearance sake, in the same position in relation to the object as the owner thereof ; therefore, whoever contests the reality of his/her rights must institute a proprietary action and prove his claim. This fact is emerges from article 658 of Book III of the Civil Code, which provides that "**in case of personal estate, possession is equivalent to title**".

- Possession for a specified period leads to the acquisition of *dominium* by means of prescription, in favour of the possessor, even though he/she was not legally entitled to possess.

59. The notion of possession under the law of things is applied in the field of family law and in matters relating to the status of persons. **"Possession of a status" consists in exercising *de facto* the prerogatives related to a status, regardless of whether one is or not the rightful bearer**.

B. Constitutive elements of civil status

60. Article 305 FC enumerates the necessary facts which influence possession of status in matters relating to filiation:

"Possession of status of a legitimate child is established by a sufficient group of facts which indicate the relationship of filiation and parenthood between an individual and a family to which he/she pretends to belong.

These principal facts include the following :
- an individual must have been given a name by the father to whom he/she pretends to belong;
- where a man has accepted to treat the child with care and love and has accepted to cater for his/her education as if he were the father;
- where the society constantly recognises him/her as such ;
- where the family members recognises him/her as such.

61. Traditionally; whether in matters relating to filiation or in other matters, possession of status is composed of three elements that are expressed in the following three latin expressions: *nomen*, *tractus*, and *fama*.

(1) ***Nomen* (Name)**: is the fact of having a name corresponding to a status that one wishes to have. The name in question is the family name according to the tradition of several countries where a person takes his/her father's surname, and consequently, of the whole family from which he/she originates. The child pretending to be part of the family must prove by birth certificate, that he/she was registered under the surname of his/her so-called father.

As the practice of family surname does not apply in Rwanda, the evidence of paternal filiation is replaced by the simple act of the father to give a name to the child.

(2) ***Tractus* (Treatment)** is the fact of having been considered as by the relatives as if you were part of the origin of that filiation.

(3) ***Fama* (Reputation)** is the fact of having been considered by the family and the public as if one had the status he/she claims.

The law does not oblige the court to base its decision only on the above elements, the court may also consider other facts according to circumstances.

62. A problem would rise in case of contradiction between the deed and possession of status. In such a case, article 310 FC clearly solves it in favour of the deed:

"*None will claim a status contrary to one given by the birth certificate and the possession in conformity with that deed.*

None will contest the status of a person whose possession conforms to his/her birth certificate". This prescription cannot be challenged and nobody can prove otherwise.

Section 3 : Legal identification of physical persons

63. Identification of a person serves to distinguish people from others while exercising their rights. According to article 57 of the family code, "a physical person is **identified by gender, ethnicity, name, given name, residence and domicile**".

On these elements, we must add "**nationality**" in order to distinguish a Rwandan citizen from a foreigner. It is also important to add "**the place and date of birth** (age)".

Although, in this chapter, nationality is one of the elements identifying a person, it will be dealt with in a separate section.

§1. Gender, age and ethnicity

A. Gender and age

64. There are legal effects related to gender and age :

Examples :

- marriage is only allowed between two persons of different sexes (art.17 FC);
- the husband is the head of the conjugal community (art. 206 FC);
- The incapacity of a person of minor age;
- Under the former Family Code, the incapacity of the married woman; the new code gives a man and a woman full capacity without distinction.

B. Ethnicity

65. Family code considers ethnicity as an element for identifying a physical person, even though there is no right attached to it, especially in as far as the status and capacity of a person are concerned.

At the moment of adoption of the Family Code, the upholding of ethnicity as an element for identifying a person was justified by the former regime as a fundamental element to implement the so-called policy of "ethnic and regional balance".

Today, **ethnic background is no longer an element of identification of a person**, since it was repealed by the Arusha Peace Agreement of August 4th, 1993, forming part of the Rwandan Fundamental law. It is formally prohibited to mention that element in the identity card, or in any other document related to civil status.

§2. Name and Given names (Art.58-72 FC)

A. Notion and principle

66. Name is a term used to specify a person in his/her social and legal life in exercising his/her rights and fulfilling his/her duties.

This means of individualisation is composed of various elements having different importance, and governed by different regulations :

- A **surname** and one or more potential **given names** (Art.58 FC) ;
- In practice, individuals are sometimes given nick names ;
- Individuals also may decide to use **pseudonym** or pen-name ;
- In some societies, there are **qualifications based on either religion** (e.g. Muslims), or **nobility** (e.g. In European feudalism : Prince, Duke, Count, Viscount, Baron, Knight).

B. Surname and given name

67. Unlike some societies where the individuals take up family surnames, in Rwanda, a personal name is given to an individual upon his/her birth: **surname.**

The legislator gives **reasons to justify why a personal name is maintained instead of a family name**:

- Most of Rwandan names are closely related to previous circumstances of their parents' life;
- Some names are ridiculous and are against good morals;
- There are some names which are not suitable for females (e.g. *Mfizi* –Bull, *Gasekurume* – Goat, *Semubi* – The Ugly, *Bendantunguka* – Bastard, etc.);
- Attribution of family surnames is no more than a blind obedience to foreign traditions.
- It is unanimously known that Rwandan culture, regardless of potential nicknames, officially attributes one surname and if need be one given name.

68. A surname is given within a period of 15 days after birth. The given name(s) is (are) not compulsory. The given name(s) is (are) given at the same time as the surname.

In the same family, given name are personal. It is not allowed to take one's father', mother', brothers' or sisters' given names while they are still alive so as to avoid confusion among individuals.

The name given to a child is communicated to the civil status officer at the time of birth declaration. In practice a surname is given to a new-born child by his/her father on the 8th day after birth, in case of father's absence, this is done by one of the close male relative, member of the family council.

Birth declaration (notice) is done (given) by the father, in his absence by the mother, in their absence by one of the ascendants or close relatives, or any person having assisted in the birth, or any other person that finds a new-born.

69. The married woman retains her maiden name on official documents. She may however, for personal reasons, use her husband's name if she so wishes.

Clergymen and religious personnel also retain their surnames and given names on official documents.

70. Surnames and given names must not be against morality and good morals. Examples: *Semubi* – The Ugly, *Bendantunguka* – The Bastard, *Ntibanyendera* – referring to the adulterine child, *Rwasubutare* – The rock splitter (referring to hard sexual intercourse with his wife), …

C. Nickname

71. A nickname is a term used to call an individual by the public, and adds to his/her name.

Nicknames are very common. They are not official, therefore cannot be written on certificates of civil status.

However, as they make people more identified, they are sometimes mentioned on official documents or on notified papers, and often started by the word "alias"; e.g. *Harerimana* alias *Rusisibiranya*.

D. Pseudonym

72. Pseudonym is a borrowed name that a person uses to conceal his/her real name. This is often done by artists, writers, sportsmen, warriors and politicians.

Pseudonym has no regulation and has no official value. Because it is useful in completing identity, people are used to mentioning it on certain certificates. Pseudonym can lead to birth of a right similar to commercial names and be protected against usurpation.

E. Legal characteristics of a name

73. The name is characterised by the following three elements:

- Immutability;
- Imprescriptibility;
- Unavailability.

(1) Immutability

The name is imposing on a person. None shall officially take a name or a given name different from the one mentioned on the birth certificate (Art.62 FC). A person cannot change his/her name on will.

Changing a name is only authorised by the Minister of justice on request of any interested person in conformity with the prescribed legal procedure (Art.65-70 FC).

(2) Imprescriptibility

The person's name is not subject to extinguishing or acquisitive prescription.

(3) Unavailability

The person's name is not subject to commercial transaction. It's beneficiary cannot pass it (on) to another neither can he/she generally allow another person to use it. However, an individual's name attributed to the commercial exploitation can be passed to another person as a commercial name.

F. Protection of the right to a name

74. Any person has a right to use his name in order to identify him/herself, even though the usage may cause prejudice to the other person; for example, in the case of homonymy, when sharing the same name. However, the attempt to create confusion are to be avoided, otherwise, there would be abuse of rights that can result into liability.

A person may request third parties to address him/her using his/her real name, and make it rectified on certificates where his/her name might have been incorrectly written. It is the "action of claiming a name" or an "action of rectifying a certificate" or an "action of claiming a status".

The bearer of a name can prevent other persons from using it, especially when there is a likelihood that it would lead to material or moral damage. After death of the bearer, the right is passed to the surviving spouse and successors.

§3. Domicile and residence

A. Notions

75. According to article 78 FC, the domicile of a person is "*a place where he/she has his/her principal establishment, and where he/she can possibly be reached at any time either directly or through an intermediary, or where he/she is registered*".

Domicile is the place where a person is legally deemed to be permanently present for the purpose of exercising his/her juridical activities. In a way it is the person's registered office.

According to article 73 FC, a person's residence is "*a place where a physical person is habitually based*". It is actually the permanent place where a person lives.
A place where a person lives is assumed to be his/her residence unless it is proved that he/she has another residence elsewhere (art.74 FC).

The meaning that emerges from those two definitions is that residence is a factual notion. Domicile is a legal notion and it is determined by legal provisions. **Registration in "population register" and an "identity card" provide an official evidence of a domicile**.

76. A domicile can be a residence. In this case, the domicile and the residence are interchangeable. But the domicile can also be located in other place different from that of residence.

The terms “domicile and residence” in their current usage, or in their official usage or juridical usage, are very often confused. For example, in the field of criminal law, when we talk of ‘violation of domicile”, it can be taken to mean violation of domicile, as well as residence, housing or lodging of a person, even for a single night.

B. Practical importance of domicile and residence

77. The *lex loci domicilii* of a person plays an important practical role:

(1) Importance in the law of procedure

In several cases, the domicile of the defendant determines the competent jurisdiction “*ratione loci*”, unless the law provides otherwise.

In case notice or summons could not be given to a person, domicile is the place where he/she can be notified as regards procedure acts.

(2) Importance in the civil law

Certain acts regarding family matters must or can be accomplished at domicile place; e.g. marriage, adoption, tutorship.

The succession falls open at the deceased’s domicile.

The domicile is the central place a person’s financial interest, in the event of measures to be taken as regards his patrimony, e.g. the debt payment is normally done at the debtor’s domicile.

78. ***Determination of a person’s residence plays also an important practical role:***

- The residence can sometimes replace the domicile when the latter is not fixed or known.

- Residence and domicile can also stand in direct position to each other as regards legal effects. For example, marriage can be celebrated by the civil status officer not only at one of the spouses’ domicile but also at one of their residences.

C. Legal characteristics of domicile and its determination

79. **Necessity and unicity of domicile**: “*Every person must have one and only one domicile*” (Art.79 FC). However, domicile can be transferred following certain administrative procedures (Art.80 FC).

The family code distinguishes three categories of domicile: domicile of choice, domicile by operation of law, and domicile by election.

79.1. Domicile of choice

In principle an individual is free to choose a domicile for him/herself by exercise of his/her free will. According to article 78 FC, the totality of three elements determine a person's domicile:

- The person must actually settle permanently at a place;
- The person must be accessible at any time, either directly or through an intermediary (generally his/her family members, in the wider sense of the term);
- Place of registration in "population register" (practically the district where a person takes his/her census).

The domicile can be transferred from a district to another following the administrative procedure of transfer of registration files from the district of origin to the new district.

79.2. Domicile by operation of law

In principle everybody is free to choose a domicile, but, in certain cases, domicile can be granted by law. This is the case when the concerned person has no known domicile or has not determined it either because of his/her way of life (nomad) or his/her dependence on another person.

(1) *Domicile of attachment by operation of law*

When a person's domicile is unknown, his/her domicile is presumed to be (Art.81 FC):

- the place of the real estate that he/she possesses and in which, according to the public notoriety, he/she must have the intention of residing permanently till the end of his/her old age, or to retire in the event of unfortunate days, even if he/she lives somewhere else with the family;
- In default, the place of his/her residence;
- In default of a known residence, the place where that person actually is found.

(2) *Domicile of dependency by operation of law*

According to articles 83, 84 and 85 of the Family Code:

- a married woman's domicile is that of her husband;
- non-emancipated minors' domicile is that of their parents or guardians;
- interdicted persons' domicile is that of their tutors.

79.3. Domicile by election

A person can choose a domicile in a determined place for the purpose of fulfilling official duties or certain obligations (Art.82 FC).

Normally, the chosen domicile is not a real domicile. It might even be a place to which an individual has no physical attachment. His only interest in this kind of domicile is to determine, by way of convention, the court having jurisdiction in case of litigation. In fact,

such a domicile is chosen by two contracting persons (physical or moral), when they are living in different places.

Section 4 : Nationality

§1. Principle

80. The Rwandan nationality is governed by the law of September 8th, 1963 bearing Rwandan Nationality Code (RNC).

The principle is that "*one is a Rwandan if born of a Rwandan father or whose Rwandan status has been established.*

Having Rwandan status consist of being continually and publicly treated as a Rwandan citizen by the authorities and populations of this country" (RNC).

According to this legal provision, we shall note that in Rwanda:

- The *jus sanguinis* (nationality by blood) is preferred to the *jus soli*;
- The *jus soli* criteria is only used to grant nationality to abandoned children;
- In principle it is the father to give nationality.

81. The Rwandan Nationality Code prohibits double nationality (Art.19 RNC).

However, the Fundamental Law of Rwanda issued by the Arusha Peace Agreement of August 4, 1993 recognises **the possibility of having more than one nationality. The principle of double nationality was inserted in the new constitution in process of adoption. However, the Rwandan Nationality Code has not yet been amended, for the insertion of that constitutional principle of double nationality and the way of implementation**. In the case, the fundamental law provision abrogated article 19 of Rwandan Nationality Code prohibiting double nationality. Consequently, the fundamental law, having superiority to any other law, shall be the only applicable. Rwandan Nationality Code prescribes provisions to eliminate stateless situation.

§2. Determination of Rwandan nationality

82. The code distinguishes between Rwandan nationality of origin and nationality by acquisition. But there is no distinction of rights and obligations between the nationals by origin and those by acquisition.

A. The Rwandan nationality of origin

83. The principle criteria for determining this type of nationality is filiation: one is Rwandan when he/she is born of a Rwandan father or Rwandan mother if the father is not known (art.3 RNC). However this provision of the RNC was modified by the Law n°27/2001 of April 28, 2001 governing the rights and protection of children against all forms of violence. Article 6 of the above law provides that: "… a child born of a Rwandan mother and a foreigner automatically obtains Rwandan nationality".

Ever since that law came into effect, “Rwandan nationality of origin is granted when one is born of a Rwandan father or Rwandan mother”.

84. According to article 5 RNC, a new-born child found in Rwanda and whose parents are not known obtains Rwandan nationality by the right of *jus soli*. This provision is to prevent a child of unknown parents from being stateless.

B. Rwandan nationality by acquisition

1. Principle

85. The code recognises everyone the right to acquire Rwandan nationality after birth.

Nationality can be assigned to a person through marriage, adoption, natural filiation, naturalisation or by option.

2. Acquisition of nationality by operation of law

86. The law grants Rwandan nationality to a legitimate or illegitimate minor child if either the mother or father acquired the Rwandan nationality.

The same applies to a child born out of marriage if the paternity was proved or if the surviving parent acquired the Rwandan nationality. This acquisition is automatic and does not require any special procedure.

87. A child adopted by a Rwandan automatically becomes Rwandan.

The situation is different in case of adoption of a person of age. Article 9 RNC provides for specific grounds on which the granting of nationality shall be based:
(1) The concerned person must have been living in Rwanda for five years;
(2) The concerned person must not be opposed to democratic and republican ideas;
(3) He must have an irreproachable civil and moral behaviour;
(4) He must be physically and mentally healthy;
(5) He must prove of his assimilation to the Rwandan society.

Exceptions are provided for persons who offered eminent services to the State; these requirements may be dispensed with by presidential order.

3. Acquisition of nationality by choice (or acquisition by option)

88. The acquisition by option of Rwandan nationality was a possibility offered by the code to a child born of a Rwandan mother and a foreigner. The child had to make his option between the age of eighteen and twenty one. This mode of acquiring the Rwandan nationality is no longer applicable because, as mentioned above, “a child born of a Rwandan mother and a foreigner automatically acquires Rwandan nationality”.

4. Acquisition of Rwandan nationality by naturalisation

89. The naturalisation is a legislative act by which a foreigner, on request, acquires Rwandan nationality. The Parliament is the only competent body that can grant the naturalisation.

90. According to article 13 RNC, the requirements to be met are the following:

(1) He/she must be at least of the age of eighteen years and have been living in Rwandan for ten years. The age requirement permits one to consider if the request was given freely and voluntarily without any inducement. The condition of having stayed in Rwandan for ten years can be dispensed with for persons who offered distinguished services to the country.
(2) Having rendered exceptional services to Rwanda, most importantly by creating and maintaining economic, social and cultural activities for the country.
(3) He/she must be assimilated to the Rwandan community, and most importantly having good knowledge of the national language *Kinyarwanda*.

91. The acquisition of the Rwandan nationality by naturalisation is done using the following procedure:

(1) The person concerned shall address his request to the Minister of Justice by sending a letter through his residential provincial office or the Rwandan diplomatic mission. He must present all necessary documents pertaining to his civil status;

(2) The public prosecutor shall give his view (opinion) on the concerned person's behaviour, conduct and loyalty (at the time this law was voted, public prosecution was headed by a public prosecutor; today, it is the General Prosecutor of the Supreme Court to consider the case);

(3) The request shall be published in the Official Gazette;

(4) At the end of the investigations, a decision shall be made;

(5) If nationality is not granted, clear reasons must be given. If granted a bill is prepared and presented to the parliament for debates and adoption. After promulgation and publication of the law in Official Gazette, the new status is recorded in the civil status office.

92. The naturalised in principle enjoys all rights attached to a Rwandan national. But the code gives limits, in the exercise of civil and political rights: he cannot become president or vice-president of the Republic, president of the parliament, or president of the supreme court or one of its departments;

The naturalised must wait for at least ten years before he/she can be awarded a ministerial post or be elected as member of parliament. Exception is made for one who has rendered eminent services to the state or whose personal ability is profitable to Rwanda.

93. Very few cases of naturalisation were noticed in Rwanda, and the first was granted on 30th January 1975. This is the case of Father FRAIPONT. Two other cases are in process and were approved by the Cabinet Meeting of 4th December 2002. These are the cases of Mr Ally NASSOR residing in RWAMAGANA town, and Mr Muhamed ASLAM, residing in Gikondo district. As far as the question of naturalisation is concerned, one may wonder if there is not an easier way (shortcut) to obtain naturalisation for a person who has rendered eminent services to the country, and thus modify the code.

5. Rwandan nationality through marriage

94. In principle a foreign woman who marries a Rwandan acquires Rwandan nationality through marriage under the following conditions:

(1) If she is no longer permitted by her national law to keep her nationality;
(2) If she does not decline Rwandan nationality;
(3) If the Rwandan government does not make an opposition within a period of one year;
(4) If the marriage was registered in the civil status office;

No formal conditions are required, but of course the marriage must have been celebrated in line of Rwandan law. Once the nationality is acquired, she enjoys all civil rights and political rights granted to the citizens.

6. Acquisition of nationality by status possession

95. The Rwandan Nationality Code gave (granted) nationality to all neighbouring natives who had been staying in Rwanda for 15 years by the time the law on citizenship came into operation. These people were deemed to have acquired Rwandan citizenship, by their contact with the nationals, their assimilation to Rwandan behaviours and custom, and by the mere fact that Rwandan authorities and the population considered them as nationals.

These people had to decline their original nationality in order to be granted Rwandan nationality.

This measure was extended by the decree of November 13th, 1981 to all foreigners living in Rwanda since 1948.

7. Acquisition of nationality through territorial transfer

96. In this case, the problem of nationality has to be decided according to States agreements. If a territory is transferred to Rwanda, all the inhabitants of that territory become Rwandans on condition that they decline their original nationality.

§3. Loss of nationality

A. Principles

97. The code prescribes the grounds on which Rwandan nationality may be lost:

(1) Voluntary rejection of Rwandan nationality through marriage or option;
(2) Administrative decision of deprivation of nationality, in case a person willingly has not fulfilled his/her obligations related to citizenship.

The distinction between the two cases is based on the position that, the first is done voluntarily in order to get another nationality, whereas the second is a punishment which does not give rise to the right to get any other nationality. Fortunately the system affects the person him/herself and does not concern his/her minor children (Art.23 RNC).

B. Different hypothesis of loss of Rwandan nationality

1. Voluntary rejection of Rwandan nationality

98. Two cases can be mentioned: a Rwandan woman who, through marriage, acquires the nationality of her husband, and a person of age who opts for a foreign nationality.

(1) Loss of nationality through marriage

According to article 20 RNC, where a Rwandan woman marries a foreigner, she may reject Rwandan nationality by express declaration before the celebration of marriage. This declaration is only valid if the woman shall acquire her husband's nationality.

(2) Voluntary acquisition of foreign nationality

A person of age who voluntarily and effectively acquires foreign nationality looses all rights to Rwandan nationality. This is for the purposes of national security. There is no procedure for this matter; acquisition of a foreign nationality automatically leads to loss of Rwandan nationality.

However, the Rwandan Nationality Code, as regards this automatic loss of Rwandan nationality, might be revised in order to conform to the fundamental law which accepts dual citizenship.

2. Deprivation of Rwandan nationality

99. For specific cases, the code prescribes the grounds on which a Rwandan citizen can be deprived of his nationality. This will be the case if a person entertains acts of treason with a foreign country, to the detriment of Rwanda.

100. Up to date there has been no such a case. These kind of sanctions should be removed from the code and only sanctions provided for by the penal code maintained.

§4. Recovery of Rwandan nationality

A. Principle

101. Article 24 RNC provides for the possibility of recovering the Rwandan nationality.

The code determines specific cases under which nationality cannot be recovered, except in the case the person concerned could prove that the recovery is of superior benefit for the country.

Rwandan nationality cannot be recovered in the following cases:

(1) A person convicted of treason or any other crime against the national security;

(2) A person convicted in Rwanda or abroad of a crime punishable by a sentence of 10 year prison or more, and sentenced to the minimum of five year prison;

(3) A person who acquired or recovered Rwandan nationality through fraud, false declarations, presentation of documents containing erroneous or misleading information, corruption of the competent authority or use of disloyal process for the acquisition or recovery of nationality.

Despite the above conditions, the code prescribes a judicial procedure which permits the person involved to seize the court of the case and present his means of defence.

B. Different hypothesis for the recovery of nationality

1. Recovery by operation of law

102. If due to territorial transfer, part of Rwandan population loose their nationality in favour of another country, they can recover it if that territory goes back to Rwandan sovereignty. This situation is not provided for in the code, but it is a result of normal consequences, in conformity with principles governing international public law.

2. Reintegration by choice

Voluntary reintegration of Rwandan nationality is done under the following conditions :

(1) Having a residence in Rwanda;
(2) Not having been deprived of Rwandan nationality following the judiciary decision except if there was rehabilitation ;
(3) Not having been deported or sentenced to security measures for reasons of being a public menace to the country;
(4) Not having voluntarily rejected one’s nationality except for reasons of marriage with a foreigner.

Apart from the above cases, a person having originally had Rwandan nationality can ask for its recovery as long as he/she fulfils necessary conditions.

The government is empowered to oppose the request for reintegration, and in additions, the law does not require to mention the grounds on which the decision of refusal was taken, thus exposing one to arbitrary.

CHAPTER V – THE ACTS OF CIVIL STATUS

Section 1 : Notion

104. The civil status has a double meaning:

(1) The civil status of a person is a set of qualities which attribute him a place in the society and differentiate him from others as regards the enjoyment and exercise of civil rights.

(2) The civil status is the administrative service in charge of the writing and conservation of the registers concerning person's status.

105. The acts of civil status are instrumental acts of authentic character meant for serving as a proof of many elements of person's status.

More concretely the acts of civil status are writings by which the public authority namely "the civil status officer", attests the events on which depends the civil status, such as births, marriages, deaths, children's recognitions, divorces and other valid acts.

Section 2 : Compilation of civil status acts

§1. General rules

A. Responsible persons

106. The civil status officer is the only competent official to receive, draw up and conserve the civil status acts of Rwandans and foreigners domiciling or residing in Rwanda (Art. 87, 96 and 141-143 FC). The duties of the civil status officer are precised by the family code in its article 96. In a general way, the civil status officer has got the following attributions:

- To receive, constitute and conserve the civil status acts;
- To deliver the copies or the extracts of the civil status acts;
- To deliver the public attested affidavits;
- To celebrate the marriages.

107. These are the officers of the civil status:

- The executive secretaries of districts;
- The Ambassadors and Rwandan Consuls on duty abroad or their substitutes in case of impediment;
- People appointed to those posts by the Minister of Justice.

Up to now, the Minister of Justice has not yet used his competence of appointing civil status officer.

B. Material compilation of civil status acts (Art.98-116 FC)

1. The register of civil status

108. The acts of civil status are registered in the registers of civil status.

Article 101 FC indicates six registers, according to the nature of the act or the fact to be attested:

- The register of birth certificates;
- The register of death certificates;
- The register of marriages certificates;
- The register of recognition certificates;
- The register of different certificates.

Even if the current practice leaves to the secretaries of districts or agents of census the task of filling in those registers, the law obliges the civil status officers to fill in them, themselves.

These registers are made up in advance, prior to any use, handed over to the civil status officer by the Minister of Justice, numbered from the first to the last page and initialed by the public prosecutor. Compilation of civil status acts is free of charge.

2. Content of registers and their keeping

109. The register of civil status contains acts established in forms prescribed by the law by civil status officers, transcriptions of acts or of status judgements and mentions.

Depending on the kind of act, certain mentions must clearly appear in the act, under sanction of nullity.

Thus for example, the act should state the year, day and hour when it was received, the surnames, names, age, profession and domicile of all those who are named there.

Nothing should be written in an abbreviated form, no date is put in numbers (Art.105 FC). The writing of acts in the registers is done in a continued way, in the numerical ascending order, without any blank neither erasure nor interlineation (Art.104FC).

110. The act is written in the presence of parties and witnesses. The civil status officer, before signings, reads it and invite the parties to get aware of it, in the presence of two witnesses. The act is then signed by the officer, appearers and witnesses. If one of them is unable to sign, he appends his finger print. In case of erasure or interlineations, these are approved and initialed by all signatories of the act.

111. The keeping and conservation of registers are verified at least once a year by the public prosecutor. And this one can give to the civil status officer advice and instructions directly without intermediary (Art.90, 94 FC).

C. Conservation of civil status registers (Art.102-103 FC)

112. The register of each type is kept at once in two copies.

At the closing of the register one of the copies is deposited to the clerk of the first instance of territorial competence and the other conserved at the office of civil status.

The registers must be permanently found in the premises affected to the service of civil status. However, the Minister of Justice can authorise their displacement within the territory.

113. There exists, in each district an office of civil status of which the competence corresponds to the territorial boundaries of the district. There exists also within each Rwandan diplomatic or consular mission abroad, an office of the civil status of which the competence corresponds to its jurisdiction.

§2. Rules peculiar to certain acts

114. In additions to rules common to all acts, the code enacts rules particular to certain acts, such as births certificates, deaths certificates, marriage certificates, attested affidavits and acts of foreigners in Rwanda.

A. Birth certificate (Art.117-126)

115. The declaration of birth is obligatory and its omission is sanctioned by Penal Code (Art.253-254 PC).

The birth must be declared by the father and in default, by the mother, in the absence of the father and the mother, by one of the ascendants or one of the closet parents, or otherwise by any person having attended the birth or by any person who discovers a newly-born child (art.119 FC).

The declaration of birth can be validly done by proxy.

The birth can be declared if fifteen days of delivery over eventual presentation of birth medical certificate, that certificate is eventual, thus not obligatory because all the children are not born with a medical assistance; most of the Rwandan mothers deliver at home with the assistance of midwives.

Birth certificate is written immediately at the time of the declaration and signed by the declarant, witness and civil status officer.

A special register in which births which occur there, are immediately registered in order of date, is kept in the private and public healthy centres; the administration and judiciary authorities determined by the family code, may consult the register at any time.

116. Specific provisions are provided for the discovered children, stillborn children and natural children

(1) Discovered newly-born child (art.122 FC)

Any person who finds an abandoned newly-born child should without delay make a declaration to the civil status officer of the place of the discovery. If he does not consent to take care of the child, he should hand him over together with clothes and other belongings

found with him, to the closest civil status officer. A verbal report and a separate act holding a place of birth certificate shall be compiled.

(2) Stillbirth (art.124 FC)

The declaration of a child stillborn is registered on his birth date in the register of deaths and not that of births. It only mentions that a stillborn child has been declared without resulting into a prejudice over the issue of knowing whether the child has been alive or not. Moreover the child's sex, surnames, given names, age, professions and domicile of the father and mother and, if possible, of declarant as well as the year, month, day and hour of delivery.

(3) The natural children (art.123 FC)

As for the natural children, in a birth certificate, when parents are not married, the declaration indicating the father's name is only regarded as recognition, if it comes from the father himself or from his proxy.

117. Statements of birth certificate

The article 118 FC indicates the statements of the birth certificate. In addition to the statements common to the civil status acts, the birth certificate states:

(1) The year, day and place of birth, sex, surname and given names of the child*; (ethnicity is no longer mentioned)*;
(2) The surnames and given names, age, profession, residence and domicile of father and mother and, if possible those of declarant; *(ethnicity is no longer mentioned)*;
If the child's father and mother are not known, it should be mentioned in the register;
(3) The surname and given names of the author of the produced medical certificate.

The birth certificate proves the maternal filiation and paternal filiation, except the case of repudiation of paternity.

B. Death certificate (art.127-136)

118. The death certificate is drawn up over the declaration of one deceased parents, or of any other person possessing in his civil status necessary information for the declaration. It is signed by the declarant, witnesses and civil status officer. Any person can declare an unknown person's death.

The death should be declared within fifteen days following the date of death, by an eventual presentation of death medical certificate.

The directors of prison should inform in forty eight hours to the civil status officer of the deaths occurred in the prison following the execution of death sentence or a natural death.

119. The penal code obliges all the persons held to declare to do so or otherwise they face penal sanctions. The civil status officer must take all necessary measures so that the deaths occurred in his territory of competence be noted and declared.

The directors of healthy centres keep a register of deaths which must be presented upon demand to the civil status officer and the administrative and judiciary authorities.

The judgements of declaration of death hold a place of death certificate and are opposable to the third persons who can only obtain their rectification.

120. The death certificate states particularly the identification of the deceased and the year, month, day, hour and place of death, the identification of the deceased's father and mother as well as that of his/her spouse, if he/she was married. A mention of the death is done in the margin of the birth certificate of the deceased person.

121. While there are signs or indications of a violent death or other circumstances with clear ground for its suspection, the statement of the judicial police officer, helped by a qualified doctor, is required before burial.

The judicial police officer is obliged to immediately transmit all the informations stated in the verbal report, according to which the death certificate is written, to the civil status officer of the place where the person has deceased.

122. The declaration of death has a partial interest including especially:

- Opening of the right to the receipt of social allowances of the surviving rightful claimants, if the deceased person was affiliated to the social security;
- Opening of the succession;
- Possibility of remarriage of the surviving spouse.

C. The attested affidavits (art.138-140)

123. The inexistence of an organised civil status before the independence of Rwandan has obliged the legislator to provide for the possibility of establishing attested affidavits. The certificates of civil status use, currently issued by the districts are equivalent to that kind of acts.

The attested affidavits of birth are solely regulated by the code. However, it is a practice of delivering other attested affidavits, i.e. marriage, single life, complete identity or death certificates.
The code provides rather for the granting of copies or extracts of the civil status (106 FC).

D. Civil status acts for foreigners

124. Any foreigner having his domicile or residence in Rwanda can hire Rwandan civil status acts in the procedures provided for by the Rwandan legislation. Nevertheless, births and deaths must be declared to the civil status officer.

Any document produced by a foreigner with a view to establish a civil status act must bear an enclosure of its translation in one of the Rwandan official languages, an exact copy certified by the diplomatic or consular mission of the interested person, or approved by the Minister of Justice.

E. Other civil status acts

125. The family code regulates furthermore the marriage, adoption and recognition certificates. Provisions relating to those acts will be precised in chapters below pertaining to marriage, kinship and filiation.

Section 3 : Sanctions of irregularities in the compilation of acts

126. Irregularities committed in the writing of civil status acts can lead to the following different sanctions:

- sanctions against the civil status officer;
- sanctions against the private individuals;
- the nullity of irregular acts;
- the rectification of irregular acts.

A. Sanctions against the civil status officer

127. The sanctions which can be inflicted are of three kinds;

- civil sanctions;
- disciplinary sanctions;
- penal sanctions.

1. Civil sanctions

If the civil status officer commits a mistake causing a prejudice to a private person, his civil responsibility is engaged in terms of the common law. Indeed, according to the terms of article 91 FC, the civil status officer is civilly responsible for the errors or negligences committed at the occasion or in the exercise of his duties, without prejudice, if need be, of the criminal or disciplinary lawsuits.

2. Disciplinary sanctions

The responsibilities committed in the keeping of registers can lead to disciplinary sanctions against the civil status officer, and especially the suspension or dismissal.

3. Penal sanctions

All contraventions to the prescribed provisions relating to the keeping of registers and the publishing of acts by the civil status officer are penally repressed by the family code. The article 152 FC enumerates the possible offences and provides for an appropriate penalty of seven days to six months of imprisonment of these penalties, without prejudice of the most important penalties provided for by the penal code. Hence, for example, an error in writing for which the penal code provides a maximum punishment of 20 years of imprisonment and a fine of two hundred thousand francs (art.203 PC).

B. Sanctions against private individuals

128. The law provides also for the sanctions against the defaulting private person in civil status matters.

1. Offences of a private person (art.152 FC)

- Abstention of providing information requested by the officer of civil status;
- False declaration to the civil status officer;
- False testimonial;
- Destruction or falsification of a civil register;
- A conscious use of an act, a copy or extract of stolen, fraudulently altered or falsified civil status act.

2. Sanctions against private individuals

Except for the disciplinary sanctions, any private person faces the same penalties like those of the civil status officer.

C. Nullity of irregular acts

129. An irregular act of the civil status, like any other irregular authentic act can be nullified.

1. The nullity is the normal sanction of the irregularity of the civil status act

That sanction plays an important role, because such irregularity risks depriving a person the means of proving his status whereas it is not opposable to him. Tribunals behave particularly prudent and cancel (an act) only when the irregularity is such that it removes from the act all guarantee of sincerity.

2. Irregularities always leading to nullity

- Default of a public officer's intervention,
- An act written somewhere else than in the registers or the documents *ad hoc*;
- An act compiled late;
- An act of which essential statements are false or without object, including especially the act attesting an imaginary or already declared birth, an alive person's death or a non-celebrated marriage.

3. Irregularities likely to lead to nullity

- Incompetence of the civil status officer;
- Absence of a signature; there is nullity if it results from a refusal to sign; but not if it derives from a mere forgetting.
- The default of declaration of a birth or death in legal time limits.

130. The nullity is not generally admitted for minor irregularities such as notably:

- The omission of the declarant's name in the body of the birth or death certificate, or of his signature;

- The error on a name or its spelling.

In case of omission or error, they proceed to the rectification and not to the nullity.

D. Rectification of the civil status acts

1. Principle

131. The irregularities in the writing of the civil status acts are, as mentioned above, rarely sanctioned by nullity.

The normal sanction and the most effective one consists of the rectification of acts. The rectification of the civil status acts is provided for in articles 144 to 146 of the family code. In principle, the rectification can only be a result of a judicial decision over a motion of any interested person or of the public prosecutor.

However, the merely material errors and omissions of the civil status acts are administratively rectified by the civil status officer per a simple order from the public prosecutor (art.144 FC).

The need of a judicial intervention is justified by the necessity of giving sufficient guarantees to the rectification.

2. Application scope of the rectification

132. The rectification supposes, in principle, an error or omission in the writing of an act.

Thus, it is possible to rectify, if a mention required by the law has been omitted (case of incomplete acts), or if, to the contrary, non statutory even prohibited statements have been inserted in the act (case of overabundant acts), or if the act contains inexact statements especially of which a wrongly-spelt name, an erroneous indication of the child's sex, of the date or the place of birth or death.

133. The rectification may consist of:

- the addition of missing mentions;
- the suppression of overabundant mentions;
- the correction of inexact statements.

3. Distinction: Actions in rectification and actions of status

134. The actions in rectification of status and actions of status must be correctly distinguished.

It often happens that a person introduces a motion for rectification of a civil status act while it rather consists of a substantial question relating to an interested person. For example, a child pretends that the name mentioned as being that of his father or mother is inexact, or else, that they have omitted to indicate the quality of married status of his father or mother ; in a word, that the act to be rectified attributes him a status other than his real status. Such a motion in rectification must be carefully examined to the fact that it can hide a question of the child's status in search for paternity or maternity.

The rectification of acts is regulated by particular rules different from those regulating the actions of the status. It is, therefore, important that an individual cannot escape from these rules relating to the actions of status by disguising his real intention in a question of rectification.

Section 4 : Utilisation of civil status acts

A. Usefulness of the civil status acts

135. The civil status acts have a double function:

- To serve to the interested person him/herself for proving the elements of his status such as especially the age, filiation, marriage, nationality and others;

- They serve to third parties for having the information concerning a person's status, if they particularly wish to sign a contract with him.

B. Announcement of civil status acts

136. It is important that the status of persons can be made known to all the interested people; it is a matter of the publishing of the civil status acts provided for by the law.

In principle, any interested person can consult the registers at the civil status office, but without displacing them (art.98-103 FC). The prohibition of displacement is motivated by the need to ensure a good conservation of registers and avoid deterioration and falsifications.

As for the interested third party who cannot consult on spot the register, the publishing of acts is carried out through copies or extracts that they ask from one of the register keepers, such as the civil status officer or the tribunals of first instance in case of status judgements. The civil status officers deliver copies or extracts of the civil status acts; they cannot refuse to issue them (art.106-107 FC).

Certain foreign legislations even prohibit the consultation of registers on spot so as to ensure a more rigorous protection and protection of secrets of other people. The publishing of acts remains assured by copies or extracts issued by the civil status officer.

C. The convincing force of the civil status

137. The acts of civil status like other authentic acts are reliable on their writing and content until the improbation. He, who wishes to contest their writing and content, should therefore resort to the judicial procedure of a request for improbation.

The particular convincing force that matters here, applies only to what has been personally attested by the civil status officer, essentially the date of compilation and the conformity of the act to the declaration.

The acts of the civil status do not therefore prove the accuracy of declarations content relating to the indications of status; their inaccuracy is likely to be freely proved.

This convincing force applies to the third party as well as to the interested persons. The status of persons should be fixed in a certain way *vis-à-vis* everybody; it is the very purpose of the civil status acts.

138. The copies or extracts have the same convincing force as the original. This rule is however a derogation to the common law, according to which, the copy of an act does not replace the original and does not exempt from its presentation. In matters relating to civil status acts, the copy or the extract is reliable on itself.

Section 5 : Replacement of the civil status acts and reconstitution of the status registers

139. In principle, the civil status acts constitute the single receivable proof of events affecting the status of persons. They cannot be substituted by any other means, neither the proof by witnesses nor the written proof of the family.

However, it happens that the acts have not been established, that the registers containing them have been lost or destroyed, especially during periods of troubles and war. In these cases, the code in its articles 147 to 151 provides for the default substitution of the civil status acts and reconstitution of lost or destroyed registers.

140. The lack of a civil status act can be supplied through a judgement rendered by the tribunal of first instance where the act might have been instituted, over the motion of the public prosecutor or of any other interested person.

In the case a register has disappeared either entirely or partially, the public prosecutor invites the interested civil status officer to institute a status, year by year, of persons who, according to the public notoriety, were born, married or deceased in the course of a concerned period.

The tribunal, through a judgement, after investigations and all verifications believed opportune, confirms the established register in replacement of the destroyed old one or in substitution of the default establishment of a register.

141. However, this replacement or supply is not a hindrance to the rights of the parties to ask for reestablishment of all acts interesting them that were appearing in the destroyed, deteriorated or disappeared register.

CHAPTER VI – INCAPACITIES AND PROTECTION OF INCAPABLES

Section 1: Notions

142. A clear distinction must be drawn between "**capacity**" or "**incapacity**" in its current usage, and its juridical usage.

It is also important to draw a distinction between "**capacity to enjoy rights**" and "**capacity to exercise rights**", or "**incapacity to enjoy rights**" and "**incapacity to exercise rights**".

(1) "Capacity", in its current usage, refers to financial means, intellectual or physical abilities to achieve any action.

(2) "Capacity" in its juridical usage is the competency to have rights. In law, there is a distinction between "**capacity of enjoyment**" and "**capacity of exercise**", or "**incapacity of enjoyment**" and "**incapacity of exercise**".

143. "Capacity of enjoyment" is the ability to be bearer of a right, irrespective of its exercise or non-exercise. "Incapacity of enjoyment" is exceptional. There is no general incapacity of enjoyment, that can consequently preclude a person from enjoying his rights and exercise his capacity to act. Such an incapacity would be no more than an exclusion of the human being from being legal subject. The classic example of a human being excluded from legal personality is the slave. Slaves were not legal subjects but legal objects. In Rwanda, the banishment penalty "*ugucibwa*" was a form of general incapacity.

144. However, there can be "special incapacity of enjoyment" limited to a certain extent because there are persons who cannot have certain rights or who are limited on their capacity to act.

In instances:

- Associations cannot possess immovable properties which are not necessary for their functioning;

- Legal capacity of sentenced persons is limited in so far as they cannot have certain rights, such as the right to vote or to be elected, right to be a teacher, right to be a medical practitioner, right to drive a car, freedom of movement.

145. "**Capacity of exercise**" of a person is the competency to exercise the rights attributed to him, and that he enjoys.

The principle is that **all human beings have this capacity**, but in some cases the law provides for exceptions, as far as the physical and mental state of a person is concerned.

146. In law, a person is precluded from exercising a right if he cannot understand the nature of his acts because of his mental state, this restriction being meant to protect the person and his property against exploitation.

The persons who are considered to be incapable because of lack of proper judgement are the following:

- Minors, those persons under the age of 21 years ;
- Persons of full capacity, but with mental defectiveness.

147. The law prescribes two kinds of protection of incapables and of their property :

- Representation, which applies to minors, mental ill persons and idiots (imbeciles) ;
- Assistance, which applies to major persons with normal mental ability, but not sufficient enough to manage their own affairs.

148. The previous family code prescribed full incapacity to act to the married woman, and this position prevailed until 1992 ; the wife had to be represented by her husband or had to be authorised by the husband for entering into juristic acts. The new family code has restored full capacity to the wife.

Section 2 : Protection of minors

§1. Childhood, minority : Notion

149. Generally speaking, a child is a person not yet adult.
In law, a child or minor is a person who is under the age of majority.
The legal majority varies depending on which branch of law is concerned.

(1) In criminal law, labour law and electoral law, the majority age was fixed at 18 years. Any person above the age of 18 has attained majority status, and therefore :

- He is held accountable for criminal acts ;
- He is allowed to perform a salaried work ;
- He has a right to participate to the election of authorities of the country.

(2) The UN Convention on children's rights and the Law relating to the rights and protection of the child against all forms of violence prescribes that a child is any person below the age of 18.

(3) In social law, is considered as a child any person under parental authority. Moreover, this law provides that the parental authority extends to any person below the age of 18, to any regular student below the age of 25 or any handicapped person incapable of managing himself.

(4) In terms of the common law rules, that is the private law, majority age is fixed at 21 years ; persons below that age are minors.

150. The family code establishes two institutions for the care and protection of minors :

- Parental authority for children under the care of their parents ;
- Tutorship for orphans if both parents have died.

Minors who are concerned here are children below the age of 18..

§2. Protection of children whose parents are still alive. Parental authority

A. Parental authority. Notion of attribution and exercise

151. (1) Parental authority is the group of rights which the father and mother or adoptive parents enjoy in relation to the child, the child's estate and administration thereof, minors and non emancipated.

(2) Parental authority vests in the father and mother or adoptive parents.
In the case of disagreement, the father has an overriding say. However, the mother is competent to seize the Tribunal of first instance of her residence or domicile (Art.345 FC).

(3) In terms of the previous code, parental control was referred to as paternal power and not parental authority; the mother's position was that she only had authority in the absence of the father.

(4) In principle, parental authority vests only in the father and mother of the child. In the case of natural children, there is a recognised relationship at least between the child and one of the parents. In any case, if none of the parents recognised the natural child, parental authority shall be vested in the one having custody over the child (art.346 FC).

B. Attributes of the parental authority (Art.349-358 FC)

152. The exercise of parental authority implies incidents such as:

- custody of the child;
- administration of the child's estate;
- right to enjoy the fruits of the child's estate.

153. The right to custody over the child

In terms of article 350 of the family code, the right to custody includes the duty of the father and mother, or any other person vested with parental authority in their absence, to maintain and educate the child for his well-being in conformity with their powers (abilities) and fortune.

154. The right to custody implies also that:

- the person vested with parental authority has a right to inflict punishment to the child; this right is also recognised to those having the duty of education of the child (art.347 FC);

- the child shall stay in the familial residence, and he cannot leave the place without the permission of those exercising parental authority;

- the father or mother may ask the court to order internment of the child in a rehabilitation institution, in the case of notorious loose behaviour (art. 351 FC).

155. Legal administration of the child's estate

- The father, in his absence the mother, in a marriage, has the capacity to administer the child's personal estate and to assist the child in juristic acts and in legal proceedings (Art.352 FC).

- The administrator of the child's estate is accountable for the property and the fruits and profits thereof if he has no right of enjoyment, and only of the property if he is vested with usufruct by law.

The law makes provision for the tribunal's authorisation in the instance of alienation of the child's property or encumbrance of immovable property or any right to immovable property belonging to the child (Art.353).

156. Legal administration of the minor's estate shall be terminated (shall come to an end) :

- Where tutorship is opened ;
- Where the child attains civil majority ;
- Where the child is emancipated ;
- Where the parents are deprived of parental authority.

157. Legal enjoyment (art.355-358 FC)

(1) Exercise of the parental authority empowers the parents to perceive the fruits and profits that accrue from the minor's personal property and to enjoy them. That right is devolved to parents only, and cannot be awarded to anybody else.

(2) However, the right to enjoyment entails the following obligations :

- usufructer's duties ;
- feeding, maintenance and education of the child ;
- payment of arrears and interests on capital ;
- the last days of illness charges and burial charges.

(3) The father or mother against whom the decision of divorce was taken shall be deprived of the right to enjoyment of property, unless he or she was entrusted with custody.

(4) The right to enjoyment does not extend to separate assets or income of the child's labour or industry, nor to assets that were obtained in the way of donation or legacy, if they are subject to the express condition of not being enjoyed by the father and mother. In such a case, the child himself shall contribute to his maintenance.

C. Civil and criminal sanctions

159. Criminal and civil sanctions prescribed by the law are to protect the minor.

1. Civil sanctions

159. Civil sanctions that are normally provided by the law may take three forms :

- annulment of the invalid act performed by the minor ;
- civil liability of the parents for the child's delict ;
- deprivation of parental authority.

160. Juristic acts performed by the minor child without the consent of the one vested with parental authority may be annulled, except for cases prescribed by the law.

161. In law, the person vested with parental authority incurs vicarious civil liability based on the minor child's act. Vicarious civil liability is a civil sanction against parents or guardian when they neglected their duty of education and supervision of the child.

There are, however, three requirements for the parents or guardians to be held liable :

- proof that the sued party exercises control and supervision on the child ;
- proof that the sued party lives together with the child in his custody ;
- evidence as to the child's delict, and the link of causality between the act and the damage to be repaired.

162. The father or mother is deprived of parental authority in the following cases :

- Where the father or mother abuses of his parental authority or maltreats the child ; in the instances if he or she frequently inflicts corporal punishment causing grievous bodily harm to the child, or if he or she exposes the child to painful work, or in the case of abandonment or non-maintenance.

- Where the father or mother is unworthy of exercising parental authority, because of his or her notorious loose behaviour or his or her serious incapacity, such as a notorious intoxication, sexual affair in front of children or any other immorality.

2. Offences to children by their parents and penalties

163. The father or mother, himself or herself may assault or threaten his or her child.
In order to ensure protection of the children, the law prescribes penalties against offenders, even in the case of the father or mother. Being father or mother does even constitute an aggravating circumstance for the penalty.

Some of the penalties are prescribed under the provisions of the penal code. Some others are prescribed under the provisions of the Law relating to the rights of the child and his protection against all forms of violence.

Prescribed penalties are the following: payment of a fine, temporary prison sentence, life imprisonment, death sentence.

164. The penal code enumerates offences against a person's physical and moral integrity, and those a father or mother can commit towards his children:

- voluntary homicide and voluntary corporal injuries;
- murder attempt or attack attempt on his property;

- involuntary homicide and involuntary corporal injuries, because of imprudence, clumsiness, carelessness, negligence, or lack of foresight;
- submission of a person to harmful acts with resort to occult forces;
- harmful words and insults.

165. The law relating to the protection of the child against all kinds of violence enumerates specific offences against children, that a father or a mother may commit:

- omission of denunciation of offences against a child;
- murder attempt on the child, especially in the case of abortion;
- sexual violence and sexual abuse of the child;
- incitement of the child to sexual affairs and prostitution;
- abuse of the child, in the manner of getting income from the child's prostitution or child's illegal trafficking;
- abandonment and exposure of the child by a person, in terms of neglect as to maintenance of a child under his custody or where the child is abandoned to his dependency or reduced to begging.
- Offence to the child's personal freedom, in the instances of sequestration, abduction, arbitrary arrest and detention, or trafficking or compelling to slavery.

§3. Tutorship

A. Notion

166. Tutorship opens in the following circumstances:

- If the father and the mother of a minor child have both died;
- If the father and the mother of a minor child are both absent or have both disappeared;
- If the father or the mother of a minor child has died, and the other is absent or has disappeared;
- If the father and the mother of a minor child are both deprived of their parental authority;
- A natural child whose parents, neither the father, nor the mother did recognise him or her.

B. Organisation and functioning of the tutorship

1. Organs of the tutorship

167. The family code prescribes the following organs of tutorship :

- The tutor ;
- The subrogate tutor ;
- The tutorship council ;
- The State.

2. The tutor

2.1. Designation of the tutor

168. Depending on the mode of designation of the tutor, there can be :
- testamentary tutorship ;
- legal tutorship ;
- judicial tutorship ;
- State's tutorship.

169. For the designation of the tutor, the code prescribes the following ways :

(1) In principle, the surviving spouse is the one to choose the tutor for the minor by will; designation of the tutor by will is called the testamentary tutorship.

The chosen tutor can be a parent, a collateral or a friend of the family.

(2) For the situation where the surviving spouse dies without choosing a tutor, the tutor of the child shall be the closest ascendant in degree (Art.364 FC) ; that is **the legal tutorship**.

(3) Where ascendants are of equal degree of family relationship, the tutorship council may choose from them the one to be appointed as tutor.

(4) Where a tutor was not designated by will or by law, the tribunal of first instance is the one to appoint a tutor, that is **the judicial tutorship**.

(5) In a situation where a child has no ancestors nor collaterals nor family friends, and the tutorship council cannot be granted, the tribunal of first instance can differ tutorship upon the state ; that is called **the state tutorship**, where the child becomes a ward of the state.

(6) No one can be forced to accept a tutorship. If a designated tutor refuses to carry out his duties, the tutorship council shall appoint another tutor (Art.412-413 FC).

(7) The tutor can demand to be discharged of his duties for the following reasons (Art.415) :
- Where he has reached the age of 60 ;
- If he becomes disabled and has good justifications for that ;
- When he becomes pauper.

170. As far as tutorship is concerned, it may be noticed that the law trusted the child's blood relations and his parents'friends, for the reason that the child's tutorship involves commitment and sacrifice for the upbringing of the child, a duty which can only be accepted by a person with close relationship to the child.

2.2. Causes of incapacity, suspension or dismissal of tutorship

171. The family code describes various causes of incapacity, suspension or dismissal of the duty of tutor. Those include :

(1) Causes related to incapacity

- minority ;
- interdiction.

(2) Causes related to sanction

- Deprivation of capacity ;
- Deprivation of parental authority.

(3) Causes related to dismissal

- notorious loose behaviour ;
- incapability to care for the minor and to manage the property of the minor ;
- unfaithfulness in the duties of managing the property of the minor.

(4) Other causes

- having been engaged in court proceedings with the minor or his father and mother.

2.3. Duties of the tutor and their exercise

172. Tutorship entails a personal responsibility in the performance of the duty, which cannot be transmissible and cannot pass on the heirs.

The tutor is concerned with a dual responsibility, characteristic of the parental authority :
- care for the minor ; and
- management of the property of the minor.

2.3.1. Tutor's guardianship of the minor

173. For the guardianship of the child, there are duties are incumbent to the tutor and those incumbent to the minor.

(1) The direction of a minor implies on the part of the tutor notably the following essential actions:

- To exercise the right of custody on the ward minor;
- To provide for the caring and the education of the ward minor;
- To represent the minor on his act of civil life.

(2) Also the ward minor has on his own the following duties:

- To respect and obey to his tutor or legal guardian;
- To like with his tutor, and not leave the residence of the tutor without his assent.

2.3.2. The management of minor's goods

174. In principle, the orphan minor has at his disposal the patrimony from his parents' succession. That patrimony must also be well maintained and managed until the majority of the child.

(1) Management principles (Art.387 FC)

- The tutor ensures the management of all the minor's property;

- The tutor is personally responsible for the prejudice occurred to the ward due to his bad management;
- The tutor represents the minor in the act of civil life;
- The tutor does not ensure the administration of professional incomes of the ward from a distinct activity of that of the legal guardian as well as the acquired things by his incomes;
  In that case, the ward contributes to his caring.

(2) Obligations of the tutor at the starting of guardianship

The tutor has the following obligations at the starting of guardianship:

- Inventory of ward mind's goods (Art.381 FC): At the beginning of his functions, the legal guardian draws up an inventory of movables and immovable goods of ward minor, in presence of the deputy-guardian.

  The state and inventory drown up are countersigned by the deputy-guardian and deposited without delay with the bailiff of the tribunal of first instance of the residence. The state and inventory, as well as their deposit are carried out at the diligence of the legal guardian.

- Declaration of tutor's debts against his ward (Art.383 FC)
  The tutor must declare in the inventory his debts against the minor. The default of declaration leads to the loss of his debts. That form tends to avoid the possibility of a fraud of the tutor who, once paid, may withdraw the receipt found by him in succession documents and claim again his debt.

(3) Acts that the tutor can accomplish alone (Art.388 FC)

The legal guardian accomplishes all conservatory and administrative acts in accordance with the ward's interests and the normal economic utilisation of his personal goods.

(4) Acts that the tutor cannot accomplish alone

The acts of alienation as well as all the acts likely to entail the ward's heritage, can only be carried out by a tutor on a prior authorisation from the tutorship council. This authorisation should only be granted for:

- A cause of an absolute necessity; or
- An evident advantage.

There are prior requirements to the alienation authorisation in case of absolute necessity:

- The tutor presents a summary audit to the tutorship council so as to show that the minor's funds, personal effects and incomes are insufficient;
- The tutorship council indicates, in all cases, immoveables which should preferably be sold and under all the conditions it judges favourable.

The article 389 of the Family Code enumerates, as an indication, some acts that the tutor cannot accomplish without authorisation:

- A pure and mere acceptance of inheritance;
- Raising mortgages;
- Sale;
- Right or debt assignment;
- Acceptance of a gift;
- Compromise or transaction;
- Partition directed against the minor's estate.

2.4. The *ad hoc* tutor (Art.391 FC)

175. It is proved necessary that the tutorship council designates an *ad hoc* tutor to represent the ward minor's interest in the following cases: When the tutor's interests or one of his or her familial or spousal relative's interests are in conflict with those of the ward. When such a conflict is evident, the tutor submits the issue to the appreciation of the tutorship council. The tutorship council, in that case, may represent the ward in his or her interests without being necessary to designate an *ad hoc* tutor.

3. The tutorship council (Art.368 – 378 FC)

3.1. Composition of the tutorship council

176. Members of the tutorship council are chosen among the minor's close kinship and his or her father or mother's friends. The code does not explicitly provide the modalities of designation of the tutorship council members. Nevertheless, when examining the usual practice, it can be asserted that members of the tutorship council are designated by the family council, and are confirmed by the President of the court in accordance with the minor's interests.

If the family council cannot meet, members of the tutorship council are designated by the President of the court on demand of any interested person. This appears even in articles 370 to 372 of the code of family.

(1) The tutorship council is composed of the following 7 persons:

- The President of the court of first instance of the territory where the tutorship is open, or his or her delegate;
- Three close relatives from the family of the mother's origin;
- Three close relatives from the family of the father's origin.

Unlike a certain practice, the tutor or subrogate-tutor are included in those 7 persons.

(2) The minor's close relatives are selected in the order of the near relationship with this one. The familial relative is preferred to the spousal relative of the same level. And among the relative of the same level, the eldest is preferred to the youngest one.
(3) Minor's full brothers and sisters can all take part in the tutorship council without number limit. If they are six or beyond, they all constitute the family council, alone with the ancestry.

(4) When the minor's full brothers and sisters are less than six in number, other relatives are called upon to complete the tutorship council.

(5) The President of the court of first instance can invite to the tutorship council known friends of the minor's father and mother or the person protector of this one as regards a natural child, in the following cases:

- If the minor's familial or spousal relatives are of an insufficient number;
- If the minor's familial or spousal relatives live far;
- If the minor's interests can be better protected.

3.2. Attributions and functioning of the tutorship council

177. The code provides in details the attributions and the functioning of the tutorship council.

(1) In general, the tutorship council is the real holder of prerogatives of the parental authority in place of the minor's deceased, absent of unknown father or mother.

(2) In particular, the tutorship council has notably got the following important attributions:

- Authorisation of the alienation of the minor's estate;
- Appointment of an *ad hoc* tutor;
- Emancipation of the minor;
- Approval of the inventory of the minor's property at the opening and at the end of the tutorship;
- Appointment of a subrogate-tutor.

(3) The tutorship council convenes and takes decisions as follows:
- Sits as often as necessary;
- Members' presence is obligatory; the absence is penalized;
- The quorum required for a valid sitting is of 2/3 of the members;
- Is presided over by the President of the court of first instance or his/her delegate;
- Upon the invitation of the President of the tribunal, *ab initio* or upon request of the parents of the minor, his creditors or any other interested person;
- Decisions are taken at the simple majority, in case of a tie the vote of the President is dominant.

4. The subrogate-tutor or tutor's supervisor (Art.392 – 400 FC)

178. The code provides in details for the nomination and the attributions of the subrogate-tutor or tutor's supervisor.

4.1. Nomination of the subrogate-tutor

(1) The subrogate-tutor is nominated by the tutorship council without the intervention of the tutor. He is chosen in the family other than that of the tutor except in case of own sisters or brothers of the minor.
(2) In principle, the subrogate-tutor is immediately nominated after the designation of the tutor.

(3) The tutor provided for by the act of will, before entering into function, has to make sure that the subrogate-tutor is nominated by the tutorship council. If he interferes in the management before the subrogate-tutor is nominated the tutorship council may withdraw from him the guardianship.
(4) When the subrogate-tutor is in impossibility of exercising his functions, the tutor is obliged without delay to request the guardianship council to nominate another subrogate-tutor.

4.2. Attributions of the subrogate-tutor and the exercise of his functions

(1) The subrogate-tutor is invested of the general mission of supervising and controlling the management carried out by the tutor.
(2) The subrogate-tutor, periodically or at least once a year, is obliged to make a control of the exercise of the guardianship.
(3) The subrogate-tutor informs without delay by writing the tutorship council of the fraud or the mismanagement by the guardian.
In case this information is not delivered, the subrogate-tutor is jointly responsible with the tutor of the prejudice caused to the minor favoured by the negligence of the subrogate-tutor.
(4) The subrogate-tutor does not *de jure* replace the tutor when he dies or is absent; in this case he provokes the nomination of a new tutor by the tutorship council. In the contrary the subrogate-tutor is held responsible of the prejudice that may harm the minor.

5. Guardianship by State, the ward of the State (Art.401-406 FC)

179. According to its normal role, the State is the guardian of orphans without guardians.

(1) When a minor has neither parents, nor allies nor friends of his father or mother to ensure his/her guardianship according to the legal provisions, he is placed under the State's guardianship and becomes a "ward of the State". In this case, upon the request of the Public Prosecution or any other interested person, the tribunal of the first instance designates an institution which will ensure the guardianship and the management of the minor's property on behalf of the State.

The institution in question may be a public organ body, a non-governmental organisation, a family or a physical person. Any designation takes into account the interests of the minor. Any interested person may be a major of the district or a town, a coordinator of an administrative sector, any organisation of the child's rights protection, a neighbour or any other person concerned with the rights of a child.

(2) The guardianship by the State doesn't comprise either the guardianship council or the deputy guardian. It is assumed that the State organs are enough to ensure the guardianship of the ward and its control.

(3) The Public Prosecutor of the place has more broad powers to supervise all material and moral interests of the ward.

(4) The person in charge of the chosen institution to exercise guardianship has all prerogatives of the parental authority except the legal enjoyment of the revenue and profits of the minor's property. He delivers each three months a report on physical, moral and material status of the minor to the Minister in charge of Social Affairs.

(5) The mode of management of the ward's property is determined by the Minister in charge of Social Affairs.

(6) Each year the State allocates an amount of money destined to the education and the upkeep of its wards and this money is drawn from the budget of the Ministry in charge of Social Affairs.

C. End of the guardianship (Art.407 – 411 FC)

180. At a certain moment, for diverse reasons, the guardianship takes an end.
The code provides for ceases and their effects.

(1) Guardianship ends by:
- majority or emancipation of the minor;
- the death of the minor;
- the reappearance of the absent parent;
- the recognition by at least one of the parents or legitimisation of the natural child;
- adoption of the ward.

(2) When guardianship ends, the guardian must, within 3 months, account for his management. In case he has died, it is done by his/her heirs. The final account of management is independent from the annual account of management that the guardian gives to the surrogate-guardian or to the Minister in charge of Social Affairs.

(3) Depending on the cause of the end of guardianship, the account is done:
- to the former ward who became a major person or emancipated;
- to his heirs in case he has died;
- to the new guardian if there is only termination of the guardian's functions.

(4) The accounts rendered at the end of the guardianship are countersigned by the guardianship council for approval.

§4. The minor's emancipation (Art.426 – 430 FC)

A. Notion & procedure of emancipation

181. Depending on the child's interests, there may be serious reasons which justify that the minor child be accorded the capacity to exercise his rights as if he is a major person. It is the emancipation.

The emancipation is thus an act provided for by the law which gives to a minor the capacity to exercise his rights as does a major person.

182. The code provides for 3 ways of emancipation a minor:

(1) **Emancipation *de plano*.** The *de plano* emancipation is provided for in one case : the

emancipation of a minor by effect of his/her marriage. The minor is *de plano* emancipated by marriage.

(2) **Voluntary emancipation**.
The voluntary emancipation in principle results from the will of those who exercise the parental authority on a non-married minor who reached 18 years old.
- The minor is emancipated by his father or his mother by the sole declaration before the officer of the civil registry of the domicile of the declarant.
- The minor orphan without parents (father & mother) is emancipated on the decision of the guardianship council confirmed by the declaration of the President of the tribunal as the President of the council.

(3) **Judicial emancipation**.
The State's ward is emancipated by judicial way by the tribunal of the first instance at request of the Public Prosecutor or the person or institution in charge of the ward.

B. Effects of emancipation

183. The emancipation of a minor has legal effects.

(1) As earlier said, the emancipation has on a minor the following effects:
- he poses all the acts of the civil life as a mature person;
- it ends the parental authority or guardianship accordingly.

(2) However, marriage of an emancipated minor requires legal authorisations necessary for people who have not yet reached 21 years among which the authorisation of the Minister of Justice or his delegate.

Section 3 : Protection of mature incapables

§1. Notions and basic principles

184. As already mentioned, incapables are not only children. There exists mature persons who are incapable. These are also protected by the law.

(1) A mature incapable is any person aged 21 and more but who has so necessary mental abilities allowing him/her to accomplish all acts of civil life (Art.431 FC).

(2) The code divides mature incapables into 3 categories:
- Persons mentally insane because of mental defectiveness or madness;
- Idiotic persons because of imbecility, it means mental disability which does not allow the necessary thinking;
- Wasteful persons due to the prodigality, it means, incapacity to manage his/her property.

(3) The law provides for measures aimed at protection of :
- The person and his property;
- The society against the unreasonable acts of the alienated.

185. The Rwandan legislator does not say anything about reparation of damages caused by the mature incapable, mentally insane.

However, the legislation of certain countries of the same juridical family as Rwanda provides for total reparation of damages caused by the ill person, through his/her family or by the State because of their negligence to take case of him/her. This is by virtue of civil liability resulting from the child's fault or the fault of any other person under one's guard.

186. Like the minor, the mature incapable does have capacity to benefit from his/her property, but not capacity to exercise, or at least not in its entirety.

The code provides for two measures of protecting mature incapables:
- Interdict;
- Placing under judicial council.

§2. The interdict or "interdiction" (art.432 – 455 FC)

A. Notion

187. The interdict or "interdiction" is a state in which a mature person or an emancipated minor has been declared insane by judicial decision. Such a ban entails his or her total incapacity of exercise.

The interdict concerns a usual state of insanity, imbecility or mental illness, even though these persons present lucid intervals.

B. Procedure of interdict

188. The code provides for procedure of interdict in details :

(1) The interdict follows a judicial procedure, before the court of first instance of the domicile of the patient.

(2) The interdict may be provided on the request of:
- the spouse of the patient;
- the parent of the patient;
- the public prosecutor.

(3) The state of imbecility, insanity or mental illness must be proven by writing by the one who requests, with witnesses and written evidence.

(4) The court declare the decision after having heard :
- the point of one of the family counsel on the state of the person whose interdict is requested. Those who introduced the request are excluded from taking decision of the family counsel. The point of one of the family counsel is necessary to avoid labelling a person mental alienation, imbecility, by bad faith or criminality of one person (even the father, the mother, a brother, a sister or the spouse).
- The person whose interdict is requested.

(5) The court questions in camera the person whose interdict is requested, in presence of the public prosecutor.

(6) After the first interrogation, the court mandates, if possible a temporary administrator to take care of the patient and his/her property.
The temporary administrator has similar competences to those of the tutor of the minor.
The temporary administrator ceases his/her functions at the nomination of the guardian of the interdicted.
(7) The irrevocable judicial decision on the interdict is informed to the public within 10 days, by posting at the office of civil status of the residence of the interdicted.

C. Effect of the interdict and its exercise

189. The code provides for effects of interdict and its exercise in the following manner :

(1) The interdicted loses his/her entire capacity of exercise. For all his acts of civil life, concerning the administration of his person and his property, he is treated as a minor.
(2) The person of the interdicted and his property are protected in accordance with rules relating to tutorship of minors.
Then, it is set up :
- A tutor;
- A surrogate-tutor;
- A tutor council.

(3) The organs of tutorship are set up after the irrevocable decision of interdict.
(4) Each of the spouses is, by the sole fact of law, the tutor of his/her spouse (art.446 FC).
(5) Incomes of the interdicted have to be essentially used for his well-being (i.e in facilitating his/her recovery).
(6) If the interdicted is poor, he/she is admitted in the health house on the expenses of the State, by way of decision from the Ministry in charge of Social Affairs, at the diligence of the family council (art.449 FC).
(7) Acts prior to the interdict may be cancelled, if the cause of interdict existed when those acts were performed (art.443 FC).

D. End of the interdict (451)

190. In principle, the interdict ceases with causes which justified it. In particular, the interdict ceases in the following cases :

(1) The death of the interdicted;
(2) The judicial decision of withdrawal, on the request of those who provoked the interdict, or the interdicted himself/herself.

191. The end of the interdict is made known to the public within 10 days, by posting at the office of civil status, following the same procedures of publication of the decision of interdict.

§3. Placing under judicial council

A. Notion and procedure of placing judicial council (452 – 454 CF)

192. The placing under judicial counsel is a judicial act by which a council is nominated in charge of assisting a person in the accomplishment of certain acts of managing his/her property because of his/her prodigality or mental disability.

The placing under judicial council concerns :

- Any prodigal person;
- Any person of mental disability.

The prodigals or spendthrifts are persons who squander their fortune in excessive and unjustified expenses due to some defect in their power of judgment or character.

The mentally disabled persons are persons of insufficient intelligence to judge with good thinking and appreciate things at their just value. The mentally disabled persons are no longer taken into consideration by the family code.

193. The placing under judicial council is operated by a judicial declaration following the same procedure of interdict. Each of the spouses is, by the mere fact of law, the councillor of the spouse put under judicial counsel.

B. Effects and end of placing under judicial council

194. A person placed under judicial council has a partial incapacity of exercise, with regard to the acts of his estate's management. For the performance of these acts, he may be assisted with a council, designated to that effect by the court.

In particular, acts for which the concerned person needs assistance can be summarised in the following (art.452 FC) : pleading into court, compromising, borrowing, accepting personal estate and signing for delivery, alienating and mortgaging of property.

15. The placing under judicial council ends by the death of the concerned person or by a court decision of discharge, in the same way as for the interdict discharge.

In case of discharge, the concerned person's capacity of exercise is reinstated.

THIRD PART – FAMILY

I- MARRIAGE
II- DIVORCE AND JUDICIAL SEPARATION
III- BLOOD RELATIONSHIP AND FILIATION

CHAPTER I – MARRIAGE

Section 1 : Notions and characteristics

196. The marriage is presented as a civil institution that involves the sexual union of a man and a woman; it is different from the contract.

According to the article 170 FC, the civil marriage is the voluntary union of a man and a woman in accordance with the rules established by the family code.

197. The family code, in its articles 169 and 170, insists on the non religious character of the marriage. Only the monogamous civil marriage is recognised by the law (art.169 FC).

198. This might be due to the fact that religious marriage was also recognised at the same level as the civil marriage by the constitution of 24th November 1962. Even the customary marriage was recognised up to 24th December 1962. Likewise, before this constitution, the religious marriage presented a form of perfect marriage in the views of the population.

199. Such public opinion is usually noticed in the marriage ceremony that takes place before the civil status officer, where despite the fact that it is recognised by the law, religious marriage must take place before the intending spouses cohabit. The population does not actually adhere voluntarily to the civil marriage but accept it as a sort of constraint.

The question is therefore upon the necessity of expanding the concept of marriage and of thinking whether it is not necessary to restore the usual three types of marriage corresponding to the usual practice so as to allow the intending spouses to choose the marriage which is convenient to them, in the instances:

- the customary marriage;
- the religious marriage;
- the civil marriage.

The restoration of these three types of marriage is of importance because it would reduce a number of cohabiting unmarried couples.

200. The marriage actually implies two distinct facts:

- Juridical act formed on a specific date by the exchange of the consent between the spouses;
- Juridical situation that flows in, for as long as the marriage lasts.

Section 2 : Betrothal or Engagement (art.159-168 FC)

§1. Notion

201. In the understanding of the Rwandan community, the marriage extends its meaning beyond the mere matrimonial contract between two persons.

It equally involves the families of origin of the two intending spouses and the family in its broader sense involves strong relationships of friendship and solidarity bringing about an

obligation to assist each other. By the institutionalisation of the betrothal, the family code emphasized such Rwandan tradition.

Thus, the code in its article 159, defines the betrothal or engagement as "an agreement between the members of the two families to effect the marriage between two persons, the groom to be and the bride to be, belonging to the two families, and involves the commitment of both families to assist and support the union of the intending spouses".

From the above definition, the marriage appears to be an alliance between two families, in accordance with the Rwandan tradition. However, the agreement of engagement shall take place only after the consent of the intending spouses to be engaged, contrary to the ancient Rwandan tradition where the intending spouses were not consulted.

202. The betrothal is different from the simple promise of marriage which only involves two individuals, the boy and the girl whereas the betrothal may involve the intervention of their respective families.

§2. Procedures of betrothal and matrimonial title "*INKWANO*"

203. The juridical procedure of betrothal consists of a formal request by the family delegate of the intending husband to the representative of the family of the intending wife; this request is accompanied by the handing over of a hoe, a billhook and a pot or equivalent container full of bier to the latter family as **a sign of engagement** (*gufata irembo*). The three objects may be given at the same time or two of them or one, in accordance with the social custom of a given region of the country.

The betrothal takes place at the domicile of the girl's family or at another place elected or chosen by that family.

204. During the betrothal, the groom's family gives the bride's family "*INKWANO"* as a sign of alliance between the two families. The payment of *inkwano* is not a condition to the validity of the marriage.

Inkwano should not be confused with what some people call "*Dot*" in French or dowry. The "dot" in European culture designates a portion of the family of the wife or a third party representing the contribution of the wife to the family charges.

Inkwano in Rwandan culture, is a property or its equivalent that is given to the bride's family in the respect of marriage.

The nature and/or sum of i*nkwano* are determined by the Minister of Justice. He fixed that *inkwano* to a Rwandan cow or its equivalent amount of money in accordance with Rwandan culture.

205. In principle ***inkwano* gives a right to *Indongoranyo*.** *Indongoranyo* is a property or anything that has value, generally consisting of a cow or a sum of money equivalent to the nature of *inkwano*, given by the family of origin of the wife to the family of origin of the husband.

Indongoranyo can be given immediately after receiving the *inkwano* during the wedding ceremony, generally it is the case where the *inkwano* is given in money, or can be given a long time after the wedding ceremony.

206. *Inkwano* could also be given by the deceased's children after their father and mother's death and in their father's place. Because the act of giving *inkwano* plays an important role of legitimizing the act of marriage and the parental filiation, this act was incumbent upon the children in the case. The children born in the marriage not legitimized by the *inkwano* remained in the mother's lineage or *parentela*. Today, as already mentioned, *inkwano* is not a condition to the validity of marriage and not even to the children's parental filiation. In addition to this, the delivery of *indongoranyo* is no longer an obligation but remains optional.

207. Each of the future spouses conserves the faculty of terminating an engagement. Such a termination and other related unfulfilment of engagement may lead to the payment of damages and compensation to the injured party for breach of promise to marry. The prejudice caused and the amount of indemnity are determined in accordance with the rules of civil responsibility.

Section 3 : Conclusion of marriage (art.169-219 FC)

208. The marriage is a solemn act by which a man and a woman establish between themselves a legally recognised voluntary union for life, and that they cannot dissolve at will. Celebration of marriage is subject to formal and substantive requirements, and their non-respect is sanctioned by nullity.

§1. Substantive conditions of marriage

209. For a given marriage to be valid, the following requirements must be met:

- Persons of opposite sexes;
- Persons of a minimum age of 21 year old which is the majority age in the civil law; persons below that age must obtain special authorisation from the Minister of Justice or his delegate;
- The consent of intending spouses during the ceremony of civil marriage by the civil status officer;
- The authorisation of the persons vested with parental authority or the tutor in the case of minor's marriage;
- Respecting the " *délai de viduité*" or the "presumed pregnancy period" by the woman after the dissolution of marriage by the husband's death or by divorce.

210. The code also establishes impediments to the marriage in the instances of:

- persons too closely related; called the prohibition of "parental relationship" or "alliance";
- Adultery between the intending spouses;
- Existence of any other marriage of the one of the intending spouses, because bigamy is prohibited by the law.

211. The law recognises only the marriage between two persons of opposite sexes, that is to say a man and a woman. The homosexual marriage in Rwanda could be a scandal.

212. The marriageable age prescribed by the law is 21, age of majority. The Minister of Justice or his delegate may however allow minors below that age to marry, for serious reasons. The serious reasons accepted here are pregnancy of the minor girl. The married minor is automatically emancipated as a matter of right by the marriage. No condition of age for the authorisation from the Minister of Justice to the minor's marriage was fixed by the law. As for today, the children pretend to be of a marriageable age before the majority age set up by the law of different countries, most of the legislations reduced the age of marriage to 18 years, and also to 16 years for girls. In Rwanda, there is a need to examine the necessity of doing the same. This could even be in harmony with special laws in Rwanda prescribing the age majority to 18 as already mentioned.

213. Legally effective marriage requires declaration of spouses in the presence of the civil status officer that they shall live together as wife and husband, and the declaration of the civil status officer, who ascertains the fulfilment of the marriage.

The consent to marriage must be express. The marriage by proxy representing one party is not permitted. The permission of the persons vested with parental authority or the tutor is necessary in case of a minor's marriage.

214. In order to differentiate the child's fathers, article 176 FC prohibits a woman from contracting a new marriage within a period of 300 days from the time of dissolution of the marriage or modification of the previous marriage. Such a period is called "*délai de viduité*" or "presumed pregnancy period". Such a period is terminated by the woman's delivery. It is also terminated when the woman presents a medical certificate established by the commission *ad hoc* testifying that she is or not an a state of pregnancy. This certification must be approved by the president of the tribunal of first instance before the celebration of the new marriage. The Minister of Health determines the composition and functioning modalities of this commission. Up to now the composition and functioning modalities of such a commission have not yet been determined.

Article 278 of the Family code allows the divorced spouses to remarry without respecting the period of presumed pregnancy, on the condition that the woman did not get married to another man during that period so as to prevent the risk of confusing the children's real father.

215. The code prescribes prohibition **to marriages between too closely related persons** (Art.172-174 FC)

The violation of such impediment constitutes an incest in our law. In the instances, marriage is prohibited:

- In the direct relationship between a person and his/her descendants;
- In the collateral line between a person and his/her collaterals and between a person and collaterals of his/her father and mother's collaterals (his/her cousins) up to the 7th degree;
- Between the adoptee and the adopter and the adoptee's descendants on the one hand; on the other hand:
  - Between the same person's adopted children;
  - Between the adopter's children and the adoptee's children;
  - Between the adopter and the adoptee's spouse.
- Between a person and his/her parents in-law.

216. According to the article 279 FC, in case of divorce pronounced because of adultery, the implicated spouse can never get married to his accomplice. In the sense of the law, the adultery is the fact of a person having sexual intercourse with another person other than his/her partner.

217. Article 175 FC forbids celebration of a new marriage before the cancellation or dissolution of the previous marriage. In addition to the civil sanction of cancellation of the second marriage, the bigamy is also prohibited by article 357 of the penal code.

§2. Formal conditions of marriage (art.177-184 FC)

218. The formal requirements of marriage concern essential formalities of marriage and its celebration.

A. Essential formalities

The essential formalities concern the publication of marriage and collection of documents to be handed over to the civil status officer.

1. Publication of marriage

219. The publication of marriage consists of the announcement of the marriage project so as to enable persons who could know the existence of any impediment to the celebration of that marriage to have enough time to inform the civil status officer and even make an opposition if they are entitled to do so by the law.

220. According to the article 177 FC, before the celebration of marriage takes place, **the civil status officer proceeds to the publication** by sticking a notice up to the office of the civil status of each of the intending spouses and to the office of civil status where the celebration of marriage will be held.

This publication states surnames, given names, profession, domicile and residence of the intending spouses, the quality of age majority or minority; their fathers and mothers' surnames, given names, domicile and residence.

The publication also states the day, place and hour and even the office of civil status where marriage will be celebrated. The code provides for the possibility to exempt from the publication in case of serious reasons. It is up to the Minister of Justice or his delegate to grant such an exemption. **Neither the law nor doctrine determines which serious reasons justify the exemption of publication**. It would be better for any marriage project to be published. **Marriage in secrecy should not be held valid**.

The marriage cannot be celebrated before the 20th day following that of publication. **If the marriage is not celebrated within 4 months starting from the expiry of the publication time limit, it cannot be celebrated before a new publication** is done in the same manner as the previous one.

2. Documents to be handed over to the civil status officer before celebration of marriage

221. Before the celebration of marriage, each of the intending spouses has to hand over to the civil status officer documents attesting he/she fulfils the required conditions to contract a lawful marriage. Those documents are the following :

- A copy of the birth certificate of each of the intending spouses ;
- A copy of the single life certificate, or a copy of the of the former spouse's death certificate or a copy of judgement attesting the divorce or annulment of the previous marriage ;
- An act granting waiving of age or of publication which may be necessary.

The Minister of Justice may for serious reasons, exempt from presentation of those documents. The act of marriage mentions documents to be presented.

B. Celebration of marriage

222. The code renders public and solemn the celebration of marriage. The marriage must be known to the public because of the effects which arise with the creation of the marriage relationship, and also to allow possible opposition. All legal prescriptions concerning the celebration of marriage tend to ensure this publicity and solemnity: place of celebration, presence of the civil status officer, witnesses and representatives of both families, public celebration of marriage; effective presence of intending spouses and the intervention of the civil status officer.

223. The code provides in details for the formalities relating to the performance of marriage.

(1) According to the article 170 FC, the marriage is performed publicly by the civil status officer of the domicile of one of the engaged couple or of the residence of the intending spouses.

(2) The date and hour of the celebration of marriage are agreed upon between the intending spouses and the civil status officer (art.182 FC).

(3) According to the article 184 FC, the intending spouses accompanied respectively by one representative of each family, two witnesses of the majority age and of capacity to exercise his/her rights, all appear personally in the presence of the civil status officer. The civil status officer reads to them documents relating to their civil status and informs them of their respective rights and obligations towards each other.

(4) The civil status officer receives from each of the parties the declaration that they shall be husband and wife, and himself or herself pronounces the declaration that they are linked by marriage.

(5) The act of marriage is signed by civil status officer, the spouses, representatives of the families and witnesses.

§3. Proof of marriage

224. Spouses may be asked to prove their quality as married persons in their relationship of one another and towards third parties.

The children may also be asked to prove the marriage of their parents because this is one of the elements to demonstrate their legitimate filiation.

Other persons may also be called to prove the marriage, for example in case of claim for alimony or in case of claim for succession if it is necessary to establish the parental relationship with the deceased.

A. The marriage certificate

225. As already highlighted, during the wedding ceremony, the civil status officer, spouses, representatives of both families, and witnesses append their signature to the marriage certificate. The marriage certificate serves as an evidence of marriage.

The marriage cannot then be proven by testimony of persons who would have assisted to the performance of the wedding ceremony or by the presumption that may arise from possession of status; otherwise concubines would establish easily the false quality of being married persons (Art.229-330 FC).

226. In general, the evidence of marriage lies on the copy of the marriage certificate established by the civil status officer.

However, the code allows all means of proof for events concerning the status in case there is no register or when they were lost or in case it is proved that the marriage was not compiled in the register or if it has been recorded on a loose sheet.

227. **The code enacts an exemption in favour of children concerning evidence of their father and mother's marriage**: According to the article 232 FC, by default of presentation of the copy of their deceased father and mother's marriage certificate, the child may prove his/her legitimacy by possession of status.

B. The marriage book (art.185-189 FC)

228. During the marriage celebration, the civil status officer gives to each of the spouses a marriage book. Inscriptions and writings in the marriage book are signed and approved by the civil status officer with also the stamp of his office. The marriage book presumes its conformity with registers of civil status.

§4. Opposition to the celebration of marriage

229. The civil status officer is empowered to refuse the performance of a wedding ceremony if there is an impediment to the celebration, meaning the non-compliance with the conditions of validity.

230. The public prosecutor, and any other interested person may inform the civil status officer of the impediment by sending him/her an act called "opposition", in other words he/she makes

opposition to the celebration of marriage. In this case the celebration of marriage stands adjourned until the time there is:

- A withdrawal of the opposition by the tribunal of first instance of marriage celebration place;
- Realisation of the quality or condition of which the default was claimed;
- Disappearance of the prohibition.

The opposition is made verbally or by writing not later than the date of the celebration of marriage in the presence of the civil status officer. It must be motivated.

231. The action of withdrawal of the opposition is directed against the one who made opposition by one of the *fiancés*.

The judgement denouncing the opposition may condemn the one, who made the opposition, to pay damages.

The opposition is different from an unofficial notice which is the warning made to the civil status officer by any person in any form (for example by means of a letter or by an anonymous telephone call) that there exists an impediment to that marriage.

The civil status officer is not bound to care about it. However, he practically verifies its well-founded and he may refuse celebrating the marriage if he finds that the notice is justifiable, instead of incurring penalties for having in bad faith celebrated an irregular marriage.

Section 4 : Effects of the marriage

233. The marriage lawfully contracted produces many important juridical effects:

- Towards spouses, it creates a link of marriage which is characterised by a set of reciprocal rights and duties;

- Towards the patrimony of spouses, it creates society of property of which rules are fixed either by the contract of marriage or by the matrimonial regime prescribed by the law. It creates also reciprocal rights to succession either in property or at least in usufruct. Nevertheless, through the law of succession, the surviving spouse does not succeed to the deceased one's estate.

- Towards the spouses' children, it creates a link of alliance which results into certain consequences, such as an obligation of alimony.

§1. Obligations which result from the marriage towards children, ascendants and allies (Art.197-205 FC)

234. The obligations resulting from the marriage are rooted in the necessary solidarity between the members of the same family, this one being the natural basis of the society. On the foundation of this solidarity, the code creates reciprocal obligations between spouses on one hand and their offspring, and on the other hand between spouses, ascendants and allies.

A. Obligation to educate and bring up the children

235. The spouses contract together by a simple fact of marriage the obligation of bringing up and educating the children. If one of the spouses refuses, the other introduces an action to force him/her to do so. This action also belongs to the public prosecutor.

B. The duty of support

236. In addition to this obligation, the code presents alimony as an essential effect of marriage; that is, the first duty of the family.

Alimony is that imposed by the law on a person to furnish the other who is in need with food support (198 CF).

Alimony exists:
- Between spouses;
- Among parents in the direct line;
- Among certain spousal relatives in the direct line.

237. Alimony between parents in the direct line exists:

- Between the father and mother on the one hand, and their children on the other, and *vice-versa*.
- More generally, between ascendants and descendants, even adults, and *vice versa*.

238. Sons-in-law and daughters-in-law are also similarly duty bound to alimony towards their fathers-in-law and mothers-in- law, and *vice versa*.

But this obligation ceases:

- In case of one of the spouses'death on whom the affinity was based, if there exists no offspring from the dissolved marriage by death.
- In case of dissolution of marriage by divorce.

239. The persons charged with alimony are responsible in the following order:
- the spouses;
- the children;
- the father and mother;
- the ascendants;
- the parents-in-law and son and daughter-in-law.

240. Alimony is also a charge of succession; it is borne by all legatees of the entire inheritance, and if this is not enough, by all legatees of proportional part of it, and eventually, by all the legatees of particular part of it in proportion to their emoluments.

Alimony is accomplished by cash or in kind.

Food support is given in proportion to the needs of the claimant and the resources of the one from whom the support is due.

§2. The relationship between spouses

A. Introduction

241. According to the ancient code, up to October 1988 when the new family code came into force, the relationship between spouses was characterised by marital power with the consequence of the **man's authority over the woman** and the **incapacity** of the latter to make juridical acts without the husband's authorisation.

Using examples, in the terms of articles 119,120,122, and 124 of the ancient family code:

- the husband is the head of the family: he has to protect his wife, and the wife has to obey the husband (Art.119);
- the wife is obliged to live with his husband and to follow him wherever he chooses to go and live (Art.120);
- the wife has to obtain the authorisation from the husband in all juridical acts in which she has to be present personally;
- Except for cases provided by the law, the wife cannot file civil suits, acquire, alienate or take up an obligation without "**authorisation from her husband**".

242. The customary evolution, the progress of women education, the nature of her habitat, her need for home care, her need to take up a career, extension of activities, and the social role of the woman as well as the influence of various feminist movements on both the national and international level, have brought the juridical emancipation of the married woman.

It is in this spirit that the new family code was elaborated. However, the new code only managed to abolish the civil incapacity of the woman, while maintaining for the husband a certain power of direction on the family and the woman.

B. Marital authority

243. According to article 206 FC, "the husband is the head of the household composed of the man, the woman and their children". **This formulation should not be understood as keeping up the marital authority and the woman's duty to obey. The wife retains the right to govern her person and her interests**.

Even though the quality of household-head grants the husband certain prerogatives (such as the choice of the matrimonial home and the pre-eminence of the father's will in exercising parental authority), **he no longer has the monopoly of decision in household affairs**.

(1) In effect, according to article 207 FC, the wife joins hands with the husband to assure the moral and material direction and the firm establishment of the household. And according to article 280 FC, one of the spouses exercises these functions when the other is unable to manifest his will, due to his incapacity, absence, being far away or any other cause.

That is to say therefore, that the quality of being the head of the family is no longer the man's exclusive right, but it may as well be exercised by the wife in the interest of the family.

(2) Furthermore, each spouse contributes to the family support according to his/her means; it is thus no longer an obligation of the husband alone (Art.211 FC).

(3) The parental authority is exercised by the father and the mother; it is no longer exclusively paternal.

C. The capacity of the married Woman

244. The marital authority no longer brings as a consequence the wife's obedience and civil incapacity. According to article 212 FC, marriage does not modify the spouses' civil capacity. Only their powers can be limited by the law and their matrimonial regime.
As a consequence:

(1) Each spouse has the right to exercise a profession, an industry or commerce without the consent of the partner (Art.213 FC)
(2) The spouse who exercise a profession, industry or commerce is personally bound by the related activities without the implication of the partner (Art.213 FC).

However, the common matrimonial regime limits each spouse's will, and undertakings of one requires the consent of the other.

(3) Whatever the matrimonial regime, each partner can file suit in court without authorisation of the other in all litigations concerning property and his/her administration or rights due to him/her because of his profession, industry or commerce (Art.215 FC).

§3. Respective duties of the spouses (Art.209-211 FC)

245. The conjugal duties provided for by the law are, cohabitation, fidelity, mutual help, assistance and contribution to family support. These duties are reciprocal and either can invoke them in proceedings before the court.

A. The duty of cohabitation

246. According to article 210 FC, marriage creates between spouses a life community with the duty of cohabitation. This life community must be manifested physically, emotionally and intellectually. Although the law does not expressly say it, the case law and the doctrine consider that the duty of cohabitation implies also and especially the conjugal duty, that is the spouses' obligation to have sexual relationship. Failure to fulfil this duty constitutes a fault which may be ground for divorce.

247. However, the lack of sexual relationship can be justified under certain circumstances, notably when it is for medical reasons. The abstention is at times a duty, when it is for the benefit of the partner's health.

248. Likewise, the duty of cohabitation may become morally impossible where one of the spouses is adulterous or oppressive. The victimised spouse may then sue for divorce or separation. The spouse may however opt for neither solution in a hope that the situation is temporal or simply as a matter of principle.

249. According to the practice in Rwanda, instead of bringing an action for separation from bed and board, in most cases the wife leaves the conjugal domicile: it is the voluntary separation (***Ukwahukana***). Generally, the husband persuades his wife to rejoin the marital home (***Ugucyura***).

However, in accordance with the codified law, the partner who leaves the conjugal domicile without the consent of the others risks the sanction of divorce due to his/her fault as well as penal sanctions for neglect of the family. The women therefore have to use the practice of voluntary separation cautiously so as not to risk the sanctions even when they are the victims.

B. The duty of fidelity

250. The duty of fidelity is the duty of each of the spouses to abstain from all sexual relations with third parties. This duty lasts till the dissolution of marriage even when spouses are legally separated.

Failure in this duty constitutes divorce which is a cause of divorce, plus penal sanctions.

C. The duty of help

251. The duty of help presents itself as the extension of the alimony between spouses, which also exists between parents and allies in direct line.

This duty imposes on a spouse a duty to take care of his/her partner deprived of resources. It supposes a state of need for the one who claims its execution.

D. The duty of assistance

252. The duty of assistance is the obligation for each of the spouses to furnish the other with moral and material help in all circumstances. Whereas the duty to help presents a pecuniary aspect, the duty of assistance is related to personal care of each of the spouses in respect of his/her age, health and mutual comfort in difficult times. **The duty of assistance implies the existence of a life community**.

Where spouses live separately, this duty can only be executed in a pecuniary form.

E. The duty to contribute to household expenses

253. The duty to contribute to household expenses does not suppose a state of need. The contribution to household expenses entails not only expenses on spouses themselves, but also those on the children. And the contribution covers all the expenses pertaining to the standard of living of the spouses, including expenses on pure luxury as well.

Section 5 : Marriage of foreigners in Rwanda and of Rwandans' marriage abroad

§1. Marriage in normal cases

254. The marriage can concern:
- two foreigners in Rwanda;
- A Rwandan and a foreigner in Rwanda;

- A Rwandan and a foreigner, abroad;
- Two Rwandans abroad.

The civil code enacts provisions applicable to all these hypotheses – And these povisions contained in articles 10, 11 and 235 of the code, are inspired by international private law.

256. As for Rwandans, according to article 10 of the family code, "the law concerning the persons' status and capacity applies to Rwandans even those living abroad. For the foreigners in principle, the foreigner's status and capacity as well as his family relations are governed by the law of their country of origin, or in case of unknown nationality by the Rwandan law" (Art.11 FC).

256. And more particularly regarding to marriage of foreigners, this is governed (Art.253 FC):

- as regards formalities, by the law of the place where it is celebrated;
- as regards effects on the spouses, in case there was no common agreement, by the husband's national law at the time of marriage celebration;
- as to its effects on the children, by the national law of the father at the moment of birth;
- As to its effect on the spouses' property, in the absence of matrimonial conventions by the law of the country where they are domiciled.

§2. Marriage of Rwandan refugees

257. Analysing the marriage between Rwandans who reside abroad, one may question the validity of this marriage. The question poses itself with acuteness after July 1994 when Rwandan refugees started coming back from exile. When coming back to Rwanda, some abandoned their partners on pretext that their marriages celebrated abroad are not valid, because they don't conform to the Rwandan law.

258. Rwandan refugees abroad are not under the regime of the Rwandan law. They are rather governed by the international convention on refugees and the law of the country of exile.

The validity of marriage of Rwandan refugees, therefore must be examined in respect of the legislation of the countries where it was celebrated. If a Rwandan refugee's marriage is valid in the country where it was celebrated, it remains valid in Rwanda as well, except if it is contrary to Rwandan good morals.

Examples: **The religious or customary marriage valid in the country of exile is also valid in Rwanda, if the married Rwandans came from exile,** even though the Rwandan legislation recognises only the civil marriage.

Section 6 : Nullity of marriage and its effects

§1. Domain of nullity

259. The civil status officer can, consciously or not, proceed to the marriage celebration, in violation of certain conditions of its validity. The violation of these rules can be sanctioned by nullity of the marriage.

However, all violation does not lead to nullity; it is necessary to make a distinction between **dirimant impediment** and **prohibitive** impediments.

Only the dirimant impediment leads to nullity of marriage which would have been contracted despite their existence.

The prohibitive or simple impediments, present an obstacle to the celebration of marriage, in the sense of obliging the civil status officer to abstain from celebrating the marriage.

The sanction will be a penalty against the officer of the civil status if he had knowledge in one way or another especially by opposition, of the existence of the prohibitive impediment.

One distinguishes similary the absolute nullity and relative nullity:

- The absolute nullities concern public order, they are in principle invokable by all interested persons and the public prosecution; they cannot have prescription, save for exception provided for by the law, they cannot be covered.

- The relative nullities protect private interests, they are invokable only by the protected person and can have prescription.

§2. Absolute nullities

A. Causes of absolute nullity

260. The following cases constitute causes of absolute nullity:

- Identical sex;
- Impubescence;
- Incest;
- Bigamy;
- Clandestine marriage;
- Incompetence of the civil status officer.

1. Identical sex

261. The code does not expressly prescribe the prohibition between two persons of identical sex. However, according to article 171 FC, it is specified that it is “the man” and “the woman” who can contract a marriage. It follows, therefore, by deduction that it is prohibited that “a man” and a man” or “a woman” and “a woman” contract a marriage.

2. Impubescence

262. Although the impubescence is an impediment to the public order thus a cause for absolute nullity, it however may not hold in two precise cases (Art.223 FC):
- When the spouses have attained the required age;
- When the woman who hadn’t this age is pregnant.

3. Incest

263. The incestal marriage, that is to say, the one which was contracted when there exists between the spouses familial or spousal relationship from which results a prohibition of marriage, is sanctioned by absolute nullity and that even when the impediment is of the nature that can be lifted by the authorisation from the Minister of Justice.

4. Bigamy

264. The second marriage contracted before the dissolution of the first one is sanctioned by absolute nullity.

Bigamy, assuming the existence of a first marriage, the spouse regarded as bigamous can prove the dissolution or the nullity of the first marriage. In this latter case, the validity or nullity of the first marriage must be forejudged.

265. The provisions of article 225 FC may lead to confusion and give an impression that bigamy is a cause of relative nullity by giving the victimised spouse alone the right of action for nullity. This article does not exclude the persons' right of action with a present and actual interest and the public prosecution.

5. Incompetence of the civil status officer and clandestinity

266. Failure of publicity and the incompetence of the civil status officer can be raised by interested parties, the public prosecution inclusively.

B. Those entitled for an action of absolute nullity

267. In principle, the absolute nullities can be evoked by all interested persons. However, in matters of marriage, in an effort to ensure its stability, the code puts forward certain distinctions and restrictions.

The code distinguishes three categories of those entitled to an action of absolute nullity:

- Persons with a right of action under all circumstances;
- Persons who must justify a present and actual interest;
- The public prosecution.

1. Persons with a right of action under all circumstances

268. Certain persons can bring an action for absolute nullity, during the spouses lifetime as well as after their death or the death of one of them, due to a simple moral interest, without even justifying it, the law presuming the existence of the interest.

These persons are:

- **The spouses themselves**, in all cases (Art.122 FC);
- **The first partner** of one of the spouses, but only if he/she evokes bigamy (Art.225 FC);
- **The father and mother and the ascendants** concurrently.

2. Persons who must justify a present and actual interest

269. The decided case law and the doctrine consider that the phrase "a present and actual interest", as used in the family code, serves to designate a "pecuniary interest'. In addition to persons enumerated above, other persons can only react by justifying a pecuniary interest. The notion of moral interest is large and the legislator doubts the intention of certain parents who may raise this interest to prejudice the ongoing marriage.

These persons are:

- the spouses' collateral parents;
- the children born from another marriage;

270. The **collateral parents**: Article 224 CF does not allow them to act unless they have present and actual interest, that is to say pecuniary interest. The law supposes that the pecuniary interest for the collateral parents can exist only after one of the partners' death; it regards them in effect as heirs.

They have an interest to annul the marriage and avoid the other partner's concurrent right to succession at the opening of succession to which they are invited. But article 224 FC allows the admissibility of the collaterals' action of nullity where exceptionally, the spouses' pecuniary interest has been manifested while they are still alive.

271. Children born from another marriage can introduce an action for nullity, as the collaterals, on a condition to justify a pecuniary interest (Art.224 CF). For them, more often than for the collaterals, this interest can exist even during the spouses lifetime.

3. Public prosecution

272. The public prosecution is included in the number of the interested persons who can bring about the nullity of a marriage. Its action is justified because the causes of absolute nullity are of public order.

However, the public prosecution can only request for nullity of the marriage during the spouses lifetime, and in this case, has to "condemn them to separate" (Art.227 FC).

As a matter of fact, the interest that motivates the intervention of the public prosecution is to nullify a scandalous union in the interest of public morals, for example in case of incest or bigamy.

§3. Relative nullities

A. Causes of relative nullities

1. Introduction

273. The relative nullity of marriage is, as it is in any other subject of law, a nullity for protection, punishing the violation of rules prescribed to protect private interests.

According to article 220 and 221 FC, the relative nullity penalizes marriage concluded with a default of consent:

- Lack of free consent from the married couple or one of them;
- Error on the person or on his/her main qualities.

274. It must however be pointed out that, contrarily to other contracts concluded in conformity with the common rules, the code doesn't consider the fraud a default of consent as far as marriage is concerned.

Actually, juridical culture doesn't allow the spouses to attack a marriage contracted on the ground that his/her consent was given because of fraud from his/her spouse.

It is the meaning of the french old adage stating the following: "*En fait de marriage, trompe qui peut*", meaning that the consent procured by fraud does not invalidate the marriage.
The need for stability of marriage leads to the exclusion of any action related to that annulment.

275. However, the nullity is accepted if the fraud causes an error on the spouses identity or his/her main qualities.

2. Lack of free consent

276. The freedom of consent is normally vitiated by violence. **This can either be physical or moral**. But the physical violence is hardly conceivable where the marriage was celebrated in the presence of the civil status officer and witnesses.

277. The moral violence, which relates to **the fear due to the** "**threat of a considerable and current harm"** is easier to imagine, but this threat has to be so great that even a reasonable person can fear it, therefore, for instance, the parents or grand parents' reverential fear cannot be raised as a cause vitiating the consent.

3. Error on the person

278. The code considers the error on the person or on his/her essential qualities as a cause of relative nullity.

The legislator doesn't define the spouse's "essential qualities", but rather leaves to the judge the task of defining. In order to be taken into consideration it is generally accepted that the person's quality has to be appreciated by considering the proper objectives of the marriage as defined by the law or other moral principles generally admitted.

For instance, it can be considered an error on the essential qualities, the one related to one of the spouses' previous criminal record, on his/her mental health state, on his/her sexual intercourse ability. In fact, for example, it can't be considered a cause of nullity the error based on one of the spouses' wealth, profession, intelligence, psychological character, ethnicity, race, educational background or religion.

279. In all cases, the person's qualities don't have only to be essential with reference to public opinion but also in the eyes of the victim of the error. Also, the quality has to be so relevant

that if the victim had known it before, he/she could not have given his/her consent to marriage.

B. Persons to whom the legal action for relative nullity is opened and its prescription

280. The nullity based on the default of the spouse's consent is **only opened to the spouse victim of violence or error**. Neither the spouse nor the grand parents or the third party is allowed to exercise it.

281. However, the relative nullity doesn't take any effect if the voidable act is later confirmed.

This is the case when the nullity is based on the default of the spouse's consent: According to article 220 FC *in fine* "the marriage contracted on the basis of the error or violence cannot be nullified if the spouse towards whom the legal action in nullity was introduced came to tacitly or expressly consent ".

282. The delay of prescription of a legal action in nullity based on vice of consent of a spouse is six months. Article 221 FC provides that "the action in nullity is no longer admitted if the spouses went on living together for six months from the time the spouse got the freedom or the error was known to him/her.

§4. The effects of the nullity

283. The effects of the nullity of the marriage are dominated by the principle of **retroactivity** of nullity. The pronouncing of nullity whether absolute or relative ends up the marriage with retroactive effect. It must be considered as if **the purported marriage does not exist and never has existed**.

The effects of the marriage in itself, regarding spouses, as well as the effects of the marriage concerning their property, are retroactively nullified.

Despite the nullity of marriage, children keep respectively their status of legitimate or legitimated children; the legislator, here, considers that children should not be victim of their parents fault.

284. Nonetheless, to attenuate the strong consequences of retroactive nullity of marriage as regards to spouses, the legislator brought in the notion of good faith (Art.233 FC). Therefore, a void marriage keeps the effects previously generated in case it has been contracted with good faith, it means when the spouses or one them, ignoring the cause of nullity at the time of celebration, thought the marriage was valid. That is why it is called "putative marriage". If the good faith is only on the side of one spouse, the latter will be the one to benefit from it.

Example: Normally the annulment of the marriage leads to termination of the marriage contract : it is as if it has never come to existence. If it was under the community of property regime, this is considered as if it has never existed and as principle, each of the spouses takes with him/her what he/she possessed before the nullified marriage and what he/she personally acquired during the concerned marriage. However, according to the principle of benefiting from a putative marriage, there will be an equal sharing of the whole property if the marriage

was contracted with good faith. In a contrary hypothesis the only spouse with good faith will benefit from the sharing.

285. The annulled marriage has civil effects in favour of children even when none of the spouses was of good faith.

Section 7 : Extra-marital Cohabitation

A. Position of the problem

286. Though the marriage is the formal way for spouses to live together, the only form of sexual intercourse regulated and organised by the law, married couples are not the only sexual partners and marital fidelity is not secured as well.
The frequency of sexual intercourse out of marriage in so high that it can't be neglected.

287. Even though, knowingly, the legislator didn't regulate the situation of concubines, in order to avoid the recognition of its existence, the non-officially celebrated marriages is a social fact that creates difficulties in judicial domain, leading then to litigious cases and often courts do not easily find legal solution to such cases.

According to the legislator, the non-officially celebrated marriage cannot give rise to any juridical effect because it is a simple juridical fact. But it appears difficult to maintain that principle.

The evolution of the law leads to the fact that even the extra-marital cohabitation produces some juridical effects that one can even wonder whether such a cohabitation is not being institutionalised to be a marriage on a second level.

288. Judges tend to consider that **for the extra-marital cohabitation to produce juridical effects it has to resemble the legal marriage in its character of stability and exclusivity**. Nevertheless, one should not confuse a simple cohabitation between spouses, which somehow resembles a legally married couple, with "adultery concubines". As consequence, such juridical effects are excluded for instance in case of pure occasional or passing sexual intercourse. In most cases, despite the characteristic of stability and exclusivity, the extra-marital cohabitation cannot turn into a valid marriage due to a certain course of time.

That is the reason why the court decided that **an extra-marital cohabitation, even for a long period, does not create any legal duty of cohabitation between concubines** (see the judgement RCA 5176/R. 11/RUH of 22 April 1987 decided by the court of Appeal of RUHENGERI).

289. In practice, the extra-marital cohabitation causes legal difficulties and do produce effects:

- as regards to children;
- between cohabiting partners (so-called "concubines") themselves;
- between cohabiting partners and third parties.

B. Extra-marital children

290. Children born out of marriage are called “natural children”. Their situation will be discussed in the further chapter concerning “filiation”.

In all cases, in case of the natural father and mother’s death or separation without having legally recognised their natural children, the latter are faced with difficulties during judicial procedure of paternity or maternity suit, claim for education and care fees, apportionment of property (*umunani*) or inheritance.

C. Relationship between cohabiting partners

291. Between cohabiting partners themselves, difficulties mostly appear at the moment of breach of their union and consist of the following two points:

- the liquidation of pecuniary gains;
- the reparation of prejudice incurred due to the breach.

1. Liquidation of pecuniary gains

292. The interests of cohabiting partners are more or less intermixing. In particular the property of common usage is, in principle, acquired with shared resources. In case of breach of their relationship, there must be liquidation of the cohabiting partners property whereas there has been no matrimonial regime.

293. For liquidation, generally, judges tend to adopt two positions:

(1) Some judges attribute all the patrimony to the “husband” except personal belongings and earnings that the wife proves they belong to her: it is often the case when she left her own family to join the husband.

(2) Others consider that all property assets not justified to be exclusive to one of the cohabiting partners are deemed to be common patrimony and consequently divided between them. This is the position adopted by the Ruhengeri Court of Appeal: Property acquired by the cohabiting partners during their cohabitation makes a mass common to them which has to be shared at the moment of their separation (see judgement RCA 5178/Ruh. 11/RUH).

The second tendency is the most suitable because it is fair. In fact, when two persons live together as spouses, one cannot reasonably affirm that only one of them (the husband) contributes to household while the other party does not bring anything (the wife).

2. Reparation of damage due to the breach

The breach of extra-marital cohabitation is likely to cause a considerable damage to one of cohabiting partners especially the wife. Nevertheless, the breach does not, in principle, lead to civil liability because the breach is not a fault since there is no legal relationship between cohabiting partners, each of them being free to leave at any time.

The breach can only be considered a fault in particular circumstances such as a husband leaving his wife while pregnant.

D. Relationship between cohabiting partners and third parties

295 . The problem, here, can be analysed in two ways: third parties may pretend certain rights against cohabiting partners or in the contrary, cohabiting partners towards third parties.

1. Third parties pretend rights against cohabiting partners

In that very case, no problem arises. Cohabiting partners appear in eyes of third parties as a regular household. Regarding third parties with good faith i.e. those who took it for a regular household; the cohabiting partner is obliged as any other spouse would.

2. Cohabiting partners pretend rights against third parties

The claim appears difficult to imagine. Accepting the extra-marital cohabitation as an institution able to produce some legal effects would now bring it nearer to the legal marriage, and consequently the latter would lose its value.

298. However, **many cases of female concubines are found in courts, claiming for indemnity based on the fact that their partners died in the accident,** or claiming for death indemnity to social security or insurance companies. How then to deal with such cases?

There is no unanimity in Rwandan courts as regards to solution of this situation. Often the survivor concubine is not compensated. However, most of European and north American courts grant them indemnity with two conditions:
- long period of cohabitation;
- the cohabitation not having been based on adultery.

E. Long-lasting legal solutions to unmarried couples

299. The problem of unmarried couples should not visibly be ignored.

Though no formal census on unmarried couples has been done, some people estimate them to a rate of 50% of all household in Rwanda.

300. In order to attenuate problems linked to unmarried couples, a fair judicial solution should be envisaged for them.

It has been resorted to and even at present it is being resorted to administrative solutions by way of sensitising unmarried couples to get formally married but changes are not remarkable.

The judicial solutions are limited however; they provide specific solutions to the very specific causes referred to courts, no general solution to the general situation is provided. **A such way cannot obviously settle juridical problems, which are now generalised, of unmarried couples**.

301. It remains now resorting to legislative way. The legislative solution can be analysed in two ways:

- extension of legal forms of marriage;
- allow extra-marital cohabitation produce legal effects.

Both solutions can be applied at the same time.

302. Extension of legal forms of marriage

(1) At present, the law admits one legal form of marriage: the civil marriage.

However, as it has been stated, till 1978 there has been jointly three legal forms of marriage in Rwanda:
- customary marriage (until 24/11/1962);
- religious marriage (until 20/1/1979);
- civil marriage.

The coexistence of the three legal forms of marriage has never caused any known difficulties.

(2) Though from 1979 the law recognizes only the civil marriage the common practice maintains the free forms of marriage. Even the public opinion attributes a great value to customary marriage and religions one which is more solemn.

(3) The country has therefore an interest in re-establishing the three forms of marriage legally, given their persistence.

(4) Thus future spouses and their respective families would have a free choice of a form that is suitable to them. This would have as result a considerable decrease of irregular households.

303. Allowing extra-marital cohabitation produce legal effects

(1) **In practice a husband and a wife cohabit for a long period of time without getting legally married until their old age. Such couples appear in the public eyes as regular couples**.

(2) When the husband and the wife, maintaining their cohabitation until their old age, gave birth to children, no problem arises. The problem occurs in case one of them (often the husband) repudiates or abandons the other.

Repudiated or abandoned wives as well as minor children suffer a lot: often, the husband simply repudiates his wife without any support after a very long period of cohabitation, and hard effort in the profits of the would-be household.

(3) It is socially unimaginable, and this is generally source of conflicts in families, that a wife who lived together with her husband for many years, as a regular household in everybody's knowledge, be now repudiated simply or abandoned without any support.

It is at this level that the legislator intervention appears to be crucial to give a long-lasting legal solution; **it is unacceptable to keep on ignoring more than 50% of all households in the country**.

(4) Referring to some foreign countries (such as Tanzania) and according to a common understanding of Rwandans the law should provide that “a husband and a wife who publicly cohabit as spouses, be considered as legally married. This cohabitation must last for a period of one year at least and not be backed with adultery.

It should also be very important to make that legislative provision retroactive to previous unmarried couples, at least as regards to children and property.

CHAPTER II – DIVORCE AND LEGAL SEPARATION

Section 1 : Introduction

304. The intensity of discord in the families can reach different degrees and the consequences that it generates in relationships between spouses or towards their children vary from situation to situation.

First, it is possible that the two spouses can cease to stay together, voluntary separation can be as a result of one of the spouses' will or of both of them. The law emphasizes evident cases that are more juridical and the conjugal problems in fixing rules applicable on divorce and juridical separation.

305. Though family, the natural base of the Rwandan society, has to be protected by the constitution, one cannot oblige spouses with incompatible characters or where one inconveniences another to stay together forever in marriage. It is for such a reason that the code provides for two modes of dissolution of marriage and these are divorce for determined reason and divorce by mutual consent.

306. Divorce and one of the spouses' death dissolve marriage. The code doesn't provide for particular provisions on dissolution of marriage by death. On the contrary it provides for important provisions on dissolution of conjugal relationship by divorce.

Section 2 : Divorce for determined reason

§1. Causes of divorce

307. The Divorce for determined reason can be envisaged only when one of the spouses wrongs another. According to the article 237 of family code, the causes of divorce are:

- Having been guilty of a very shameful offence ;
- Adultery;
- Cruelty, physical mistreat, serious abuse by one towards his/her partner;
- Refusal of contribute to essential household expenses for a period of 12 months at least;
- Mutual separation for a period of three years at least.

In accepting divorce, the court bases its decision solely on the above mentioned causes and one cause is enough on its own.

308. In the intention of the legislation, abandonment of household is different from voluntary separation in the sense that in the latter case there should be mutual consent of spouses contrary to abandonment of household when there is no consent.

According to Rwandan tradition abandonment of household by the wife is judiciously used at the risk of being regarded as an infraction of abandonment of domicile.

309. The code doesn't define "the very shameful offence". It is left to the judge's appreciation, depending on the way of the claimant's understanding, his/her social status,

his/her convictions and which consequences the infraction entails on conjugal relationships, children, the family and the public.

Example : According to one's understanding a very shameful infraction can be homicide, theft, poisoning, drunkardness, injury, defamation, destruction of another's property, cruelty and children's physical mistreat and their abandonment, fraud or any other infraction.

Serious injury to the other or physical violence, in principle implies battery injuries and regular moral harassment. Sexual violence can also be taken as serious injury or physical violence.

§2. Procedure of divorce (art.238-247 FC)

310. Divorce is judicially pronounced following five phases:

- Motion for divorce;
- Attempt of reconciliation;
- Provisional measures;
- Proceedings in court;
- Publication of the juridical decision.

A. Suit for divorce and jurisdictional competence

311. A divorce suit is only brought under the tribunal of first instance of the spouses' domicile or residence.

A divorce suit is brought, instructed and judged according to ordinary proceedings i.e. civil and commercial procedure, but the public prosecution has always to be represented.

If it is deemed necessary for the public prosecution to instruct the case of the infraction that the one requesting for divorce based on, the action for divorce is suspended until a definite decision is taken by the criminal court.

An action for divorce is personal: it belongs only to the spouses. An action for divorce has no prescription and is not transferable.

B. Attempt of spouses' conciliation

312. When divorce is requested for, the law requires an attempt to spouses conciliation; the objective being that of consolidation of families and not their breakdown. At the first appearance of the parties, the president of the tribunal of first instance hears them in person and in camera. He may try a counselling to show them the consequences of their action. In case of no conciliation the president records it and authorises the one requesting divorce to continue with his/her action.

C. Provisional measures during the proceedings in divorce (Art.248-254 FC)

1. Introduction

313. **During proceedings in divorce**, the spouses are in conflict so that the cohabitation becomes impossible and usually they live separately.

As the case can take long, it is necessary to provide for the care for the family members and the protection of their property.

In the family members' interests, the President of the court takes provisional measures to guarantee the spouses' protection, their children and their property.

Provisional measures are provisionally executed without guarantee even though there has been a recourse. They can be reviewed in case of new facts.

2. The spouses' residence

314. **During proceedings in divorce,** for the spouses in need of divorce not to stay together whereas they are in conflict, each of them, being plaintiff or defendant, can ask the president of tribunal of first instance the permission of leaving the conjugal residence with his/her property. The president of the tribunal, who grants this permission, fixes also the new residence of the spouse.

315. While the wife asks for separate residence, the husband cannot be forced to leave the conjugal residence and stay elsewhere. Likewise, in the case the house constituting the conjugal residence belongs to the wife or when her parents are the usufructaries or leasees, she can never be forced to leave it.

In this case, the husband has to leave the conjugal residence unless he exercises there the art activities, liberal activities, craft industry, commerce or industry.

Here there is a way of wondering why it is only the wife who has to leave the conjugal residence instead of providing for the husband to leave in the same circumstances. This proposition violates the principle of equality between persons without discrimination mainly of sex ; it should therefore be corrected.

When the spouses jointly exercise their professional activity in the conjugal residence or in a dependent local of the community, the president takes provisional measures in the children and customers' interests.

316. Each of the parties is obliged to furnish the president of the tribunal with justification, whenever he/she is requested to do so, that he/she is residing in the house that was directed to him/her. In default of this justification, the other spouse can refuse the alimony and if he/she is dependent he/she can ask the court to dismiss the plaintiff's case.

3. Spouses financial interests

317. *During proceedings on divorce*, any of the **spouses in the community of property can ask for the seal of the moveable property communally owned** so that they may not disappear. Seals are removed when those property are counted or given value.

318. ***Any act fraudulently accomplished by one of the spouses notably a sale or donation can be nullified in case of the offended party's motion***.

4. Child custody and maintenance on divorce

319. During proceedings in court, **in the children's best interest**, the president of the court shall invest one of the spouses or a third person with the provisionally custody of the children. **At the same time, he shall determine**:

- The right of visit to children to the one to whom custody was not awarded.
- The contribution of each one of the spouses to the well-being and education of the children in accordance to one's capacity

These measures concern the spouses' legitimate children, or legitimated children or adopted children. The recognised child by one of the spouses is not concerned by these measures.

D. Proceeding in court

320. Civil procedure shall be applied during the proceedings on divorce, as it has been mentioned above. Nevertheless, it is important to mention four **particularities of proceedings in divorce** :

- Attempt of conciliation;
- Cross-demands;
- Peremptory pleas;
- Administration of proofs.

1. Attempt of conciliation

321. As already mentioned, in all cases, the attempt of conciliation precedes trial and trial is always suspended pending an attempt of conciliation to take place.

It is not common for the law to provide for conciliation procedure between parties. It is only provided for as a particularity in matters of divorce. **When conciliation has resolved sensitive matters** by the spouses joint willingness and goes on with restoration of conjugal life, **the suit shall be dismissed**.

2. Cross-demands

322. In principle under civil procedure, a cross-demand is not allowed on appeal level . It is regarded as a new case and it is only an original case that can be appealed for. **But in a divorce case a cross-demand can be introduced for the first time in appeal level and be examined**.

3. Peremptory pleas (Art.255-256 FC)

323. As for other civil actions in general, actions in divorce may be subject to peremptory pleas. But **two particular peremptory pleas are peculiar to actions in divorce**:

- Spouses' conciliation;
- One of the spouses' death.

Any of the above peremptory pleas extinguishes the action in divorce. But **the cause of peremptory pleas should be raised when the case hasn't been definitively decided**.

4. Administration of proofs

324. Administration of proof in divorce matters are similar to other civil cases, but there is a particularity peculiar to divorce cases as concerns testimonial evidence. In divorce procedure, the spouses' house workers, descendants and ascendants cannot give testimony. The major reason of not being included among witnesses is the presumption of their partiality or hiding truth for the interest of the family or any other cause, and the other reason consists of the prevention of conflicts that can arise in the family as a result of their witness. House workers can hide or deform truth to keep up in their work or revenge on one of the spouses employer. **Ascendants** can be partial in favour of their descendant. However, in the children's interest they should not interfere in conflicts between their mother and father.

E. Verdict of divorce (Art.245-246 FC)

325. Third parties have an interest in knowing modifications brought about by divorce in the family. And even the divorced parties have an interest in the knowledge of their divorce by the third parties.

Upon a request by the public prosecutor the judge's final decision is written in the civil status register of the place where the divorced spouses celebrated their marriage. It is written at the end of the margin of the spouses' marriage and birth certificates.

On the public prosecutor or one of the parties request, the extract of the judgement on divorce can be published in the official gazette of the Republic of Rwanda.

All those measures of publicity are taken to inform the public about the divorce, especially those in relationship with the divorced parties in order to protect their interests. The registration in the civil status register and publication in the official gazette are the best and trustful means of publication.

326. That publication plays an important role for three essential reasons :

(1) The registration in civil status register facilitates the divorced parties to get the divorce certificate when they need for it.

(2) Publication dissuades one of the spouses with bad faith to continue using his/her former spouse's name in damaging the latter's interests or the interests of the third parties who should ignore the existing divorce.

(3) The publicity incites the divorced spouses creditors to take urgent measures for protection of their interests.

Section 3 : Divorce by mutual consent (Art.257-277 FC)

§1. Introduction

327. By mutual consent, the two spouses can ask the court to terminate their marriage without mentioning the cause of their request. Spouses often have secrets that they don't want to disclose in public or to the judge.

Though the divorce case is supposed to be in camera, the verdict is public. Thus, judges do not have secrecy as it is believed. For that reason, the code provides for a separation by mutual consent to spouses, even though behind their intention there is a hidden determined cause that the spouses don't want to disclose in public, so that the public does not jeer at them. But the law provides for harsh measures to avoid newly married spouses who should request for dissolution of their marriage.

§2. Required conditions

A. Substantive conditions

328. One substantial condition is required : The spouses requesting for divorce have been living together for five years instead of two years required by the old code. There should be a reasonable time in cohabitation to prove that communal life is no longer possible for them.

B. Formalities prior to the seizure of the court

329. Before introducing an action for divorce by mutual consent in court the two spouses requesting for it have to prove in an authentic document the following elements :

- The list of both personal and real estate and their estimation in monetary terms;
- Settlement of each one's respective rights;
- The one who shall be provisionally awarded children's custody during proceedings and after verdict;
- Each one's residence during the proceedings in divorce;
- Amount of alimony that the needy spouse shall get;
- Each one's contribution to the children's education and care;
- Ways of visiting children by the spouse who doesn't have custody;
- Any other issue relating to the dissolution of their marriage and their property, such as liquidation of matrimonial conventions.

§3. Procedure for divorce by mutual consent

330. Divorce by mutual consent is a court decision. The procedure for divorce by mutual consent is composed of the following phases :

- Spouses agreement regarding their children and property during the probation period of and after divorce;
- Declaration of the will to divorce by the spouses' mutual consent;

- Attempt for the spouses conciliation;
- Court proceedings;
- Publication of judgement on divorce;

The period of attempt for conciliation takes at least one year.

A. Spouses' agreement in divorce request as regards to their children and property

331. Before presenting their decision of divorcing by mutual consent in the court, it is obligatory for spouses first to agree on the children's education and maintaining and the destinaty of their property during the probation period and after the verdict of divorce.

B. Declaration of the will to divorce by mutual consent and attempt for conciliation

332. The declaration of the will to divorce by mutual consent and attempt for conciliation are made up of the following procedures :

(1) The spouses requesting for divorce by mutual consent jointly and personally go to the president of the court and inform him of their intention in the presence of two witnesses of their choice.

(2) The president of the court tries a counseling and good piece of advice for conciliation, by showing them the consequences of their motion.

(3) If the spouses persist in their intention, the president gives them an act and at the same time they deliver the following documents :

- Their notified agreement regarding children and property;
- Their children's birth, adoption and death certificates.

The court clerk draws up a detailed report mentioning all that was said and done in executing legal provisions thereof.

(4) In addition, to give enough time to spouses requesting for divorce to think about the consequences of divorce and to attempt to reconcile them, **the president fixes them three other appearances** to review the declaration of their will. The president fixes the appearance date in the period of the following months : **the fourth, seventh and tenth month** starting from the date when the spouses have made the first declaration of their will to divorce.

(5) During the month of the day when the year has passed, starting from the first declaration, for the fifth and last time, the spouses together and personally, in the presence of the president, ask separately but in presence of each of them, the admission of divorce.

The president for the last time again gives the spouses a piece of advice that he feels useful for conciliation. In case of persistence with their motion, they are given act of their motion and receipt of the required documents and the court clerk issues a written declaration.

C. Court proceedings

333. Introduction of the proceedings in divorce and the judgement are made according to the following procedure :

(1) The court clerk communicates to the public prosecutor all element of the file for judgement.

(2) If the public prosecutor realises that all the required legal conditions are fulfilled he gives his conclusions in these words "**the law permits**", on the contrary case "**the law prohibits**". Submissions of the public prosecutor are filed with the court without any delay.

(3) **The court seized with the action of divorce proceeds on hearing without delay**. It verifies if all formalities and conditions required were respected. If it feels that conditions and formalities required were fulfilled the tribunal admits divorce. On the contrary side, the tribunal declares that there is no way to admit divorce and states motivation of its decision.

(4) The decision pronouncing or dismissing divorce can be appealed for and even be taken to high court for "cassation" (cancellation), in the respect of procedures and particular periods provided for by the family code in its articles 271 to 274.

D. Publicity of judgement of divorce by mutual consent (Art.275-277 FC)

334. In the same manner as in the case of judgement pronouncing divorce for determined reason, **in two months after the decision became definitive, the two spouses jointly signify or take to the civil status officer of the place where their marriage was celebrated**, the decision of the judge admitting divorce by mutual consent for being recorded in the civil status registers. Their **failure to do so is punishable**.

On each of the spouses initiative or that of the public prosecutor, the extract of judgement of divorce can be published in the official gazette of the Republic of Rwanda.

Section 4 : Effects of divorce

335. Divorce entails effects on spouses themselves, on their property, on their children as well as on the third persons, described as follows :

(1) **The definitive judgement of divorce** starts to produce effects on the following dates (art.247, 277 FC) :

- Concerning the property of spouses on the date of introduction of demand by mutual consent according to the case;
- Towards the third persons on the date of registration at the civil status office;
- Between spouses, the day the judgement was rendered.

(2) **The divorced spouses** may remarry, either between themselves or to other people of their choice. However in case of divorce caused by adultery the guilty spouse cannot remarry his/her accomplice.

(3) **The spouse at fault for which divorce was pronounced** loses all advantages conferred on him/her by the other spouse, either by the contract of marriage, or during the ongoing marriage. The spouse who won the case keeps the advantages conferred on him/her by the other spouse whether these advantages are stipulated reciprocal or not reciprocal.

The spouse who wins the case obtains on the property of the losing spouse allowance for necessities. This allowance does not exceed 1/3 of the revenue of that spouse. This allowance is revocable whenever necessity is no longer there.

(4) **Child custody on divorce is awarded** to the spouse who won the case, unless the tribunal does order it to the other spouse in the major interest of the children or to a third person. Such measures are always provisional and can always be revoked by the tribunal which ordered them.

(5) **Divorce doesn't deprive children born in marriage from their legal advantages or those provided by matrimonial convention of their father and mother**.
To whoever custody of children is awarded, the father and the mother keep respectively the right to supervise the upkeep and the education of their children and are bound to contribute in proportion to their respective capacities.

(6) **Particularly in case of divorce by mutual consent, a half of the spouses property becomes *de plano* the ownership of the children born in marriage**. The fate of the remaining property and the keeping of children are settled according to the divorced spouses prior consent.

Section 5 : Legal separation or separation from bed and board

336. Causes on which spouses can rely on to claim divorce may also justify the legal separation or separation from bed and board. The separation from bed and board is a state of releasing the ties of marriage characterised by the disappearance of life in common and the separation of property. It is different from the Rwandan practice of "*UKWAHUKANA*". Like in divorce matters, the law provides for two forms of separation from bed and board.

- separation from bed and board for a specific cause;
- separation from bed and board by mutual consent.

337. The code provides for the following essentials for the separation from bed and board:

(1) Separation from bed and board for a specific cause or by mutual consent follows the same procedure as divorce for a specific cause or by mutual consent.

(2) In principle, during the divorce procedure, the president of the tribunal orders provisional measures for separation from bed and board of spouses.

(3) The separation from bed and board does not aim at the dissolution of marriage i.e. the bed and board separated spouses remain united by marriage as a wife and a husband, the obligations issued from marriage remain, apart from that of cohabitation.

(4) In all cases the separation from bed and board has as consequence the separation of the common property of the spouses.

(5) When the separation from bed and board lasts for three years after registration of the enacting terms of the judgement in the registry of civil status, one of the spouses can ask for the transformation of the judgement of separation from bed and board into divorce.

Section 6 : Divorce of foreigners (Art.93-295 FC)

338. The code regulates divorce of foreigners living in Rwanda as follows :

(1) Divorce of foreigners for a specific cause or by mutual consent is governed by Rwandan law except if national laws of the applicant provide for the contrary.

(2) When one of the spouses is a Rwandan citizen, the divorce is governed by Rwandan law.

(3) In all cases the admissibility of causes of divorce remains regulated by Rwandan law.

CHAPTER III – BLOOD RELATIONSHIP AND FILIATION

Section 1 : Preliminary notion

339. Filiation is a link between a child and his parents. It is said maternal or paternal according to the link attaching the child to the mother or to the father. Filiation constitutes the base of blood relationship i.e. the relationship between a person and his/her parents.

340. The code distinguishes three types of filiation:

- maternal and paternal filiation;
- legitimate and illegitimate or natural filiation;
- filiation by blood and artificial filiation or filiation by adoption.

The code provides for juridical effects that arise from each type of filiation.

341. Legitimate filiation concerns children born of two legally married persons. It is worth noting that the legality of marriage varies according to the considered historical period of Rwanda.

(1) Up to the constitution of 24th December, 1962, were recognised as legal marriages:

- the civil monogamous marriage;
- the customary monogamous marriage;
- the customary polygamous marriage;
- the religions marriage.

2) From 24th December, 1962 to the constitution of 19th December, 1978, were recognised as legal marriages:

- the civil monogamous marriage;
- the religious monogamous marriage.

3) From the constitution of 19th December, 1978, the marriage recognised by the law is only the civil monogamous marriage.

It is therefore necessary to examine the legality of a filiation according to the contemplated historical period and the legal provisions concerning personal status which were into application during that period.

Section 2 : Legitimate filiation (Art.296-306 FC)

A. Principle and disavowal of paternity

342. A child conceived during marriage is legitimate and has as father, the husband of his/her mother.

Is presumed to have been conceived during marriage a child born from one hundred eightieth day following the celebration of marriage or in the three hundred days following the dissolution of marriage.

343. The husband can disavow a child if he proves that during the period of three hundred days before the birth of the child he was in physical impossibility of intercourse with his wife due either to the absence in place or to the effect of any other accident. The husband can as well disavow a child due to adultery relations of his wife. However the husband cannot in any case disavow a child alleging the natural impotence.

344. A child born before one hundred eightieth day of marriage cannot be disavowed by the husband in the following cases :

- If the husband has assisted to the establishment of the certificate of birth and has assisted it or put his fingerprint on it;
- If after the birth of a child or even before he has acknowledged to be the father of the child either in writing or verbally before the family council.

345. Disavowing paternity follows a judicial procedure. The action of disaffirmation exclusively belongs to the husband of the mother of the child. It is introduced before the tribunal of first instance at the domicile of the child.

The action in disavowing paternity must be introduced within three months if the husband was present at the birth of child, within three months after his coming back if at the time of birth he was not present, within three months following the withdrawal of the temporary deprivation of civil rights.

The action in disavowing paternity is directed against the child himself/herself. If he/she is a minor or deprived from exercising certain rights, the action is directed against the *ad hoc* guardian designated by the court. The trial is heard in the presence in the mother.

B. Evidence of legitimate filiation (Art.307-317FC)

346. The code provides that legitimate filiation is proven by the birth certificate written in the registry of civil status. In absence of the birth certificate the constant possession of the state of legitimate child is enough to prove filiation. In default, it will be proven by the declaration of witnesses accompanied by the commencement of proof in writing or by presumptions or other indices if they are serious enough to determine the admission of that declaration.

Section 3 : Natural filiation (art318-331 FC)

A. Introduction

347. The code makes no distinction between natural children. Contrary to the ancient code of family, the new code does not distinguish between simple natural children, natural children born in adultery and natural children born from incestuous intercourse.

In order to enforce the natural child's legal rights as being legitimate child, his authors must first recognise him/her. The code provides for three modes of establishing the filiation of a child :

- Legitimisation resulting from subsequent marriage of his/her father and mother;
- Volontary recognition;
- Forced recognition.

348. Legitimised or recognised children by their authors have the same rights and obligations as legitimate children but only towards those who recognised them.

Equally children whose paternity or maternity is established by the tribunal following the action in search of paternity and maternity has the same rights and obligations as a legitimate child towards the concerned author only.

B. Legitimization and voluntary recognition of a child

349. Natural children are legitimised by the subsequent marriage of their father and mother according to the law.

350. Equally, every natural child can be recognised by his/her father and mother.

The recognition of the child by one of the spouses has effects only towards the one who did it. However, the **consent of another spouse** is required except in the **case of separation** of property.

One can question the fate of the child to be recognised in case another spouse doesn't consent. The code is silent about the objection from the other spouse. Since the code doesn't make compulsory the consent of another spouse in case of separation of property it would be in the interest of the child that the recognising spouse apply for the modification of the community of property to the separation of property.

In any case, recognition of a child is done on his birth certificate or after in an authentic deed in exclusion of the testament.

C. Forced recognition of a child

351. Judicial means of ascertaining paternity or maternity is the action of paternity or maternity.

The action of establishing paternity is admissible in the following cases:

- The case in which the mother of a child was kidnapped;
- The case of arbitrary sequestration or rape of the mother;
- The case of captivation of the mother by fraudulent manoeuvres, misuse of authority, promise of marriage or betrothals;
- The case of extra-marital cohabitation;
- The case of written or non-equivocal acknowledgement of paternity;
- The case of a man who accepted the upkeeping, education and treatment of the child as his.

352. The action in establishment of paternity is a personal action to the child and is introduced before the tribunal of first instance of the residence or the domicile of the child. Introduction

of the action is limited to a period of 5 years after the child reaches majority. If the child is still a minor, the action is introduced by his father, mother or the guardian.

The action remains even after the death of the mother or father. The action is not transmissible to the heirs of the natural child, however, they have the option to continue the action started by their author if he dies before finishing it up.

Section 4 : Filiation by adoption (Art.332-342 FC)

A. Principle and effects of filiation by adoption

352. The code holds a principle that adoption must be based on a just cause and must have advantages to the adoptee. The concern of the legislator is mainly to help needy children, abandoned children and those for whom it is necessary to find a family on which should fall the burden of supporting the child.

353. Filiation by adoption has the following effects :

(1) The adoptee has the same rights and obligations as the legitimate child of adopter.
(2) The adopter exercises all the attributes of parental authority over him/her as his own legitimate child. However, the rights of the adopter have the following limits (Art.339FC):

- The adoptee and his descendants have no right to succeed on the property of the parents of the adopter;

- If the adoptee dies without descendants, the assets of property given to him by the adopter or acquired in his succession which still exist in nature at the moment of the death of the adoptee return to the adopter or to his descendants;

- If in the lifetime of the adopter, the adoptee dies and also his descendants die without descendants, the adopter succeeds the assets of property he had given to the adoptee. This right is not transmissible to his heirs;

(3) The adoptee keeps the links with his natural family and retains his rights and all obligations;

(4) The adoptee keeps the surname and given name he received at birth;

B. Substantive conditions for adoption

1. Conditions concerning the adopter

354. The adopter must meet the following conditions
(1) Be aged of 35 years at least;
(2) Be aged of 30 years at least for one of the spouses if adoption is to be made jointly by the spouses married since 5 years;
(3) Age of 21 minimum if the child to adopt is the child of one of the spouses;
(4) A difference of 15 years between the age of the adopter and the adoptee and 10 years if the adoptee is a child of one of the spouses.

(5) The consent of the other spouse if they were not separated from bed and board.

355. It is worth to mention that the legal conditions concern essentially the age of the adopter and the duration of the marriage, essentially for the following reasons :

(1) It is important that the adopter be sufficiently of age compared to the adoptee, as it is for the natural fathers and mothers;

(2) It is important that spouses have sufficient experience of conjugal life and think of what adoption is. Generally adoption permits spouses without children to have them.

2. Conditions concerning the adoptee

356. There are no particular conditions concerning the adopted person; all the procedure aims at facilitating adoption:

(1) There is no condition of age, even a person of age can be adopted;
(2) Prohibition of concurrent adoption at the same time apart from that of two spouses;
(3) Each person can be adopted even in the lifetime of his/her father and mother;
(4) The consent to adoption of a minor by his father and mother, the tutorship council or the person vested with custody, depending on the case;
(5) Consent of the adoptee if he is at least 18 years;
(6) Consent of the spouse of the adoptee if he/she is married.

C. Procedure of adoption and revocation of adoption

357. Procedural formalities to adoption are accomplished in the presence of the civil status officer of the domicile or the residence of the person to be adopted.

Adoption is established by an authentic deed of the civil status officer with all consents required.

358. Concerning an orphan without father and mother, after adoption in the presence of the civil status officer, the consent of the tutorship council or the guardian of the child to be adopted is submitted to **“ratification”** by the tribunal of first instance of the domicile of the adopted. The tribunal decides without motivating its decision, by stating in the following terms **“Adoption is ratified”** or **“Adoption is not ratified”**.

359. Adoption may be revoked by the tribunal on demand of the adopter. If by ungratefulness the adoptee becomes unworthy of the goodness he benefited.

The adoptee or the public prosecution may equally ask for revocation of the adoption before the tribunal for serious causes.

FOURTH PART – MATRIMONIAL PROPERTY

I- MATRIMONIAL REGIMES
II- LIBERALITIES
III- SUCCESSIONS

CHAP I – THE MATRIMONIAL REGIMES

Section 1 : General notions

§1. Notion and general principles governing matrimonial regimes

360. The matrimonial regime is understood as a body of rules that govern in a specific way the patrimonial agreements deriving from marriage. Put otherwise, those rules relate to the property of spouses, their powers upon that property and financial agreements between them or with third persons.

361. The autonomy of will or freedom of matrimonial regime is the power granted to spouses to choose or determine their own regime, constituting thus the basic rule. The contract by which the spouses determine their matrimonial regime is referred to as "the contract of marriage" but this should not be mistaken for "certificate of marriage" whose effect is to create marriage bonds.

Where spouses failed to conclude the contract of marriage, their relationships as regards to their patrimony automatically fall under a legal regime i.e. the matrimonial regime provided for by the law.

362. However, the freedom of contract is not absolute : the intending spouses do not determine their matrimonial regime as they like it to be, restrictions are prescribed by the law, as we shall examine them later.

Though the freedom of matrimonial regime is recognised in some countries, this principle is not of general application :

- In some countries, only one legal matrimonial regime is imposed upon spouses, but with the possibility offered to them of making minor modification on it by way of contract of marriage;
- In some other countries including Rwanda, the law grants the spouses the free choice between two or more regimes restrictively provided for by the law.

§2. Different types of matrimonial regimes

A. Introduction. Primary and secondary matrimonial regimes

363. In most countries including Rwanda, there exist two categories of rules that govern matrimonial agreements between spouses as regards to the management of their property.

The first category is composed of imperative rules, imposing on spouses as a matter of right in the ongoing marriage, without any possibility of deviation or derogation.

Example: *Duties incumbent upon spouses as regards to the patrimony such as the duty of assistance, mutual obligation of support, maintenance of children, contribution to household expenses, alimony to the other spouse and the obligation of alimony towards needy ascendants and parents-in-law.*

All these rules form what the legal writers generally call the "**primary**" matrimonial regime for they are basic rules regulating the effects as to the patrimony of a household, whatever be the patrimonial regime chosen by spouses.

The second category is composed of rules that are governed by the autonomy of the will granted to spouses i.e. their freedom of assessment, according to the way the best they think running their union, the manner they want to organise their patrimonial relationships as well as to the specific features of their familial, professional and financial situation.

These rules constitute what the legal writers call "**secondary"** matrimonial regime of spouses for they are additional rules, according to the choice of spouses, to the primary rules imperatively imposed upon them.

364. In principle, the rules regulating the secondary matrimonial regime can be entirely elaborated by spouses themselves by means of "contract of marriage". Though with that contract the spouses choose a specific secondary matrimonial regime which is referred to as a "**conventional regime**" for it derives from a contract between spouses.

However, not all spouses conclude the contract of marriage. Therefore the legislator provides for the secondary regime as a supplement and this is referred to as **"common" or "legal"** for it is organised by the law.

365. In current language, the term "matrimonial regimes" is used to stand for secondary matrimonial regimes and it is that term that shall be used in further details.

B. Types of matrimonial regimes

1. Basic principle

366. All matrimonial regimes are indistinctly based on the idea of mutual assistance of spouses for they relate to the marital union. It is that idea that govern the setting up of rules related to the property of spouses, their respective powers as well as their duties towards each other and *vis-à-vis* third parties, even in case of divorce as well as after their death.

All the regimes, even though in various ways, take their source in that fundamental idea of mutual assistance.

367. The matrimonial regimes can be classified into three categories according to the contribution of each spouse to the patrimony:

- The regimes of community type;
- The regimes of separation type;
- Mixed regimes.

2. The regimes of community type

368. In these kind of regimes, both spouses bring into the marriage for the whole duration of their marriage a set of assets referred to as "community" or "common estate". Common estate includes, as a matter of right, certain assets allocated to the maintenance of the household namely all expenses needed for common debts.

In principle, in the case of dissolution of the regime, spouses are granted equal rights on the common patrimony.

Generally, the regimes of community type differ according to two salient criterions :

- composition of the common patrimony;
- management rules.

2.1. Categorisation based on the composition of the common patrimony

369. As a general rule, the regimes of community type include the following regimes:

-Community of movables and acquests;
-Community of earnings and acquests or limited community of acquests;
-Community of property.

370. **The community of movables and acquests**. The community includes all movable things belonging to the spouses i.e. those they possessed before marriage and all to be acquired during the marriage either on onerous or gratuitous title as well as earnings and immovables acquired on onerous tittle during the marriage and thereby excluding immovables possessed by spouses before marriage or acquired on gratuitous title during the marriage.

Such a regime particularly fits to agricultural based societies where land capital is still valuable. In the mind of the people from those societies, families don't accept to transfer land capital from an ancestry to another by sole marriage.

371. **The community of earnings and acquests or limited community of acquests.** Are included in the community, professional earnings of spouses and the acquired property after entering marriage; the common patrimony is limited to the only property acquired during the marriage.

The community comprises the only earnings of spouses as well as movable or immovable property acquired on onerous title during the marriage thereby excluding movables and immovables possessed by spouses before marriage or acquired on gratuitous title during the marriage.

372. **The community of property**. It is the community of the whole property. It includes all present as well as future movable and immovable property belonging to spouses except for all the things that are attached to their person.

2.2. Classification according to the role of each spouse in the management

According to the role of each spouse in the management of the patrimony, the regimes are generally classified as follows :

(1) The regime that confers on the husband the exclusive management of the property.

According to the principle of unity of management and enjoyment, the husband manages the whole property, the consent of the wife being exceptionally required for some important acts. This is the regime that prevailed in traditional Rwanda.

(2) The regime that confers on the wife the management of some property referred to as "reserves".

(3) The regime imposing *the plain equality between spouses* as regards to the patrimony. This is the position of the Rwandan law regulating patrimonial agreements of spouses.

3. The regimes of separation type

374. In those regimes, spouses keep their respective patrimonies separated during their ongoing marriage. The spouses give up the idea of constituting the common patrimony.

The contribution to the household expenses is made up either by :

- personal contribution of spouses;
- allocation of some assets of property to the community of life.

375. Depending on a given country, as regards to the regimes of separation type, a distinction is usually made between :

(1) The regime of separation of property also referred to as " total separation of property".

In this kind of regime the spouses keep their respective properties totally separated including earnings as well as debts; this is the current regime in most countries of the common law system, characterised by the English tradition.

(2) The regime of "*separation of property with community of acquests*". The spouses form a "common patrimony" composed of acquired property on onerous title in the course of the regime. The common patrimony so constituted is used to cover household expenses.

(3) The regime of separation of property "*without community*" or "*with union of estates*". The respective properties of spouses remain distinct but the husband is entrusted with the power to enjoy all the property belonging to his wife.

(4) The "dotal" regime.

The husband is entrusted with the power to enjoy dotal property of his wife.

Among all the regimes of separation type, the most current is "**the regime of separation of property**".

4. Mixed regimes

376. These regimes tend to combine a regime of separation of property with some characteristics of community regimes and thus combines the advantages linked to these two types of regimes. At the dissolution of marriage due to death, spouses are given proportional interest on earnings.

377. Mixed regimes have the advantage of offering spouses motivation to work. However, because of duties incumbent to spouses as regards assistance and support, spouses consent to on the fact that each of them took advantage in the other for his enrichment, and therefore should claim proportional sharing of property based on his initial contribution.

Section 2 : Matrimonial regimes in Rwanda

A. Basic principles and types of regimes

Rwanda legislation related to matrimonial regimes is based on equality between husband and wife, mutual assistance and freedom of will.

As already mentioned, the legislation is contained in the "law n° 22/9 of 12th /11/1999 supplementing Book one of the civil code and instituting Part five regarding matrimonial regimes, liberalities and successions".

The principle is that "spouses themselves **determine, in total liberty, their matrimonial regime** by concluding their matrimonial conventions within the "contract of marriage". As said above, "contract of marriage" should not be mistaken for the "certificate of marriage" which declares the existence of marriage bonds between two persons, a man and a woman.

The choice of the matrimonial regime of the future minor spouses and major interdicted persons is made by those who exercise parental authority over them and their tutors respectively.

However; **this freedom of choice has got limits**: The Rwandan legislation provides for three matrimonial regimes within which spouses have to choose :

- Community of property
- Limited community of acquests
- Separation of property.

The limitation of the choice of matrimonial regimes was put in place in order to avoid the disorder and hesitations in the management of family property as well as to facilitate the choice of spouses.

380. **Spouses are neither obliged to conclude a contract of marriage nor to choose one of the matrimonial regimes provided for by the law**. Failing to choose or to conclude marriage contract, the law chooses for them *ex-officio* "**the regime of community of property**", a regime preferred by more than 90% of the questioned Rwandans during the "*travaux préparatoires*" (preparatory works) of the said law and is moreover similar to the Rwandan customary matrimonial regime; that is the "**common or legal regime**" to Rwandans.

B. The Regime of community of property

382.The regime of the community of property is a contract by which the spouses opt for a marriage settlement based on joint ownership of all their property-movable as well as immovable and their present and future debts. Their entire property constitutes the community and is composed of each one's property before marriage and that acquired by each or both of them during the marriage.

383. The community does not hinder each spouse from owning personal property which cannot be separated from the beholder. The doctrine classifies the following among the

property of a personal character that is to say, personal property not forming part of the community:

(1) The property for personal use like clothes, toiletries and ornaments;
(2) Intellectual property and artistic rights;
(3) The right to the redress of corporeal or moral prejudice that is personal;
(4) The right of one of the spouses to pension, life annuity or allowance of the same nature;
(5) The rights resulting from personal insurance;
(6) Tools and instruments used in exercise of one's profession.
(7) Customers;
(8) The rights linked to the quality of associate by one of the spouses in the company with nominal shares.

C. The Regime of limited community of acquests

384. The regime of limited community of acquests is a contract by which spouses agree to pool their respective property owned on the day of marriage celebration, to constitute the basis of the acquests as well as the property acquired during marriage by a common or separate activity, legacy or succession.

D. The Regime of separation of property

385.The regime of separation of property is a contract by which spouses agree to contribute to the expenses of the household in proportion to their respective abilities while retaining the right to enjoyment, administration and free disposal of their personal property.

In the regime of separation of property, the property of each spouse is totally separated from that of another, as well as their incomes and debts. However, they both contribute to household expenses like accommodation, food, the sleeping equipments, leisure, clothing, health care, maintenance and education of their children, the payment of common debts.

§2. Modes of property Management

A. Introduction

386. When analysing spouse's property relations, the following modes of family property management are observed:

- Joint management;
- Concurrent management;
- Reserved management;
- Exclusive management.

(1) Joint management implies that any act must be accomplished by common consent of spouses. This has some advantages and disadvantages: in case of absence of one of spouses in a situation of urgency.

This mode may also lead to poor management due to lack of sufficient initiatives.

(2) Concurrent Management implies that each spouse, without any distinction in accordance with his/her appreciation of family interests, may accomplish an act of Management. This mode presents real advantages because it allows each spouse to take an initiative in accordance with his/her talents and capacities. It can however be disadvantageous as one of the spouses may unlimitedly accomplish thoughtless acts.

(3) Reserved Management implies that the responsibility of management is conferred on of the spouses at the exclusion of the other. Generally, management is conferred on the husband at the exclusion of the wife.

387. It is possible, and it is important for family management, to combine advantages of different modes of management, notably, joint management, concurrent management, and reserved management in the sole interest of the family regardless of the matrimonial regime, community of separation.

B. Legal modes of management (Art.14-22 MLS)

388. **The intending spouses agree between themselves on the one to be responsible for management of the common property. Nevertheless, spouses have the same power to the follow up and representation over the common property**.

During the preparatory works of the law, there occurred hot debates regarding the above question, some supporting that the responsibility of management should be given to the husband, because he is in principle the head of the family, while others emphasised that it should be given to the wife who moreover carries out daily management of the family property. After the debate, it was decided that the responsibility of management must be exercised by both of them, in respect of the principle of equality between the wife and husband.

Each spouse administers his/her personal property; this especially concerns the separation of property and personal property in the limited community of acquests. The property with a personal character in the regime of community of property are also concerned (Art.17 MLS).

389. The management of personal property may be withheld from a spouse in case he/she becomes extravagant or negligent and the household is prejudiced as a result. In that case, management is given to the other spouse or a third party if so required. Such a measure aims at the protection of the family against thoughtless acts that may prejudice the family.

390. **Debts contracted for household needs** are due by both equally; **they are part of common debts**.

In principle, the doctrine includes among **the common debts**:

1° The debts contracted by both spouses;
2° The debts contracted by one of the spouses for household needs, education of children and interests of their common property.

The debts contracted by one of the spouses **for the needs of the household**, even if he/she paid them from his/her personal property are reimbursed from the common property.

Such debts may be those in connection with conjugal residence and other household needs, household equipment, transport, food and clothing, health care, leisure, corporeal maintenance, maintenance and education of the children.

If the common property cannot cover the entire common debt, the amount is paid in equal parts from the personal property of each spouse. In case of marriage under the regime of the separation of property, the common debts are paid by each spouse in equal parts from their personal property (Art.23 MLS)

391. Regardless of applicable patrimonial regime, the donation from common property or an immovable property even if personal requires the consent of both spouses. This measure aims at protecting the household against thoughtless acts that may be accomplished by one of the spouses.

392. During marriage, **the spouses may change their matrimonial regime** by forwarding their request thereof to the court of first instance either for the interests of the household or in case of remarkable changes in the situation of both spouses or one of them.

393**. In case of divorce, separation of bed and board or dissolution of the community**, the common property (of which, the common debts) is shared equally by both spouses.

394. Regardless of the applicable matrimonial regime, **spouses are bound to obligations as well as rights resulting from the sole act of marriage**, and the rules guiding the parental authority, legal administration, of their children's property and tutorship.

Example*: If one of the spouses has no property, the one who has it is the one who contributes alone to household expenses without murmurs. This becomes obligatory in order to respect the respective obligations of spouses to contribute to household expenses, assistance and obligation to provide for alimony.*

C. Guarantees of creditors

395. In case of recovery of the debts to be paid by one of the spouses, **there may be confusion between the husband's and wife's separate estate and joint estate of husband and wife to the prejudice of the creditors**.

Such difficulties may be found especially in the case of limited community of acquests and separation of property regimes. It becomes easy for the debtor in bad faith to agree with his/her spouse that the later should register in his/her name the separate estate of the debtor spouse capable of being seized by the creditor.

The Rwandan legislation does not provide for a solution to such problems, that what should prejudice creditors.

396. **Purporting to insure the creditors protection**, the doctrine and legislations of countries sharing with Rwanda the same legal tradition put up a presumption that "**with the exception of the evidence to the contrary, all property of spouses is joint estate and thus constitutes the common pledge of creditors**".

It is thus upon to the spouse who is not the debtor to prove that such an asset of property is belonging to him/her and not included in joint estate. If not, the creditors should have real difficulties to point out the separate estate of debtor to be seized.

§3. The contract of marriage

A. Basic principles relating to the contract

397. As stated in the first section of this chapter, the spouses have fully liberty to rule out the provisions organising their matrimonial regime in a "**contract of marriage**" The regime agreed upon by spouses themselves is called "**conventional regime**" for it is resulted from a contract.

398. There cannot be any contract of marriage, without marriage even though the contracting parties live together. The value of the contract of marriage depends on the marriage of the contracting parties.

The contract of marriage is null and void if the intended marriage does not exist. However, the nullity shall only affect the clauses concerning the planned marriage. Other clauses shall remain valid.

Example: The acknowledgement of debt, the acknowledgement of natural child, the donation remain valid.

399. On the other hand, an authentified deed concerning the contract of marriage continues to have a probatory force like an authentic deed, even if the matrimonial agreement has become null and void.

400.The contract of marriage is also null and void if the marriage celebrated happens to be nullified. However, the spouse in good faith may put forward, for the past time, the effects of the matrimonial regime he/she had stipulated. That is an application of the theory of putative marriage which, despite a decision annulling it, may have legal effects in favour of the spouse in good faith up the date of that decision.

401. The contract of marriage enters into force at the time of the celebration of marriage, and not before.

The nullity of the marriage contract puts spouses in the same situation as if they have never concluded a contract.

The effects of the contract of marriage end at the time of the dissolution of the marriage resulting from divorce or death.

402. The contract of marriage cannot be contrary to good morals and public order.

B. The procedure of setting up the contract of marriage

403. The contract of marriage between bride and groom is set up according to the following procedure (art.14-16 MLS):

(1) Before reading the banns, in principle at the time of registration of bride and groom, the Registrar shall explain to the bride and groom to the various matrimonial regimes to allow them to choose one suits them.

(2) The contract of marriage can be set up in three forms:

- By an authentic deed officiated by a public officer;
- Under private agreement;
- By verbal declaration.

(3) The verbal declaration or the private agreement on matrimonial regime is presented or declared before the Registrar of the place where the marriage is celebrated by the bride family and two witnesses. The authentic deed on matrimonial regime (contract of marriage) is also presented to the registrar officer.

The matrimonial regime is written down respectively in the registers, deed and booklet of marriage.

(4) In addition, where one of the spouses is a business person the contract of marriage and its modification shall be published in accordance with the legislation on commerce and business persons. That publicity is necessary to insure the protection of the public against possible bad faith of business persons. Ordinary, the credit is often used in commerce. It is important that creditors be aware of the situation and standing of their businessman debtor’s property without any confusion made between his/her property and that of his/her spouse. The publicity of the contract of marriage facilitates creditors to know the size of credibility for the recovery of their debts.

CHAPTER II – LIBERALITIES

Section 1 : Notions and basic principles (Art.25-31 MLS)

404. **Charity and mutual aid** are normal in human beings relationship, especially between parents and friends.

A liberality or donation is an act by which a person transfers to another by gratuitous act a patrimonial right, without expecting any counterpart. A donation is characterised by the idea of charity, without any other intention; a liberality done with the aim of popularising the donor is void.

405. The principle is **that everyone has the right to make donation from his or her own property**. However, in order to avoid the dissipation of the patrimony, the law may impose restrictions on the act of donation as far as the family interests are concerned.

In this regards, the law provides **for the transferable quota and the reserve of succession**. **The Reserve of succession** is intended to insure the protection of the interests of the successors, especially, those of descendants who may be prejudiced by the dissipation of the property made by a person unconcerned about the family interest.

406. **The transferable quota** is a part of property owned by a person from which that person has the right to make donation.

The Reserve of succession is a part of property that everyone is obliged to keep for his/her successors determined by the law; **the reserve of succession shall not exceed 4/5 of the patrimony of the donor if he/she has a child, and it shall not exceed 2/3 of the patrimony if the donor has no child**.

407. Moreover, **the restriction imposed on the right to make donation** in order to avoid dissipation of patrimony are justified by two elements:

- The protection of the donor himself or herself and his family;
- The protection of the creditors, interests.

(1) The dissipation of the property is prejudiced to the interest of the donor himself / herself and his/her family, owing to the fact that you'd almost think that are chargeable to the society.

(2) The dissipation of the property is also prejudicial to the interests of creditors, owing to the fact that their pledge constituted by the property of their debtor is found reduced; where from the maxim "the payment of debts precedes donations".

(3) It is due to those prejudicial effects of the dissipation of the patrimony that the law provides for the placing of the prodigal under legal administration and for the appointment of a tutor to administer that spendthrift's property.

(4) That is also why any donation prejudicial to the interest of the family or to those of creditors is null, and subject to retrocession.

408. **Every legal heir may claim retrocession in the reserve of succession**, the part of donation compassing the surplus of the available quota. However, a property which has been given away three years earlier, starting from the date when the succession goes through probate, cannot be retroceded. **The children and the surviving spouse** are the sole beneficiaries of the reserve of succession (Art.78-79 MLS).

409. The law provides **for four types of donation (Art.26 MLS)**:

1° Donation *inter vivos*;
2° Ascendants partition;
3° Legacy;
4° Promised donation.

The donation here is that one which confers a real utility to the beneficiary, whose real effect is to increase the property of the beneficiary. **It is different from mere gifts or presents**, such as marriage gifts and party gifts.

410. A donation may be made under four forms:

1° By an authentic deed;
2° Under private agreement;
3° By a verbal declaration;
4° By a simple transfer.

Whichever should be the form, to be legally valid, any donation must be justified by the idea of charity and the acceptance by the beneficiary.

411. The donation is a contract with the obligation to hand over the thing which is the object of the contract. **The donation is therefore a recoverable debt**.

412.A donation is susceptible of nullity. **Shall be void**:

1° Any donation submitted to conditions for which the execution depends on the sole wish of the donor;

2° Any donation that requires the beneficiary to pay the debts or other charges of the donor, other than those existing at the time of donation or those mentioned in the act of donation;

3° Any donation *inter vivos* in which the donor keeps the right to dispose of one or several objects donated;

4° Any donation which is contrary to the public order and good morals;

5° Any donation involving the property of another person.

Everyone who makes a donation must transfer unhesitatingly the ownership of the object donated to the beneficiary, “ No liberality without relief”.

Section 2 : Donation inter vivos (Art.33-41 MLS)

413. **The donation *inter vivos*** is a beneficial contract by which the donor irrevocably transfers a patrimonial right to another person who accepts it. That donation act takes place and is realised while the donor and donee are alive; this is reason why it is named donation "*inter vivos*" to differentiate it with "legacy".

414. It can happen that a donation simulates an act by onerous title, as an act by onerous title may simulate a liberality. The act by onerous title and the disguised donation are reputed and dealt with as such.

The act by onerous title which simulated a liberality is often used by persons who want to avoid certain rules such as those which impose to vendors the fulfilment of Administrative authorisations (such as the sale of lands) or those which impose the payment of tax calculated to selling price (such as the proportional right of the state). The donation which simulates an act by onerous title often exists between individuals who intend to hide the acts contrary to law and good morals (such as the payment of a concubine).

415. Besides a donation which simulates an act by onerous title, there exist other forms of donation called "**indirect donation**" (Art.35 MLS).

Examples:

- Any stipulation in favour of another person;
- Any letting off of debts;
- Any renunciation which conveys a right;
- Any payment for another.

However, to be qualifies as donation, all those acts have to be executed gratuitously and without simulation.

416. Besides gratuitousness and the acceptation of the donee, **the donation *inter vivos* is characterised by following elements**:

- The irrevocability;
- The immediate execution;
- The handing over of the thing given.

417. In principle, **a donation is irrevocable**. However in some exceptional circumstances, the revocation is possible.

1^0 In case of non-fulfilment by the donee of the obligations under which the donation was made.

2^0 In case of ingratitude.

418. **The donation shall be revocable due to ungratefulness** only in case of:

1^0 When the donee has intentionally caused the death or has made an attempt on the life of the donor;

2^0 When the donee has been found guilty of grave physical cruelty or insult towards the donor;
3^0 When the donee refuses to help and assist the donor when in need.

It should not be suitable for the better human relationships that a an ingratitude continues to enjoy good deeds of a disappointed donee. It would be unreasonable to favour an ingratitude.

419. It is opportune to clarify some concepts:

(1) **Grave physical cruelty** means the acts that are harmful to physical integrity of an individual such as assault and battery, poisoning or any other harmful act.

(2) **Grave insult** means the acts that are harmful to moral integrity of an individual such as acts that seriously cast a slur on him, acts that harm his reputation, his image in society and his privacy.

(3) **Help and assistance to donor**, according to the doctrine, deal with:

- Health care such as drugs in case of illness;
- Food in case of famine;
- Helps during the last moment of the life.

And that help and assistance become compulsory in case:

- The donor has no other means, and has no other parent to take care of him;
- The donee has means;
- The donee has really benefited from the donation and the profits persist.

420. **The donations between intending spouses are revocable** whenever the marriage is not celebrated. Normally such donations are based on communal life planned between a man and a woman. Since then, in case of breakdown in engagement or in case the marriage has not taken place for any reason, the base of donation does not exist anymore.

421. In event of revocation of the donation, the donee shall not be obliged to return the fruits and all any other sort of benefits he has gained from it.

Section 3 : Promise of donation (Art.44-45 MLS)

422. **The promise of donation** is a contract of donation based on prospective property.
The principle is that any donation should be without any delay; and the thing donated be released and handed over to donee, “the donation implies handing over” and “there is no claim for promise of donation”.

In principle, **the promise of donation is not legally admitted**. This prohibition comes in order to take precaution against swindlers and other individuals of bad faith who make promise of donation of things that they do not possess or those which should not be released.

423. **However, the law admits the promise of donation made between close** relatives or relatives by marriage. Since then, the promise of donation shall be valid between:

- Intending spouses;
- Spouses;
- Parents and their children, or their descendants born or to be born.

Normally, such individuals who are closely related does not need to swindle or cheat each other.

It is clear that, the promise of donation between individuals other than the mentioned above is void.

The promise of donation shall be valid even when the donor has died.

Section 4 : Ascendants partition and legacy

424. **Ascendants partition** (*itanga ry'umunani*) is an act accomplished by parents while they are still alive, whereby they share patrimony between their children or their descendants who acquire, each for the portion devolved to him, full ownership. This partition shall be regarded as the accomplishment of parent's duties to educate their children and to provide them with a personal patrimony.

All children, without distinction of sex have a right to the partition made by their ascendants excluding those banished due to misconduct or ingratitude. The ascending partition constitutes in fact a settlement of parties by anticipation on succession.

425. **The legacy** is patrimony devolved as a donation by the owner while alive and for which the donee called "legatee", acquires full ownership only after the death of the donor.

The testament or **will** is an act by which a person decides on the destination of his/her patrimony after his/her death and fixes provisions of his/her last wishes.

426. It should be noticed that **legacy is different from ascendants partition** owing to the fact that beneficiaries of a partition enter immediately into patrimonial rights devolved while the donor is alive, contrary to legacy where the legatee acquires full ownership after the death of the donor.

Another distinctive element between the legacy and the ascendants partition is that, beneficiaries of a partition are only descendants of the donor.

427. Everyone has the right to make testament; he may, while alive, "**express his wishes relating to the destiny of his property after his/her death, and also express his/her last wishes provisions** ".

The last provisional wishes may relate to the form of funeral and the place of burial, acknowledgement of a child, the custody and education of children, executors and miscellaneous.

The testator, while alive may at any time, change or revoke totally or partially his/her will.

428. **The testament may be verbal, written or authentic.**

The testament is a personal act: the testator must exercise his testamentary power himself, and **no one else is allowed to make it on his behalf.**

However, **the testator may be assisted** by someone else for the drafting of the will, especially if he/she cannot write or can but is unable to draft it. The testament so drafted must on sanction of nullity be legalised by the registrar or the notary of the place where it was drafted and in presence of the testator.

429. An individual may bequeath whole or part of his/her property. Thus it may be a legacy by universal title, a legacy by general title and a legacy by particular title.

(1) **Universal legacy** is that which the legatee acquires the whole succession; it provides to the legatee possible vocation to the whole property of the testator. This does not mean that the legatee should be considered as universal legatee if he/she collects actually the whole property.

(2) Portion of legacy, may be reduced by other eligible persons such as rightful heirs who cannot be disinherited. In case there is no competitor, the universal legatee collects the whole. The universal legatee in fact, is not characterised by the size or extent of his portion, but by the title to inheritance.

(3) The presence of beneficiaries of the succession reserve does not exclude the legacy by universal title. In case beneficiaries of the succession reserve come to succession at the same time with the universal legatee, their successoral rights are reduced to the transferable quota.

(4) **The legacy by universal title** is that which the testator bequeaths a share of patrimony which law allows to alienate. The property bequeathed in that share of patrimony is not individually determined, they are rather taken in their universality. The legacy by general title may bear five different forms:

- Share of the whole patrimony;
- All immovables;
- All movables;
- A share of patrimony of immovables;
- A share of patrimony of movables.

(5) **Legacy by particular title** is that which confers the right to a particular thing or a thing which is determined.

CHAPTER III – SUCCESSIONS

Section 1 : Explanations and the main principles (Art.49-55 MLS)

430. If the person dies, he/she is not buried with the property he/she had. The property is given to those who are still alive.

How is this property transferred? How is it devolved? Who is supposed to divide the deceased's property? To whom? How is the selling off and sharing done? What share does the surviving spouse get? That of children? What is the share of the mother and father? The brothers' and sisters'? And those of blood relationship and those of relatives by marriage? How is the intestate property conflict solved?

All those questions are solved by law governing succession.

431. The succession can be either legal (*ab intestat*) or testamentary.
The legal successor or successor *ab interestat* is called legal heir or *ab intestat* or simply a heir. The testamentary successor is called legatee.

432. Succession is an act by which the rights and obligations on the property of the *de cujus* are transferred to the heir; the succession falls open at the death of the *de cujus* at his/her domicile or residence; It also falls open at the declaration of death because of absence. From that moment the transfer of the deceased's property is done, successoral vocation is fixed and it is from that day the capacity to succession is determined. Succession is done without discrimination of sex among children.

433. There are people who may be deprived of the right to succeed due to their loose behaviour or ingratitude. Thus, are not allowed to succeed therefore deprived of the right to succession any heir or legatee who (art.53 MLS):

(1) Was convicted of having intentionally caused the death of the *de cujus* or had made on attempt on his or her life;

(2) Was convicted of false accusation or perjury which could have resulted in the *de cujus* being sentenced to at least six months prison;

(3) Has, during the lifetime of the *de cujus*, deliberately broken off the parental relationship with him/her;

(4) Has deliberately neglected to provide the needed care to the *de cujus* during his/her last days of illness, although he or she was bound by law or by tradition to do so;

(5) Has abused the physical or mental incapacity of the *de cujus* by taking the whole or part of the inheritance;

(6) Has intentionally disposed, destroyed or altered the last wishes of the *de cujus* without his or her consent or has taken advantage of an invalid will.

434. Such a person said above is thankless, and usually, ingratitude is punished. The reason of exclusion to succession is based to wild behaviour among people who believe that the inconvenient person cannot succeed the victim, furthermore the exclusion motivate children to respect their parents.

The motive of exclusion moreover based upon the security of the people: **a person who rapidly wants to succeed a person hastens his death** by killing him/her, by attempting to his/her life, by betraying, by refusing to assist and aid in order to let him/her die of illness or hunger, **must be excluded to succession**. Its the same as that one who wanted to succeed alone by **using fraudulent means** to exclude other heirs of the *de cujus*.

435. **A person allowed to succeed has the right to option** that is to accept succession or refuses it in accordance with the following principle (art.86-89 MLS):

(1) None is forced to accept succession or legacy to which he/she is appointed to;

(2) Acceptance of succession is irrevocable and run from the day of deceased's death;

(3) The refusal to succeed considers the person who refused as not having been called to succession and that refusal is irrevocable;

(4) The refusal of succession is done in a written form and must be informed to a liquidator of succession or it can be done verbally to the liquidator in the presence of two witnesses;

(5) The hereditor who refuses succession must do it, within three months from the date, when he or she was informed by the liquidator of the succession;

(6) The acceptance of succession is done expressly by the heirs.

436. By refusal, the successor has one of the following objectives:

- not to pay the debts of the *de cujus* because of much debts the *de cujus* has in his/her patrimony;
- to give the advantage to other successors;
- To escape fraudulently from the obligation to give back the donation which was over the available quota.

Section 2 : Testamentary succession (art.47, 56-64 MLS)

437. In testamentary succession, the *de cujus*'s wishes are respected. The testament determines:

- the persons in charge of succession who are the legatees;
- the legacy, its nature and its extension.

438. The testament does not normally comprise all the *de cujus*'s patrimony. And often the testator keeps a part of the patrimony. It is important to say that property which the *de cujus* has not disposed of by testament shall be devolved in accordance with the provisions of *intestat* succession.

439. Moreover the testator is not free to decide upon the reserve of succession, which is to divide equally between the reserved heirs that are children.

It is for that reason that the reserved heirs may claim retrocession in the succession reserve of the part of the donation composing the surplus of available quota.

This means that the testament related to reserve succession is limited only to the sharing among children.

440. However, the testator can grant some children a most important part of legacy in comparison with others; the surplus of others' legacy comes from the available quota.

Example:

- *Callixte has in his patrimony one million (1,000,000 Frw) and has five children, among which three girls and two boys: Therese, Mary, Nadine, John and Peter.*
- *In accordance with law, callixte is allowed to dispose 1/5 of his patrimony, that is to say two hundred thousand (200,000); eight hundred thousand must set up the succession reserve.*
- *That 200.000 Frw can be freely donated, Callixte can freely dispose of 150,000 Frw to Therese and 50,000 to Peter without thinking of the others.*
- *Thus, each children will get as a part of succession: - Mary, Nadine and John will get 160.000 Fr each.*

- Therese will get 160,000 + 150,000 = 310,000 Frw
- Peter will get 160,000 + 50,000 = 210,000 Frw

Concerning the surplus given to Therese and Peter is like that callixte could have given it to his friends or to persons other than his children. In addition to that it is normal and acceptable that a father or mother pleased with one of his or her children can give him/her more than he/she gives to others due to his/her good behaviours and respect towards his/her parents. Otherwise that possibility of giving more pushes the children to respect their parents.

441. **Special legatees**. **A person can bequeath his/her patrimony to poors** (art.48 MLS). In that case the law provides:

- If those poor people are from a known place, their legacy is handed to the district of their residence, and given to those who are supposed to be assisted;
- If they are poor people unknown, the legacy is supposed to be given to all poor people of the sector in which the testator inhabited in Rwanda.

About the last point of view, **the law is not clear, whether the said sector is of residence or domicile of the testator**. If the testator is a foreigner it is understandable that the concerning sector is of his residence in Rwanda**. The problem arises when the testator is a Rwandan**. In principle a Rwandan is more attached to his domicile than to his residence. To put into enforcement the present disposition, it is more comprehensible that **those poor people are those of the place where the testator is more attached, those of his domicile**.

Section 3 : Intestate succession or succession by law

A. Determination of the successors. The main principles

442. In the testament, the testator determine his successors and the part of succession devolved to each of them. When the *de cujus* has not determined his successors and their parts of succession, the succession is done in accordance with the law. This means that the successor of the *de cujus* are determined by the law governing the person and the succession sharing of the patrimony is made in accordance with legal disposition. That is why the intestate succession is called “legal succession”, and the successors are called “legal heirs”.

443. It is noted that for the determination of successors, the law takes into consideration the family and matrimonial relationships. The relationships related to marriage are not taken into consideration in the matter of succession. Instead, the relationships taken into consideration are those of familial, the matrimonial relationship and brotherly relationship; the family and brotherly relationship are permanent whereas those matrimonial are precarious, just the duration of the cohabitation of the spouses. In addition, the law divides heirs in hierarchical order, some coming before other according to the parental nearest degree of the *de cujus*. Apart from the state in case of escheats (art.72-73 MLS), **the successors are only those with blood relationship with the *de cujus***.

444. The legal heirs and the modality of succession vary in accordance with the fact that the successory property makes the proper patrimony of the *de cujus* or the common patrimony with his/her spouse.

The proper patrimony is found especially in case of matrimonial regime of separation of property, and the regime of limited community of acquests or if the *de cujus* was not married.

The common patrimony is especially found in the community of property or limited community of acquests regimes.

It is then understandable that the matrimonial regime influences more on the determination of successor and on the modalities of succession.

B. Succession of the proper patrimony

445. In the case of marriage under the regime of separation of property, the order of heirs in succession shall be as follows:

1) The children of the *de cujus*;
2) The father and the mother of the *de cujus*;
3) The full brothers and full sisters of the deceased;
4) The half brothers and half sisters of the deceased;
5) The paternal uncles and aunts as well as maternal of deceased.

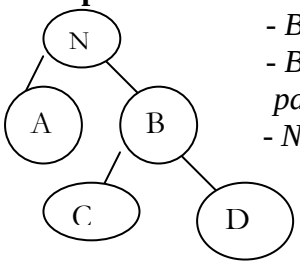
446. With the exception of father and mother of the deceased, the heirs deceased before the *de cujus* shall be represented at the succession by their descendants.

Each rank excludes the others in the succession order.

447. The successoral representation has been instituted with the aim of mitigating potential injustice which can arise to the application of the principle of hierarchical ranging of heirs based on the rank and the degree.

The succession representation is a juridical institution which allows to a more far successor to be on the way up in the degree for occupying the important rank in the place of a predeceased ascendant and has the aim to avoid that untimely death of the middle ascendant leads for the descendants to disruption in the natural devolution of their ancestor. For reaching this, the successoral representation enters the more far parent in the rank that would have normally been to the nearest predeceased parent.

Example :



- N, the de cujus have given birth to A and B.
- B has given birth to C and D
- B, died before father N, without receiving his part from his parent patrimony
- N also died after, ab intestat, here called the de cujus

- *In application of principle of hierarchical ranging of heirs in their ranks and each excluding the next, the whole patrimony of the de cujus would be devolved to his surviving child A.*
  This means therefore that the children of the predeceased B among which C and D would get nothing.

- *In the aim of removing the potential injustices, there has been instituted the "successoral representation" which permits grand-children C and B to occupy the place of their parent B deceased before the de cujus N and thus they rise for occupying the same rank as the de cujus's child A.*

- *Even though, the grand children of the de cujus come at the same successoral rank as A, the succession is not divided into three equal shares. Instead, C and D will share only the portion which would have devolved to his parent B if he would not have died.*

448. The half brothers and half sisters of the *de cujus*, paternal and maternal uncles and aunts, parents-in-law as well as brothers and sisters in law, who have no common ancestors with the *de cujus* **cannot succeed to an estate inherited by the deceased from his/her family**, unless it is proven that there is no other survivor among the descendants of the aforementioned ancestor. This provision has been provided **for preventing the transfer of such a property lineage to another** which could raise automatically the conflicts and disputes among families at the moment where a person would occupy the field from the family or the lineage other than his or hers.

C. Succession of common patrimony of spouses

449. In accordance with article 70 of the law governing succession, **the succession of common property of the spouses is made as follows**:

(1) In case of death of one of the spouses, the surviving spouse shall ensure the administration of the entire patrimony while assuming the duties of raising the children and assistance to the needy parents of the *de cujus*;

(2) When both spouses die leaving children behind, the latter shall succeed to the entire patrimony but must also assist their grandfathers and grand mothers. When the children are not blood related, the patrimony shall be divided into two parts and each child shall succeed to the part of his or her respective parent.

(3) When the spouses die without leaving a child behind the patrimony shall be divided into two, one half being allocated to the successors of the husband, the other being allocated to the successors of the wife;

(4) In the event that the widower or widow did not have a child with the *de cujus*, the former takes one half of the patrimony and the heirs of the *de cujus* share the other half.

(5) When the widower or widow does not fulfil his or her duty of assistance to the parents of the *de cujus*, the family council shall allocate to the parents the succession part of the deceased;

(6) In case the surviving spouse fails to fulfil his/her duties to raise the children of the *de cujus*, he or she is deprived of the ¾ of the succession which shall be given to the children;

(7) The surviving spouse who has no longer any children under his or her care and wants to remarry shall obtain full ownership of the ½ of the patrimony and another half shall be given to the deceased heirs;

(8) In case of remarriage of the surviving spouse who is still bound by the duty of raising the children of the *de cujus*, he or she shall obtain full ownership of ¼ of the succession and shall continue to administer the remaining ¾ for the benefit of the children.

(9) When the surviving spouse did not remarry but gave birth to an illegitimate child, the ½ of the patrimony shall, on the day when children entitled to inherit, be devolved to the children of the *de cujus* and the other ½ shall be devolved to all the children of the widow or widower in equal part without any discrimination between legitimate and illegitimate children.

450. Taking a look at the article 704 of the law which governs succession; it is noted that, its **translation in Kinyarwanda is different from French and English version**. However the English and French are pattern. In Kinyarwanda it is said that “when the widow or widower has no children with the *de cujus* and remarries…”. **The group words** “….. and remaries…” **does not appear in French and English version**, the problem is to know the original version.

451. Even though the law does not give the authentic version in the spirit of the present law, they must read, “… when the widow or widower does not have children with the de cujus…”, as it appears in preparatory works. Thus they have to follow the English and French version worded as: “when the widow or widower does have children with the *de cujus*, the half of

common patrimony comes back to him/her, and the other half being attributed to the successors of the *de cujus*".

452. Another question which is presented in the application of the article 70,1 of the law governing succession is the way the surviving spouse can "… **assume the responsibility to educate the children**…" where not all children have the same parents. The law doesn't give more precisions.

To answer the question given, then one can be inspired by the point 2 and 3 of the same article 70, which provide for a solution to the succession of children related not to same parents: the patrimony is divided into two parts, each child being called to succession of his or her parent. This means that in present case of article 70,1 **the education of some children will be assured by the part which comes back to the surviving spouse at which it's added to the part of the share of the *de cujus*'s succession.**

The education of children which are not related to the two spouses will only be assured by the party of the share of succession of *de cujus*. Practically the common patrimony is divided into two equal parts, one is attributed to the surviving spouse, the other shared equally among all heirs of the *de cujus* among which all his children, including children related to both parents and others who are of one parent.

453. The successors of the wife, the successors of the husband and those of the *de cujus* said in the points 3, 4 and 7 of article 70 **are successors of proper patrimony** following their rank of succession, starting to the children as it is precised in article 66 of the law governing succession.

454. The present law provides nothing about **succession of the common patrimony when the surviving spouse has no longer children in his care with the *de cujus* in case of no remarriage**. In the spirit of the present law, **the surviving spouse owns the half of succession, the other half is attributed to the successors of *de cujus***.

455. In the application of the law governing succession, it is no longer necessary, as it is in practical, that the surviving spouse seizes the tribunal in order to be vested in the right of managing the property left by the deceased spouse.

D. Successoral right of surviving spouse

456. Either the succession of the proper patrimony or that of common patrimony, the surviving spouse does not appear among the heirs of his/her deceased spouse.

457. In the succession of common patrimony, reading the article 70 of the law governing succession, one can be mistaken and think that the surviving spouse is heir of his/her spouse. However, it is necessary to notice this:

(1) The surviving spouse becomes the property manager of the whole common patrimony and uses it for children's education and for caring about the *de cujus*' needy parent, but does not become the legal owner. In fact:

- in case of remarriage or default in education of children, the ¾ of the patrimony are attributed to the children;

- in case of default in caring about the *de cujus'* needy parent, a part of the common patrimony is attributed to them by the decision of family council.

(2) A half of common patrimony is attributed to the surviving spouse who has no child with the *de cujus* or has no child in his or her care. This is equivalent to his own share, and not a share of succession.

458. In the succession of proper patrimony it is also noted that the surviving spouse is in no way his or her deceased spouse's heir.

It is also noted that the law protects more the children than their parents. One can wonder how the surviving spouse who has not sufficient own patrimony is supported. The solution is given by article 200, 203 of the family code which provide the following:

- The children are under maintenance order or alimony to their parents;
- The predeceased spouse's successor without common children, has to look after the surviving spouse at the moment of death.

Also, according to art 75 of the law governing succession the surviving spouse remains usufruct of the conjugal house as well as of its furniture when they are the only part of successoral property or are part of inheritance property.

The present provisions are justified by the family promotion and the fondness of the *de cujus vis-à-vis* the surviving spouse. They also reflect the mutual obligation of help or of assistance and the foresight which hang over the spouses.

459. Moreover, as far as succession is concerned, it is not only a matter of passing on the patrimony from generation to generation but of ensuring first of all, in case of a spouse's premature death, the surviving spouse and the children's subsistence who are incapable of taking care of themselves. It is that which justifies even the maintenance order of the predeceased spouse's of successors *vis-à-vis* the surviving spouse as it is provided by the family code.

The legislation of certain countries places the surviving spouse among the heirs of the *de cujus* and even of brothers and sisters related to the *de cujus*. In all cases, these legislations attributed to the surviving spouses a part of the patrimony of predeceased spouse.

The essential reason in addition to those already indicated of attributing a part of the patrimony to the surviving spouse is that **the latter plays a certain role in the increase of the predeceased spouse's proper patrimony by the care given to that patrimony while in the common life**. It is for the same reason that sometimes, between unmarried couple, a part of patrimony is allocated to one of them from the other's patrimony, in case of separation due to death or other motive.

460. Since the surviving spouse can mismanage or spoil the patrimony left by the predeceased spouse, at the expense of the children, the law governing succession, in its article 76 imposes limits of patrimony administration: "in case the succession council considers the alienation, constitution of a mortgage or exchange undertaken by the surviving spouse on the patrimony of which he or she is usufructuary, causing in the case serious damage to the household, it can institute a petition for a summary judgement of forfeiture of that right".

E. Anomalous succession

461. Anomalous succession consists of the "devolution of certain properties which passed on to a determined heir in preference to others, because of their origin". It commands the return of properties to the person from whom they were taken.

This seccession is called "anomalous succession" because it derogates from the normal principle of classifying heirs in orders and ranks.

The return may be prescribed by the law, it is the legal return, or conventionally provided for, it is then the conventional return.

462. Some legal return cases.

(1) Legal return in favour of the adoptive (339 CF) . If the adopted dies without descendants, properties given by the adoptive parent or obtained in his succession return to the adoptive parent or to his descendants.
(2) Legal return in favour of the ascendants (339 CF). This concerns the adopted person's property which he/she had from his/her real parents. If the adopted person dies without leaving descendants, properties given to him by his/her real parents and those originated from his activities return to his/her real parents or to his/her parents'descendants.

F. Succession devolved to the state

463. In principle, succession is devolved to the State in case there is no successor. In this regard, it is said that the succession is in escheat.

464. Escheat must not be confused with succession vacancy. The succession vacancy is the situation of a succession for which nobody claims at the expiry of certain period.
The law fixed that period to one year from the date of the publication of a succession apparently in escheat. The publication is done by the President of the Tribunal of First Instance of the place where the succession went through probate on decision of the Tribunal and on the Mayor's request or from the Public Prosecution of the place where succession went through probate or of the place where properties to succeed are seated.

465. If no successor appears, within a period of one year from the publication, the Tribunal notes the "Succession vacancy" on the Mayor's request or of the Public Prosecution. At the same time, the Tribunal designates the manager of the properties in succession vacancy on behalf of the State until the successors appear or the escheat is declared.

466. If no successor appears after the period provided for has expired, on the Mayor's request or of Public Prosecution, the Tribunal declares the "Escheat" and the succession is devolved to the state. The legal period provided for to declare the escheat is as follows:

(1) five years after the declaration of succession vacancy in case of personal estate.
(2) Fifteen years, after the declaration of succession vacancy for real estate.

467. The succession law confuses “succession vacancy” and “escheat”. Nevertheless, meticulous analysis of the procedure provided for by article 73 in order for the succession to be devolved to the State, one notes that three steps are provided for as above mentioned.

Section 4 : Liquidation and succession partition

A. Roles and duties (art.80-84 MLS)

468. When the succession falls open, generally some heirs, if not all of them, tend to misappropriate or conceal some of the assets, and even to neglect or loose interest in the patrimony. There are also third parties who may have to resort to all means to appropriate the property by way of robbery.

In this regard, the law provides for the designation of a “**testamental or successoral executor**” in charge of liquidation and partition of the succession. Everyone is free to designate his/her testamental executor(s), who can be chosen among children, family members or friends.

In the absence of designation by the *de cujus*, the duty of liquidation and partition of the succession is conferred on the successoral council, and in case of absence, on the judicial liquidator.

469. Before the testamental executor starts fulfilling his mission, or before the successoral council or the judicial liquidator is designated, the *de cujus*’ estate must be protected. That is why it is provided for a juridical institution “**seizure**”. Seizure is the right recognized to certain successors to seize the *de cujus*’ estate, and take conservatory measures without being beforehand obliged to ask for authorisation, so as to avoid them being abandoned while waiting for the activities of the succession execution to start.

In principle, the seizure is recognized only to the surviving spouse, to children of the de cujus (especially the designated head of family) or to his father or his mother. In case of failure, the seizure is recognized to brothers and sisters of the *de cujus*.
The seizure is not provided for by the Rwandan law related to succession. All in all, it must be recognized because of his utility. It permits avoiding succession properties being abandoned and robbed.

470. In principle, the testamental execution is a gratuitous act requested for and rendered to a parent, brother, sister or friend. The testamental executor’s task is optional and voluntary.
However, he is refunded of engaged fees and for the outlay and even the testator can allocate salary for the task. The testamental executor’s task is conferred *intuitu personnae*, not because of the familial relationship with *de cujus* or because of his profession, instead, because of the confidence placed in him.

(1) Declaration of succession apparently in escheat.
(2) Declaration of succession vacancy which the law in Kinyarwanda presents as “*itangaza ry’umutungo ubuze nyirawo by’agateganyo*”, and in French “*déclaration de la déshérence effective*” (art 73,3 MLS).

(It is to be noted that the Kinyarwanda version, the French version and the English version don’t express the same idea).

(3) Declaration of exheat which allows the succession to be devolded to the state.

471. The succession council is composed of:
- the surviving spouse;
- child delegatd by the *de cujus*' children if there are some who are major among them;
- a person delegated by the *de cujus'* family;
- a person delegated by the surviving spouse's family;
- a friend of good behaviour designated by the surviving spouse's family;
- A friend of good behaviour pointed out by the *de cujus* family.

The President of the succession council is designated by the de cujus' family, and the secretary is designated by the surviving spouse's family.

It is to be noted that the two allied families are represented, the husband's origin family and the wife's origin family of. Hence, the reciprocal confidence is settled with regard to the protection of interests of both sides, in equity.

472. Succession executor's attributions are:
1. to manage the succession;
2. to pay payable debts contracted by the *de cujus*
3. to determine definitely those who are called to succession:
4. to decide on disagreements related to the partition
5. to account for the management to those called to succession or to the court.

However, it is up to the family council to determine the portion of patrimony reserved to the minor children's education and that to be divided up to the the *de cujus*' children of (Art.51 MLS).

473. The succession executor may take all conservatory measures to avoid removal or divertence of some hereditaments. At the date when the succession goes through probate, the inventory of properties left by the deceased is necessary in order to avoid concealment or remoral of some hereditaments at the expense of succession creditors. Every interested person may even require that seals be put to some herditaments.

The inventory and apposition of seals poved to be necessary in order to draw the the interested persons' attention to the actual situation of the succession as to give basis to the liquidation.

Since then, the fact of stopping the inventory of common hereditaments as it is provided for by article 74 of the law on succession risks to be harmful to third parties, even to heirs.

Moreover, the fact of preventing the inventory of the common patrimony stops the provisions implementation of article 70 of that law.

The inventory consists notably of the following acts;
- the inventory of real estate;
- the description and estimation of personal estate:
- the analysis of titles and valuable papers;
- the indication of debts and potential claims.

474. On the date when the succession goes through probate, beside the inventory, there is another essential activity: the organisation of funerals and the occupation of the mortuary. These imply notably the choice and preparation of the burial location, the form and organisation of funerals, and the desceased person's going through in documents. This kind of activities constitute, in principle, the surviving spouse's prerogative and of the de cujus' closest relatives, independently of the successors.

The choice of burial location and the funerals form belongs, in principle to the *de cujus*, as mentioned in the testament. In default of the *de cujus*' will, the prerogative belongs firstly to the surviving spouse, then to the *de cujus* closest relatives (descendants, ascendants, brothers and sisters).

B. Determination of succession shares

475. Before the partition, the hereditaments are in "unpartitionated succession". The determination of succession shares is preceded by estimation of the hereditaments and the payment of the debts in order to determine effectively the real property to be shared by heirs.

476. The heirs may decide to remain within "unpartitionated succession" instead of operating the departition into individual shares. If they decide to stay within the unpartitionated succession the heirs establish the convention between them, which contains notably the following elements:

(1) the unpartitionated management
(2) the partition of revenues coming from property in unpartitionated succession.

477. If the heirs decide not to remain in unpartitionated succession, succession partition is done as follows:

(1) In principle, the partition of the *de cujus*' property shall be made in kind.
(2) Where it is impossible to establish equal shares in kind, the property is given to one heir, who, on his return, gives the compensation to the heirs who received a smaller share;
(3) When the heir who received a greater share fails to compensate, they go through property licitation; and the heirs share the product of this licitation.

478. In any case, the principle is that all the *de cujus* legitimate children inherit in equal parts without any discrimination between male and female children. That is why the ascending partition or the testament must not favour certain children at the expense of others. That is also why any surplus beyond the share which every heir must inherit and beyond the available quota may be subject to the reduction on any forced heir's request in order to be shared in equal parts. Any donation which favours ones at the expense of others is likely to be retroceded (art.78 MLS). This provision avoids discrimination favours.

479. It is necessary to remind that a property which has been given away three years earlier starting from the date when the succession goes through probate, cannot be retroceded. This provision concerns any donation even the ascendants partition.
However, the impossibility of retrocession of a property which has been given away at least three years earlier without taking into account circumstances in which the act has been done, risks being harmful to the family, especially to minors, incapable majors and to women.

Examples.

(1) A minor born from extravagant father or mother, who became major, is legally allowed to claim for retrocession of property dissipated by the parents.

(2) A spouse who, after three years, discovers that his spouse did clandestine donations. Such donation are especially done by men to their concubines in squandering familial patrimony.

It is therefore opportune that this provision must be received to take into account the circumstances in which the donations have been made.

480. However for heirs, the retrocession in principle doesn't concern:

(1) the food, maintenance, education, training equipments fees, those of nuptial ceremonies and usage presents;
(2) fruits and interests of the properties subject to reduction;
(3) Life insurance subscribed for the heir's benefit

481. The heirs at the same rank inherit in equal parts.
If the available heirs are those of the fifth rank composed of "the *de cujus*' paternal and maternal uncles and aunts". A partition of the estate is carried out to the heirs of the mother's side and the father's side of the testator, that is, in our case, a part of succession is attributed to the maternal uncles and aunts and the other part is given to paternal uncles and aunts. Heirs of both sides obtain, each, equal shares of the succession portion reserved to them.

482. This operation is a legal institution that consists in partitioning hereditaments (*fente successorale*) into two equal parts in order to be distributed respectively to maternal family and to the paternal family of the *de cujus*.
This institution has been put up to correct potential injustices in succession matters which could appear between the *de cujus* paternal and maternal families:

(1) Modalities of that partition are well explained in succession of spouses'common properties (art.70 MLS)

(2) So far as hereditaments is concerned, the partition concerns all properties, except patriarcal landed property.

To avoid potential conflicts between allies families as already explained, the law forbids landed property to pass on from one ancestry to another.

483. Before succession partition, it is firstly required to settle the charges over the succession and this is done in the following orders: (art.85 MLS):

1) The *de cujus'* funeral expenses;
2) Wages and salaries payable by the *de cujus*;
(3) The expenses of administrating and liquidating the succession;
(4) The the *de cujus*'debts;
(5) Legacies by particular title made by the *de cujus*.

In principle, in normal social relations, the non settlement of these charges may dishonor the *de cujus* family. Therefore, their settlement shows respect towards the *de cujus* and the survivors' honor.

484. Land tenure which does not exceed an area of one hectare and any other undivided thing cannot be partitioned. The owners rather agree on the modalities of their sale or exploitation and share the fruits therefrom.

The present provision relating to landed property aims at avoiding the land tenure crumbling as a result of inheritance. Crumbling reduces agricultural tenures into small dimensions (often under one hectare) per household in a manner as to render them non exploitable for the family subsistence.

The provision, therefore, aims at enabling a heir to inherit a sufficient agricultural tenure for his family subsistence, his coheirs, as to them, have to resort to other professional activities than agriculture.

ANNEXES

ANNEX I: GENERAL EXERCISES
ANNEX II: FAMILY CODE
ANNEX III: LAW RELATING TO MATRIMONIAL REGIMES, LIBERALITIES, AND SUCCESSIONS

ANNEX I : GENERAL EXERCISES

ANNEX I : GENERAL EXERCISES

(*NB: What is said in these exercises is the existing reality except that forged names were used so that those who are concerned are not exposed*)

1. It is now ten years since Adele and Paul were legally married. They produced children. Paul died without leaving behind a testament and he left a 5 ha land and a residential house. Adele wants to sell the land but her father in law opposes it.
   What are the rights for each of them?

2. Nyiramana was not legally married to the husband. She died leaving behind eight children and without a testament. Among those children there are 3 girls and 5 boys. Before sharing the property of their mother 3 boys and 2 girls died during the war all leaving behind children. The remaining girl also got married. Solve the problem of succession.

3. John is a widower. He has already given his 3 married sons their legacy. John wants to re-marry but his sons oppose it claiming that he should give them another share from the common property left behind by their mother. Solve this problem.

4. An unmarried doctor bought a land and built a house in it. In June 1994 he took exile in Congo together with his sister Mary. He left behind in Rwanda 5 relatives; girls and boys. That doctor eventually died in Congo after he had transmitted all his property to his sister Mary including the other land and house. When Mary returned to Rwanda, her relatives refused to accept this legacy claiming that they should share it on equal basis. How could this problem be solved.

5. A wife and a husband had 3 ha land. They both died without leaving behind a testament. They left 2 children; a son and a daughter. The daughter got married and lives with her husband in another district. It is now few months since the other boy also died before the sharing of the property of their parents could be done but left his child named Peter. The Family Council has already decided that Peter is the one to inherit his grand-father and grand-mother but his paternal aunt opposes it.
   Solve this problem of succession.

6. It is now 10 years since Anne and Jacob were married without a matrimonial regime. The competent court has pronounced a divorce judgement on the ground of Anne's faults. But that court's decision does not provide anything about the property of Anne and Jacob.
   What are the rights for each other?

7. The husband of Elisabeth together with his 4 children were killed from they hiding during the genocide. Elisabeth was raped that time and got pregnant and gave birth in 1995. Meanwhile, the brothers of her deceased husband shared among themselves the property left by him. Elisabeth wants to evict them from that property so that she could occupy it. They also refuse on the ground that she no longer has a right in the family because she brought in a bastard child.
   How could this problem be solved?

8. Theresa knows well that her son Peter died during the genocide but his dead body did not surface and even the date of death is not known. In order Theresa to be given the property of his son Peter, she was asked to bring the certificate of death confirming the death of her

son, Peter. She did not get this certificate because the civil status officer told her that there is not any proof showing that Peter died.
What can Theresa do?

9. Jane is an 18 year old white girl. She does not know her parents because she was picked from a hotel in Gisenyi when she was still a very young baby. She was brought up in a sisters' home in Holland. Now she has completed her secondary education and she wants to join the university in Holland on the sponsorship of the government of Rwanda. The Embassy of Rwanda in Holland fears to give Jane the documents demanded by the Ministry of Education on the account that Jane is not a Rwandan.
What advice can we give to the Embassy on this issue?

10. Joseph is a Rwandan by birth. He wants to join a secondary school in the United States of America. The civil status officer without any explanation refused to give him documents that are required by the Immigration office. Not only that he even refused to give him a National Identity Card.
Considering that case, what advice can you give to Joseph?

11. Kantengwa a grand-grand daughter of Ngunda was born on 30th/6/1981. She wants to be married to Mupenzi who is a grand son of Peter's uncle and was born on 31st/12/1985.
What can you say about their marriage?

12. Habimana, his wife Nyirantete and their two minor children took refugee in Tanzania in July 1994. During repatriation of refugees in 1997 the family got scattered to the extent that Habimana came back in Rwanda alone. He waited for his wife for a long time up to when he thought that the wife had died and decided to get another woman in January 2000. The new marriage was celebrated by the mayor of their domicile in Kibungo. After that marriage Habimana got surprised of reappearance of Nyirantete and her children.
What can Nyirantete ask for?

13. Setindi and Nyiramiruho got legally divorced. The court ordered them to share their patrimony equally. During the sharing, the court bailiff and Nyiramituho found out that the more valued had been alienated, others sold by Setindi?
What can Nyiramiruho do in order to recover her rights?

14. Susan is a widow and has a 7 year old child called Didier. Didier is a son of te deceased Peter. He (Peter) left four brothers and both parents.
Which rights do Susan have over Didier?

15. Zikamabahari from unknown family simply cohabited with Nyiratete for a period of ten years. They produced three children who are still minor and they were not registered with the civil status officer. After many years of disappearance of Zikamabahari in Rwanda, he had left all his patrimony. Later this patrimony was taken by the District and utilised all the profits from this patrimony. Nyiratete and her children have no means of surviving.
Which advice can you give to Nyiratete?

16. Mr Simba and Miss Furaha were legally married since 1990. During their marriage, Furaha had 42 years of age and was about to reach menopause while the husband (Simba) had 28 years of age. When they were (spouses) with the Family Council, they agreed that

the husband would re-marry to another wife so as to get more children if the wife does not produce three children.
In 1992 Furaha produced only one child and it was in 1995 that Simba realised that his wife no longer produces and decided to marry another wife as he had desired. Before marrying the second wife, Simba introduced her to the Family Council and Furaha who both approved. In April 2000, Furaha had the following:

1. The dissolution of the agreement Furaha had had with Simba;
2. Separation of the second wife with Simba;
3. If necessary, divorce to be pronounced.

Could there be grounds for Furaha's wishes?

17. Mr Kayihura and Mukabera were legally married by the mayor of Mukabera's domicile (District). During their marriage was handicapped from the accident in a way that if she had a sexual relations, she would get a pain. That disability had been treated for so long by the doctor but failed. Both Kayihura nad Mukabera in the presence of the Family Council reached an agreement that if the disability continues, Kayihura would get married to another woman. Two years later Kayihura realised that the disability could not be cures and on the approval of the Family Council he married Zaninka who is a relative of Mukabera.
    In brief, what are the rights and obligations of Mukabera, Zaninka and Kayihura?

18. Henrico found his wife committing adultery and dismissed her immediately. It is now five years after their separation. Henrico is now cohabiting with another woman.
    What can you say about this issue?

19. Teresa a widow, would like to get money from Social Security Fund but the Mayor of her domicile refused to give her a death certificate testifying the death of her husband who had died in the Congo forests saying that the death was not registered in the death register.
    Which advice can you give to Teresa?

20. Mark legally married with Teddy. During the 10 years of their marriage, they never produced any child at all. Mark cohabited with a concubine without the knowledge of Teddy and they produced a baby girl whom Mark immediately recognised on her birth. He registered the child in the civil status office.
    What can you say about that child's recognition?

21. Teddy and Assiel were legally married in 1987 and had three children. The husband dismissed the wife and she went with her three children. For several times Teddy returned to her home but Assiel refused her. Nowadays Assiel cohabits with another woman in the house that Teddy had bought on credit.
    With those issues what can Teddy do?

22. Macumi and Mukakanyange were legally married and produced 4 children, they also acquired patrimony. Later, they were legally divorced. In presence of the Mayor, Mukakanyange and Macumi reconciled and reunited. Two months later; they re-separated and Mukakanyange returned to her legally acquired property together with the children. Macumi later remarried another woman and produced two children. During genocide period Macumi died and Mukakanyange immediately seized Macumi's property in which he shared with the second wife.
    What are the rights of the second wife?

23. Stephen and Ruth were legally married before 1994. In 1994 marriage registers files together with other documents were burnt. Stephen and Ruth produced three children. Later Stephen abandoned Ruth and married another woman called Sarah to whom they produced two children. Stephen later died and Sarah went to the district and acquired marriage certificate. She later took that certificate to the Social Security Fund and the employer of Stephen where she was given indemnity. Stephen left a patrimony composed of a piece of land and a registered house located in the town.
    What are the rights of Ruth?

24. Charles and Mukaneza were legally married in 1963 and produced two children but on e died leaving three children. By the time Charles got married to Mukaneza he had other two wives who had also produced children. After the marriage with Mukaneza, Charles married another called Uwingabiye in 1985 and immediately registered her as his wife in the district? Charles and Uwingabiye produced one child. Charles wanted also to bring in another wife called Immaculate but the latter first conditioned him to divorce Uwingabiye so that they cohabit. Charles accepted and there was divorce. Charles and Immaculate cohabited and produced three children.
    The first two wives before Mukaneza and Uwingabiye died leaving behind their children. Charles died in 1993. Immaculate who also claims to have legally married to Charles and having marriage certificates, nowadays she is the one with the whole patrimony for the whole family basing on the decision of the president of the court. The family of Charles recognised all the wives and their children.
    On that issue what advice can you give to Mukaneza?

25. John and Goretti were legally married and have produced 2 children. John went to Gisenyi on an official duty where he met Marian and impregnated her and after went back Kigali. With that pregnancy Marian gave birth to a child named Eric. John has denied to recognise the paternity of this child. John has also a lot of wealth, Marian is poor and has nothing to feed Eric.
    What can Marian do?

26. Peter and Dancille were legally married without a matrimonial regime. They produced 6 children. Peter died. Dancille gave birth to a baby girl outside the wedlock. Peter left behind a 5 ha land. The first six children denied the latter child claiming that she should go to her father and that she does not have any right to the property in there home.
    Does that girl have any right to property in that home?
    If she does, how much is her share?

27. Dorothy is a 23 year old girl. She went to visit her paternal aunt where she met with another visitor by the name of Paul who invited her to his home so that he can give her a letter to take to his relative who is in the neighbor. When Dorothy reached there, Paul locked her in his house, raped her and impregnated her. In the process of being raped, Dorothy called for help and Paul's neighbors heard her but intervened very late. Dorothy immediately went home and gave birth to a child named Kwihangana. Paul is not yet married. He has a monthly salaried job. Dorothy stays with her parents without any personal property yet her parents tell her that she should take her bastard child away from their home. Paul does not know that Dorothy went away pregnant.
    What advice can be given to Dorothy?

28. Suzan and Alfred were legally married. They gave birth to 5 children. They acquired property made up of 5 houses and 2 pieces of land. Alfred has a concubine called Saidati and gave her one piece of land and one house. Saidati and Alfred did not bear any child. Currently Alfred has died and Suzan wants to claim back that piece of land and the house which her husband gave to his concubine.
    Does Suzan have any right on that piece of land and the house?

29. John and Odeth were illegally married. At first they were renting and after john who was being paid a monthly salary of 200.000 Frs bought a plot and registered it to himself but together with Odeth who was a business lady built a house to live in that plot. Because Odeth was earning a profit of 150.000 Frs per month in her business. She bought another house which also John registered on himself. They did not bear any child. Now John has dismissed Odeth without giving her anything except that he allowed her to come and pick her clothes.
    What can Odeth?

30. Mr Habari and Ingabire were legally married. They gave birth to 10 children. Habari also has a concubine and they gave birth to 4 children. All the children are still young. Habari recognises his 4 children he has with his concubine but Ingabire does not recognise them. Habari died in 1997 after giving part of his property to his concubine and the 4 children as succession.
    Does Ingabire have any grounds in refusing the husband's recognition of the 4 children he beared outside the wedlock? Does that claim of Ingabire of returning back the property given as succession have any legal ground?

ANNEX II : FAMILY CODE - First book – Of persons and family

Law n°42/1988 of October 27th , 1988 bearing Preliminary Title and First Book of the Civil Code (Official Gazette, 1989, p.9)

Family Code : First book – Of persons and family

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Law n°42/1988 of October 27th , 1988 bearing Preliminary Title and First Book of the Civil Code (*Official Gazette*, 1989, p.9)

1. The following law institutes the preliminary title and the first book « Of Persons and Family », of the Civil Code.

PRELIMINARY TITLE – GENERAL PRINCIPLES

(…)

FIRST BOOK – OF PERSONS AND FAMILY

FIRST PART – NATURAL PERSONS

FIRST TITLE – PERSONALITY

15. A human being acquires legal rights at the time of birth and continues to enjoy and exercise them until death.

CHAPTER I – BIRTH

16. The conceived child is entitled to legal personality, provided that he subsequently is born alive. For the law to protect his interests, the child is deemed to have been born whenever it is to his advantage.

17. A child is deemed to have been conceived between 300 days and 180 days preceding birth.

This presumption is irrebuttable, subject to the provisions of the present law with regard to the time of conception, if paternity is to be established.

CHAPTER II – DEATH

18. If many people die in a common calamity and it is impossible to determine the one who survived among them or to determine the one who died before or after, then it is said that such people died at the same time.

19. Where a person disappeared and there are circumstances justifying his death even where the dead body is not found or is found but hard to identify, any interested person can ask court to render judgement declaring the death of this person.

20. In case of death of several persons as a result of an event such as drowning, aerial catastrophe for example a plane crash or where the earthquake or landslides cause the death, their death can be declared in a collective judgement by the competent tribunal.

21. The competent tribunal is that one which has jurisdiction where the accident of which death resulted from, took place. However, in case of the disappearance of the ship or that of the aeroplane, the competent court is that of the ship’s or the plane’s port of registry.

22. The judgement declaring the death of the person indicates the date of death and this date is presumed by law to be the one he or she died on, as to the circumstances and cause of the death.

Where it is established that the date of death mentioned in the court judgement is erroneous, it may be rectified. The petition seeking for the modification of the date of death is only accepted before court within a period of three years starting from the date the judgement was made. If it was not possible for the petitioner to know about the date of judgement declaring death, then the case can be heard up to six years.

23. Where a court in its judgement declares the death of a person and later that person reappears, the judgement is reversed upon the application by the missing person herself or by any other interested person or by the public prosecutor.

24. The judgement declaring death of a person orders the civil status officer to make the death certificate of the deceased person. The competent civil status officer is that one of the place where the accident took place, of the port of registry or that of the diplomatic mission abroad.

The judgement reversing the judgement declaring death of a person orders the same status officer to rectify or annul the death certificate.

CHAPTER III – ABSENCE

Section 1 : Absence in general

25. Where a person goes missing in his residence or domicile without leaving behind a general mandatary to be in charge of his property and there is no news about his whereabouts, this person is presumed to be alive in the period of two years starting from the day when they last heard about him.

Where he leaves a general mandatary to be in charge of his property, he is presumed to be alive for a period of five years.

26. This presumption of life provided by article 25 may fail to stand if it is proved that the death actually occurred and the circumstances surrounding it prove so.

27. In the cases mentioned under articles 25 and 26, all interested persons can ask the tribunal of first instance of the last domicile or residence of the missing person to render judgement declaring absence.

28. If, after an absence of 7 years from the time the presumption of life expired, as so provided for in articles 26 and 27, there is no definite news concerning the absentee that he is alive, there is presumption of death and consequently, on the application of any interested person or the public prosecutor, the tribunal of the last domicile or residence pronounces the death.

29. The judgement declaring someone’s death determines the date from which the absentee is presumed to be dead.

30. Apart from the provisions of article 26, the presumption of life ends by the proof that the person died sometimes before, by the presumption of death, by the proof that the absentee died one time or that he/she was still alive after that time.

Section 2 : Presumption of absence

31. Where a person goes missing from his domicile or residence, after one year without his news, and if he did not leave a general mandatary behind, any interested person or the public prosecution can ask the court to appoint an administrator of his property. As far as possible, the administrator is chosen among the absentee's presumed heirs.

However, before the expiry of the first year of absence, an administrator may be appointed if there is danger in delay.

32. The rights and duties of the appointed administrator are, in conformity with article 31, only limited to the absentee's property. His powers extends also to the absentee's stocks, accounts, shares, and liquidation of stock in which the absentee's is interested. He/she cannot make a petition nor defend him against the allegation before the court without the authorisation of the court that appointed him/her.

33. The court which appoints the administrator of the property can at the same time impose him/her to do all that is necessary to safeguard the absentee's properties be movables or immovables.

34. The property administrator draws up a stocklist of the absentee's personal estate, in the public prosecutor's presence or his delegate.

He or she can request the court to appoint an expert to visit the absentee's real estate with the aim of proving its state. The report is approved by the public prosecutor or his/her representative and that service is paid from the disappeared's property. The general mandatary who was appointed by the disappeared can be requested to make an inventory and a report of the real estate's state on the request of his/her presumed heirs, of any interested person or of the public prosecutor.

35. The administrator of the absentee's property can alienate or hypothec the disappeared's real estate if it is proved to be necessary and o advantage to the disappeared but after the authorisation of the court. The court determines how that should be done and thereafter the court is given a report.

36. If the court judges it useful, the mandataries or administrators give security for the sureness of their management and of the property restitution. Every year they give the court an account of their management and in case of reappearance, they give the absentee or his messenger into possession a definite account of their management.

37. The public prosecutor is specifically charged with the protection of the absentee's interests.

Section 3 : Declaration of absence

38. The court, in deciding the disappearance case, puts much emphasis in knowing the reasons of disappearance and those which led it impossible to know the presumed absentee's whereabouts.

39. The court so as to declare disappearance, can order for investigations after examining the forwarded documents. The motion and the judgment ordering for investigations are published by the public prosecutor at the absentee's domicile, and at his residential place if they were different.

40. The judgment declaring absence is pronounced one year after the court was seized by motion and it is published as it is provided in article 39, and then the authentic copy of that judgment is addressed to the Minister of Justice who makes it public.

41. The absentee's presumed heirs alive at the time of his/her disappearance or the time they last heard of his/her news, by way of a judgement declaring absence, can be allowed to enter into the provisional possession of the absentee's property by the time he/she disappeared or by when they last heard of his news, on condition that they give a security for sure administration of the property.

42. Where there is a judicial declaration of the person's absence and the absentee left behind a will, there will be an immediate provisional opening of that will, and shall also participate to the property division the donees, legatees, and all those having right to property based on the absentee's death, on condition that they all give their security.

43. Where one of the spouses is present and accepts to maintain the matrimonial conventions, he/she may stop the provisional sharing and the temporarily exercise of the rights which were based on the absentee's death, and take up before all others the administration of the property. If the spouse requests for the temporary dissolution of the matrimonial conventions, he/she shall take back his/her personal property and exercise all his/her legal and conventional rights. As the case may be he/she must provide security. The spouse who opts for the temporary continuation of the community of property reserves the right to renounce it latter.

44. In case where the security provided in articles 41, 42, and 43 of this law is not given within the period of three months, the court takes measures which are deemed necessary to safeguard the property of the absentee.

45. The temporary possession of the absentee's property is a deposit. The holders have the same rights and duties as the administrator appointed by the court when the absentee is presumed alive. However, they are not obliged to return the fruits consumed when he/she reappears. They should only make restitution of all his property including the benefits thereof still existing.

Section 4 : Death declaration

46. Filing a case for death declaration is done as it is provided by article 39 and 40 and is published in the same way and in the same period of time.

47. Death declaration of the absentee opens the succession. The inheritors alive on the day admitted to be that of the absentee's death, have the right to share the absentee's property in accordance with each one's respective rights.

48. In case the absentee reappears after the declaration of death, the presumed heirs have to ensure restitution of the property conferred to them and still into their possession.

Section 5 : Common rules for all the periods of absence

49. The judicial declaration of death of the person declared absent empowers the surviving spouse to remarry. If before the declaration of death and before the new marriage is celebrated the absentee reappears, what is provided in the first paragraph of this article is no longer possible.

50. It is only the person declared missing who can attack the new marriage if so celebrated before him being declared dead.

51. If one of the spouses disappeared leaving behind young children he/she had with the remaining spouse, the latter is the one vested with parental authority in providing education as well as administering their property.

52. If one of the spouses died before death declaration of the disappeared or if the disappeared left behind his/her children of the first marriage, the parental authority is conferred in conformity with the dispositions relating to tutorship.

53. Whoever claims the rights for a person whose rights were not established must prove that the person in question existed by the time the right was opened.

54. In case there is succession for a person whose existence is not certain, that succession is exclusively given to the co-heirs or to those who would succeed him in his absence. The present heirs can request the court to confirm, the public prosecution defending him/her, that the person whom they are to co-inherit no longer exists. Those who received the things which would have been given the absentee must make its inventory and give the security for it. That security is given back to the owner after eighteen years. If it is not given within three months, the court takes other measures which are deemed necessary.

55. Whenever the absentee does not appear and no one was appointed to take action on his/her behalf, those who inherit the absentee’s property may keep the benefits from what they were in good faith given.

56. What is provided in articles 54 and 55 may take place without prejudice to the claims for inheritance or for any right pertaining to the property, and these powers are given to the absentee or those representing him/her or those who can follow up his/her things and are terminated with the time provided by the law for prescription.

TITLE II – IDENTIFICATION OF PHYSICAL PERSONS

57. A human being can be identified by gender, ethnic background, name and given names, residence and domicile.

CHAPTER I – NAMES

58. Every individual has a surname and possibly one or more given names. On official documents, a person is designated by his/her surname followed by his/her potential given names.

59. A child is given a name and potential given names within a period of 15 days after birth.

60. A child is not allowed to take one's father', mother', brothers' or sisters' given names while they are still alive. On the contrary, it is given another given name to distinguish him/her from them.

61. The name given to a child is communicated to the competent civil status officer by the person who declares his/her birth.

Surnames and given names that are against public order and good morality are prohibited by law.

62. None shall officially take a name or a given name different from the one mentioned on the birth certificate.

63. The married woman retains her maiden name and given names on official documents.

64. On official documents, the clergymen and religious personnel retain their surnames and given names appearing on birth certificate.

65. The change of surname and given names on the birth certificate is authorised by the Minister of Justice if there are cogent reasons and on the request of that one whose name or given names are to be changed.

66. After receiving the application for the change of names, the Minister of Justice communicates it to the Public Prosecution attached to the tribunal of first instance of where the applicant resides or of where he/she domicile and publishes the extract of that application in the official gazette of the Republic of Rwanda.

67. Within the period of 3 months after the Public Prosecution has received the request for change of a name, it notifies the Minister of Justice its findings and submissions about the cogency and worthiness of the request.

68. Within a period of 3 months starting from the date the request was published in the official gazette, any interested person may, with justifiable reasons, submit his/her opposition against the change of name before the Minister of Justice.

69. After the end of the period mentioned in article 68, and if there is no opposition to the request or if the potential oppositions were not accepted, the Minister of Justice on the ministerial decree may authorise the change of a surname or given names as indicated in the request.

70. The law provides for three months from the time the ministerial decision is published in the official gazette for the applicant to ask the civil status officer to write down the change of names in the register containing his/her birth certificate. The civil status officer informs the Minister about the changes made on the birth certificate.

71. The amount of money paid for the change of names as well as the modalities of receiving it are determined by the Minister of Justice. The amount of money to be paid was established by the Ministerial Regulation n° 97/05 of 25.3.1992 (*Official Gazette*, 1992, p.488).

72. The bearer of a surname or a given name can prevent other persons from using it, especially when there is a likelihood that it would lead to material or moral damage.

After death of the bearer or in case of incapacity to express his/her intention, the right is passed to the surviving spouse, to the heirs and to each of the successors, even if themselves they are not bearers of that name.

CHAPTER II – RESIDENCE AND DOMICILE

Section 1 : Residence

73. A residence is a place where a person habitually live.

74. The place where a person is usually present is assumed to be his/her residence unless it is proved that he/she resides at another place. A person can have more than one residence.

75. Spouses share the same residence unless otherwise arranged for the family interests. In case of conflict, the court decides in the way of provisional order.

76. The civil servant and private sector's staff, clergymen and religious officials should have residence where they exercise their functions unless otherwise arranged.

77. It is legally accepted that a person, having dealings with another physical or moral person, can show that a given place shall constitute his/her residence for the purposes of a business or any conventional arrangement.

Section 2: Domicile

78. A person's domicile is the place where he/she is permanently settled and where he/she can possibly be accessible at any time either directly or through an intermediary, and where he/she is registered in the population census register book.

Being registered in the population census book and having an identity card is an administrative proof that that person has a domicile.

79. Every person must have a domicile and only one.

80. A person is compelled to stay in one domicile he chose all the time he/she has not shifted it to another place.

81. When a person's domicile is unknown, his/her domicile is presumed to be:

a) the place of the real estate that he/she possesses and in which, according to the public notoriety, he/she must have the intention of residing permanently till the end of his/her old age, or to retire in the event of unfortunate days, even if he/she lives somewhere else with the family;

b) in default, the place of his/her residence;
c) in default of a known residence, the place where that person actually is found.

82. A person can elect a domicile in a determined place whereby he/she is notified official documents or for the purpose of fulfilling certain obligations.

A domicile by election is assimilated to the residence as provided in article 77 of this law.

83. A married woman's official domicile is that of her husband. However, if there are justifiable reasons, the court can allow the married woman to choose a separate domicile.

84. Non-emancipated minors' domicile is that of the person that exercises parental authority over the minor.

85. Interdicted persons' domicile is that of their tutors.

TITLE III – PROOF OF CIVIL STATUS

86. Civil status for persons can be established and proved by the official documents called certificates or acts of civil status, drafted in conformity with the provisions of this title and exceptionally by judgements for the substitution or rectification of these acts.

CHAPTER I – CIVIL STATUS OFFICERS

87. A civil status officer is a government officer who has authority to receive, register and conserve all the acts of the civil status.

Are officers of the civil status the burgomasters, the Ambassadors and Rwandan Consuls on duty abroad or their substitutes in case of impediment; and people appointed to those posts by the Minister of Justice. The civil status officer is only competent to issue the copies or the extracts of the civil status acts.

88. The civil status officer cannot make the civil status acts in that capacity and at the same time participate in it in another capacity. He/she is prohibited to receive the acts concerning his/her spouse, his/her ascendants, descendants, collaterals and those with marriage relationship up to the 4^{th} degree.

89. Without prejudice to the provisions of article 61 of this law and except for marriages where the civil status officer must make sure that all conditions provided under the law are respected and must celebrate a marriage union in the name of the law, the civil status officer is duty bound to record facts as they were noticed by himself/herself and receive declarations given to him/her in conformity with the law.

He cannot refuse to constitute a certificate prescribed by the law, nor draw up an act contrary to the declarations of appearers, nor draw up a certificate automatically.

90. The civil status officer exercises his/her functions under his/her personal responsibility and under the supervision of the Public Prosecutor or his delegate. In case of the difficulties, he/she requests for advice and instructions from the Public Prosecutor.

91. The civil status officer is civilly responsible for the errors or negligences committed at the occasion or in the exercise of his duties, without prejudice, if need be, of the criminal or disciplinary lawsuits.

92. If the civil status officer refuses to write what is declared to him/her or to issue a copy or an extract of the civil status act, any interested person can file a case to the president of the tribunal of first instance who statutes it by provisional order.

It is also what happens if the civil status refuses to give the tribunal of first instance, the Public Prosecutor or the Ministry of Justice or his delegate informations concerning an event which happened and which needed a civil status act.

93. Declarants and witnesses are responsible for accuracy of their declarations or corroboration in the constitution of civil status acts.

They still have a right to file a case against that one who misled them so longer as they did not do it in bad faith.

94. The Public Prosecutor or his delegate is the one specifically charged with the follow up the civil status service in his jurisdiction. Once in a year at least he/she should verify how the registers are conserved and kept and makes a report of that verification; indicating the faults committed by the civil status officer and if need be instituting criminal lawsuit against him.

He has the right of direct correspondence with the civil status officer of his jurisdiction.

95. The civil status acts are drawn up free of charge. However, the issuing of any copy or any extract of any act is paid for a tax which is fixed by the law relating to taxation.

CHAPTER II – THE CIVIL STATUS OFFICER FUNCTIONS

96. The civil status officer is charged with preparing and conserving civil status registers. He has especially got the following attributions:

1. To receive and register birth declarations and make birth certificates;
2. To receive and register recognition of extra-marital children and make legitimisation certificates;
3. To celebrate marriages and prepare the marriage certificates;
4. To receive and register death declarations and make death acts;
5. To receive and register the declaration of adoption and make adoption certificates;
6. To register declarations from other people other than spouses whose consent is vital for the validity of the marriage in question;
7. Re-writing certain acts received by other competent officers;
8. Re-writing all judgments related to the civil status like divorce judgments and those ordering the rectification of civil status acts for error or omission in the writing of an act;
9. To insert mentions required by the law to be written in the margin of the civil status acts already constituted or copied out.
10. To issue to authorised persons copies or extracts of acts recorded in the civil status registers.
11. To issue acts of the public notoriety.

97. The civil status officer has authority in receiving declarations as to the civil status and preparing the civil status acts in only his zone of operation.

CHAPTER III - THE CIVIL STATUS REGISTERS

98. The civil status registers are supplied free of charge to the civil status office by the Ministry of Justice.

They are free to be consulted by any interested person.

99. Each register is numbered from the first page to the last page and initialled by the Public prosecutor or his delegate.

100. The civil status registers are opened from the first January to the 31st December of each year.

After the mention of closure and in the month following the closure, the civil status officer puts in each register the table of contents in an alphabetical order.

In case where the civil status office ceases to exist, the registers are conserved in conformity with the dispositions put in place by the Minister of Justice.

101. There exist six categories of the civil status registers:

1. The register of birth certificates;
2. The register of death certificates;
3. The register of marriages certificates;
4. The register of recognition certificates;
5. The register of adoption certificates;
6. Other acts register.

102. In every civil status office, one register of each kind must be used. Each register is made up at once in two copies. At the closure of those registers, one is deposited in the clerk's office of the first instance tribunal of their territorial jurisdiction and the other is conserved at the civil status office.

103. The registers must be permanently found in the premises affected to the office of civil status.

However, the Minister of Justice can give an authorisation for them to be used elsewhere but in the same jurisdiction.

104. The writing of acts in the registers is done in a continued way, in the numerical ascending order, without any blank neither erasure nor interlineation.

105. The act of civil status is written in the presence of two witnesses. The civil status officer, before signing, reads it to the appearing parties, in the presence of two witnesses.

The act is then signed by the civil status officer, appearers and witnesses. If one of the appearers or witnesses is unable to sign, he/she appends his/her finger print.

In case of erasure or interlineations, these are approved and initialled by all signatories of the act. Nothing should be written in an abbreviated form, and no date is put in numbers.

106. The civil status officer must deliver to any interested person who requests for the copies matching the original or the extracts of all acts of the civil status.

A copy is a complete reproduction of the act as it appears in the register. An extract is the summary of essential elements of the act. The copies and the extracts should be signed by the civil status officer and sealed with the stamp of his/her office.

107. The civil status officer cannot refuse to issue a copy or an extract of the act under the pretext that they are null or without any value.

108. Any civil status act concerning Rwandans and foreigners prepared abroad, has only the value in Rwanda basing on the procedures and conditions provided for by the Rwandan legislation or by international conventions.

The acts prepared abroad concerning Rwandans are re-written, under the request of the interested party, in the civil status register of his the domicile.

109. Declarations are received as follows:

1. For the birth; by the civil status officer either of the place of birth or of the place of residence or domicile of the parents;
2. For the death; by that one of the place of death;
3. For the marriage; by that one of the place of the marriage celebration;
4. For the recognition; by that one of the domicile of the person who recognises the child;
5. For the adoption; by that one of the place of the domicile of the adopted.

The civil status officer who received the declarations is charged with informing the civil status officer of the domicile of the interested.

110. The civil status acts are drawn up by the civil status officer in one of the two official languages chosen by the one declaring.

Each act should contain the specific mentions provided for it. The witnesses of one or the other sex, if need be, should have at least 21 years.

111. In case where the interested parties are not needed to be present in person, they can be represented by proxy.

112. If the appearing parties, their representatives or the witnesses do not speak one of the official languages and if the civil status officer does not know the language they explain their declarations, these ones are translated by the interpreter who first takes an oath in conformity with the code of civil and commercial procedure.

The action should be mentioned in that act. That mention indicates the language used in declaring, the interpreter’s identity as well as his/her oath.

113. Before preparing the act, the civil status officer informs the parties or their proxies and the witnesses the penalties provided by the law sanctioning those who give false declarations.

After the act is established but before being signed or fingerprinted, he reads it for them or read it themselves if they know how to read and understand the official language.

For what is provided in the first paragraph of article 112 of this law, it is the interpreter who translates the act into another language.

It is mentioned in the act that the formalities were accomplished.

114. The acts are signed by the civil status officer, the parties, their witnesses and if necessary by the interpreter. If the parties, witnesses and the interpreter do not sign or fingerprint the act, the cause which hindered it must be mentioned.

115. If the civil status officer dies or becomes physically or mentally incapable without signing certain acts or certain mentions nearly concluded, the Public Prosecutor forwards to the competent President of the tribunal of first instance the document requesting him to make an order that the acts drawn up by the civil status officer who died or who became physically or mentally incapable without being signed be accepted though they lack that signature.

The contents of the president's order rendered for that purpose is written in the margin of the concerned act in the care of the Public Prosecutor.

Before taking a decision, the President of the court can all the time order for an investigation confirming the accuracy of the act of the interested parties or informing the rectifications which should be made.

What is provided in the preceding paragraph is also applicable when one of the parties did not sign or put the fingerprint because he/she was dead, disappeared or was absent.

CHAPTER IV – THE CIVIL STATUS OFFICES

116. There exists, in each district an office of civil status of which the competence corresponds to the territorial boundaries of the district.

There exists also within each Rwandan diplomatic or consular mission abroad, an office of the civil status of which the competence corresponds to its jurisdiction.

CHAPTER V – RULES PECULIAR TO EACH CATEGORY OF CIVIL STATUS ACTS

Section 1 : Birth certificates

117. The newly-born child is registered within 15 days after delivery over eventual presentation of birth medical certificate.

118. The birth certificate clearly indicates :

1. The year, month, date and place of birth, gender, ethnic background, surname and given names of the child;

2. The surnames, given names, ages, professions, ethnic background, residence and domicile of the father and the mother, and possibly those of the declarants;
3. The surnames and given names of the persons who prepared medical certificate presented for registration.

119. The birth declaration is done by the child's father and in default, by mother, in the absence of both, by one of the ascendants or by one close relative or by any person who assisted at the birth or that one who found the newly-born child.

120. The birth certificate is immediately written and signed by the declarant, the witnesses and the civil status officer.

121. A special register in which births which occur there, are immediately registered in order of date, is kept in the private and public healthy centres; the administration and judiciary authorities determined by this law, may consult the register at any time.

122. Any person who found an abandoned newly-born child, should without delaying declare that child to the civil status officer of the place where the child was discovered. If he/she is not willing to take charge of the child, he/she should hand over the child together with all that was found with it like clothes and other things to the nearest civil status officer.

A detailed verbal-report is made which indicates also not only what is provided in article 118, but also the date, hour, the place where the child was found and how he/she was found, estimated age, sex, and everything which can assist in its identification and the authority or any other person who received the child.

That verbal-report is inscribed in the birth register on that very date. After that verbal-report, the civil status officer establishes a separate act holding a place of birth certificate.

Apart from those announcements, that act mentions the child's surname and given names he/she was named, fixes the date of birth estimated to the size of the child and establishes that where the child was found is his/her place of birth.

The civil status officer can any time request an experienced doctor to determine the physiologic age of the child.

If the birth certificate of the child is found or if the birth is judiciary declared, the verbal-report of child's discovery and the temporary birth certificate are nullified upon the request of the Public Prosecutor or any other interested person.

123. In the birth certificate, if the parents were not married, the declaration indicating the names of the child's father does not mean that he recognises the child unless if it emanates from the father himself or from his proxy.

124. In case there is birth declaration of a dead child, that declaration is inscribed on that very date in the death register instead of that of birth.

It mentions that there was birth declaration of a dead child, so that to avoid prejudgement on the question whether the child has even been alive or not.

What is also stated is the child's sex, surnames and given names, age, father and mother's profession and their domicile and those of the declarant if he is there and the year, month, date and hour of giving birth.

125. Any person can be given a copy of his/her birth certificate. Except the Public Prosecutor, the interested person's ascendants and descendants on the direct line, his/her spouse, his/her tutor or his/her legal representative, no one else can be given that copy without the authorisation issued, free of charge, by the Public Prosecutor and only if also it is requested in writing.

In case of refusal, a claim may be introduced to the Minister of justice.

126. The civil status officer delivers to anyone requesting, the extracts indicating only the year, the day and place of birth, sex, surname and given names and ethnic background of the child, as it results from the birth act announcement or mentions contained in the margin of that act.

In addition to that, the extracts precise the surnames and other given names, ethnic background, profession and domicile of the parents. They cannot be issued without respecting what is provided in article 125, unless if requested by the inheritors or the public administration.

If the child was brought up by the adopter and his/her real parents are unknown, those extracts should indicate only that the father or mother is the one who adopted him/her.

Section 2: Acts of death

130. In the public healthy centres and the private ones there exist special register where those who die from there are registered.

The civil status officer of where the establishment is located and administrative and judicial authorities can at any time order for that register of deaths.

131. Once there are signs showing that the death was violent or other reasons which make one to be suspicious, the dead cannot be buried if the public prosecutor assisted by an authorised medical officer has not yet made a verbal-report of the state of how the dead body is and other circumstances related to it and also the informations concerning the surnames, given names, age, profession, place of birth and the domicile of the deceased person.

132. The judicial police officer should quickly transmit to the civil status officer of the place where the person died all the informations announced in the verbal-report of which the death certificate is drawn up.

133. The prison directors should send in the 48 hours following the execution of the death penalty judgment to the civil status officer of the place where the sentenced person had been executed, all the informations indicated in the article 128 of this law.

134. When a person dies in the prison, the prison director should in 48 hours, transmit to the civil status officer of the place where the person had died, the death certificate issued by the authorised doctor, and all the informations indicated in article 128 of this law.

However, in case of death which took place in prison, what is provided in article 131 is the only one applicable when there are signs of indications of a violent death or other circumstances with clear ground for its suspection.

135. In case the dead body is found and can be identified, the act of death should be made by the civil status officer of the place presumed to be of death no matter the period from when the person died and when the dead body was found.

If the dead body cannot be identified, the act of death should indicate the complete dead body identities, when the dead body is identified later, the death act is rectified.

136. Upon the request of the Public Prosecutor or any other interested person, the person who disappeared in Rwanda in the circumstances whereby his life was put in danger can be declared dead by the court if the dead body did not appear, but the court must try to find all the evidences which can lead to the conclusion that that person actually died.

The death declaration's judgments are held to be like death acts and can therefore be opposed to those who pretend that the person is alive. They can only request for their rectification.

Section 3 : Acts of marriage

137. The marriage act indicates:
(1) Surnames, given names, sex and ethnic background, profession, age, date and place of birth, domicile and residence of the spouses.
(2) The surnames, given names and ethnic background, professions, residence and domicile of the fathers and mothers.
(3) The authorisation issued when one of the spouses or both of them are still minors.
(4) The surnames and given names of their former spouses if so happened.
(5) The declaration from each of the parties accepting to be each other spouses and pronouncement of their union by the civil status officer.
(6) The surnames and given names, professions and domicile of the witnesses and of the representatives of the spouses families.
(7) The matrimonial regime declaration.
(8) The nature of "*Inkwano*".
(9) The spouses' nationality.

In the margin of each spouse's birth certificate there is an inscription of the marriage celebration and the name of the spouse.

CHAPTER VI – NOTORIETY ACTS OF BIRTH

138. In case a person fails to get an act of birth, he/she can exceptionally replace it with a notoriety act issued by the civil status officer of his place of birth or of his domicile.

139. The notoriety act cannot serve for the purpose of which it was not issued for. It must indicate the purpose of its being issued.

It contains the causes which hindered him from obtaining the birth act and the declarations of the witnesses concerning the surname, given names, profession, ethnic background, residence and domicile, place and date of birth and those of his father and mother if they are known.

Are also applicable, the provisions of article 88, 89, 90 and 97 of this law.

140. The public prosecution or any other interested person can request by a simple motion the court of first instance of where the act of notoriety was issued to nullify it.

CHAPTER VII – THE CIVIL STATUS OF THE FOREIGNERS

141. Any foreigner having his/her domicile or residence in Rwanda can have prepared the civil status acts concerning him/her by the Rwandan civil status officer in the manner provided by this law.

However, the born and the dead should be declared to the Rwandan civil status officer.

142. In case of a marriage celebrated in Rwanda, if one of the future spouses is a foreigner and the other is a Rwandan by nationality, the Rwandan civil status officer is the only one competent to celebrate that marriage.

In eight days following that marriage celebration, that civil status officer must send the marriage act to the Rwandan foreign affairs Minister who shall in turn address it to diplomatic representative or consul in Rwanda of the foreign spouse.

143. Any piece of document issued by the foreigner so that he/she can be made a civil status act, should compulsorily be accompanied by its translated version in one of the two official languages used in Rwanda, certified by the diplomatic representative or consul in Rwanda of the interested's country or approved by the Minister of Justice.

CHAPTER VIII - THE RECTIFICATION OF THE CIVIL STATUS ACTS

144. The rectification of the civil status act is ordered by the court of first instance of the place where the act was prepared after hearing the wish of the public prosecution.

The rectification of the civil status act prepared or transcribed by the Rwandan diplomatic mission abroad is ordered by the Kigali tribunal of first instance.

The court having the territorial competence to order for the rectification of the civil status act is equally competent for ordering for the rectification of all other acts even if they were not prepared in its territorial jurisdiction if they contain errors or if there were serious omissions when they were being drawn up.

The motion for the rectification of the civil status act is filed by any interested person or by the Public Prosecutor; this one must file it as a matter of right without being requested when the error or omission indicates an essential element to the act or to other decision equivalent to it.

The Public prosecutor having the territorial competence can administratively make the simple errors and omissions be rectified on the civil status act. Because of that, he gives essential instructions to the civil status officer.

The refusal to rectify the civil status acts ordered by the Public Prosecutor can be appealed to the Minister of Justice.

145. The judicial or administrative rectification of an act or judgment related to the civil status act are opposable to all in the same conditions as that of the act rectified.

The judgment following a motion for rectification can be appealed by the Public Prosecution or any other interested person.

146. The act rectifying the ordinance, judgement or an order is transmitted by the Public Prosecutor to the civil status officer of the place where the rectified act was prepared. It is then inscribed in the act margin. A copy could not be issued if not with the ordered rectifications.

CHAPTER IX – THE SUPPLETIVE JUDGMENTS OF THE CIVIL STATUS ACTS

147. The lack of a civil status act can be supplied through a judgement rendered by the tribunal of first instance where the act might have been instituted, over the motion of the public prosecutor or of any other interested person.

If it does not emanate from the prosecution, the motion should be communicated to the public prosecution.

The court as a matter of right orders for the instruction measures which it judges necessary. It can also order any interested person to be implicated, and this one can voluntarily intervene.

148. The rendered judgment by the court in conformity with the preceding article can be appealed in accordance with the common law rules.

149. The Public Prosecution transmits to the civil status officer of the place where the event so happened the pronouncement of the judgment definitively rendered.

They are transcripted in the registers of the ongoing year and their concerned mentions is inscribed in the margin of those registers.

CHAPTER X – THE RECONSTITUTION OF THE CIVIL STATUS REGISTERS

150. In case where the register has disappeared either as a whole or partially, the Public Prosecutor invites the concerned civil status officer to record systematically year by year, persons who, according to the public notoriety, were born, were married or died during that period.

After examining that systematic recording of the names, the Public Prosecutor requests the competent court to order for an investigation and all other measures of publishing to all believed opportune. The investigation can be done by the delegated judge and a copy of

investigated results is deposited during the period of 3 months in the court clerk's office and in the office of the civil status officer where any interested person can get access to them.

The court, if finds it necessary, can take new enlightenment and new witnesses are heard.

When investigations and instructions are over, the court based on the submissions of the Public Prosecutor, re-establishes acts whose existence has been recorded.

One single judgment should possibly contain the acts of the whole year for each office of the civil status.

The acts are listed in two registers, numbered and initialled as is provided in article 99 and deposited, one in the civil status office and the other in the clerk's office of the first instance tribunal.

151. What is provided in the preceding article cannot make an obstacle to the interested parties' rights of requesting to re-establish all acts concerning them which were in the destroyed, deteriorated or disappeared register.

TITLE IV – THE PENAL PROVISIONS

152. Without prejudice to the most important penalties provided by the penal code, shall be punished by an imprisonment of seven days to six months and a fine from five hundred francs to twenty thousands francs or only one of them:
(1) The civil status officer who was supposed to prepare the civil status act and did not do it within the period provided by the law;
(2) The civil status officer who accepts to receive the declarations well knowing that they are wrong declarations;
(3) The civil status officer who was supposed to communicate the civil status acts and did not do it;
(4) The civil status officer who violated the legal rule related to the keeping of civil status registers and issuing of the extracts of the civil status acts;
(5) Any person who was asked the necessary information for his/her civil status and refused to give it when it was asked by the civil status officer;
(6) Any person who declares the information to the civil status officer well knowing that it is not correct and when it is about establishing the civil status act;
(7) A witness who confirms false declarations;
(8) That one who destroyed or made any falsification to the civil status register;
(9) Any person who knowingly used stolen or fraudulently falsified act or copy of the act or extracts of the act.

PART II – ABOUT THE FAMILY

FIRST TITLE – MARRIAGE

CHAPTER I – PARENTAGE AND MARRIAGE RELATIONSHIP

153. The parentage relationship results from blood relationship. Parentage relationship exists in direct line, between ascendants and descendants, and on collateral line, between persons which are not descendants of each other but which have a common ancestor.

The parentage relationship on direct line produces effects at any infinitive degree unless where the law provides otherwise.

On the collateral line, the parentage relationship does not produce effects after the seventh degree. However it continues to exist to a person who does not have descendants.

154. The parentage degree is calculated on collateral line by counting the generations up to the common ancestor, and then add a number of generations which separates the common ancestor from the person whose parentage is to be established.

155. The marriage relationship results from marriage. The marriage relationship exists on the direct line, between a person and the ascendants of his/he conjoint as well as the descendants of another bed. It exists, on the collateral line, between the person and the collaterals of his/her spouse.

156. The marriage relationship does not produce any effect except in the cases specifically provided by the law.

157. There exist a double alliance relationship between the person and his/her in-laws'spouses.

That relationship does not produce any effect except in marriage matters.

158. The marriage relationship continues to exist even if the marriage of which it was based is dissoluted.

CHAPTER II – ENGAGEMENT

159. The engagement consists of the agreement between two families which agree that two persons from then, a boy and a girl, will get married, both families then oblige themselves to assist and patronise the union of the intending spouses.

160. The simple promise of marriage by two persons to get married is not an engagement to marry. The non execution of that promise can be sanctioned by paying damages in case where there is a fault committed in conformity with the provisions related to the civil responsibility and enrichment without cause.

161. The family of the boy to marry is the one which starts the fiancing process. The fiancing will not produce effects if the boy and girl to get married have not showed their consent.

162. On the agreed date, the delegated representative of the boy's family addresses in public the representative of the girl's family and in the presence of the family a formal request of engagement.

On that occasion, the representative of the boy's family gives to the representative of the boy's family a hoe as a sign of their engagement.

163. The engagement ceremonies is held at the girl's domicile or elsewhere it chooses.

164. The engagement takes effect when the intending spouses and the representatives of both families give their consent.

Both families fix the date for the marriage celebration which should not exceed twelve months except in case of an extraordinary reasons.

The Minister of Justice determines the practical modalities related to the engagement ceremonies.

165. The engagement agreements can only be broken by anyone of the intending spouses only.

166. The breaking of the engagement agreement can give rise to the payment of damages and restitutions.

The determination of the prejudice caused and damages to be paid is appreciated in conformity with the civil responsibility rules.

167. All the actions founded on the engagement rejection is prescribed within a period of twelve months from the day when the one rejecting informs the other party. When he/she did not inform him/her, the action starts running after the period provided in article 164 of this law.

168. The "*inkwano*" is a marriage sign the boy's family gives to the girl's family. The marriage validity cannot be conditioned by the paying of the *inkwano*. The amount and nature of the *inkwano* are determined by the Minister of Justice.

The giving of "*indongoranyo*" is just facultative.

CHAPTER III – CONCLUSION OF MARRIAGE

Section 1 : General provisions

169. It is only the civil monogamous marriage recognised by the law.

170. The civil marriage is the voluntary union of a man and a woman conforming to the provisions of this law.

It is publicly celebrated by the civil status officer at one of the fiancés domicile or at the intending spouses residence.

Section 2 : Substantive conditions

171. The man and woman, before the age of 21, cannot enter into a marriage contract.

However, the Minister of Justice or his delegate may allow persons below that age to marry, for serious reasons.

172. *Marriage is prohibited, in the direct line, between ascendants and descendants, and in the collateral line, up to the seventh degree.*

173. *Marriage is prohibited between a person and his/her parents-in-law.*

174. *Marriage is prohibited between:*
1. *The adopter and the adoptee;*
2. *The adopter and the descendants of the adoptee;*
3. *The adoptee and the spouse of the adopter;*
4. *The adopter and the spouse of the adoptee;*
5. *The adopted children from same adopter;*
6. *The adoptee and the children of the adopter.*

Prohibitions mentioned in point 5 and 6 may be lifted by the Minister of Justice for serious reasons.

175. *No one is allowed to contract a new marriage before the cancellation or dissolution of the previous marriage.*

176. *A woman is prohibited from re-marrying until 300 days have elapsed from the dissolution or cancellation of marriage of the previous marriage.*

This period is terminated when a woman gives birth.

It can also be stopped when the woman shows a medical certificate issued by an ad hoc commission that she is pregnant or not. This certificate has to be approved by the president of the tribunal of first instance for a woman to re-marry.

The Minister having public health in his/her attributions determines the composition and modalities for functioning of this commission.

Section 3 : Formal conditions

177. Before any marriage is celebrated, the civil status officer proceeds to the publication by posting a notice at the civil status office of each of the intending spouses and at the civil status office where the celebration of marriage will be held.

This publication states surnames, given names, professions, domicile and residence of the intending spouses, the quality of age majority or minority; their fathers and mothers' surnames, given names, domicile and residence.

The publication also states the day, place and hour and even the office of civil status where marriage will be celebrated.

The Minister of Justice or his delegate may exempt from the publication in case of serious reasons.

178. Marriage is celebrated after twenty days starting from the day the marriage was publicised.

179. If marriage which was publicised but was not celebrated within four months, it cannot be celebrated without newly publicising it as it is provided in articles 177 and 178 of this law.

181. If the civil status officer refuses to celebrate marriage one of the persons intending to get married can file the case for it to the court.

The civil status officer cannot refuse to celebrate that marriage if the court declares his reasons for the refusal unjustifiable.

182. The date and hour of marriage celebration is fixed in a common agreement between the intending spouses and the civil status officer.

183. Before the celebration of marriage, the civil status officer verifies if all necessary conditions and formalities for marriage were fulfilled. Before the marriage celebration, if he/she finds a legal proof to hinder that celebration, he/she should refuse to celebrate that marriage in question and makes an act for it and immediately informs the marriage candidates.

184. The intending spouses accompanied by a representative from each family and by the witnesses of majority age and enjoying all civil rights appear in person before the civil status officer.

The civil status officer gives them a lecture related to their civil status and instructs them their rights and duties as married spouses. The future spouses declare to be each other husband and wife. He pronounces that they are legally united by marriage. The marriage act is signed by the civil status officer, the spouses, the families' representatives and the witnesses.

Section 4 : The marriage booklet

185. During the marriage celebration, each spouse is given a marriage booklet. Its model and contents are determined by the Minister of Justice.

The model of that booklet was determined by the Ministerial Regulation n° 99/05 of 25.03.1992 (*Official Gazette*, 1992, p.490).

186. The inscriptions and mentions contained in that booklet are signed and approved by the civil status officer and he/she confirms them putting on the seal of that office.

187. The marriage booklet duly listed and initialled by the civil status officer, and which has no signs of falsification, is accepted to be in conformity with the civil status registers.

188. In case of the loss of the booklet, the owner can request for the reestablishment of it. The new booklet contains the mentions "duplicata".

189. The civil status officer should call for the booklet every time there is something to be recorded in it.

Section 5 : Opposition to the celebration of marriage

190. The right to oppose the marriage celebration rests on the public prosecutor and any other interested person.

191. The opposition is done verbally or in writing, latest on the marriage day before the civil status officer. That opposition must be motivated.

192. Opposition to marriage suspends marriage celebration.

Its effects stop running:
(1) By the court judgment nullifying the opposition rendered by the tribunal of first instance of where the celebration of marriage was to be held.
(2) If the reasons for opposition were lack of necessary requirements for marriage celebration, the realisation of these requirements will put end the opposition.
(3) Where the reasons for opposition no longer exist.

193. Opposition will be challenged in court by one of the marriage candidates accusing the one who opposed it.

194. The seized court statutes the matter. If the judgment confirms the opposition, the marriage celebration continues to be suspended until when the necessary requirements for marriage celebration are realised or if the irregularity has been corrected if it was the case.

195. The judgement which declares opposition unfounded can subject the one who opposed to damages and interests.

196. Any judgment, whether it is for opposition or against the opposition is brought to the attention of the marriage candidates as well as the civil status officer who was supposed to celebrate that marriage in question.

Section 7 : Obligations which result from the marriage

197. The spouses contract together by a simple fact of marriage the obligation of bringing up and educating the children.

If one of the spouses does not comply with the obligation, the other may introduce an action to force him/her to do so. This action also belongs to the public prosecutor.

198. Alimony is that imposed by the law on a person to furnish the other who is in need with food support.

199. The food support is accomplished by cash or in kind.

200. Spouses have an obligation to feed each other. It exists also between the parents on one hand and their children on the other hand, and reciprocally.

There is also a reciprocal feeding obligation between children and their ascendants.

201. There is also a reciprocal feeding obligation between sons and daughters-in-law and their father-in-law; but this obligation ceases:

- in case of death of one of the spouses who united them and children he/she had with the other surviving spouse;
- in case of divorce of the spouses.

202. Those who have the duty to support are in the following order:
a) the spouses;
b) the children;
c) their father and mother;
d) their ascendants;
e) their father and mother in law, the son and daughter in law.

203. Where a person inherited the property of the predeceased spouse, and if there exists no offspring from the dissolved marriage by death, this person is obliged to support the surviving spouse from when the spouse died. It is borne by all legatees of the entire inheritance, and if this is not enough, by all legatees of proportional part of it, and eventually, by all the legatees of particular part of it in proportion to their emoluments.

The claim for food support may be introduced within the period of two years from when the spouse died.

204. Food support is given in proportion to the needs of the claimant and the resources of the one to provide it.

205. The tribunal of first instance is the only court that has jurisdiction over cases concerning food support. The decisions rendered in these matters are subject to revision in case of modification in needs of the creditor or in the debtor's resources.

Section 7 : The respective rights and duties of the spouses

206. The husband is the head of the household composed of the man, the woman and their children.

207. The wife together with the husband assure the moral and material direction of the household and provide for its support.

208. One of the spouses may assume those duties alone, if the other is in a state that cannot permit him/her to manifest his will due to his/her incapacity, absence, being far away or due to any other cause.

209. The spouses are duty bound to mutual fidelity, help and assistance to each other.

210. The marriage creates a life community between spouses with a duty of cohabitation.

211. Each of the spouses contributes to the household expenses in accordance with his/her means.

212. The marriage does not modify the civil capacity of the spouses, only their powers can be limited by the law or their matrimonial regime.

213. Each of the spouses has a right to exercise a profession, an industry or commerce without the consent of the other spouse, except in case of community matrimonial regime.

The spouse who exercises a profession, industry or commerce is personally liable for all those that concern his/her profession, his/her industry or his/her commerce with except if they are in a regime of community of property.

However if the other spouse estimates that such activity is of the nature that can seriously prejudice his/her moral or material interests or that of the minor children, he/she has a right to introduce a case before the family council or before the court.

If the profession, the industry or the commerce has not yet been commenced on the day that the demand was introduced, the spouse who wanted to commence it cannot do so before the family council or the court can take the final decision on it.

214. Each of the spouses, who exercises his/her own activity cannot in his/her professional, industrial or commercial relations use the name of his/her spouse without the consent of the latter. The authorisation given on that matter can only be withdrawn in case of important reasons appreciated by the court.

215. Whatever the matrimonial regime, each of the spouses can introduce a case into court without authorisation of the other in all the disputes concerning the property of which he/she is empowered with administration or concerning the right he/she has to exercise a profession, an industry or commerce.

216. If one of the spouses does not fulfil his/her obligations, the other spouse can go to court to ask it to take provisional measures that protects the interests of the household and more particularly the children.

217. The demands provided in this section are introduced in the ordinary ways before the president of the tribunal of first instance where the couple is domiciled and who resolves them by ordinance.

218. The measures provided in article 216 are executed provisionally even if they are subjected to appeal. That execution continues to produce effect even if a demand for divorce was introduced.

219. The measures provided in article 216 can be revised if the conduct or position of respective spouses has been modified.

CHAPTER IV – THE NULLITY OF MARRIAGE AND ITS CONSEQUENCES

220. The marriage contracted without the freedom of consent of the two spouses can be attacked by them or by one of the two whose consent was not freely expressed.

If there was an error on the person or on the essential quality of the person, the other spouse may demand the nullification of their marriage.

The marriage contracted by error or by violence cannot anymore be attacked if there was an expressed or implied consent of the one of the spouses who had a right to introduce an action for nullity.

222. All marriages contracted contrary to the provisions related to the prohibitions to marriage can be attacked either by the spouses themselves or any other interested person or the Public Prosecution.

224. In all cases as stipulated in article 222, the action for nullity can be introduced by any interested person. It cannot be introduced by collateral parents or by the children born from another marriage during the time when the spouses are still alive except if they have present and actual interests in it.

225. One of the spouses who is prejudiced by the second marriage contracted by another can demand for nullity of that marriage.

226. If the new spouses oppose that the first marriage of one of them was null, the validity or nullity of that marriage should be first of all judged by the court.

227. In all cases where article 222 is applicable and without prejudice to the provisions of article 223, the public prosecution should ask for the nullity of that marriage when the spouses are still alive and also condemn them to separate.

229. Nobody may claim to possess the status of married person and base on it to claim for civil rights resulting from marriage if he/she cannot present an extract of the act of marriage celebration written in the register of the civil status except in cases provided in article 150 and 151 of the present law.

230. Status possession cannot exempt the so-called spouses from presenting an extract of their marriage certificate.

231. In case of status possession and an extract of the marriage certificate was shown, nobody among the spouses can ask for the nullity of their marriage.

233. The marriage that has been declared null, however produces civil effects to the spouses and to their children if it had been contracted in good faith.

If it was one of the spouses who contracted it in good faith the civil effects resulting from it goes in favour of him or her and the children born from that marriage.

The marriage that has been nullified produces civil effects to the children of that marriage even if it was contracted in bad faith by both spouses.

The court decides on the protection of the children in the same way as in the divorce matter.

234. Shall be punished by an imprisonment of six months to twelve months, the civil status officer who knowingly celebrated a marriage subject to an impediment that may cause nullity of that marriage.

CHAPTER V – MARRIAGE OF FOREIGNERS

235. Marriage concerning foreigners is governed:

a) as regards formalities, by the law of the place where it is celebrated;
b) as regards effects on the spouses, in case there was no common agreement, by the husband's national law at the time of marriage celebration;
c) as to its effects on the children, by the national law of the father at the moment of birth;
d) As to its effect on the spouses' property, in the absence of matrimonial conventions by the law of the country where they are domiciled.

TITLE II – DISSOLUTION OF MARRIAGE AND SEPARATION FROM BED AND BOARD

236. The marriage is dissolved:
1. By death of one of the spouses;
2. By divorce.

CHAPTER I – DIVORCE

Section 1 : Divorce for determined reason

Sub-section I : Causes of divorce

237. One of the spouses may introduce a case for divorce basing on the following grounds:

- Having been condemned for a very shameful offence;
- Adultery;
- Cruelty, physical mistreat or serious abuse by one towards his/her spouse;
- Refusal to contribute to essential household expenses for a period of 12 months at least;
- Mutual separation for a period of three years at least.

Sub-section II : Procedure of divorce for determined reason

238. Whatever the facts or offences giving rise to divorce for determined reason, the demand may only be introduced before the tribunal of first instance where the spouses had their last conjugal residence or where the defendant is domiciled.

239. If it is deemed necessary for the public prosecution to instruct the case of the infraction that the one requesting for divorce based on, the action for divorce is suspended until a definite decision is taken by the criminal court; the demand for divorce can then be reintroduced but without the plaintiff spouse being opposed peremptory, interlocutory or prejudicial pleas.

240. An action in divorce is applied in court by only the spouses.

Except for those regulations mentioned in the following articles, a divorce suit is brought, instructed and judged according to ordinary proceedings, but the public prosecution has always to be heard.

241. If it permits to make out investigations, any person with except of descendants and ascendants on the first degree and domestic workers of the spouses can be called to testify before the court as witnesses.

242. In divorce matter cross-demands can be introduced by simple conclusions. It can also be introduced on the level of appeal without being considered as new demands.

243. At the first appearance of the parties, the president of the tribunal of first instance hears them in person and in camera. He may try a counselling to show them all the consequences that might develop as a result of divorce.

In the case one spouse is unable to appear personally before the tribunal, the president determines which place is appropriate for the reconciliation. In case of non-conciliation, or failure to appear of one of the parties, the president takes note of it and gives the plaintiff the authorisation to go ahead with his/her demand.

244. The pronouncement of all judgements or court decisions authorising divorce announces the complete identity of the parties, the date and the place of celebration of their marriage and the cause of their divorce.

245. The pronouncement of all judgements or court decisions admitting divorce that has been irrevocable is transcribed in the register of civil status of the place of their marriage celebration upon the demand of the public prosecution. That is mentioned in the margin of the acts of marriage and acts of birth of the spouses.

246. Extracts or copies of divorce judgement can be published in the official gazette of the Republic of Rwanda upon the demand of one of the spouses or the public prosecutor.

247. A definitive judgment of divorce starts producing its effects upon spouses concerning their property from the date the complaint was submitted before the court. It starts producing effects on the third persons from the date it was transcribed, as provided in article 245.

Sub-section III : Provisional measures during the proceedings in divorce for determined reason

248. In all levels of hearings, the president of the tribunal of 1st instance can, for the parties to the case or their common children, take provisional measures regarding themselves or their property.

249. During the proceedings for divorce, in the children's best interest, the president of the tribunal of first instance shall invest one of the spouses or a third person with the provisionally custody of the children.

250. During proceedings in divorce, for the spouses in need of divorce not to stay together whereas they are in conflict, each of them, being plaintiff or defendant, can ask the president of tribunal of first instance the permission of leaving the conjugal residence with his/her personal belongings.

The president of the tribunal, who grants this permission, fixes also the new residence of the spouse.

The president after examining the situation, pronounces where one of the spouses he allowed to leave the conjugal residence will reside.

If it is demanded by the wife, the president cannot order the husband to leave the conjugal residence and elect for him a separate residence, unless if they are living in a house of the wife or if one of her parents is the owner, usufructee or the lessee. However the husband can not be ordered to leave the conjugal residence if he practises in it, craft industry or industrial arts, commerce or an industry.

In case the spouses share a professional activity in an association in their conjugal residence or in a house dependant to the community, the president takes provisional measures in the interests of the children and the customers.

251. The spouses in a community of property regime, be the plaintiff or the defendant in the divorce, no matter how far the debates have reached can demand in the preservation of his interests that seals be put on the immovables of the community.

Those seals are removed after the full inventory of the contents of the house with value estimation and put under the custody of the other spouse who shall be responsible for them or be made responsible to answer for their values as a judicial custodian.

252. Each of the spouses is supposed to justify in case he is asked to do so that he resides in the house he was asked to live in by the president of the court of first instance. In case he fails to justify it, the other spouse may refuse to provide him/her food support and if he/she is the one who is the defendant he/she can ask the court to dismiss the plaintiff's case.

253. Each of the spouses can ask for the nullification of the acts accomplished by the other in the fraudulence of his/her rights.

254. The decisions taken in the dispositions of this subsection are executed provisionally in spite of appeal and without surety unless if they can prejudice the interests of the children. They can be essentially subject to revision if new reasons are discovered.

Sub-section IV: Peremptory pleas during proceedings in divorce for determined reasons

255. The action of the spouses is brought to an end by reconciliation of spouses. It applies also when one of the spouses who wanted to divorce dies before definitive judgement.

In either case, the plaintiff is dismissed in his demand; nevertheless he may file a new action for new reasons that arose after reconciliation and be accepted to use previous reasons to give support to his demand.

256. The reconciliation can result from any voluntary action manifested by the spouses to re-establish a life community.

Section 2 : Divorce by mutual consent

257. In case spouses mutually consent and persevere with their motion for divorce, in a manner and under the conditions and required procedures prescribed by the law, this is a definitive evidence that life together has become intolerable and that there exists between themselves a peremptory cause for divorce.

258. Five years of life community is the period for admission of divorce by mutual consent.

259. The spouses who demands for divorce by mutual consent have first of all to make a notarised inventory of their property both immovable and immovable and determine their respective rights on them; they may however agree on those rights by making a compromise.

260. The spouses are also obliged to make a notarised act of their convention on the following points:
- Of whom among them will be in charge of their children or those they adopted during the probation period and after the verdict of divorce.
- In which house will each of the spouse will reside in during the period of probation.
- The amount of money that the needy spouse shall get from the other spouse during that period.

261. The spouses requesting for divorce by mutual consent jointly and personally go to the president of the tribunal of first instance of their conjugal domicile and inform him of their intention in the presence of two witnesses of their choice.

262. The president convinces the spouses while they are together or one by one in the presence of witnesses mentioned on article 261, trying a counselling and good piece of advice for reconciliation, and tells them in details all the effects that would result from their divorce.

263. If the spouses persist in their intention, the president acknowledges formally their demand for divorce by mutual consent and at the same time they have to present and deliver to the president, in addition to the documents mentioned on articles 259 and 260, the following documents :
- Their birth and marriage certificates;
- Their children’s birth, adoption and death certificates.

264. The court clerk drafts in details a verbal-report of all that has been said and done in accordance to the previous articles. The documents mentioned in article 267 continues to be annexed on the verbal-report.

265. The declaration is to be renewed in the fourth month, seventh month and tenth month, starting from the time they expressed their wish to divorce, they can re-introduce their demand on the date that was fixed by the president but they should observe the same formalities.

However the parties are not obliged to present the required documents again.

266. During the month of the day when the year has passed, starting from the first declaration, the spouses present themselves while together and personally before the president. They present him copies of the four verbal-reports in due form containing their mutual consent and all other acts annexed thereto and asks the president, separately but in presence of each of them, the admission of divorce.

267. If after the president's counselling the spouses persevere with their intention, they are given act of their motion and receipt of the required documents. The court clerk drafts verbal-report of it that is signed by the parties and also by the president and court clerk.

268. The court clerk communicates to the public prosecutor all the elements of the file for opinion.

269. If the public prosecutor finds that the spouses have been together for a period of 5 years from the time they first declared their wish to divorce and that their mutual consent to divorce was expressed 4 times respectively in a year and that all the formalities provided in this section were observed, he gives his conclusions in the following words "the law permits", in the contrary case "the law forbids".

270. All other cases suspended, the court judges the divorce case without delay. It makes no other verifications except those provided in article 269. If the court in its opinion finds that the parties satisfied all the conditions and all the formalities required by the law it admits divorce, in the contrary case the court declares that there is no justifiable reason for divorce and states motivation of its decision.

271. The appeal against the judgement of divorce will only be accepted by court if it is made by the Public Prosecution within the period of 20 days starting from the day the judgement was pronounced by court. The spouses concerned must be informed.

272. An appeal against judgement of divorce must be made by a personal declaration in the office of the court clerk that rendered the judgement. This appeal will only be acceptable before court when both spouses jointly made it within a period of 15 days following the day the judgment was pronounced. Both spouses are required by law to present themselves and personally before the judge of appeal within a period of one month starting from the date of appeal so that they can air their grievances.

273. In ten days of signification of appeal, the complete file is transferred to the court of appeal. The court of appeal takes the definitive decision in ten days that follows.

274. The decision pronounced by the appeal court can also be taken to High Court for cassation.

Request for cassation from the parties is only admitted if it was introduced jointly by both spouses.

275. When divorce has been admitted by definitive judgement, the pronouncement of the judgement or decision is signified or delivered with acknowledgement of receipt in two months to the spouses or civil status officer of the place where their marriage was celebrated.

These two months start to run in case of definitive judgement after the expiration of the delay of appeal and in the case of decision at the court of appeal after the expiration of the delay for request for cassation.

Except in the cases of superior force, the spouses who will not have signified or delivered to the competent civil status officer shall be punished by an imprisonment of a maximum of 7 days and a fine of two thousands or one of the two.

In the month of signification or joint delivery the civil status officer will transcript in his registers the pronouncement of judgement and a mention shall be made in the margin of the acts of marriage and acts of birth of the spouses.

276. The extract of the judgement or decision of divorce can be published in the official gazette of the Republic of Rwanda on the demand by either the parties or public prosecutor.

277. The definitive judgement starts to produce effects between the parties and to their property on the day of the first introduction of the demand for divorce but to the third parties it starts to produce effects on the transcription of the judgement.

Section 3 : Effects of divorce

278. The divorced spouses can remarry without observing the 300 days provided in the first paragraph of article 176, if in that interval the wife did not contract a new marriage which was dissolved before the expiration of 300 days, without prejudice to the application of the provisions of paragraphs 2 and 3 of the above mentioned article.

279. Where the ground for divorce was adultery, the guilty spouse cannot remarry his/her accomplice.

280. The spouse at fault for which divorce for determined reason was pronounced looses all advantages conferred on him/her by the other spouse, either by the contract of marriage, or during the ongoing marriage.

281. The spouse who won the case keeps the advantages conferred on him/her by the other spouse whether these advantages are stipulated reciprocal or not reciprocal.

282. If the spouses had not made any advantage to one another or if what has been made is not enough to ensure the survival of the spouse who won the case, the court can give him/her from the property of the spouse who lost the case a food support which cannot exceed 1/3 of that spouse’s revenues. Such food support can be revoked in case it is no longer necessary to continue to provide it.

CHAPTER II – LEGAL SEPARATION

288. The demand for legal separation may be introduced by the spouses according to the rules governing divorce.

The legal separation by mutual consent is governed by the rules governing divorce by mutual consent.

289. The legal separation exempts spouses from the fulfilment of their obligation of cohabitation. It always has as consequence the separation of the property. In their respective relations, legal separation has retroactive effect from the day the plaint was brought into court.

After the pronouncement of judgment of legal separation by the court, the right of being assisted remains with the spouse who won the case of legal separation. The provisions set in articles 283 and 284 are applicable.

290. When legal separation for determined reason lasts for three years after transcription of the pronouncement of the judgement for legal separation, either party may ask the court to convert the judgment of legal separation into one of divorce.

Where there has been legal separation by mutual consent for a period of three years starting from the day the judgment was passed, the court upon the request of both spouses can convert the judgment of legal separation into the one of divorce.

291. At the expiration of 3 years of legal separation by mutual consent starting from the transcription of the pronouncement of the judgement authorising legal separation, the court upon the joint demand by the spouses, may order a judgement for divorce by mutual consent.

292. Article 280 is applied in case of legal separation for determined reason.

CHAPTER III – THE DIVORCE OF FOREIGNERS

293. In case of marriage between foreigners, the admission of divorce for determined reason is governed by Rwandan law unless if the national law of the plaintiff provides for the contrary.

294. In case of marriage between spouses having different nationality and where one of them is a Rwandan, their divorce is governed by the Rwandan law.

295. By derogation of article 11 of this law, divorce is only admitted in cases provided by the Rwandan law.

TITLE III – BLOOD RELATIONSHIP AND FILIATION

CHAPTER ONE – FILIATION OF LEGITIMATE CHILDREN OR CHILDREN BORN IN THE MARRIAGE

296. A child conceived during marriage is legitimate and has as father, the husband of his/her mother.

Is presumed to have been conceived during marriage a child born from one hundred eightieth day following the celebration of marriage or in the three hundred days following the dissolution of marriage.

297. The husband can deny a child if he can prove that during the period between 300 days and 180 days before the birth of the child he has been far away from home or because of certain accidents he has been physically incapable to cohabit with the wife.
The husband can disavow a child if he proves that during the period of three hundred days before the birth of the child he was in physical impossibility of intercourse with his wife due either to the absence in place or to the effect of any other accident.

298. The husband cannot in any case disavow a child alleging the natural impotence.

299. The husband can disavow a child for the cause of an adulterous liaison of the mother only if he can prove adultery which must have taken place between the 300th day and the 180th day before the birth of the child. He is then to provide evidence that he is not the father of the child in question.

301. A child born before the 180th day of marriage cannot be disavowed by the husband in the following cases :
- If the husband knew at the time of marriage that the wife was pregnant;
- If he assisted in the drafting of the birth certificate and he signed on it or put his fingerprint on it;
- If after or before the birth, he has recognised the child in writing or verbally before the family council.

302. A child born by the wife whose marriage has been dissolved after 180 days but before the 300 days is believed to have belonged to the former marriage unless if there is recognition or legitimisation of the child.

A child born by the woman before the expiration of 300 days since the dissolution of the former marriage but after the celebration of the new marriage is exclusively presumed to be a legitimate child of the new marriage unless if contested or disavowed.

303. The action in disavowing paternity must be introduced within three months if the husband was present at the birth of child, within three months after his coming back if at the time of birth he was not present, within three months following the reinstatement of capacity, in case he was interdicted.

304. The action in disavowal of paternity is exclusive to the husband. No one else, if he is still alive, can institute the case of disavowal is his place.

305. When the husband dies without submitting the disavowal of paternity and this action is still within the limits of its prescription, his heirs or successors can file it within a period of three months following the death of the husband or after the period of three months from the date the child was born if the birth was after the death of the married husband.

306. The action in disavowing paternity is directed against the child himself/herself. If he/she is interdicted, the action is directed against the *ad hoc* tutor designated by the court. During that period an action in disavowal of paternity is submitted to court as a request to nominate the child's *ad hoc* tutor. The trial is heard in the presence in the mother.

CHAPTER II – PROOF OF LEGITIMATE FILIATION

307. The legitimate filiation is proven by the acts of birth inscribed in the register of civil status.

308. In the absence of the birth certificate, the constant status possession as legitimate child is enough to prove filiation.

309. Status possession as legitimate child is established by a combination of enough indicators showing properly the relationship between a person and the people he refers to as his or her parents.

These indicators include the following:
- If a person was given a name by that person he/she calls his/her father;
- If the father of the child treats him/her as his and caters for his/her education, welfare and establishment;
- Where child has constantly been treated as such by the community;
- Where the child has been treated as such by the family.

310. No one can claim a civil status that does not conform his/her birth certificate or a status possession different from that one written down on his/her birth certificate.

No one can take issue over a person's status that conforms his/her birth certificate.

311. In default of birth certificate or constant status possession, or in case a child was written under incorrect names or his/her parents are unknown, the proof for a child's filiation can be evidenced by witnesses.

However, such a proof can only be admitted if accompanied by commencement of proof in writing or by presumptions or other constant indications of facts, which are serious enough to determine the admission of witnesses' declaration.

312. The commencement of proof in writing is found in the family books, registers or domestic papers and in any other public or private writings emanating from the party involved in the case or any other person who may be interested if he/she was still alive.

313. Can be opposed by all means the child's action against the one he/she pretends to be his/her mother, and in case if maternity was proved, his/her pretension to be her husband's child can be opposed too.

314. In matters concerning the status of persons, a repressive action on that civil status cannot start or cannot be heard by court before the judgement establishing the civil status is totally concluded.

315. Action concerning claim to status cannot prescribe in relation to the child.

316. A claim to status can be introduced in court by the inheritors of the child who died before attaining the age of majority or within the period of 5 years after attaining the age of majority.

317. The inheritors can also continue the action for status introduced in court by the child they succeeded, unless if there was withdrawal or peremption of hearings.

CHAPTER III – NATURAL CHILDREN

Section 1 : Legitimisation

318. Natural children are legitimised by the subsequent marriage of his/her father and mother:
1. If both the father and the mother have recognised him before, during or after marriage;

2. In case of forced recognition by Court order.

These children are granted the status of legitimate children of the new spouses, except if there is objection to that status.

319. Any legitimisation of the child shall be inscribed in the margin of his birth certificate.

320. Where the parents have legitimised a child after marriage, the court upon request can pronounce the legitimisation of that child.

321. The case is heard in camera and the public prosecution is also heard.

The appeal can be made by the public prosecution or those who may demand it in 30 days from the time the judgement was pronounced.

When the legitimisation is pronounced in accordance to the provisions of this article, on the claimants'initiative, pronouncement of the definitive judgement is inscribed in the civil status registers in the place where the marriage was celebrated or in the place where the child was born or domiciled.

The legitimisation produces effects from the time it was transcribed. It must be mentioned in the margins of the birth certificate of the child and in the marriage certificate of his/her parents.

322. Legitimisation can also be made in favour of that child who died but leaving behind descendants. In this case it profits those descendants.

323. The legitimised children possess the same rights and obligations as children born within the wedlock.

Section 2 : The recognition of the child and action for support

324. Recognition of a natural child is perfected by authentic act, with the exclusion a will, where this recognition was not inscribed on the birth certificate of the child.

325. The recognition of the child by one of the spouses produces effects to him/her alone. The consent of the other spouse is obligatory except in cases of separation of property.

326. The recognised child has the same rights and obligations as legitimate children with regard to the spouse who recognised him.

327. Recognition of a natural child made by the father or mother, and any other child's claim can be contested by all interested persons. Where a natural child is recognised by many people of the same sex, the first recognition is the only recognition to produce effects as long as it hasn't yet been annulled.

328. The action in establishing paternity is admissible in the following cases:

- Kidnapping, arbitrary sequestration or rape of the child's mother;
- Captivation of the mother by fraudulent manoeuvres, misuse of authority, promise of marriage or betrothals;

- Extra-marital cohabitation;
- Written or non-equivocal acknowledgement of paternity;
- Upkeeping, education and treatment of the child as his.

329. The action in establishing maternity is only admissible:
- If the child possessed the status possession mentioned in article 309;
- If childbirth by the presumed mother and identity of the claimant presumed to be her child are proved by all pieces of evidence to be corresponding.

330. The action in establishment of paternity is a personal action to the child. The action can be introduced on behalf of the child by the father, mother or his/her tutor.

Introduction of the action is limited to a period of 5 years after the child reaches majority. However, in the case of status possession, this period may be prolonged until the expiration of the year following the death of the presumed father or mother.

The action is not transmissible to the heirs of the natural child. However, in conformity with article 317, they have the option to continue the action started by their author.

331. Where paternity or maternity of the child has been established after an action in establishing paternity or maternity, the child acquires same rights and obligations as those enjoyed by the legitimate children with regard to the concerned spouse.

CHAPTER IV - ADOPTION

332. Adoption must be based on justified reasons and must be performed in the best interests of the child. The act of adoption must be done in respect to the legal conditions and the forms provided for under the following articles.

Section 1 : Conditions for adoption

333. The adopter must be at least 15 years over the adoptee.

However, where the person supposed to be adopted was born to one of the spouses, the age difference between him/her and the adopter should be at least 10 years. But with justifiable reasons the age limit can be reduced by the Minister of Justice.

Adoption can be requested jointly by married spouses after 5 years of their marriage on condition that these spouses have never been legally separated and one of them should be at least 30 years of age.

Any other person that has reached the age of 35 years can as well request adoption.

Where the adoptee to be, was born to a person married to the adopter, it is enough for the adopter to have 21 years of age.

If the adopter is married and has never been legally separated, his/her spouse must consent to that adoption, unless if the latter is unable of showing his/her will.

334. No person can be adopted by many persons apart from married spouses. Among the married spouses one cannot be adopted without the consent from the co-spouse except where it was not possible for the other spouse to manifest his/her will, or where the co-spouse was absent or there was legal separation.

335. If the adopted child is still a minor, the mother and the father of the child have to be consulted, and if one of them has died or he/she is in a state that cannot permit him/her to manifest his/her will or if he/she is absent, the consent of one spouse is enough.

In case of divorce or legal separation, the consent of one spouse who is vested with the child's custody is sufficient.

If the minor child no longer has the parents or if they cannot manifest their will or if they are absent, the consent is given by the tutorship council or by the person who is charged with his/her custody.

336. The adoptee keeps the ties with his/her natural family and he/she continues to enjoy all rights and obligations that existed between him/her and that family. However, the parental authority is exclusively exercised by the adopter especially in matters of the emancipation of the adoptee, authorising him/her to engage in the acts of commerce and in the administration of his/her property while still a minor.

Where adoption was granted to both spouses, the rights indicated in the preceding paragraph are enjoyed in conformity with the rules applicable to legitimate parents.

Where the adopter has been interdicted or absent or dead and the adoptee is still a minor the right of parental authority over this adoptee will be granted to the ascendants of the adopter.

Family ties arising from adoption expand to the adoptee's descendants.

The penal measures applied to ascendants and descendants, can as well apply to the adoptee, adopter and their descendants.

337. The adoptee maintains his/her surname and given names received at birth.

338. In spite of the recognition or legitimisation of the child done after his/her adoption by a third party, the adoption persists with all its effects.

339. An adopted child possess the same rights and obligations as those enjoyed by biological children of the adopter except in the following cases:

- The adopted and his/her descendants have no rights to inherit the property of the adopter's parents;
- In a situation where the adopted child died without producing any kid the property he acquired from the adopter by way of donation or by succession is given back to the adopter or to his/her descendants who are charged with contribution to the debts and without prejudice to the third parties'rights.
  The surplus of the property of the adoptee goes to his/her parents and these parents must take precedence over the adoptee's inheritors apart from his/her descendants, even for the specified assets of property mentioned in this article.

- If in the lifetime of the adopter, the adoptee dies and also his/her descendants die without descendants, the adopter succeeds the assets of property he had given to the adoptee. This right is not transmissible to his/her heirs;

Section 2 : Procedure of adoption

340. The person who wants to be the adopter and that one who wants to be adopted, if the latter has attained 18 years, may present themselves to the civil status officer of the adoptee's domicile and present to him the acts of their respective consents. If the adoptee is less than 18 years, the acts are presented in his/her name by his legal representative.

341. The consent of the parents of the adoptee, that of his/her spouse and that of the adopter's spouse are put in the acts of adoption or in a separate authentic act, before the civil status officer of their respective domicile.

In the default of the parents, the consent is given by the tutorship council or the person vested with custody of the child.

However, the consent of the tutorship council or that of the custodian of the child is submitted to the homologation by the competent court of where the adoptee's domicile is situated. The court pronounces without motivation in the following terms : "The adoption is homologated" or "The adoption is not homologated".

342. The adoption can be revoked by the tribunal on demand of the adopter if by some action of ungratefulness the adoptee becomes unworthy of the goodness he benefited.

On demand of the adoptee or public prosecutor, the adoption may equally be revoked by the tribunal for serious reasons.

The court decision to revoke the adoption is registered in the civil status register of the place where the adoptee is domiciled. The civil status officer mentions it in the margin of the adoption certificate, of the birth certificate of the adoptee, and of the birth certificates of his/her descendants.

CHAPTER V – PARENTAL AUTHORITY

Section 1 : General provisions

343. The child must all the time give honour and respect to his/her father and mother.

344. He/she remains under their authority up to his/his majority age or emancipation.

345. The parental authority is exercised over the child by both the father and the mother.

In case of disagreement, the authority of the father prevails; however the mother can introduce a case before the tribunal of first instance of the residence or domicile of the parents.

That case is introduced, instructed and judged following the summary procedure in the way of provisional order.

346. The parental authority over a natural child whose filiation was not established is exercised by that person who ensures the child's custody.

347. The parents have the right to discipline their child that is still a minor and non-emancipated. Those charged with education of the child are recognised the same right.

348. The non-emancipated child cannot leave the familial residence without the permission of the father or mother. He/she may be removed from the place only under the conditions provided for by the law.

Section 2 : Attributes of the parental authority

349. The exercise of parental authority implies the right to custody, the right to administration, and the right to enjoyment.

Sub-section I : The right to custody

350. The right to custody includes the duty of the father and mother to maintain and educate the child in conformity with their abilities and fortune.

351. In case the minor child is notorious in his/her misconduct, the father and the mother who are seriously disappointed can denounce him/her with concrete evidence to the tribunal which, if necessary, may order internment of the child in a rehabilitation institution for a period of at least 10 months.

Sub-section II : Legal administration

352. The father, in his absence the mother, in a marriage, has the capacity to administer the minor child's personal estate and to assist the child in juristic acts and in legal proceedings.

He is accountable for the property and the fruits and profits thereof if he has no right of enjoyment, and only of the property if he is vested with usufruct by law.

353. The tribunal's authorisation is required for the alienation of the child's property or encumbrance with third parties'rights.

354. Legal administration of the minor's estate shall be terminated :

- Where tutorship is opened ;
- Where the child attains civil majority ;
- Where the child is emancipated ;
- Where the parents are deprived of parental authority by court decision.

Sub-section III : Legal enjoyment

355. Legal enjoyment empowers the father and the mother to perceive the fruits and profits that accrue from the personal property of their child and to enjoy them.

356. The right to enjoyment entails the following obligations :

- obligations binding any usufructee ;
- feeding, maintenance and education of the child ;
- payment of arrears or interests on capital ;
- payment of the last days of illness charges and burial charges.

357. The father or mother against whom the decision of divorce was taken shall be deprived of legal enjoyment, unless he or she was entrusted with custody.

358. Legal enjoyment does not extend to assets which the child acquired through his/her separate labour or industry, nor to assets that were acquired in the way of donation or legacy subject to the express condition of not being enjoyed by the father and mother. In this case, the child himself/herself shall contribute to his/her maintenance.

Section 3 : The loss of parental authority

359. On the request of any interested person or public prosecutor, the court can temporarily or definitely deprive the father or mother of the parental authority over his/her child, notably in the following cases:

- Where the father or mother abuses of his/her parental authority or maltreats the child ;
- Where the father or mother is unworthy of exercising parental authority, because of his/her notorious misconduct or his/her serious incapacity.

Section 4 : The minority, tutorship and emancipation

Sub-section I : Minority

360. A minor is an individual of either sex that has not reached 21 years.

Sub-section II : Tutorship

A. The opening of tutorship

361. The tutorship is opened on a minor child when both his/her mother and father died, are absent, disappeared or if they have been deprived of parental authority.

It is also opened on a natural child if there is no either the father or mother who is recognising him/her.

362. An individual right to choose a tutor within the family or outside the family rests exclusively on the surviving parent of the child.

363. In case the father or mother recognised the natural child, or if both of them recognised him/her, the surviving parent is the one that will choose the tutor.

If a natural child is recognised later by one of the parents, the court upon request of the person who recognised the natural child can replace tutorship by parental authority according to the provisions of article 349.

364. Where the surviving spouse dies without choosing a tutor of his/her child and this child has ascendants, a tutor can be appointed from those ascendants.

Where there are several ascendants of different degrees, the tutorship will be taken by an ascendant with a close relationship to the child and if the ascendants are on equal degree of relationship, it is the tutorship council to choose the tutor amongst them.

365. Where an unemancipated minor child is without either a father or a mother or a tutor elected by his/her parents or ascendants or if the tutor designated in accordance to article 364 is no longer allowed to continue this role or has displayed reasons that bar him/her from continuing his/her duties, a new tutor may be appointed by the tribunal of first instance.

366. The tribunal of first instance is the one that appoints a tutor for a minor who has not been emancipated where his/her parents are unknown.

The same procedure is used where a natural child has no father or mother or where the tutor who was chosen following provisions of article 364 has been deprived of his/her authority or where this tutor shown reasons that bar him/her from continuing to work as a tutor.

B. Organs of tutorship

367. The organs of tutorship are the tutorship council, the tutor, the subrogate tutor and the tribunal of first instance.

a) Tutorship Council

368. The tutorship council is made up of the president of the first instance tribunal of the jurisdiction of where the tutorship will take place or his delegate, and six close relatives and allies of the minor child divided equally on paternal and maternal lines, selected for each line in the order of the closest relationship with the child.

Relatives are preferred to allies of the same degree, and among the relatives of the same degree, the eldest shall be preferred to the youngest.

369. The number mentioned in article 368 is not respected if the relatives of the minor are his/her brothers and sisters.

When they are six or more they will all alone become members of the tutorship council in conjunction with the ascendants of the minor.

When they are less than the required number, other relatives can join to make up a legally required number of members for the tutorship council.

370. When the relatives or the allies of the either line are not enough or if they do not reside in the commune where tutorship is opened, the president of the court calls on either the relatives or allies, domiciled in another commune or he may call on citizens that are known to have habitual relations of friendship with the father and mother of the minor child and in the case of natural child, he may call on the person who is in charge of his/her upkeep.

371. The president of the court can also, despite the sufficient number of the relatives or allies in the locality, summon the relatives or allies having closer relationship with the child than

those present, wherever they are domiciled, to come and replace some of them but without exceeding the number provided in the previous articles.

372. The tutorship council is summoned to convene upon the request of the relatives of the minor, his/her debtors or other interested persons, or even automatically by the president of the tribunal of first instance of the minor domicile. Any interested person can inform the court about facts that may give rise to the appointment of a tutor.

373. The date for the tutorship council meeting is fixed by the president of court and he notifies all those that must attend that meeting at least 8 days in advance. This period can be reduced if there are reasons of urgency.

374. The relatives, allies and family friends of the minor called upon to participate in the tutorship council meeting have to attend in person.

375. Any relative, ally or friend called upon to participate in the meeting and who don't attend without legitimate excuse, he will be sanctioned to pay the fine of the sum of money not exceeding 2000 Frs.

376. If there is legitimate excuse, but the presence of the absent member is found necessary, this meeting will be adjourned and another date set by the president of the council.

377. The tutorship council meeting shall take place in any place decided by the president within the court's jurisdiction.

Deliberations at the meeting shall be held valid only if at least the two third of the members are present.

If the quorum is not present and the meeting stands adjourned, deliberations at the next meeting shall be held valid regardless of how few persons may be present.

378. The tutorship council meeting is presided over by the president of the tribunal of first instance or his delegate. The decisions of this meeting shall be taken by simple majority. If the votes are evenly divided, the president has a casting vote.

b) The tutor

379. The tutor commences his obligations from the day he was appointed while he was, and in case he was absent from the day he was notified.

380. Tutorship entails a personal responsibility which cannot be passed on to the heirs.

These heirs will only be responsible for their author's management, and if they are majors they will take on the duty of tutorship until another tutor of the minor child is appointed.

381. When a tutor commences his/her functions he makes an inventory of the immovable and movable property of the ward minor.

This inventory is made in the presence of the subrogate-tutor who countersigns it and it is deposited by the tutor in the clerk's office of the tribunal of first instance of the residence.

In case of cessation of functions, a tutor who replaces the other performs the same obligations.

382. Every time there is an increase in property of the ward under tutorship, a supplementary inventory is made in accordance with article 381, deposited in the clerk's office of the tribunal of first instance, and annexed to the initial one.

383. Where a ward has a debt for the tutor, this debt should be recorded in the inventory, on pain of inadmissibility.

384. Where the initial inventory of the ward's property was not made or evenly a supplementary one was not made, if it necessitates after the ward has become a major or has been emancipated, he can establish the value of his/her property by all means.

385. The tutor exercises the right of custody on the ward. He is responsible for the caring and the education of the ward.

386. A ward cannot leave the tutor's residence without his/her assent.

387. A tutor has a responsibility of representing a ward in all acts of civil status.

He managers the property of the ward in a parental way and he is personally liable for his/her poor administration.

His/her power of administration does not encroach on the professional incomes realised out of the ward's personal activity that is not related to that of the tutor, as well as on the assets of property acquired through these incomes. In this case, the minor is required to contribute to his/her welfare support.

388. A tutor accomplishes acts of conservation and administration in accordance with the ward's interests and the normal economic utilisation of his/her personal property.

389. All acts of alienation and all other acts that encumbers the ward's property, a tutor cannot perform them without prior authorisation from the tutorship council.

This authorisation should only be granted where there is absolute necessity or where there is an evident advantage.

Where there is absolute necessity, the tutorship council gives this authorisation after the tutor has displayed before it a summarised record showing that the ward's money, personal assets and incomes are insufficient.

The tutorship council indicates in all cases the immovables which should preferably be sold before the others and shows all the conditions that will be profitable.

These acts include the following:
a) Pure and mere acceptance for a ward to inherit;
b) Raising mortgages on the immovable properties of the ward or their encumbrance with real rights;
c) Selling of the properties of the ward;

d) Assignment of right or claim against the ward;
e) Acceptance of a gift or donation of any sort made to the ward;
f) Any compromise or transaction;
g) Any partition of the property of the minor.

390. The profits that are generated out of the personal property of the ward have the sole purpose of caring for him/her and guaranteeing for his/her education.

Where these profits have multiplied or accumulated, a tutor has to inform the tutorship council and the tutorship council decides on how the surplus will be utilised.

In a situation where the profits are not enough, they can be supplemented by selling of the personal property of the ward but this selling has first to be approved by the tutorship council as per article 389.

391. Where a conflict emerges between the interests of a tutor and those of a ward, or between those of the blood relatives or the allies and those of the ward, this conflict is presented before the tutorship council and where the council deems it necessary it will designate an *ad hoc* tutor for the specific case or the council itself will take over the responsibility of the tutor in the case.

c) The subrogate tutor

392. In all cases of tutorship there is a subrogate tutor who is appointed by the tutorship council.

Where the functions of the tutor are bestowed on the person chosen by the surviving spouse, the tutor before starting performing his/her duties, he/she has to convene the tutorship council meeting so that it can appoint his/her subrogate tutor.

Where he/she interferes in the management of the ward's property before fulfilling such a formality, the tutorship council summoned on request of parents, debtors or other interested persons, or automatically by its president, can remove the tutor without prejudice to the minor's damages.

In other cases of tutorship, the subrogate tutor shall be appointed immediately after the tutor has been appointed.

393. In all cases a tutor cannot participate in the voting while designating the subrogate tutor. The subrogate tutor cannot be chosen from the same lineage with the tutor except except in case of own sisters or brothers of the minor.

394. The subrogate tutor cannot as a matter of right replace a tutor when his/her position is vacant or when a tutor is absent; in this case he/she provokes the nomination of a new tutor by the tutorship council. In the contrary the subrogate tutor is held liable for damages as a result of the prejudice to the minor.

395. The functions of a subrogate tutor cease to exist when tutorship comes to an end.

396. A tutor cannot cause a removal of the subrogate tutor from his/her responsibilities and even in the meeting convened to that end a tutor cannot vote.

397. The subrogate tutor has a broad authority to survey and control the tutor in his/her functions.

For this to be achieved, the subrogate tutor periodically and at least once a year has to accomplish the necessary verifications.

398. A tutor has to facilitate the subrogate tutor so that he/she can accomplish his duties.

On top of presenting the annual full record on how the management was carried out, the tutor has also to present acts, receipts, bills and any other document relating to operations that were effected while administering the property and allows the subrogate tutor to proceed to verifications.

399. Where the tutor refuses to allow the subrogate tutor to survey and control him/her or where the subrogate tutor proves that the minor's personal property is managed in a way that is against the interests of the minor, the subrogate tutor has to inform immediately in writing the president of the tutorship council. The president informs the tutor of all the necessary observations or he automatically summons the tutorship council so that it can remove the tutor from his/her duties.

400. The subrogate tutor and the tutor are both in solidarity held responsible for the prejudice caused to the minor as a result of bad faith or the poor management by the tutor and where if it is evident that this poor management is a result of negligence of the subrogate tutor.

d) The tribunal of first instance

401. In a situation where tutorship can't be ensured following the provisions of this law, upon the request of the Public Prosecution or any other interested person, the tribunal of first instance can defer tutorship to the State following the conditions stated in the following articles.

402. The tribunal of the first instance designates an institution which will ensure the tutorship and the management of the ward's property on behalf of the State.

403. The tutorship exercised by the State does not involve the tutorship council or the subrogate tutor.

404. The public prosecutor has broad powers to supervise all material and moral interests of the ward.

405. The head of the chosen institution to exercise the tutorship of the child has the powers of a legal administrator for the judicial control.

He termly addresses a report on moral and material status of the minor to the minister having social affairs in his attributions. He exercises all attributes of parental authority except the right to enjoy the property of the child.

The mode of management of the ward's patrimony is determined by the minister having social affairs in his attributions.

406. The State allocates an annual budget to the education and the upkeep of the wards under her tutorship.

C. End of the tutorship

407. Tutorship comes to an end in the following ways:
a) When a ward becomes a major or emancipated;
b) Where a ward dies;
c) Where his/her biological parent who was absent or disappeared reappears;
d) Where after tutorship takes place one of the parents recognises the child as per the provisions of article 363;
e) When the ward under tutorship is adopted.

408. Within a period of two months after a ward has become a major or has been emancipated, the tutor has to deliver the personal property to the ward which is accompanied by a complete report of his/her management and this report is countersigned by the tutorship council.

409. All actions in court relating to the tutorship of the ward who has now become a major or is emancipated against his/her tutor are solved by the competent court.

These actions prescribe after a period of 5 years starting from the day a ward became a major.

However, actions based on article 408 prescribe after a period of two years starting from the day the ward has become a major or emancipated.

410. Where tutorship comes to an end as a result of the death of the ward, the tutor is under obligation pursuant to article 408 in relation to the inheritors of the ward.

The inheritors of the ward are empowered to institute civil proceedings against the tutor in the same way it is provided for in article 409. However, these actions will only start after the death of the ward.

When a minor dies without leaving his/her inheritors the tutor is under obligation to respect what is provided for in article 408 before the tutorship council, within a period of two months after the death of the ward. The president of the tutorship council is also under obligation within a period of 10 days from the day he received an inventory of the minor's property, to notify the court so that it may decide on the allocation of the minor's property, but the public prosecutor may be heard.

411. When the tutor dies after tutorship has been terminated but before he has performed the requirements of article 408, his/her inheritors are under obligation to perform the tasks of the deceased tutor within a period of two months from the date of death.

When the tutor dies without inheritors the duties provided for in article 408 are performed by the tutorship council basing on the last periodic inventories of the minor's property made by the subrogate tutor.

D. Exemptions from the tutorship

412. No one can be forced to accept a tutorship.

413. If a designated tutor has reasons that can't allow him/her to carry out his duites he has to convene a tutorship council so that it can deliberate on those reasons and if it necessitates, the council will appoint another tutor.

The tutor who is enable of carrying out his duties for certain reasons has to present his/her case in a period not later than 30 days after he has been notified of his/her designation as a tutor or in the case of the death of the surviving spouse where tutorship has been granted according to article 364, par. 1.

414. If the designated tutor is present in the deliberations of the tutorship that is designating him/her in order to avoid that what he would claim after be refused he is required at that moment to give reasons that cannot permit him/her to accept that duty and then the tutorship council deliberate on them.

415. The tutor can demand to be discharged of his/her duties for the following reasons:
- Where he/she has reached the age of 60;
- Where he/she becomes disable and has justifications for that;
- When he/she becomes indigent.

E. Incapacity, suspension and dismissal of tutorship

416. Persons that are incapable of becoming tutor or becoming members of the tutorship council include the following:
- Minors;
- Interdicted persons;
- Persons having been engaged themselves or their father or mother in court proceedings with the minor;
- Persons deprived of capacity ;
- Persons discharged of parental authority.

417. Are suspended or dismissed from tutorship:
- Persons with notorious misconduct ;
- Persons identified with incapacity and unfaithfulness in their duties of managing the property of the minor.

418. Any individual who has been suspended or dismissed from tutorship cannot be a member of the tutorship council.

419. Any time a tutor has to be suspended or dismissed, the tutorship council is convened by the president of the court to pronounce it.

420. The decision of the tutorship council to suspend or dismiss a tutor has to be motivated by justifiable reasons and it has to be taken after the tutor has defended himself/herself.

421. If the designated tutor adheres to the deliberations taken, it is put in writing and the new tutor immediately assumes his duties.

In case of claim, the subrogate tutor asks the court to homologate the deliberations taken by the tutorship council.

The excluded or dismissed tutor can sue to the court his subrogate tutor asking to maintain his/her duties.

F. The accountability of the tutorship

422. A tutor is accountable for his/her management at the termination of his/her duties.

423. The expenses of the presentation of the tutorship is paid from the property of the minor after he has attained the age of the majority or emancipated. If it is necessary and justified the tutor can pay the expenses in advance from his/her own pocket and he/she is latter reimbursed all the necessary expenses.

424. All the conventions accomplished between the tutor and the minor who has now become a major are void if they were not preceded by the detailed presentation of the latter's patrimony and the presentation of the written evidence before the tutorship council in at least 10 days before the contract or convention.

425. The remainder of money left in hands of the tutor is subject to interests starting, without lawsuit, from the time of the closure of the tutorship.

Sub-section III : Emancipation

426. The minor is emancipated by the simple act of marriage.

427. An unmarried minor can be emancipated by his father or in his absence by his/her mother if he/she has reached 18 years.

Such emancipation is done by the declaration of the father or mother to the civil status officer of the declarant's domicile.

428. A minor who has no parents can also at the age of 18 be emancipated by the tutorship council if it judges him/her to be capable.

In that case, the emancipation results from the authorisation by the tutorship council and by the declaration made by the president of the court who is also president of tutorship council in the same act as that the minor becomes emancipated.

429. If the tutor does not do any this to emancipate the minor as stipulated in art 428 while the subrogate tutor, one or many parents or allies of the minor judges him/her capable to be emancipated, they can ask the president of the court to convene the tutorhip council to deliberate on that subject.

The president of the court cannot refuse to do so.

The ward under the State's tutorhip can be emancipated by the decision of the court by the demand of the public prosecutor or by the head of the institution exercising tutorship of the minor.

430. Without prejudice to the provisions of article 171 the emancipated minor can perform all the acts of the civil life.

Section 3 : Majority, interdiction and judicial council

Sub-section I : Minority

431. The civil majority is fixed at the accomplishment of 21years; at such age, a person is capable to perform all acts of civil life with except of those that are determined by the law.

Sub-section II : Interdiction

432. A major person who is in a state of imbecility, madness or raving lunacy, has to be declared interdicted, even when this state can present lucid intervals.

433. Any person may provoke the interdiction of one's parent or one's spouse.

434. In the case of raving lunacy, the interdiction may be provoked on the request of the spouse, the parent, or the public prosecutor who may also provoke the interdict for an imbecile or mad person when the latter has neither husband, nor wife, nor known parents.

435. All demands of interdiction are brought before the court.

436. The acts of imbecility, madness or raving lunacy must be proven in writing.

Those asking for interdiction have to present the witnesses and evidences.

437. The court order the family council to give their opinion on the state of the person to be interdicted.

438. Those who introduced the request are excluded from taking part in the deliberations of the family council when this one is summoned to give an opinion on the state of the person whose interdict is requested.

439. After having heard the point of the family council, the court questions in camera the person whose interdict is requested ; in the case he/she is incapable of coming before the court, the court has to find him/her where he/she is for a questioning.

In any case, the Public Prosecution has to be represented.

440. After the first interrogation, the court mandates, if necessary a temporary administrator to take care of the patient and his/her property.

441. All definitive judgements interdicting the person, on the plaintiff's diligence, are posted in 10 days at the office of the civil status office of the residence of the interdicted person.

442. The interdiction starts to produce its effects on the day of pronouncement or on the day of notification to the parties.

443. The acts prior to the interdiction can be nullified, if the cause of interdiction existed notoriously during the time the person accomplished them.

444. After the death of an individual, the acts accomplished by him/her can be attacked on the grounds that he was mad, if there was already declaration or provocation of interdiction before his/her death, unless if there is a proof of that he was mad resulting from the act itself being attacked.

445. In all case of definitive decision of interdiction by the request of any interested party or Public Prosecution, a tutor and subrogate tutor are appointed in accordance with the rules relating to minority, tutorship and emancipation.

The provisional administrator ceases his/her functions and presents the property of the minor to the tutor if he/she is not the one.

446. Each of the spouses is, as a matter of right, the tutor of his/her interdicted spouse.

447. Nobody, with except of the spouses, ascendants, and descendants can be forced to be a tutor of an interdicted person over a period of then 10 years. At the expiration of that period, the tutor can ask and be allowed to be replaced.

448. The interdicted person is taken as a minor in as far as his/her personality and property are concerned. The law relating to tutorship of the minor person is applicable to the tutorship of the interdicted person.

449. The profits of the interdicted must be essentially used in what improves his welfare and in what can accelerate his/her recovery.

If the interdicted is destitute, the family council addresses the issue to the Minister who has social affairs in his attribution; in such case the interdicted will be admitted in a mental home on the expenses of the State.

450. In cases of marriage of a child of an interdicted, the matrimonial conventions and all other formalities which require the intervention of parents are governed by the provisions of present law related to tutorship.

451. The interdiction ceases with the causes which established it; however, the patient is discharged in observation of same formalities that are followed during declaration of interdiction; and the interdicted can only reassume the exercise of his/her right by the day of notification of the judgement of discharge.

That judgement is displayed on the office of civil status office of the residence of the interested person, on his/her diligence.

Sub-section III : The judicial council

452. The prodigals can be deprived of the capacity to plead into court, to compromise, to borrow, to accept personal estate and sign for delivery, to alienate and mortgage property without the assistance of the council that was nominated for them by the tribunal.

453. To put somebody under the judicial council can be provoked by that one who has the right to ask for his/her interdiction. The request is introduced and judged in the same manner as that one of interdiction.

The prodigal's discharge follows the same formalities.

454. There is not any decision that can be taken concerning the matters of interdiction or nomination of a council without hearing the Public Prosecution's opinion.

PART III – THE FAMILY COUNCIL

455. The family council is an institution within the family charged with ensuring the safeguard of the interests of the family members.

Its organisation and functioning is based on practices and custom.

PART IV - FINAL PROVISIONS

456. The acts of civil status accomplished by the prefectoral and communal authorities before the entering into force of the present law continues to be valid.

457. Without prejudice to the definitive judicial decisions, the children qualified of adulterous and incestuous by the precedent legislation can be now recognised in conformity with the provisions of the present law.

458. All legal rules and regulations contrary to the civil code instituted by the present law are abrogated notably as modified up to date:
- the decree of 4th May 1895 related to civil code book one;
- the decree of 5th July 1948 related to the monogamous marriage rendered executed in Rwanda by ordinance n° 21/130 of 5th September 1949;
- the decree of 4th April 1950 related to polygamous marriage rendered executed in Rwanda by ordinance n° 21/132 of 11th December 1951;
- ordinance n° 11/28 of 9th February 1955 related to civil status of foreigners;
- decree law n° 33/79 of 22nd October 1979 related to changing of names.

459. This law shall enter into force on the day of its publication in the official gazette of Republic of Rwanda.

It shall start to produce effects on the date that to be determined by the President of Republic. (The Presidential Order n°102/05 of 13th March 1992 has fixed that date to 1st May 1992 (Official Gazette, 1992, p. 445).

ANNEX III : LAW RELATING TO MATRIMONIAL REGIMES, LIBERALITIES, AND SUCCESSIONS

Law N° 22/99 Of 12/11/1999 To Supplement Book I Of The Civil Code And To Institute Part Five Regarding Matrimonial Regimes, Liberalities And Successions (O.G. nº22 of 15/11/1999)

TITRE I : MATRIMONIAL REGIMES

CHAPTER I : TYPES OF MATRIMONIAL REGIMES

Article one
The matrimonial regime is a body of rules to be fixed by this law governing the agreement between spouses on the management of their property.

Article 2
Upon entering marriage spouses shall choose one of the following matrimonial regimes:
1. community of property;
2. limited community of acquests;
3. separation of property.

In case no provision is made, the spouses shall be deemed to be married under the regime of community of property.

Section I: **Regime of community of property**

Article 3
The regime of community of property is a contract by which the spouses opt for a marriage settlement based on joint ownership of ail their property-movable as well as immovable and their present and . future charges.

Article 4
In the event the regime of community of property is altered in accordance with article 19 of this law, the spouses shall equ'ally share the assets and liabilities of the common property.

Article 5
Creditors can claim payment of debts contracted before the alteration of the regime of community of property. This payment shall be made in accordance with modalities prescribed in article 23 paragraph 1 of this law.

Article 6
In the event of a partition of assets and liabilities in accordance with article 4 of this law, items of personal use, such as clothing, jewellery and tools, shall remain within the patrimony of the spouse they belong to.

Section II: Regime of limited community of acquests

Article 7
The regime of limited community of acquests is a contract by which spouses agree to pool their respective properties owned on the day of marriage celebration, to constitute the basis of

the acquests as well as the property acquired during marriage by a common or separate activity, donation, legacy or succession.

Article 8
At the marriage celebration, the spouses who opted for the regime of limited community of acquests shall establish and submit to the officer of civil status a signed inventory of assets and- liabilities defined by each spouse to constitute the community.

Any property that is not inventoried as common property shall, be presumed to be personal property.

Article 9
In the event the spouses wish to alter marital regime in accordance with article 19 adopting that of limited community of acquests, they shall have to indicate in the inventory the liabilities intended for the community.

The copy of this inventory shall be appended to the extract of the judgment by the court clerk and forwarded to the officer of. civil status.

Article 10
The debts, other than those included in the community at the time of marriage, contracted by one of the spouses before and after his or her marriage for his or her personal use, shall be discharged from the personal property of the spouse debtor.

Section III : Regime of separation of property

Article 11
The regime of separation of property is a contract by which spouses agree to contribute to the expenses of the household in proportion to their-respective abilities while retaining the right of enjoyment, administration and free disposal of their personal property.

Article 12
Upon request by one of the spouses or any interested third party, the spouse who imperils the interest of the household by, depreciating or dissipating his or her property may be divested of the right of administration and enjoyment in accordance with article 11 of the present law.

Request shall be submitted under summary procedure before the *Court of First Instance* of the place of residence of the spouses.

Unless it appears necessary that a judicial administrator be appointed, the judgment shall endow the applicant spouse with the power to administer the personal property of the divested spouse and to collect the fruits thereof which shah be used for the household, and the rest shall be held as a deposit.

The divested spouse shall keep the ownership without usufruct of his or her property.

The divested spouse may subsequently address a request to the court for the restoration of his or her rights once it is established that the underlying cause of the divestment no longer exists.

Article 13
When during the marriage one of the spouses transfers to the other the administration of his or her patrimony, the rules of mandates shall be applied.

CHAPTER II: COMMON PROVISIONS TO MATRIMONIAL REGIMES

Article 14
Spouses are to abide by the rights and duties resulting from their marriage as well as the rides of parental authority, legal administration and tutorship.

Article 15
All agreements on matrimonial regimes shall be authenticated by notarial deed. Otherwise, they shall be presented or declared before the Registrar of the place where the marriage is celebrated by the bride and, groom together with one representative of each family and two witnesses.

Deeds entered into before a notary shall bd presented to the Registrar at the time the marriage is recorded in the register of marriage acts, to be recorded in the latter and in the act of marriage.

Article 16
Before reading the banns the Registrar shall explain to the bride and groom to be the various matrimonial regimes to allow them to choose which one suits them.

Where one of the spouses is or subsequently becomes a business person after marriage, the contract of marriage and its modifications have to be published in accordance with the legislation on commerce and business persons.

Article 17
The management of the patrimony shall include powers to administer, to enjoy and to dispose, subject to exceptions provided by law.

In case of marriage under the regime of community of property or that of limited community of acquests, the spouses shall choose who, among themselves, shall be responsible of the management of the common patrimony, they are also equally entitled to monitor, to represent
.

Each spouse shall administer the patrimony and properties put to his or her personal use.

Article 18
Where either the bride or groom-to-be is a minor, the choice of the regime shall be made by the person exercising parental authority over him or her.

Where either the bride or groom-to-be is a person of full age but under legal incompetence the choice of the matrimonial regime shah be made by his or her trustee.

Article 19
On application by the spouses or by one spouse during the marriage, the matrimonial regime may be modified. The applicant has to prove that modification is required in the interest of the

household or by a significant change that has occurred in the situation of the spouses or of one spouse.

The request shall be submitted under summary procedure before the *Court of First Instance* of the place of residence of the spouses.

In case the request is dismissed by a final decision, no other such request may be made, but only two years after this decision, and basing on new evidence.

Article 20
Within one month of the date on which the modifying decision was made and no appeal may be brought therefrom, the ruling on this modification shall be sent by the Court clerk on request by the applicant, to the Registrar of the place where the marriage was celebrated, for transcription in the deed of marriage.

Within the same period, the interim ruling shall also be published in two most widely read newspapers by the Court clerk at the expenses of the applicant spouse.

Where one of the spouses is a business person, the ruling on modification of the matrimonial regime shah be recorded in the business register within the indicated period.

The notations provided for in the foregoing paragraphs may be requested by the concerned persons upon presentation of the extract of the interim ruling.

Article 21
Whatever be the matrimonial regime chosen and the management modalities of the patrimony of the spouses, the agreement of both spouses shah be required for the donation of an immovable property and of any other property in the community, as well as for the acknowledgement of any right attached to these properties.

Article 22
When one of the spouses is involved in a transaction which requires the consent of the other. spouse, he or she shall obtain this consent at the time of ratification of this transaction or within six months thereafter.

This consent shah be notified to the third contracting party by a written notice. Where no reply from the latter is made within a month following the date of notification, his or her consent shah be deemed definitely given.

Where, for some reasons the spouse whose consent is required is not available or due to serious reasons beyond his/her control could not give it, transaction shah be deemed final one year alter its ratification for movable property and five years for immovable property.

Article 23
The debts contracted by one of the spouses for the benefit of the household even when paid from his or her separate property shah be reimbursed from the common patrimony if the spouses are married under the regime of community of property or that of limited conmunity of acquests.

When the common patrimony cannot cover the entire debt, the balance outstanding shah be paid in equal parts from the patrimony of each spouse.

When the spouses are married under the regime of separation of property, these debts shall be paid on equal contribution from the separate property.

Article 24
The regime of community of property and that of limited community of acquests shall be dissolved by:
1. divorce;
2. legal separation;
3. modification of the marital regime.

In case of dissolution of the community, spouses shall share common assets and liabilities.

TITLE II: DONATIONS AND SUCCESSIONS

CHAPTER I: DONATIONS

Section 1: General provisions regarding donations

Article 25
A donation is an act by which a person transfers to another by gratuitous act a patrimonial right.

Article 26
The only donations admitted by law are:
1. donation inter vivos;
2. the descending partition;
3. legacy;
4. promised donation.

Article 27
Donations are made by an authentic deed or under private agreement or by a simple transfer.

Article 28
A donation shall only be effective, starting on the day of its acceptance by the beneficiary.

The acceptance may be written or oral.

The donor shall be bound starting from the date he or she is notified of the acceptance.

Article 29
The ownership of the object donated shall be transferred to the beneficiary once the transfer is completed.

Reception of the object donated implies acceptance of donation and is subject to no other formal condition.

Article 30
The following shall be void:
1. any donation submitted to conditions for which the execution depends on the sole wish of the donor;
2. any donation that requires the beneficiary to pay the debts or other charges of the donor, other than those existing at the time of the donation or those mentioned in the act of donation;
3. any donation inter vivos in which the donor keeps the right to dispose of one or several objects donated.

Article 31
Everyone has the right to make donations from his or her own patrimony, provided that he or she does not exceed the owned property.

Whatever matrimonial regime is opted for, the transferable quota shall not exceed 1/5 of the patrimony of the donor if he/she has a child.

However, when the donor has no child, the transférable quota shall not exceed 1/3 of his or her patrimony.

The surplus on the transferable quota shall be made up by the différence between the personal patrimony of the donor and his/her debts on the date of donation.

Article 32
Any donation of which the object is contrary to the public order and good morals shah be null.

Any donation involving the property of another person shall be null.

SECTION II: DONATION INTER VIVOS

Article 33
The donation inter vivos is a beneficial contract by which the donor irrevocably transfers a patrimonial right to another person who accepts it.

Article 34
Any act by onerous title which simulated a liberality shall be reputed to be a disguised donation. Any disguised donation shall be subject to rules applicable to donation *inter vivos*.

Any donation which simulates an act by onerous title shah be reputed and dealt with as such.

Article 35
Any stipulation in favour of another person, any letting off of debts, any renunciation which conveys a right and any payment for another shall be reputed indirect donation as far as they are performed by gratuitous act and without any simulation.

Article 36
Donations between the bride and groom to be, are revocable whenever the marriage is not celebrated.

Article 37
Any donation shall be revocable for the following reasons:
1. non-fulfilment by the donee of obligations under which it was made;
2. ingratitude;

Article 38
A donation shall only be revoked for reasons of ingratitude in the following cases:
1. when the donee has intentionally caused the death or has made an attempt on the life of the donor;
2. when the donee has been found guilty of grave physical cruelty or insult towards the donor;
3. when the donee refuses to help and assist the donor when in need.

Article 39
In the event of revocation of the donation, the donee shall not be obliged to restitute the donation with benefits he/she has gained from it.

Article 40
The action in revocation of the donation for reasons of ingratitude of the donee or for nonfulfilment of his or her obligations shall be brought before court within a period of one year, starting from the day the offence charged against him or her was committed or the day the donor was notified of it.

Notwithstanding the stipulations of the first paragraph of this article, this revocation shall neither be claimed by the donor against the heirs of. the donee nor by the heirs of the donor against the donee unless, in the latter case, the action was brought against the donee by the donor or the latter died during the year the charged offence was committed.

Article 41
Revocation for reasons of ingratitude or non-fulfilment of obligations stipulated at the time of the donation shall not be prejudicial to expenses made by the donee, pawns and other charges he or she may have attached to the object of donation.

In case of revocation, the donee shall refund the value of the alienated objects as well as the fruits therefrom as from the day action in revocation was instituted.

Section III: Ascending partition

Article 42
The ascending partition is an act accomplished by parents while they are still alive, by which they share their patrimony between their children or their descendants who acquire, each for the portion devolved to him or her, full ownership. This partition shall be regarded as the accomplishment of parents' duties to educate their children and to provide them with a personal patrimony.

Article 43
All children, without distinction between girls and boys, alive or where deceased before parents their descendants, excluding those banished due to misconduct or. ingratitude, have a right to the partition made by their ascendants.

SECTION IV: PROMISE OF DONATION

Article 44
Promise of donation is a contract of donation based on prospective property.

Article 45
Promise of donation is prohibited except between:
- bride and groom to be;
- spouses;
- parents and their children or their descendants, born or to be bom

The promise of donation shall be valid even when the donor has died.

Section V:. Legacy

Article 46
Legacy is a patrimony devolved as a donation by the owner while alive and for which the legatee acquires full ownership only after the death of the donor.

Article 47
The legacy can be of universal title, general title or particular title:
- a legacy by universal title shall consist of the whole of the patrimony of the testator or testatrix;
- a legacy by general title shall consist of a share of the patrimony of the testator or testatrix;
- a legacy by particular title shall consist of particular things bequeathed by the testator or testatrix.

Every legacy shall indicate to whom it is instituted.

Article 48
Where the testator or testatrix bequeaths his or her property, to the poor of a given repion, the bequeather legacy shall be collected at the time of the liquidation of succession by their *Commune*, which shall hand it over to the legatees.

Where the testator or testatrix bequeaths his or her property to the poor in general, the legacy shall be handed to the benefit of the poor living in the Sector of the de cujus or those where the deceased, being of foreign nationality, had his/her residence.

CHAPTER II: SUCCESSIONS

SECTION I: GENERAL PROVISIONS REGARDING SUCCESSIONS

Article 49
Succession is an act by which the rights and obligations on the patrimony of the de cujus are transferred to the heir.

The succession goes through probate at the death of the cujus, at his/her domicile or residence.

Article 50
All legitimate children of the de cujus, in accordance with civil laws, inherit in equal parts without any discrimination ; between male and female children.

Article 51
At the time of the seulement of the succession between children, the family council shah determine the part of the patrimony to be earmarked for the raising of minors and the part to be shared between all the children of the de cujus.

When all children have reached the age of majority, they shah equally share the rest of the patrimony initially earmarked for raising the minors.

Article 52
Every heir is, in case of acceptance of the succession, obligated to bear the liabilities of the latter in proportion to the part of the patrimony which makes up his or her share.

Article 53
Every legal heir or legatee shah be excluded from succession if he or she:
1. was convicted of having intentionally caused the death of the de cujus or had made an attempt on his or her life;
2. was convicted of false accusation or perjury which could have resulted in the de cujus being sentenced to six months, at least, in prison;

3. has, during the lifetime of de cujus, deliberately broken off the parental relationship with the latter;
4. has deliberately neglected to provide the needed care to the cujus during his or her last days of illness, although, he or she was bound by law or by tradition to do so;
5. has abused the physical or mental incapacity of the de cujus by taking the whole or part of the inheritance;

6. has intentionally disposed, 'destroyed or altered the last will of the de cujus without his or her consent or has taken advantage of a will which became worthless.

Article 54
In accordance with the points 3, 4, 5 and 6 of article 53, the Court of First Instance, located in the domicile or residence of the de cujus, shah be competent to order the forfeiture of inheritance rights. The request shah be submitted under the summary procedure.

Article 55
The succession of the de cujus shah be wholly or partially intestate or testamentary.

SECTION II:TESTAMENTARY SUCCESSION

Article 56
A testament is an act by which a person dècides on the destination of his/her patrimony after his/her death and fixes provisions of his/her last will.

The property which the de cujus has not disposed of by testament shall be devolved in accordante with the provisions of intestâte succession.

Article 57
The testament can be oral, holographic or authentic.

Article 58
An authentic testament is the one established by the testator/testatrix before either the notary or the registrar of his/her domicile or residence.

Where he testament is established before the registrar or the notary the latter shah keep the original and write down, in a special testament register, the date of its establishment as well as the narres and the domicile or residence of the testator/testatrix.

The original and the register shall be confidential and shah only be consulted after the death of the testator/testatrix and only by persons concerned in the said testament.

Article 59
An holographic testament is the one that is entirely written, dated and personally signed by the testator/testatrix.

Article 60
In the event the testator/testarix cannot write or can but is unable to draft or sign his/her testament, he/she can appoint somebody to do it for him/her.

The testament so drafted must, on pain of nullity, be legalised by the Registrar or the notary of the place where it was drafted and in the presence of the testator/testatrix.

Article 61
An oral testament is the one made by the testatrix in the presence of all or some of the rightfull heirs Who cannot be disinherited and in the presence of at least two witnesses of major age.

In the case of unavailability of the rightfull heirs the number of witness shall be four at least.

Article 62
Testamentary provisions may be contained in several testaments which shall as far as possible be jointly executed.

When provisions of two or several testaments are not compatible, preference shlil be given to provisions contained in the most recent testament.

Article 63
Any testament may be revoked as a whole or in part by the testator/ testatrix within the required forms of its validity.

Article 64
The testator/testatrix can appoint one or several executors who shall be in charge of executing the succession.

SECTION III : INTESTATE SUCCESSION

Article 65
An intestate succession is a succession which is legally made where no testament was made.

Article 66
In the case of marriage under the regime of separation of property, the order of heirs in succession shall be as follows :
1. the children of the de cujus ;
2. the father and mother of the deceased ;
3. the full brothers and full sisters of the deceased ;
4. the hall- brothers and half -sisters of the deceased;
5. the uncles and aunts paternal as well as maternal of the deceased.

With the exception of the father and the mother of the deceased, all other legatee heirs deceased before the de cujus shall be represented at the succession by their descendants.

Article 67
Each rank excludes the others in the succession order.

Article 68
Succession of each of the spouses married under the regime of separation of property is possible, in case of death to his/her own heirs in the order provided in article 66 of this law.

Article 69
Half-brothers and half-sisters of the de cujus, parternal and maternai uncles and aunts, parents-in, law as well as brothers-and sisters-in law who have no common ancestors with the de cujus, cannot succeed to an estate inherited by the deceased from his/her family, unless it is proven that there is no other survivor among the descendants of the aforementioned ancestor.

Article 70
Succession of spouses married under the regime of community of property shall be carried out as follows:
1. in case of death of one of the spouses, the surviving spouse shall ensure the administration of the entire patrimony while assuming the duties of raising the children and assistance to the needy parents of the de cujus;
2. when both spouses die leaving children behind, the latter shall succeed to the entire patrimony, but must also assist their grand-fathers and grand- mothers;
3. When the children are not blood- related, the patrimony shall be divided in two, and each child shah succeed to the part of his orher respective parent ;
4. when the spouses die without leaving a child behind, the patrimony shah be divided in two, one half being allocated to the successors of the husband, the other being allocated to the successors of the wife;
5. in the event that the widower/widow did not have a child with the de cujus, the former takes one half of the patrimony, and the heirs of the de cujus share the other half;
6. when the widower or the widow does not fulfil his/her duty of assistance to the parents of the de cujus, the family council shah allocate to the parents the succession part of the deceased;
7. in case the surviving spouse fails to fulfil his/her duties to raise the children of the de cujus, his/her succession shall be cut back by 3/4 which shall be given to the children;

8. the surviving spouse who no longer has any children under his/her care and wants to remarry shall obtain full ownership of the 1/2 of the patrimony and another half shall be given to the deceased's heirs;
9. in case of remarriage of the surviving spouse who is still bound by the duty of raising the children of the de cujus, she or he shall obtain full ownership of 1/4 of the succession and shah continue to administer the remaining 3/4 for the benefit of the children;
10. Where the surviving spouse did not remarry but gave birth to an illegitimate child, the 1/2 of the patrimony shall, on the day when the children are entitled to inherit, be devolved to the children of the de cujus and the other 1/2 shall be devolved to the other children of the widow or widower in equal parts without any discrimination between legitimate and illegitimate children.

Article 71
The succession of spouses married under the regime, of limited community of acquests follows, concerning the acquest, the cules stipulated in this law for the succession of spouses married under the regime of community of property, and concerning the separate property those of the succession of spouses married under the regime of separation of property.

Article 72
When there is no heir or legatee, the succession is in a situation of escheat and devolves te the state.

Article 73
The escheat procedure shall be as follows:
1. the *court of First Instance* of the place where the succession goes through probate takes notice of the escheat of the succession by the petition of the *Bourgmestre* or public prosecutor from the place where probation is or where the property of the succession is located;
2. the publication shall be made by the President of the *Court of First Instance* from the place where the succession goes through probate in two newspapers of the country, one of which should, be in the region where the succession goes through probate or by any other means ensuring more publicity;
3. within the period of one year, starting from the date of publication of escheat, the *Bourgmestre* in charge, or in his/her absence the public prosecutor, shall address a petition to the Court where the case was submitted in order to declare the escheat effective ;
4. the *Court of First Instance* where the case was submitted has to reach a verdict within the period of one month, starting from the date of submission;
5. the Court shall appoint a natural or moral person who will temporarily be in charge of the administration of the property for the benefit of the state. This person shall present every year a management report which shall be submitted to the Ministry in charge of Social Affairs, with a copy to the *Bourgmestre of the Commune;*
6. after five years for movable things and fifteen years for immovable things, the escheat shall, upon request of the *Bourgmestre* and/or the public prosecutor, be declared final by the Tribunal, the succession being devolved to the State;
7. the heirs who appear before the end of these deadlines shall receive the succession in its actual state afer deduction of keeping costs, publicity, management and possible safeguarding measures made by the State.

SECTION IV : PROPERTY IN THE SUCCESSION

Article 74
An inventory of the property making up the inheritance patrimony shall be established from ,the day of the death of the de cujus.

It does not include the common patrimony of spouses except in case of remarriage of the surviving spouse.

Article 75
The surviving spouse remains the usufructuary of the conjugal house as well as of the movable furniture where they are the only property in the. succession or are part of the inheritance property.

In the event of remarriage of the surviving spouse, the Council of Succession can, in the interest of the children, allow him or her to remain the usufructuary of the saure patrimony.

Article 76
In the event the Council of Succession considers the alienation, the constitution of a mortgage or the exchange undertaken by the surviving spouse on the patrimony to which he or she is usufructuary damaging to the household, it can institute a petition for a summary judgement of forfeiture of that right.

Article 77
In principle, the partition of the property in the succession shall be made in kind.

However, where it is impossible to establish equal shares in kind , the council of succession determines the compensation to be given by the heirs who receive a share greater than their legal or testamentary share of the succession, for the benefit of the heirs who received a smaller share.

Article 78
Every legal heir may claim retrocession in the reserve of succession, the part of the donation composing the surplus of the available quota defined in article 31 of this law..

The surviving spouse and the children are the beneficiaries of the reserve of succession.

Article 79
A property which has, been given away three years earlier, starting from the date when the succession goes through probate, cannot be retroceeded.

SECTION V: LIQUIDATION AND PARTITION OF THE PROPERTY IN SUCCESSION

Article 80
The liquidation and the partition of property in succession shall be carried out by an executor/executrix, appointed by the de cujus. If no executor was appointed they shall be carried out by the Council of Succession or a legal liquidator.

Article 81
The Council of Succession shall include:
- the surviving spouse;
- a child delegated by the children of the deceased, where there are, any who are of majority age;
- a delegate of the family of the de cujus;
- a delegate of the family of the surviving spouse;
- a friend or a person of good behaviour appointed by the family of the surviving spouse;
- a friend or person of good behaviour appointed by the family of the de cujus.

Article 82
The family of the deceased shall appoint the President of the Council of Succession and that of the surviving spouse shall appoint the Secretary.

The decisions of the Council of Succession are taken in the presence of all members who undersign them.

Article 83
The President of the *Court of First Instance* shall, either by petition of the public prosecutor or *Bourgmestre* of the place of succession or on the request of one of the heirs, appoint a legal liquidator when the heirs are not yet known or have all renounced the succession, or in case of grave contesting of the partition.

Article 84
The legal liquidator shall :
1. administer the succession;
2. pay the exigible debts contracted by the de cujus;
3. make a final determination as to who is entitled to inherit;
4. decide on partition controversies;
5. report on the management to those entitled to the succession or to the Court.

Article 85
In settling the charges over the succession, the liquidator shall comply with the following order :
1. the funeral expenses of the de cujus;
2 . wages and salaries payable by the de cujus;
3. the expenses of administering and liquidating the succession;
4 . the debts of the de cujus;
5 . legacies by particular title made by the de cujus.

Article 86
No one shall be bound to accept any succession or legacy to which he or she is called for . The acceptante shall be express on the part of the heir who publicly declares his or her quality of heir.

The acceptante of the heir shall be irrevocable and shall go back to the death of the de cujus.

Article 87
The heir who renounces the succession has to do it within three months, starting from the date he or she was informed by the liquidator of his/her quality or from the day he or she has notified his/her right to inherit.

Article 88
Renounciation shall be made in writing with a notification to the liquidator of the succession before the expiration of the period set in article 87.

If the heir cannot write he/she can make a verbal declaration within the appointed period in the presence of two witnesses. In case of silence after he/she was informed, this silence is considered as acceptance to inherit:

Article 89

The effect of renounciation by the heir is that the heir is deemed never to have been entitled to inherit from the de cujus. The renounciation shall become irrevocable only upon expiry of the time allowed in article 87, unless the renounciation was obtained by fraud, violence or threats and that a legal action was set in motion within six months following the date on which those acts stopped. In this case, the delay is extended only where convincing proof and reasons are submitted.

CHAPTER III: GENERAL PROVISIONS REGARDING DONATIONS AND SUCCESSIONS

Article 90
The partition and the donation of an estate forming part of the property in succession are subject to land regulations.

Article 91
A property which does not exceed an area of one hectare and any other undivided thing cannot be partitioned. The owners have rather to agree on the modalities of their sale or exploitation and share the fruits therefrom.

Article 92
The statutory provisions on the capacity to contract and on conditions of validity of acts shall apply to donations and to successions.

TITLE III: TRANSITIONAL AND FINAL PROVISIONS

Article 93
Subject to provisions of article 19 of this law, spouses who are governed by a matrimonial regime before this law comes into force, shall continue to be bound by that contract, unless, within two years, they make a joint declaration of option before the Registrar, modifying that regime.

Article 94
Any previous statutory or regulatory provisions that are contrary to this law are repealed.

Article 95
This law comes into force on the date of its publication in the Official Gazette of the Republic of Rwanda.