

Prof. Dr. Isaak Meier
Prof. Dr. Matthias Oesch
Prof. Dr. Peter Picht
Dr. Tina Purtschert
Prof. Dr. Madeleine Simonek
Prof. Dr. Marc Thommen
Prof. Dr. Felix Uhlmann

Fall 2015

Introduction to Swiss Law

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SOLUTIONS

Question 1 (Criminal Procedural Law)

Who of the following persons are parties at the preliminary proceedings stage?

| | correct | incorrect |
|----------------------------|---------|-----------|
| a) Persons suffering harm | | X |
| b) The public prosecutor | | X |
| c) The accused | X | |
| d) The investigative judge | | X |
| e) The private claimant | X | |

Question 2 (Criminal Law)

Which of the following sanctions are **measures** provided by the Swiss Criminal Code?

| | correct | incorrect |
|----------------------------------|---------|-----------|
| a) Indefinite Incarceration | X | |
| b) Monetary penalty | | X |
| c) Community service | | X |
| d) Treatment of addiction | X | |
| e) Treatment of mental disorders | X | |

Question 3 (Civil Law)

Family foundations are...

| | correct | incorrect |
|---|---------|-----------|
| a) ...illicit under Swiss law. | | X |
| b) ...only permitted if they take the form of a fee tail. | | X |
| c) ...permanently supervised by state authorities. | | X |
| d) ...to be registered in the commercial register. | | X |
| e) ...the most important form of "classical" foundations. | | X |

Question 4 (Civil Law)

Which of the following provisions of the Swiss Civil Code codify actions/claims helpful in the restitution of property?

| | correct | incorrect |
|--|----------------|------------------|
| <p>a)</p> <p>Art. 927</p> <p>2. Action for restitution</p> <p>¹ A person who wrongfully dispossesses another of an object is obliged to return it, even if he or she claims a better right to it.</p> <p>² If the defendant may immediately show a better right entitling him or her to reclaim the object from the claimant, he or she may refuse to return it.</p> <p>³ The claim is for restitution of the object plus damages.</p> | X | |
| <p>b)</p> <p>Art. 641</p> <p>A. Nature of ownership I. In general⁴²²</p> <p>¹ The owner of an object is free to dispose of it as he or she sees fit within the limits of the law.</p> <p>² He or she has the right to reclaim it from anyone withholding it from him or her and to protect it against any unwarranted interference.</p> | X | |
| <p>c)</p> <p>Art. 216</p> <p>2. By agreement a. In general</p> <p>¹ A different participation in the surplus may be agreed by marital agreement.</p> <p>² Such agreements must not adversely affect the statutory inheritance entitlements of children who are not the common issue of the spouses or those of the issue of such children.</p> | | X |
| <p>d)</p> <p>Art. 934</p> <p>b. Stolen or lost chattels</p> <p>¹ A possessor whose chattel has been stolen or lost, or who has otherwise been dispossessed of it against his or her will, may reclaim it from any possessor within a period of five years. Article 722 is reserved.⁵⁵¹</p> | X | |
| <p>e)</p> <p>Art. 938</p> <p>III. Liability 1. Possessor in good faith a. Use</p> <p>¹ A person possessing an object in good faith is not liable to its rightful owner for the consequences of using it in accordance with his or her presumed right.</p> <p>² He or she is not obliged to replace what has been lost or damaged.</p> | | X |

Question 5 (Administrative Law)

The cantonal administration decides on a case regarding a building permit. It will consider the following legal sources (if relevant):

| | correct | incorrect |
|---|---------|-----------|
| a) the principle of proportionality | X | |
| b) the federal act on the protection of the environment | X | |
| c) the federal act on administrative procedure | | X |
| d) the cantonal act on zoning and building | X | |
| e) the rule of law | X | |

Question 6 (Tax Law)

In Switzerland, the confederation, the cantons and the municipalities are allowed to levy taxes. Cantonal and communal tax laws must thereby observe the constitution and any federal law. Are the following statements correct or incorrect?

| | correct | incorrect |
|--|---------|-----------|
| a) The cantons are obliged to levy an individual income tax, but they are free to decide on the cantonal income tax rate | X | |
| b) Legal entities are subject either to the federal corporate income tax or the cantonal corporate income tax, but not to both of them. | | X |
| c) The cantons are not allowed to levy a value added tax. | X | |
| d) The cantons are obliged to levy an inheritance tax. | | X |
| e) A taxpayer who derives taxable income in two or more cantons is exclusively taxed on his overall income in the canton where his main residence is situated. | | X |

Question 7 (Civil Procedural Law)

The Swiss Civil Procedure Code...

| | correct | incorrect |
|---|---------|-----------|
| a) ...determines how judges are elected. | | X |
| b) ...prohibits judges that do not have a law degree. | | X |
| c) ...regulates the enforcement of money claims. | | X |
| d) ...is settlement-friendly, i.e. it gives the parties many opportunities to reach an agreement before the court renders a judgment. | X | |
| e) ...makes litigation very expensive and legal aid difficult to obtain. | X | |

Question 8 (Civil Procedural Law & Insolvency Law)

Are the following statements correct or incorrect?

| | correct | incorrect |
|--|---------|-----------|
| a) The Lugano-convention is applicable when an Indian judgment is being enforced in Switzerland. | | X |
| b) By declaring him/herself insolvent, a private individual can initiate a bankruptcy proceeding. | X | |
| c) Every party must appoint a lawyer if the value in dispute exceeds CHF 5,000. | | X |
| d) The debt collection office does not check the merits of the claim before serving a payment summons. | X | |
| e) The European Convention on Human Rights is irrelevant for the area of civil procedure law, since no rights can be infringed in a court procedure. | | X |

Question 9 (Constitutional Law & Bilateral Relations)

Are the following statements correct or incorrect?

| | correct | incorrect |
|--|---------|-----------|
| a) The Swiss Constitution is, based on an explicit provision to this effect, the highest law in Switzerland; it takes precedence in the case of a conflict with international law. | | X |
| b) Switzerland follows the concept of dualism, i.e., international law must necessarily be transformed into Swiss law by an explicit act of Parliament (or the Government) in order to be applied. | | X |
| c) Switzerland is a party to the Council of Europe and is bound by the European Convention on Human Rights (ECHR). | X | |
| d) <i>Ius cogens</i> prevails over Swiss law in any case. | X | |
| e) Switzerland is a member of the European Economic Area (EEA) | | X |

Question 10 (Constitutional Law)

Are the following statements correct or incorrect? (Popular initiative pursuant to Article 139 of the Constitution)

| | correct | incorrect |
|--|---------|-----------|
| a) With a popular initiative, it is possible to request a vote of the People and the Cantons on a proposal to partially revise the Constitution. | X | |
| b) With a popular initiative, it is possible to request a vote of the People and the Cantons on a proposal to introduce new statutory law. | | X |
| c) It is necessary to collect 50'000 signatures in order to request a vote on the proposed revision of the Constitution (ECHR). | | X |
| d) A specific draft of a new provision, which does not comply with international human rights provisions (e.g., the European Convention on Human Rights, ECHR), is declared invalid. | | X |
| e) A specific draft of a new provision, which violates <i>ius cogens</i> , is declared invalid. | X | |

Question 11 (Contract/Company Law)

Ximena Alvarez, who is a professional cook, would like to open a small Deli shop in the old town of Zurich. There she wants to sell specialities from her home country Spain and also serve some Tapas (appetizers). In order to start her business activities, she needs some advice which type of business association she should choose. These are your answers:

| | correct | incorrect |
|---|---------|-----------|
| a) To be really trustworthy – and that is especially core for a Deli shop of your size – you definitely need to set up a company limited by shares. | | X |
| b) If you run a sole proprietorship you are fully liable in person for the liabilities of the business. | X | |
| c) With a limited liability company you have both: Limitation of liability and your personal influence on the business is guaranteed. | X | |
| d) In order to set up a limited liability company you need at least CHF 20'000. | X | |
| e) The easiest and cheapest way would be to start your business as a sole proprietorship. | X | |

Question 12 (Contract/Company Law)

Alexander Huber will turn 50 on September 23, 2015. For this special birthday he made himself a gift: He ordered his dream car, a brand new Audi A4 quattro allroad. The car dealer said he thinks the car should arrive by the end of August 2015, but can't guarantee anything. So Alexander thought he will have enough time to get to know the new car, with which he wanted to go on holidays, starting the day of his birthday. Unfortunately, the car did not arrive and Alexander had to rent a car for the holidays. What can Alexander do today (October 8, 2015), after the holidays and still without A4 quattro allroad?

| | correct | incorrect |
|--|---------|-----------|
| a) Given that the car dealer is in default, Alexander has to set him a new time limit and can then – by non-performance – choose, if he compels or foregoes subsequent performance. | X | |
| b) Although holidays are over, the choice that meets Alexander's desires best under given circumstances is to still compel performance. | X | |
| c) If prizes for that car model would have decreased substantially in the meantime it would be favourable for Alexander to forego subsequent performance and withdraw from the contract. | X | |
| d) Alexander can successfully sue the car dealer for the extra cost he had by renting another car for his holidays. | | X |
| e) To set the car dealer in default, Alexander has to remind him. | X | |