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2018

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## Introduction to Swiss Law

### 16 January 2018 (10.00-11.00)

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**Duration: 60 minutes**

**Maximum score: 55 points**

- Please check the number of question sheets both when you receive as well as when you submit the exam. The examination book contains (apart from this cover) **5 pages** and **11 questions**. There is text on **both sides** of each page.

#### **Notes on multiple-choice questions**

- For every question there are 5 answers or statements
- For each statement, you must decide whether it is correct or incorrect
- It is possible that 1, 2, 3, 4, 5 or none of the statements are correct.
- A right answer will receive 1 point.
- A wrong answer will receive -1 point.
- Providing no answer will receive 0 points.
- Maximum possible points per question : 5
- Minimum possible points per question : -5
- Make sure it is clear what your final answer is.

#### **Notes concerning solution**

- Answers to the multiple-choice questions **must be marked directly onto the question sheets** by putting an **X in the box** that corresponds to the right answer.

**IMPORTANT: Write your Examination Sequence Number on every page of the examination**

**We wish you a lot of success!**

### Question 1 (Swiss Constitutional Law)

Please indicate whether the following statements concerning Switzerland's direct democracy are correct or incorrect:

|  | correct | incorrect |
|--|---------|-----------|
| With a popular initiative, it is possible to request a general vote on a proposal to include a new provision into the Constitution. For this purpose, it is necessary to collect 100'000 signatures.   | X       |           |
| Referenda against the adoption of new acts by the Federal Assembly (Parliament) are advisory, i.e. the Federal Assembly must take the result into account, but it is not bound by it.  |         | X         |
| The option for 50'000 citizens to request a vote on the planned enactment of a new act modifies the representative system. It is an important instrument of control of, and opposition against, the Federal Assembly, and it is one of the reasons why the Swiss democracy is often referred to as a "consensus-oriented democracy". | X       |           |
| It is not conceivable that there could be a vote, by way of a popular initiative, for a new constitutional provision which violates ius cogens.  | X       |           |
| A popular initiative which envisages the introduction of a new provision into the Constitution violating international human rights law (such as the European Convention on Human Rights, ECHR) must be declared invalid by the Federal Assembly and would not be put to the vote of the people and the cantons.                     |         | X         |

### Question 2 (Swiss Administrative Law)

Please indicate whether the following statements are correct or incorrect. Swiss administrative law cases are found ...:

|  | correct | incorrect |
|--|---------|-----------|
| ... before the Swiss Supreme Court.          | X       |           |
| ... before cantonal courts.                  | X       |           |
| ... before the Federal Administrative Court. | X       |           |
| ... only where federal law is applied.       |         | X         |
| ... only where cantonal law is applied.      |         | X         |

### Question 3 (Swiss Tax Law)

Alexandra lives in the city of Zug (canton of Zug) and works in the city of Zurich (canton of Zurich). She commutes to Zurich every day. When Alexandra was born, she received shares in an U.S. company with a total value of CHF 1'000 from her grandparents. The U.S. company pays her a yearly dividend.

Please indicate whether the following statements are correct or incorrect:

|   | correct | incorrect |
|---|---------|-----------|
| Due to the principle of totality of income, the dividend paid by the U.S. company to Alexandra is subject to income tax on the federal, cantonal and communal level.  | X       |           |
| Alexandra owns an apartment in Zug, but works in Zurich. Because salary income is generally taxed in the canton of the tax-payer's residence, she can benefit from the low income tax rates in the canton of Zug.   | X       |           |
| In 2017, Alexandra sells her shares in the U.S. company at a sales price of CHF 9'500. On the federal level, the resulting capital gain is taxable at a higher income tax rate than the rest of Alexandra's income.   |         | X         |
| The parliament of the canton of Zug decides to lower the income tax rates for individuals. This decision infringes Swiss federal law because the income tax rates of the cantons are harmonised.  |         | X         |
| Alexandra's boyfriend is a German citizen and she decides to move to Berlin (Germany). Since she keeps her apartment in Zug and rents it out to a third party, she remains subject to income tax in Switzerland even if she no longer lives in Switzerland. | X       |           |

### Question 4 (Swiss Civil Law)

In June 2016, B bought a used car from V. However, V had stolen the car from its owner X in April 2016. Today, X wants to reclaim the car from B. Through which of the following means can X regain possession against B's will?

|  | correct | incorrect |
|--|---------|-----------|
| Action for restitution based on possession.          |         | X         |
| Action against the abuse of rights.                  |         | X         |
| Action for restitution based on property.            | X       |           |
| Action for restitution based on right to possession. | X       |           |
| Through provisions of contract law.                  |         | X         |

**Question 5 (Swiss Contract Law)**

Nullity and defeasibility of a contract are two different concepts. Please indicate whether the following statements are correct or incorrect:

|  | correct | incorrect |
|--|---------|-----------|
| According to Art. 20 para. 1 CO, a sale contract concerning cocaine (an illegal drug) is not null/void.  |         | X         |
| Armando sells a painting from Van Gogh to Diego. It turns out that the painting is a falsification. Diego can successfully defeat that contract within one year of discovery of the error, because of fundamental error. | X       |           |
| A party that has entered into a contract under duress from the other party can defeat that contract without the application of any time limit.   |         | X         |
| Diego sells Armando his dog. But that dog is not available: it had died one week before the contract was concluded. That is a contract with an impossible content and therefore it is null/void.                         | X       |           |
| A contract for the sale of immovable property is only valid if it was done as a public deed (Art. 216 para. 1 CO).   | X       |           |

**Question 6 (Swiss Criminal Law)**

Please indicate whether the following statements about criminal procedure in Switzerland are correct or incorrect:

|  | correct | incorrect |
|--|---------|-----------|
| After the prosecution investigation, the majority of criminal cases proceed to be heard by a court.  |         | X         |
| The prosecution and the police are equally in charge of the investigation, and both have the duty to investigate the incriminatory and exculpatory evidence against the accused with equal care. |         | X         |
| The accused must be represented by a lawyer after the first court hearing: the defence lawyer may be appointed by the prosecutor at this stage.  | X       |           |
| The private claimant can request a specific sentence for the accused and can challenge the prosecution's decision to drop any charges.   | X       |           |
| In every criminal case which proceeds to court, there are always three parties: namely, the prosecutor, the accused and the private claimant.  |         | X         |

**Question 7 (Swiss Civil Procedure)**

Please indicate whether the following statements about civil procedure in Switzerland are correct or incorrect:

|  | correct | incorrect |
|--|---------|-----------|
| In Switzerland, pre-trial conciliation is mandatory in every civil case.   |         | X         |
| In Switzerland, it is possible to obtain the execution of money debts without a prior judgment if the debtor makes no objection. | X       |           |

|   |   |  |
|---|---|--|
| In Switzerland, it is possible in certain cases to become subject to bankruptcy proceedings without being insolvent.  | X |  |
| Swiss national law is restrictive in allowing the recognition and enforcement of foreign judgments given against defendants who are domiciled in Switzerland. | X |  |
| In Switzerland, a motion to set aside an arbitral award is generally addressed directly to the Federal Court.   | X |  |

### Question 8 (Roman Law)

Under the so-called 'procedure by formulas', Roman judges...:

|   | correct | incorrect |
|---|---------|-----------|
| ...had the capacity to decide about the law, not merely about the facts.                                      |         | X         |
| ...had to follow a set of instructions that they received from the magistrate that appointed them.            | X       |           |
| ...had a wide margin of discretion to decide their verdict simply on the basis of what is equitable and fair. |         | X         |
| ...were in a position similar to that of modern day jurors.   | X       |           |
| ...were merely assisted by the instructions they received upon appointment, rather than bound by them.        |         | X         |

### Question 9 (Legal History)

Please indicate whether the following statements about Swiss legal history are correct or incorrect:

|  | correct | incorrect |
|--|---------|-----------|
| At the beginning of the eighteenth century, the so-called Ecole romande du droit naturel was established in the French-speaking part of Switzerland: Geneva, Lausanne, Neuchâtel and Yverdon were the main knowledge centres in which theories of natural law and law of nations circulated. | X       |           |
| Das moderne Kriegerrecht der civilisirten Staaten, written by Johann Caspar Bluntschli in 1866, is an attempt at codification that deals with the entire law of nations, and it is divided into three general parts: the law of peace, the law of war and the law of neutrality.             | X       |           |
| For the creation of the Red Cross, Henri Dunant was influenced by the events of the American Civil War: when he came back to Switzerland, in 1862, he published his campaigning book entitled Memories of Solferino.   |         | X         |
| Principes du droit politique was written by Gustave Moynier, who was one of the key figures of the so-called Ecole romande du droit naturel, that was established in the French-speaking part of Switzerland at the beginning of the eighteenth century.                                     |         | X         |
| Emer de Vattel, the jurist from Neuchâtel, wrote his Le Droit des gens in 1758, in which he developed, in four books, a series of rules regarding the State, relations between states and war and peace.   | X       |           |

**Question 10 (Legal Sociology)**

The political system in Switzerland is called a direct democracy. What is specific to this form of government?

|   | correct | incorrect |
|---|---------|-----------|
| As an autopoietic system, politics has to be operatively closed. Thus, it is essential that the government and parliament help to shape the political views through mass media, and tell the citizens what to vote.   |         | X         |
| In a direct democracy it is vital that citizens have access to public and free education; in Switzerland, access to free primary school education is guaranteed by Art. 19 of the Constitution.   | X       |           |
| It is essential that citizens are thoroughly informed in order to make political decisions. In particular, access to social media like Facebook promotes that aim. A high number of Swiss people use Facebook on a daily basis and discussions between friends regarding political issues and newspaper articles provide different views, thus making any additional information source obsolete. |         | X         |
| Financial resources and social preconditions guarantee the working of direct democracy in Switzerland.  |         | X         |
| Amongst the social preconditions of a direct democracy are the confrontation with and acceptance of dissenting opinions, and the spirit of compromise and tolerance towards other people.   | X       |           |

**Question 11 (Legal Philosophy)**

Human rights are of foundational importance for the current civilisation of law. Which of the following statements about human rights are correct?

|   | correct | incorrect |
|---|---------|-----------|
| According to Kant's principle of humanity, the disenfranchising of women can be justified.  |         | X         |
| Methodological secularism is a theoretical stance that holds that one can only justify human rights if one does not believe in God.                               |         | X         |
| Current human rights theory is based on the idea that human rights can only be justified in Western contexts.   |         | X         |
| The universality of human rights in current human rights theory is often based on the idea of universally shared human goods, for example the desire for freedom. | X       |           |
| Normative principle like justice and solidarity are moral principles which bear no importance for the theory of legal human rights.                               |         | X         |