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Rechtswissenschaftliche Fakultät

Introduction to Swiss Civil Procedure

Prof. Lorenz Droese

Fall Semester 2025

https://www.bger.ch/index/contact/contact-inherit-template/contact-federal-besuch/contact-federal-virtual-tour.htm

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Topics

1. Basics
2. Court organisation
3. Legislation on civil procedure
4. Judges and lawyers
5. Jurisdiction
6. Proceedings
7. Judgement
8. Appeals
9. Enforcement

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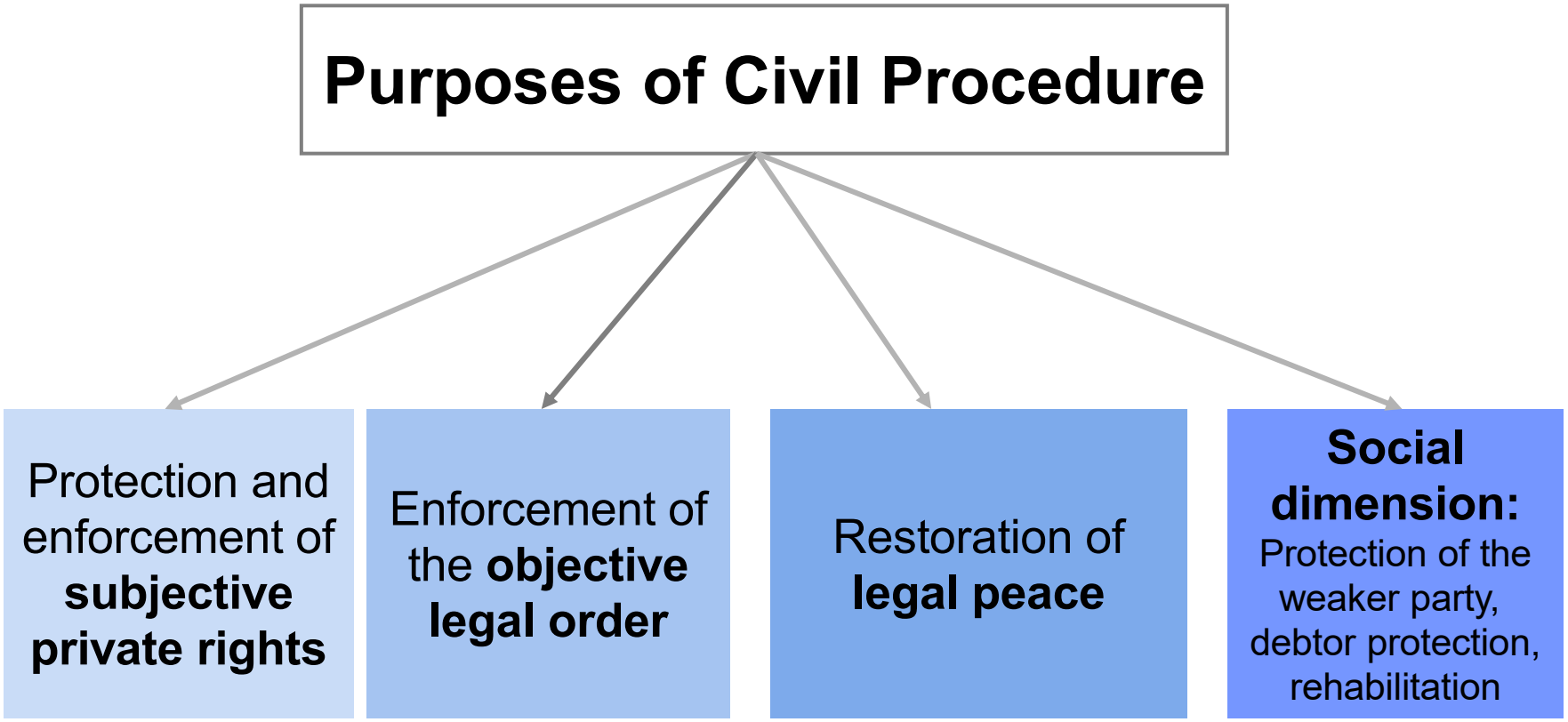
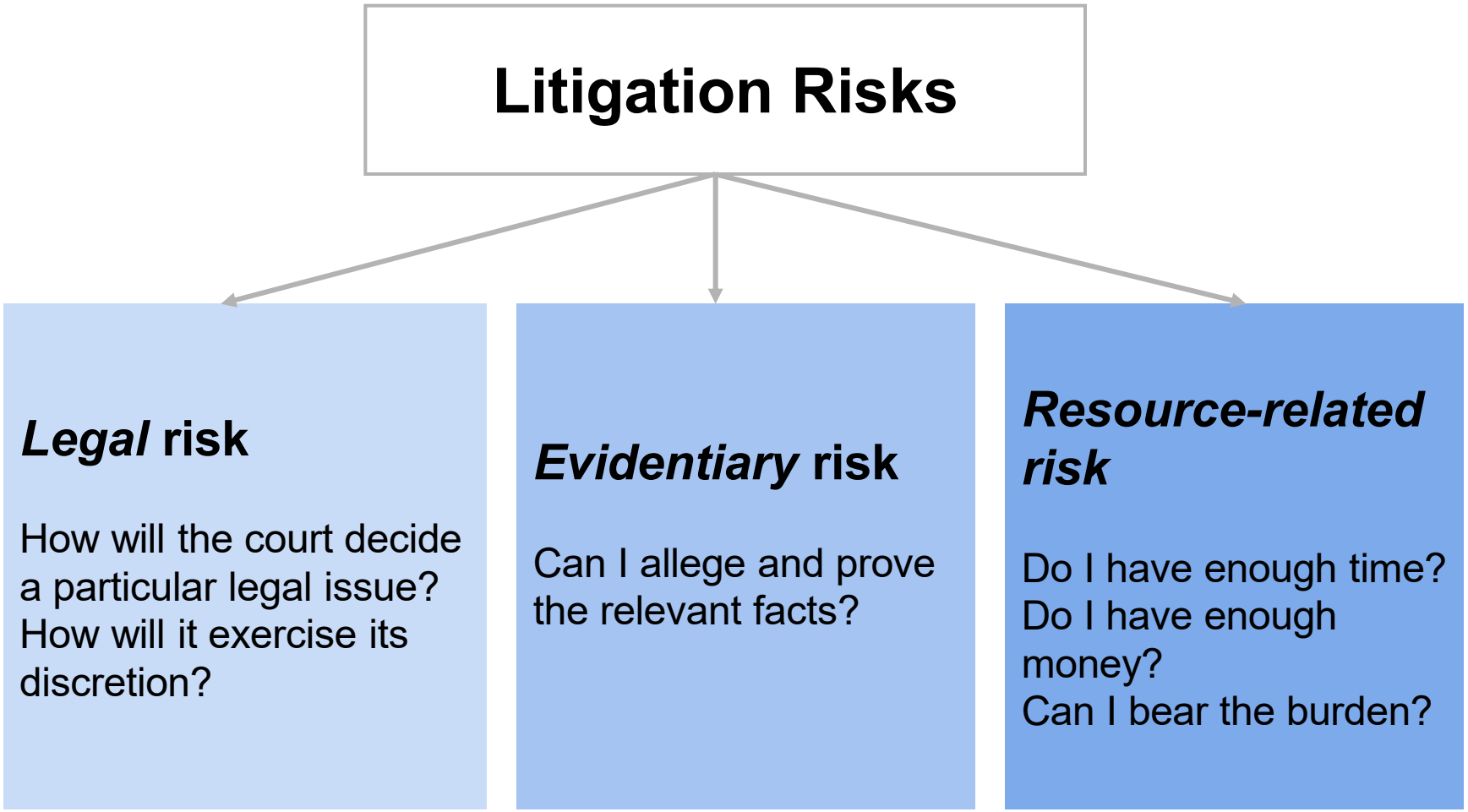
Basics

Basics: Purposes



Basics: Risks



Basics: Alternatives (to litigation before state courts)

Arbitration (IPRG 176 et seq.; ZPO 353 et seq.)

Adjudicatory body that renders binding decisions, based on a party agreement, in lieu of the otherwise competent state courts

Mediation / alternative dispute resolution

Independent / „all-partial“ third party, who supports the parties in a structured communication process in developing a consensual conflict resolution

Arbitrator‘s opinion (ZPO 189)

Binding establishment of facts by a qualified third party

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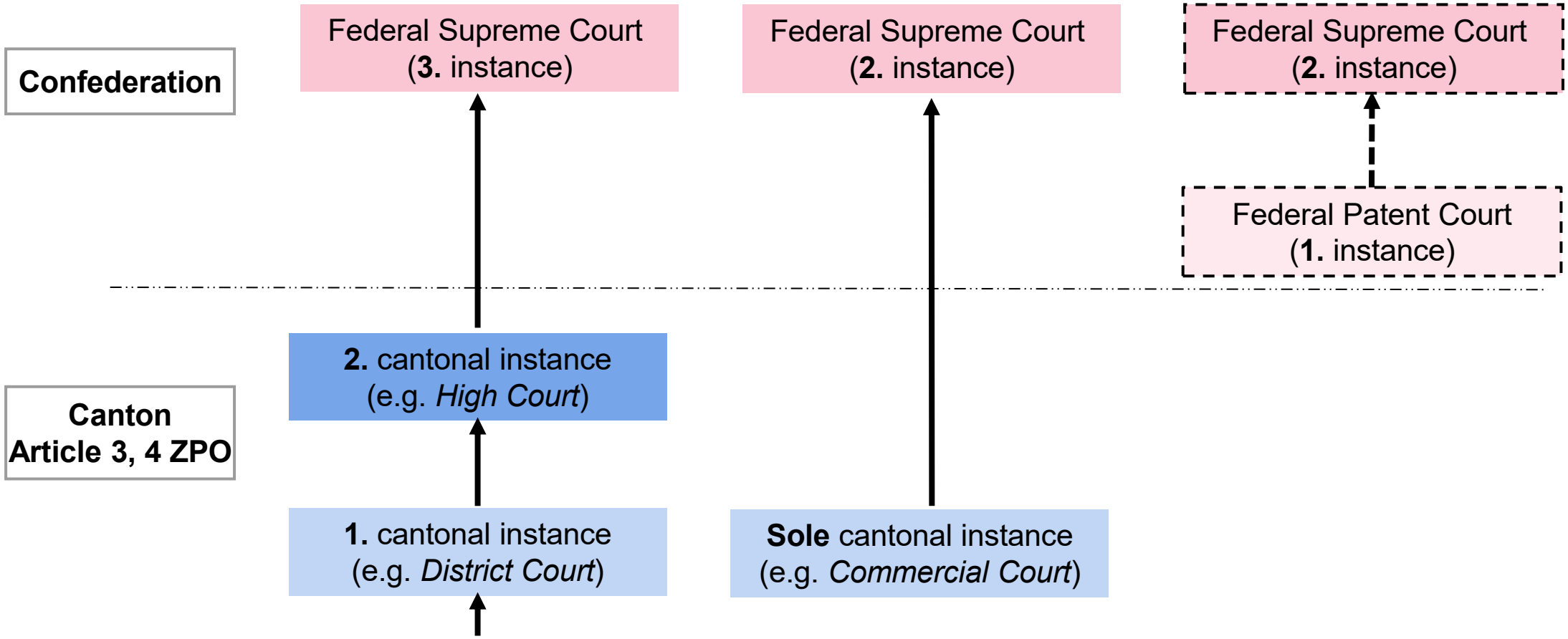
Court Organisation

Court Organisation: Confederation and Cantons

Court Organisation: Cantonal and federal level



Cantonal courts – diversity…

Kantonsgericht Freiburg

(Source: Bohnet/Ferrara, Tribunaux civils suisse – Schweizer Zivilgerichte, Un voyage dans l'architecture judiciaire civile suisse – Ein architektonischer Streifzug durch die schweizerischen Zivilgerichte, Basel 2023)

Cantonal courts – diversity…

Tribunal régional du Littoral et du Val-de-Travers, Neuenburg

(Source: Bohnet/Ferrara, Tribunaux civils suisse – Schweizer Zivilgerichte, Un voyage dans l'architecture judiciaire civile suisse – Ein architektonischer Streifzug durch die schweizerischen Zivilgerichte, Basel 2023)

Cantonal courts – diversity…

Regionalgericht
Imboden, Domat/Ems

(Source: Bohnet/Ferrara, Tribunaux civils suisse – Schweizer Zivilgerichte, Un voyage dans l'architecture judiciaire civile suisse – Ein architektonischer Streifzug durch die schweizerischen Zivilgerichte, Basel 2023)

Cantonal courts – diversity…

Pretura di Lugano

(Source: Bohnet/Ferrara, Tribunaux civils suisse – Schweizer Zivilgerichte, Un voyage dans l'architecture judiciaire civile suisse – Ein architektonischer Streifzug durch die schweizerischen Zivilgerichte, Basel 2023)

Cantonal courts – diversity…

Kantonsgericht Zug

(Source: Bohnet/Ferrara, Tribunaux civils suisse – Schweizer Zivilgerichte, Un voyage dans l'architecture judiciaire civile suisse – Ein architektonischer Streifzug durch die schweizerischen Zivilgerichte, Basel 2023)

Cantonal courts – diversity…

Bezirksgericht Baden

(Source: Bohnet/Ferrara, Tribunaux civils suisse – Schweizer Zivilgerichte, Un voyage dans l'architecture judiciaire civile suisse – Ein architektonischer Streifzug durch die schweizerischen Zivilgerichte, Basel 2023)

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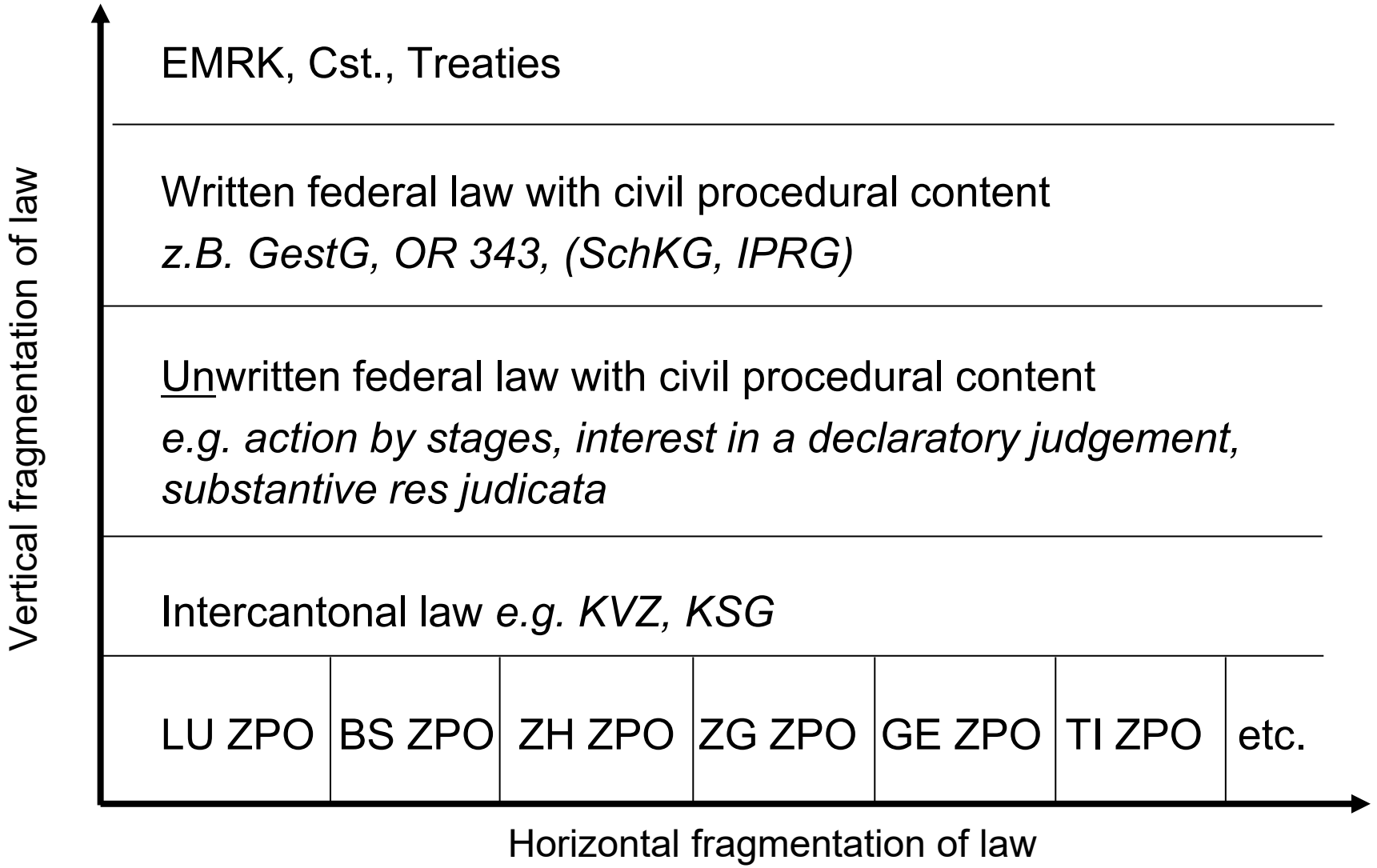
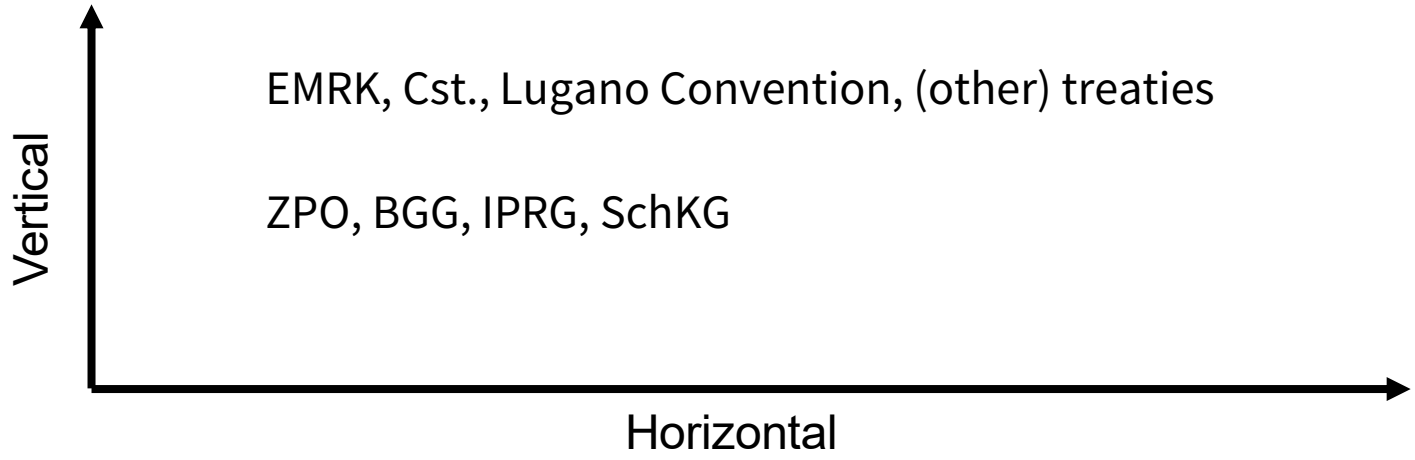
Legislation on civil procedure

Legislation: Past (until 31.12.2010)



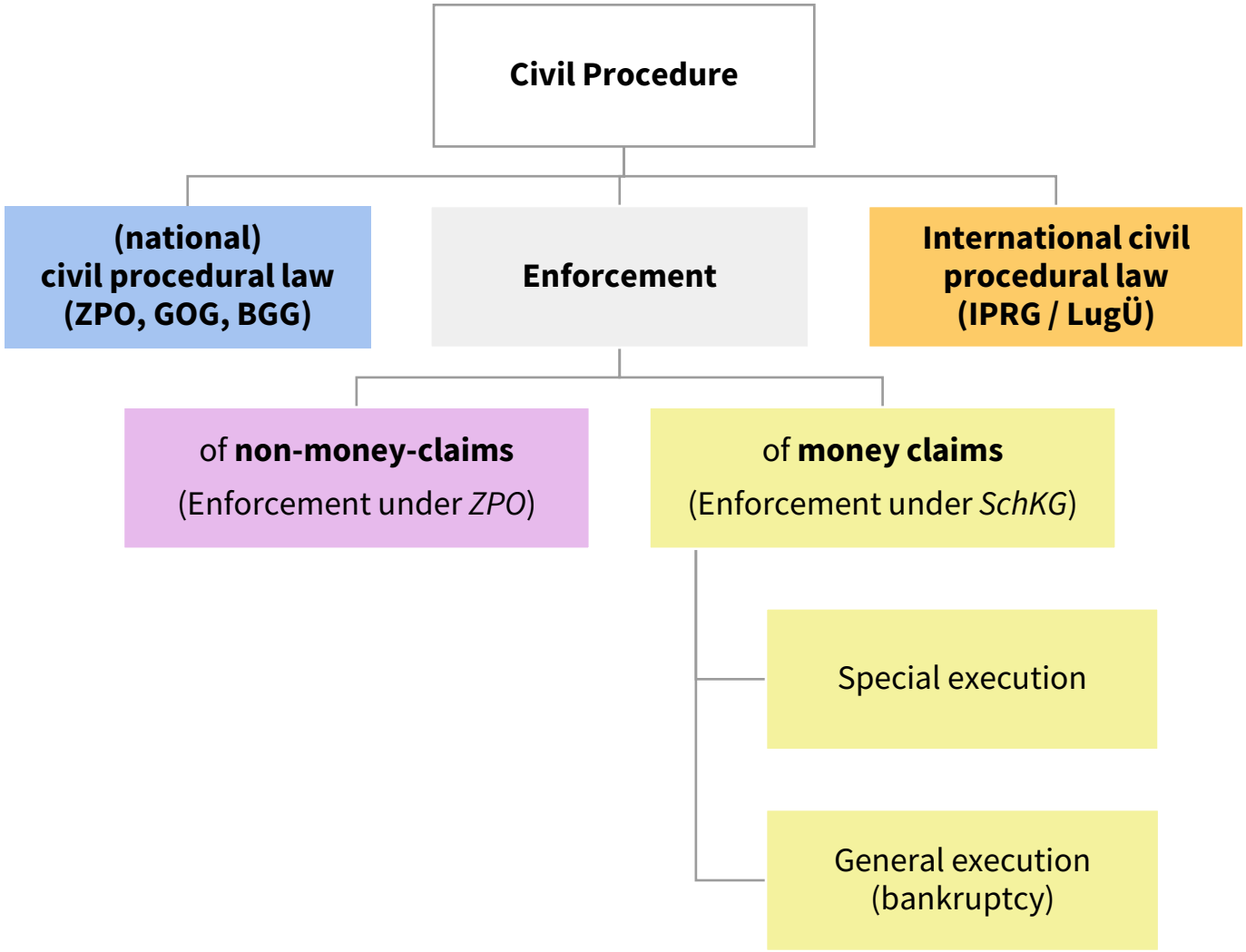
Legislation: Present (since 01.01.2011)

- Treaties, Constitution, Federal Acts

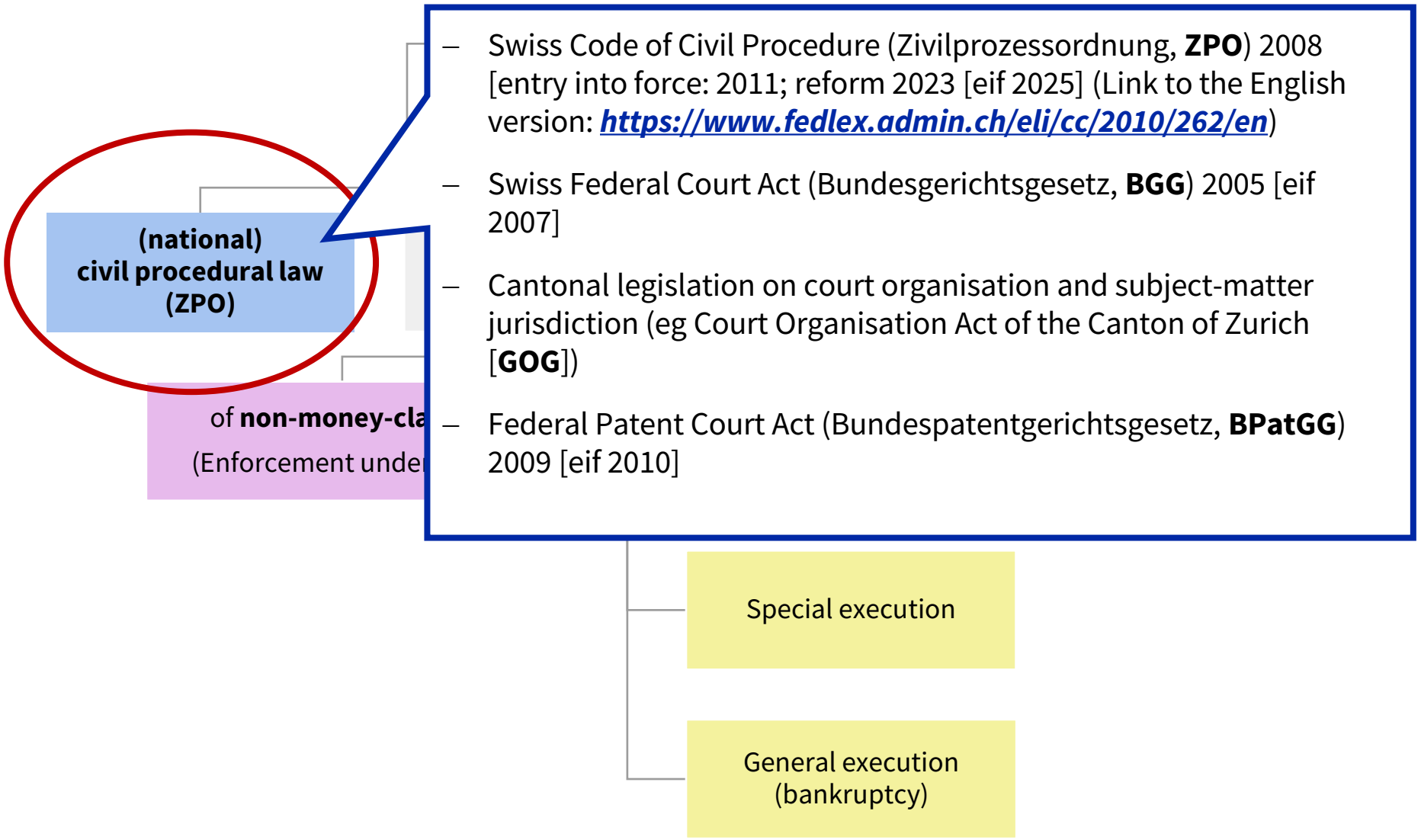


- Cantonal legislation
  - Court organisation / subject-matter jurisdiction→ GOG ZH (211.1)
  - Procedural costs → GebV OG ZH (211.11), AnwGebV ZH (215.3)
    → cf. however, Art. 95 et seq. ZPO!
  - Organisation debt enforcement and bankruptcy authorities→ EG SchKG ZH (281)

Legislation: Overview

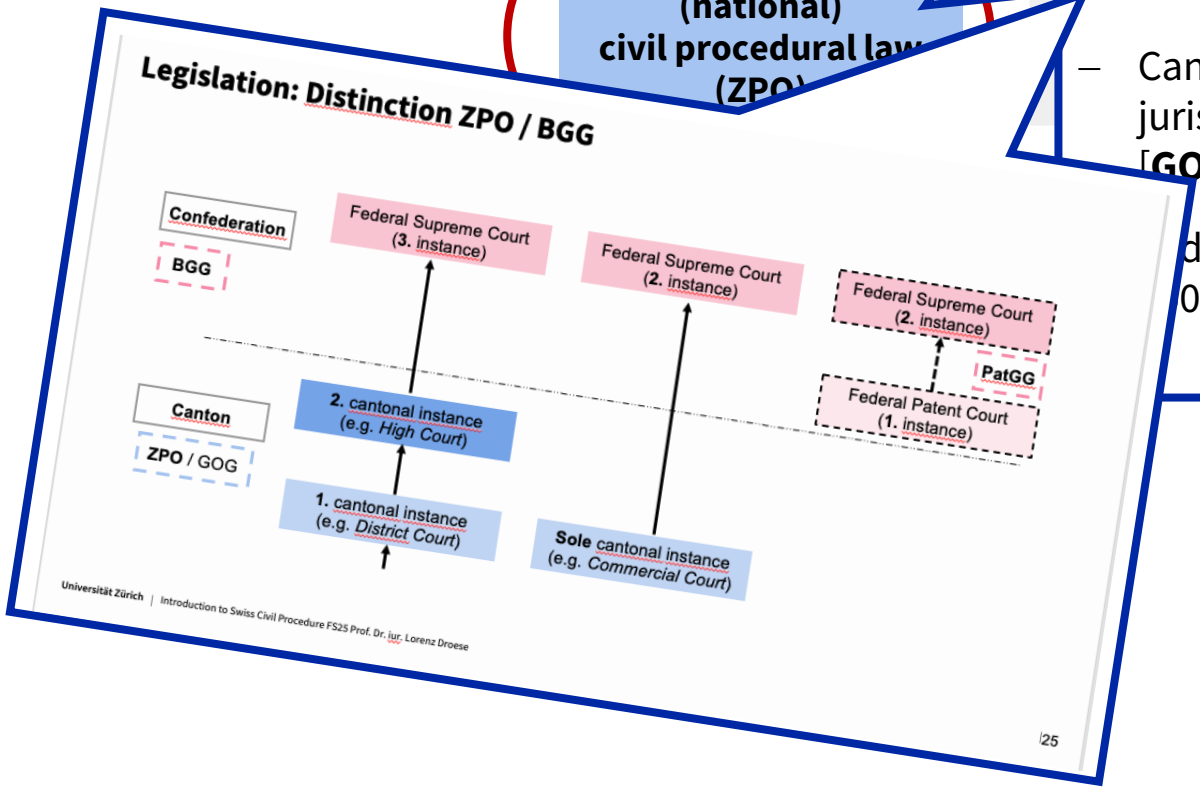


Legislation: Domestic matters



Legislation: Domestic matters

(national) civil procedural law (ZPO)

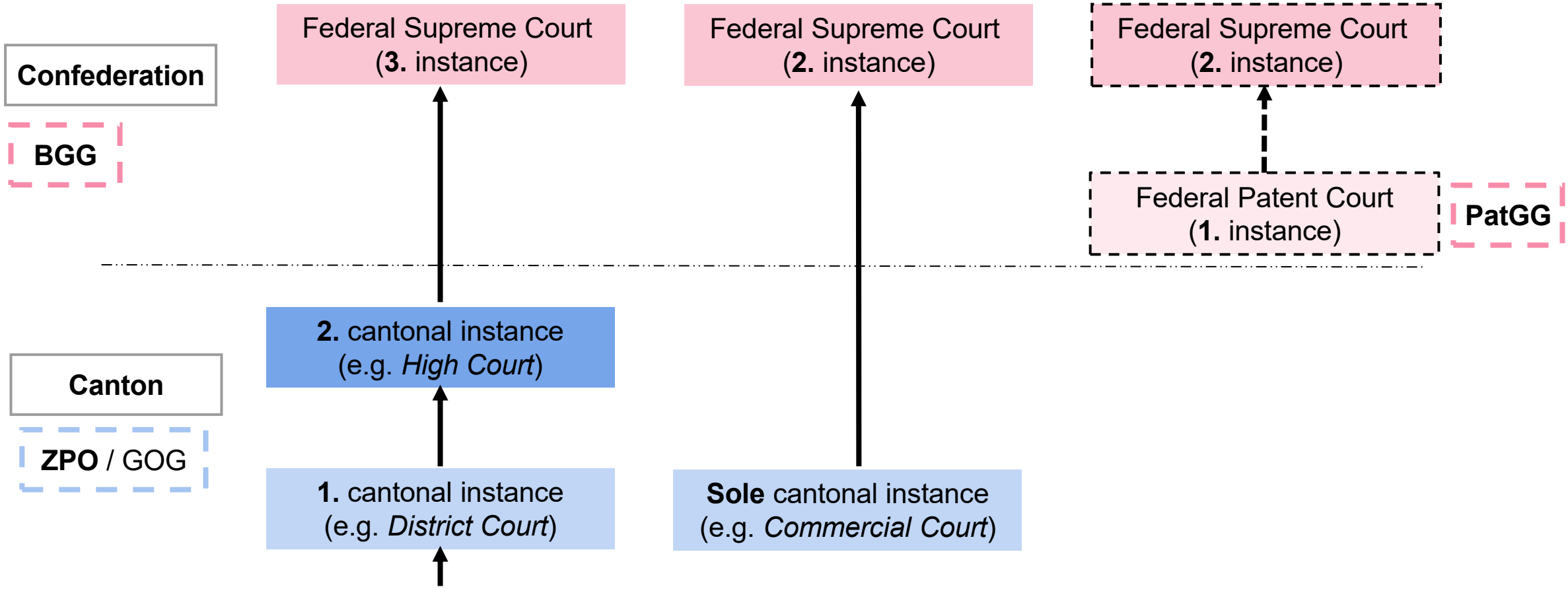


- Swiss Code of Civil Procedure (Zivilprozessordnung, **ZPO**) 2008 [entry into force: 2011; reform 2023 [eif 2025] (Link to the English version: ***https://www.fedlex.admin.ch/eli/cc/2010/262/en***)
- Swiss Federal Court Act (Bundesgerichtsgesetz, **BGG**) 2005 [eif 2007]
- Cantonal legislation on court organisation and subject-matter jurisdiction (eg Court Organisation Act of the Canton of Zurich [**GOG**])
- deral Patent Court Act (Bundespatentgerichtsgesetz, **BPatGG**) 09 [eif 2010]

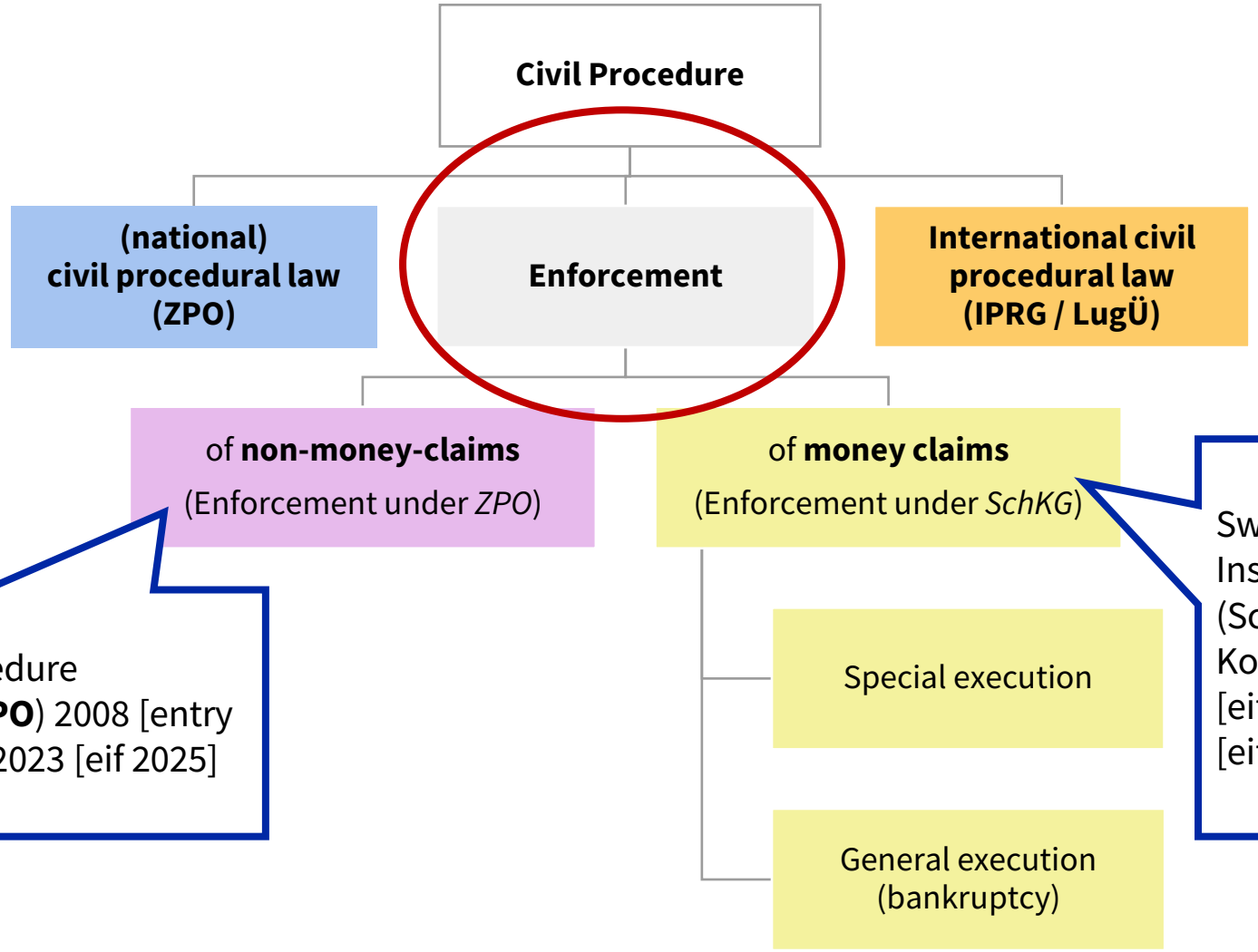
Special execution

General execution (bankruptcy)

Legislation: Domestic matters



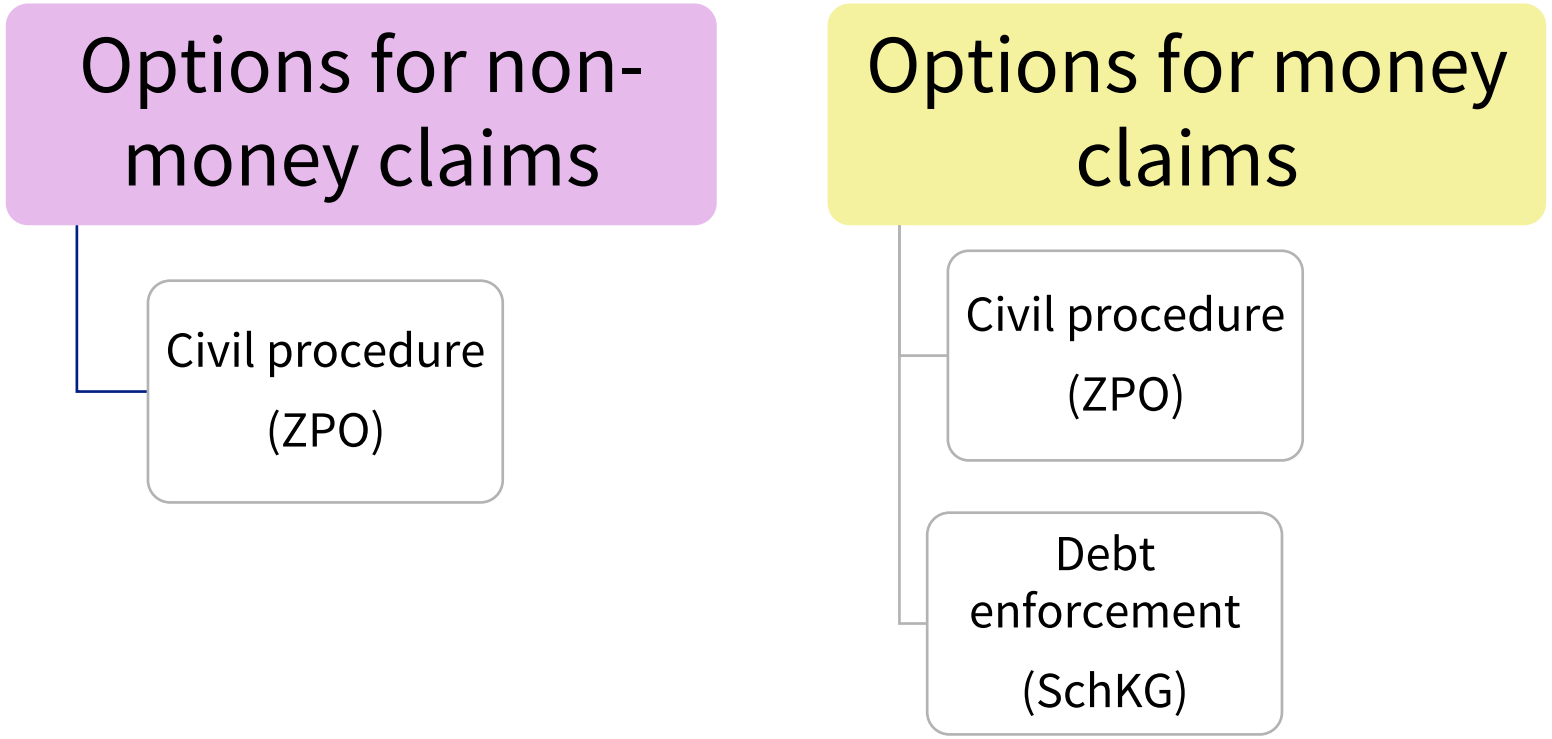
Legislation: Enforcement



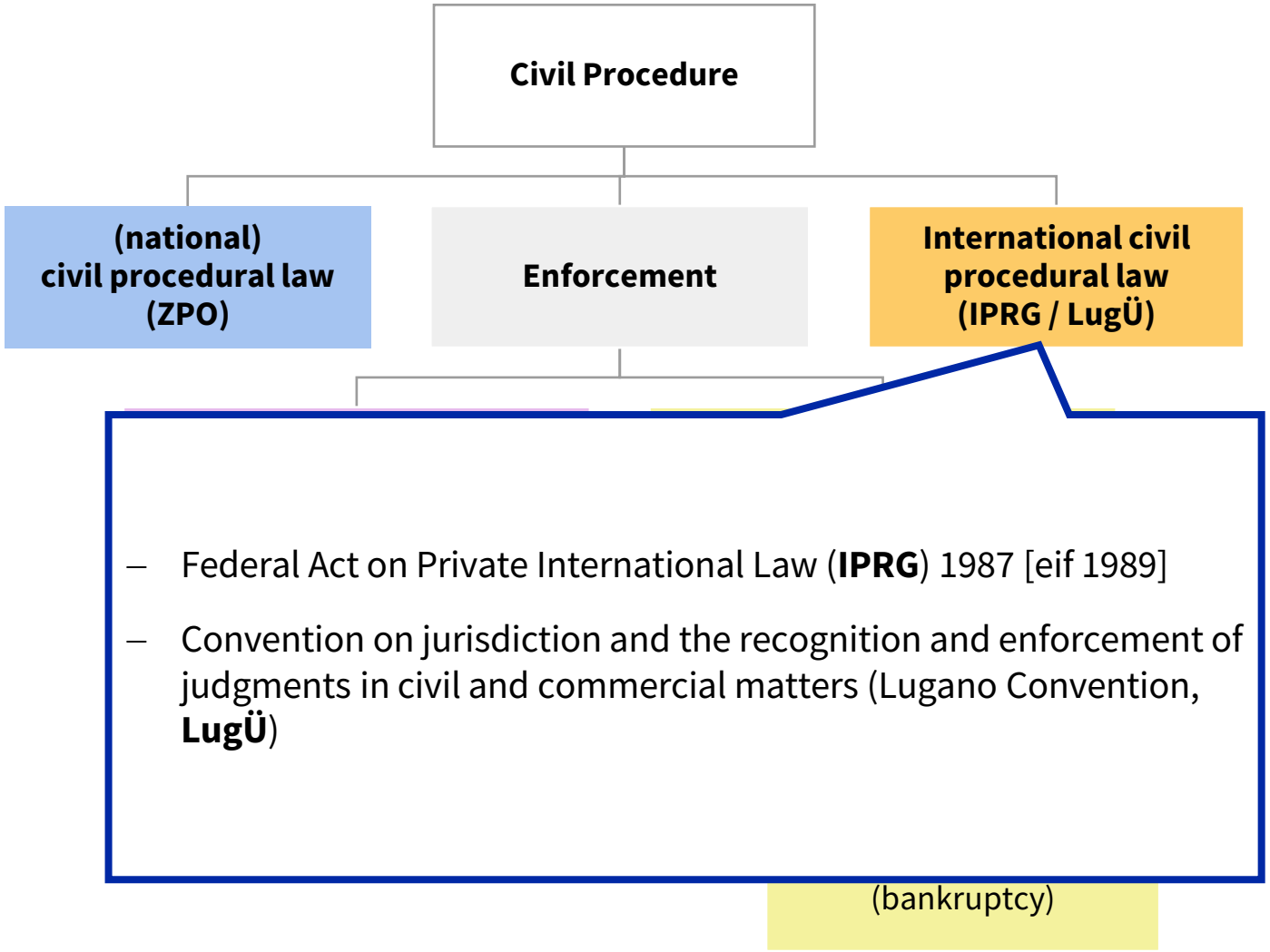
Swiss Code of Civil Procedure (Zivilprozessordnung, **ZPO**) 2008 [entry into force: 2011; reform 2023 [eif 2025]

Swiss Debt Enforcement and Insolvency Act (Schuldbetreibungs- und Konkursgesetz, **SchKG**) 1889 [eif 1892] / major reform 1994 [eif 1997]

Legislation: Enforcement



Legislation: International matters



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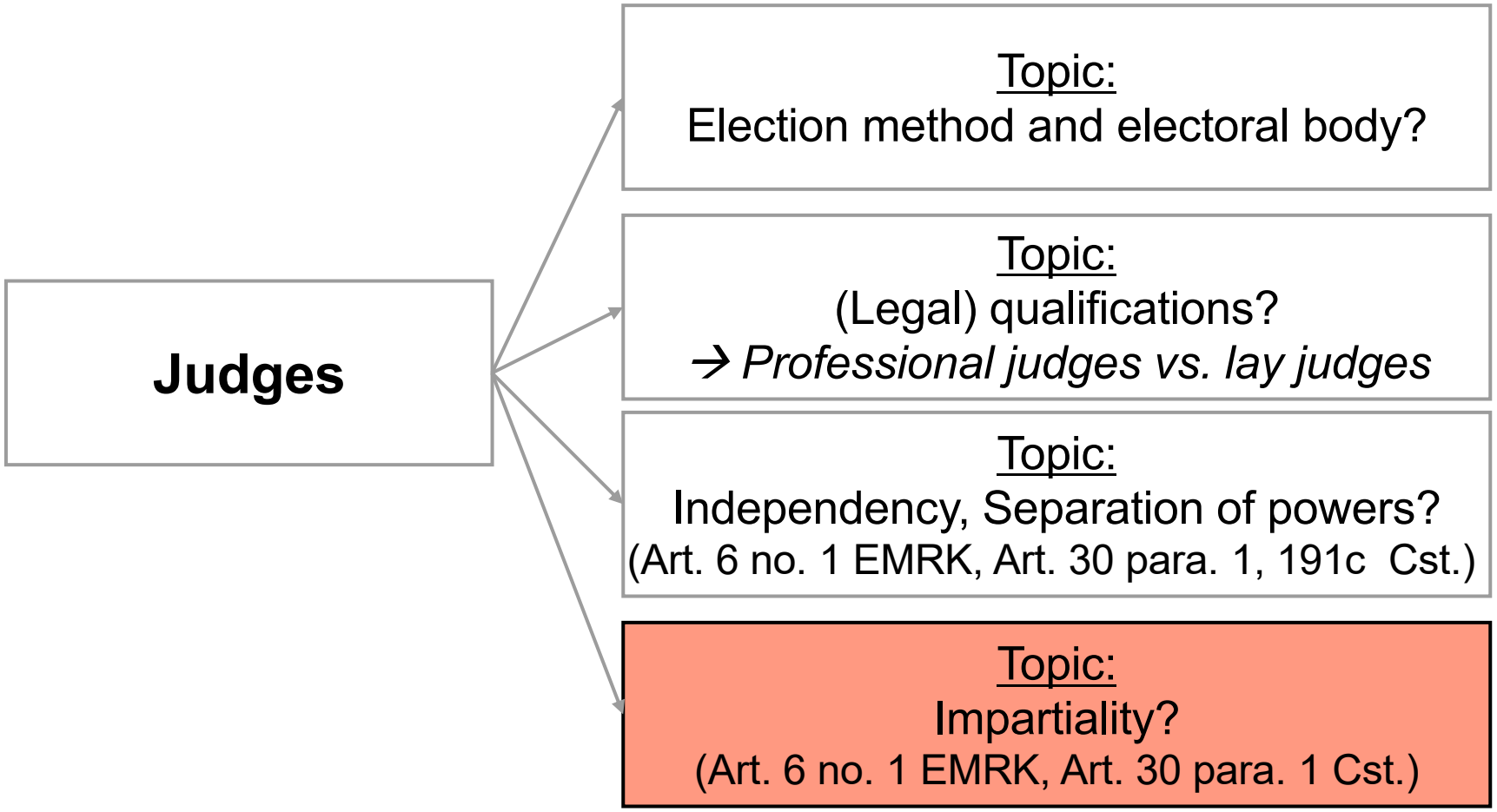
Judges and Lawyers

Swiss judges



Swiss lawyers

- **Federal Act on the Free Movement of Lawyers (Bundesgesetz über die Freizügigkeit der Anwältinnen und Anwälte, BGFA)**
- **Cantonal rules on bar admission (within a federal framework)**
- **No requirement to be represented by a lawyer in civil proceedings**
- **Professional representation before courts: lawyers' monopoly**
- **Federal Court: representation only by lawyers (but litigants in person also admitted)**

Jurisdiction

Jurisdiction

Jurisdiction(s)

international

„Where?“

Which country‘s courts have jurisdiction?

e.g.
Switzerland or Germany?

→ ***LugÜ, IPRG***

territorial

„Where?“

The courts in which location are competent?

e.g.
Lucerne, Zurich or New York?

→ ***LugÜ, IPRG, ZPO, SchKG***

subject-matter

„Who?“

Which court (in a given location) are competent?

e.g. Court for Employment Matters or
oder District Court?

→ ***Cantonal law within parameters set by ZPO, e.g. GOG/ZH***

Jurisdiction

Jurisdiction(s)

international

„Where?“

Which country
jurisdi

*e.
Switzerland*

→ ***LugÜ, IPRG***

territorial

„Where?“

→ ***LugÜ, IPRG, ZPO, SchKG***

subject-matter

„Who?“

Which court (in a given
) are competent?

*rt for Employment
Matters or
District Court?*

→ ***Cantonal law within parameters set by ZPO, e.g. GOG/ZH***

Article 30(2) Swiss Federal Constitution

Unless otherwise provided by law, any person against whom civil proceedings have been raised has the right to have their case decided by a court within the jurisdiction in which they reside.

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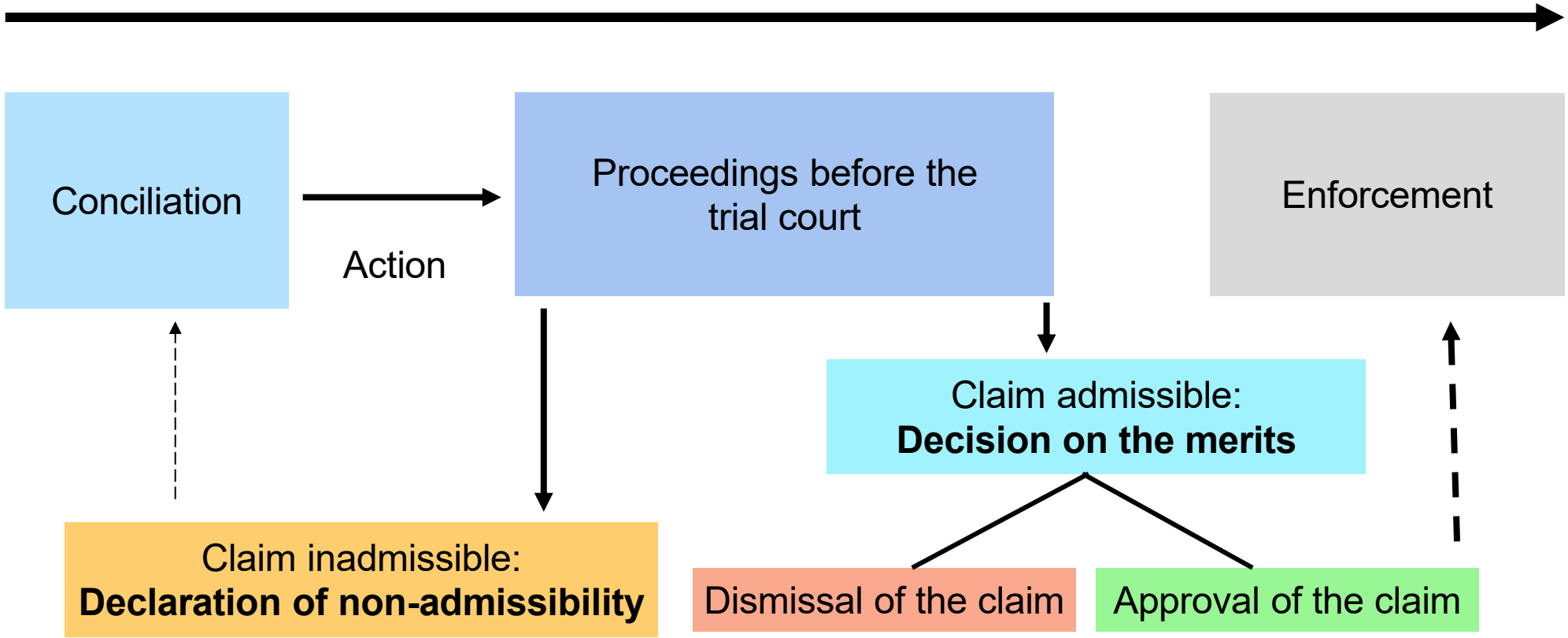
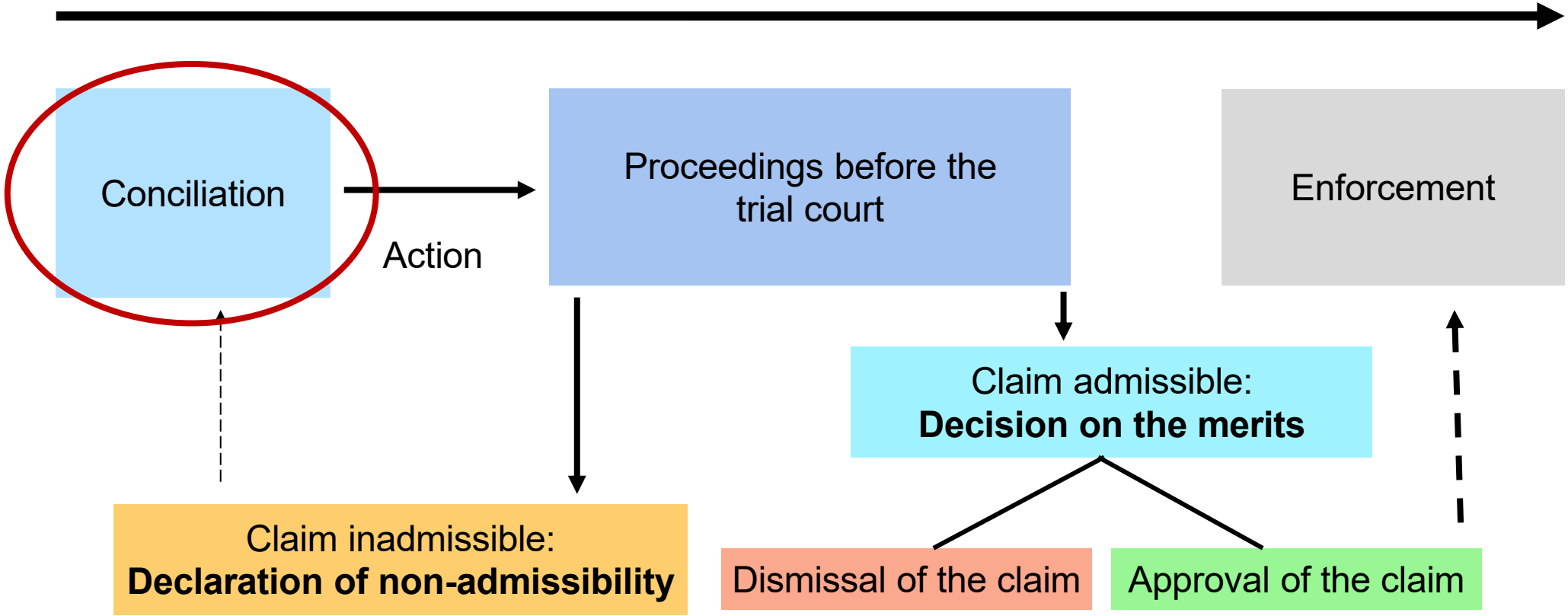
Proceedings

Proceedings: Stages



Proceedings: Mandatory conciliation



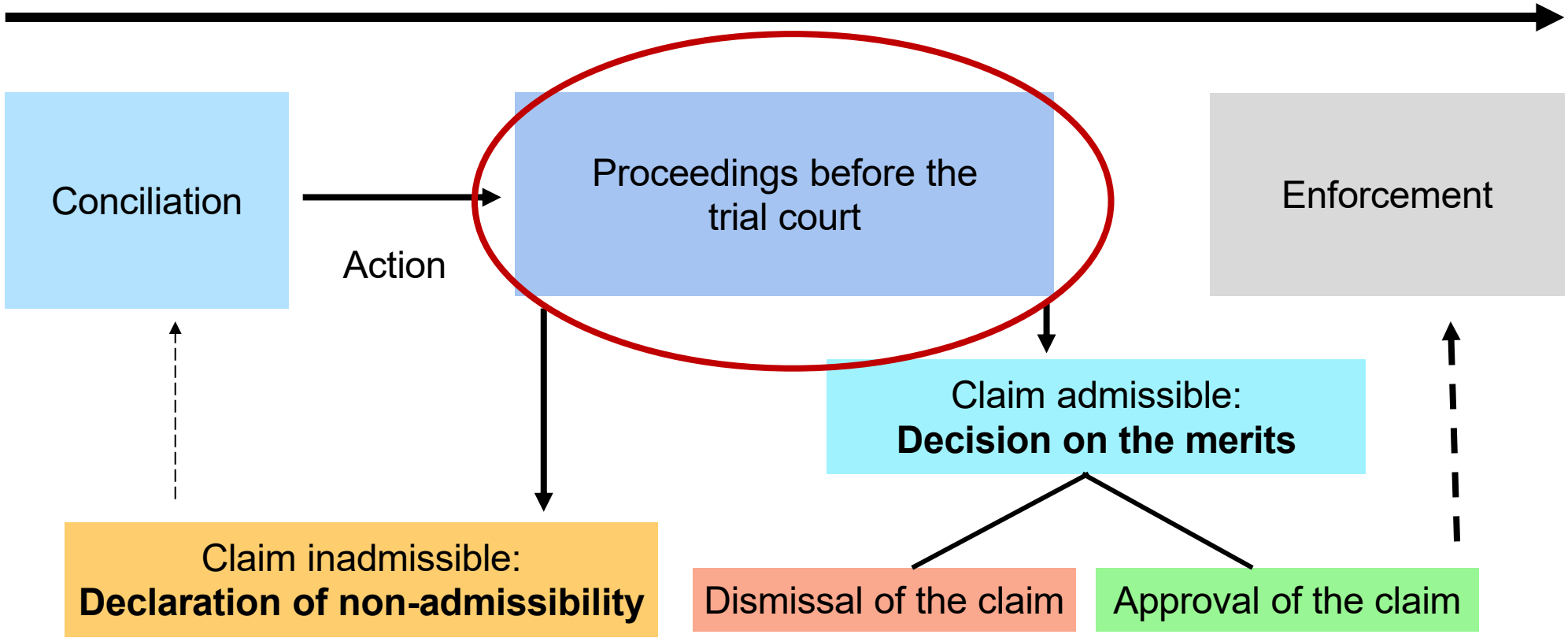
Proceedings: Mandatory conciliation

- Principle: mandatory pre-trial conciliation (with exceptions)
- About 50% of cases settled at conciliation stage
  - ➢ & large percentage of money claims filtered out through enforcement proceedings without prior judgement
- Cantonal rules on organisation of conciliation authority
  (court, justice of the peace, specialised administrative authority)
- Alternative (to conciliation hearing): mediation (rarely used)

Proceedings: Mandatory conciliation

- dismissal for groundlessness (plaintiff's default)
- settlement, acceptance, withdrawal
  - ➢ same effect as binding judgement
- authorisation to proceed (*Klagebewilligung*)
  - ➢ case may be brought before court within 3 months (no automatic initiation of court proceedings!)
- judgement (*Entscheid*)
  - up to 2000 CHF
  - claimant's request; discretion of conciliation authority
- proposed judgement (*Entscheidvorschlag*)
  - up to 10'000 CHF (gender equality/tenancy: no upper limit)

Proceedings: Proceedings before the trial court



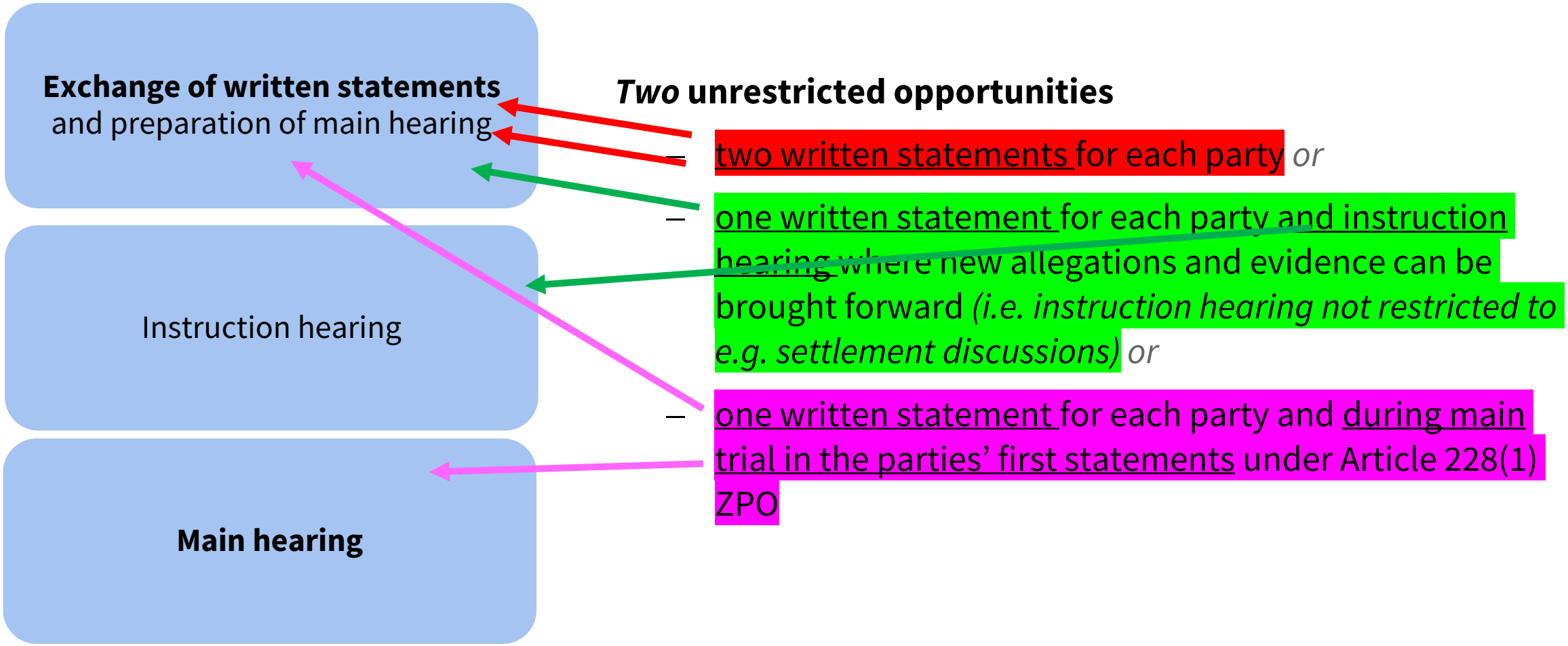
Proceedings before the trial court – Overview

- Ordinary procedure (*ordentliches Verfahren*)
  - claims over CHF 30'000 / claims without monetary value
  - often dominated by written elements
  - emphasis on formalities, strict party responsibility, *de facto* (but not *de iure*) necessity of representation by lawyer
- Simplified procedure (*vereinfachtes Verfahren*)
  - claims up to CHF 30'000 (some types of claims regardless of value)
  - less formal, more orality, more judicial involvement
- Summary procedure (*summarisches Verfahren*)
- Special procedures in family law matters

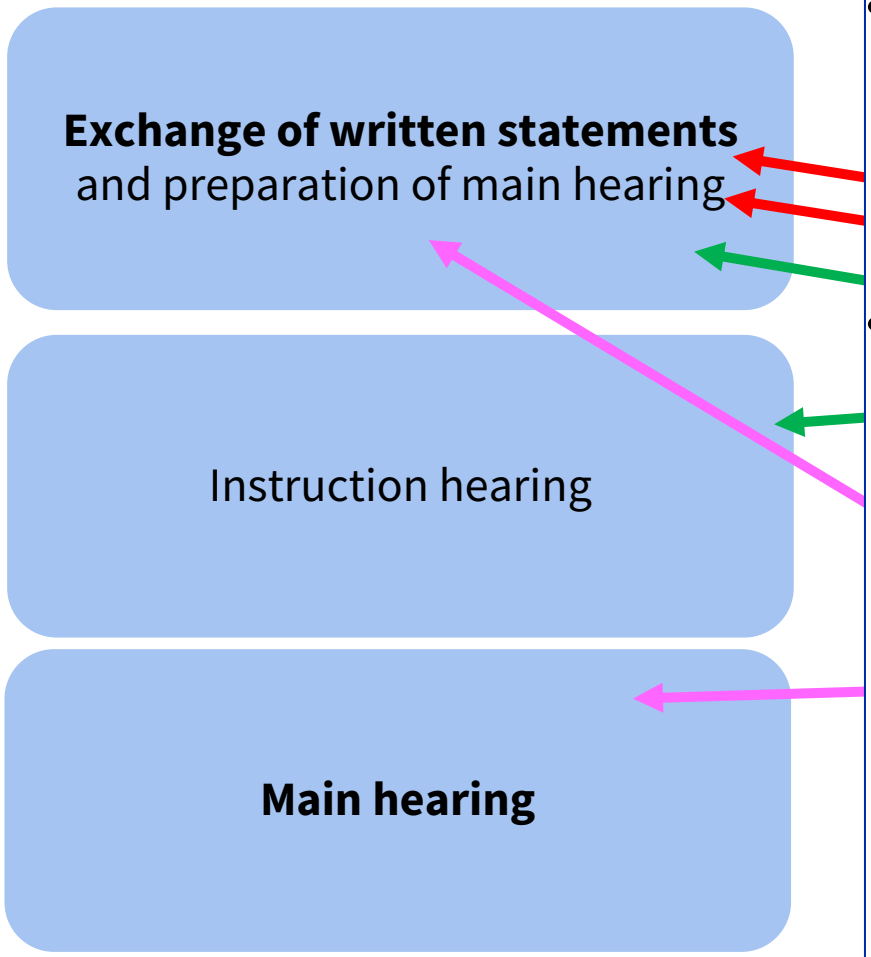
Proceedings before the trial court – Structure of ordinary proceedings

Exchange of written statements and preparation of main hearing	• **Statement of claim (ZPO 220 et seq.)** • **Statement of defence [if applicable with counterclaim] (ZPO 222-224)** • **if ordered by court: replication [*Replik*], rejoinder [*Duplik*]**
Instruction hearing	• **At court‘s discretion** • **ZPO 226**
Main hearing	• **New factual allegations and evidence (ZPO 229)** • **Opening party submissions (ZPO 228)** • **Taking of evidence (ZPO 150 et seq.; ZPO 231)** • **Closing submissions (ZPO 232)** • **Waiver by parties possible**

Proceedings before the trial court – New factual allegations / evidence



Proceedings before the trial court – New factual allegations / evidence



Admissibility of late allegations (Article 229 para. 2, 2bis ZPO)

- What?
  - Newly-arising facts and evidence
  - pre-existing facts and evidence that could not have been introduced earlier despite reasonable diligence
- When
  - new facts or evidence must be introduced within a deadline set by the court; in the absence of such a deadline, they must be introduced at the latest by the opening party submission in the main hearing in accordance with Article 228 para. 1 ZPO
  - Latest possibility for all new facts and evidence:
    - beginning of the deliberation of the judgement
    - where facts are established *ex officio:* until the beginning of the deliberation

Proceedings before the trial court – Relationship between the judge and the parties

- **Formal aspects** of proceedings (service of documents, scheduling hearings etc.): **responsibility of court** (Article 124 para. 1 ZPO)
- **Substantive case management?**
  - principle of party presentation (pleading of facts by the parties)
  - Court's duty to ask questions and give instructions (Article 56 ZPO) (scope disputed; courts often reluctant, in particular towards parties represented by lawyers)
  - taking evidence *ex officio* (powers broad in theory, but rarely used in practice)

Proceedings before the trial court – Evidence

- **Numerus clausus of types of evidence** (Art. 168 para. 1 ZPO: witness testimony, documents, inspection, court-appointed experts, written statements, party interrogation
- **Free evaluation of evidence** (Article 157 ZPO)
- **Duty to cooperate** and right to refuse (Article 160 et. seq. ZPO)
  – unjustified refusal *by party* taken into account when appraising evidence
  – unjustified refusal *by third party*: compulsion
- **Evidence obtained illegally** : Balancing of interests (Art. 152 para. 2 ZPO)

Main hearing

- **New factual allegati… …ence (ZPO 229)**
- **Opening party su… …ssions (ZPO 228)**
- **Taking of evidence (ZPO 150 et seq.; ZPO 231)**
- **Closing submissions (ZPO 232)**
- **Waiver by parties possible**

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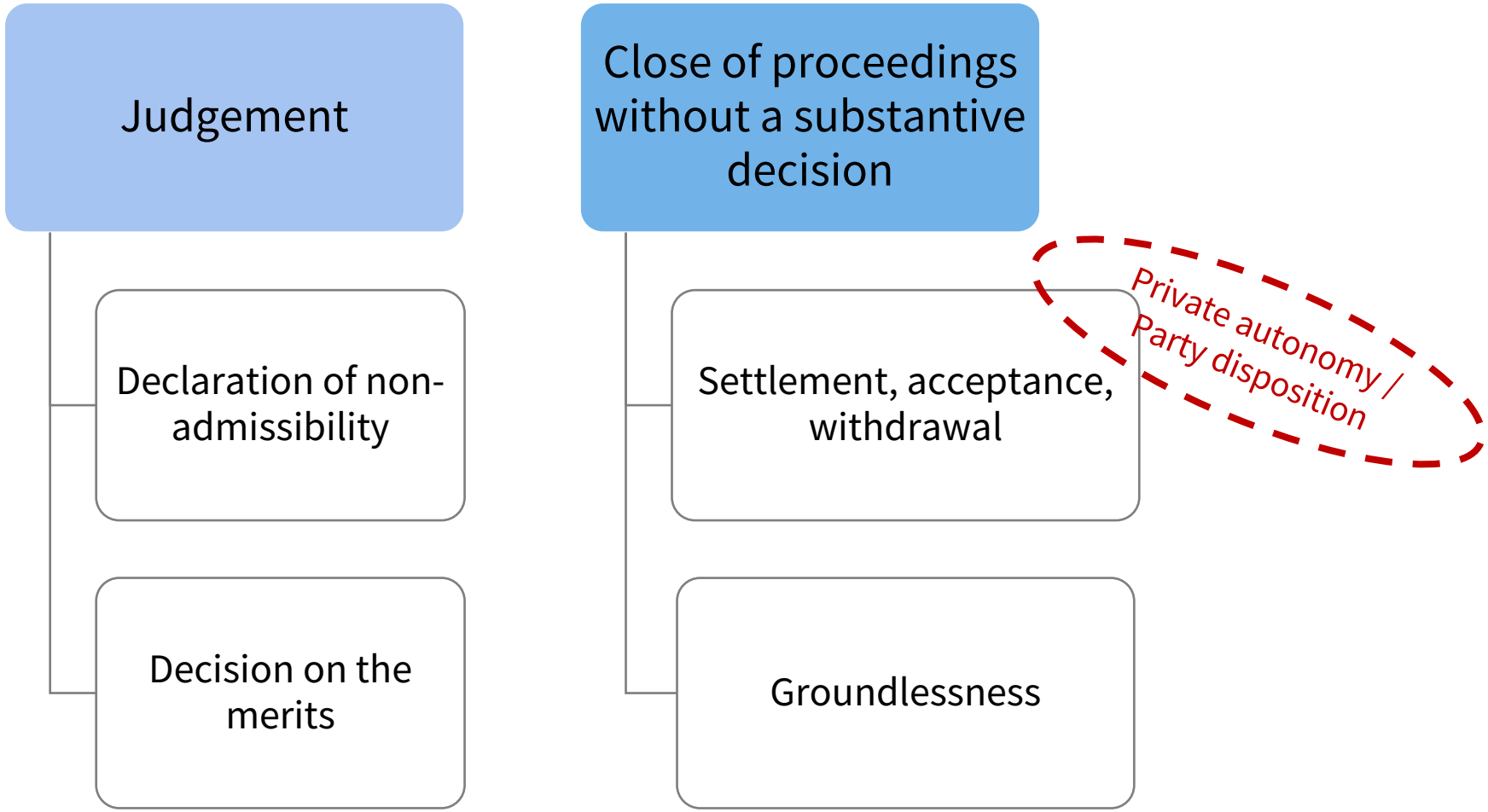
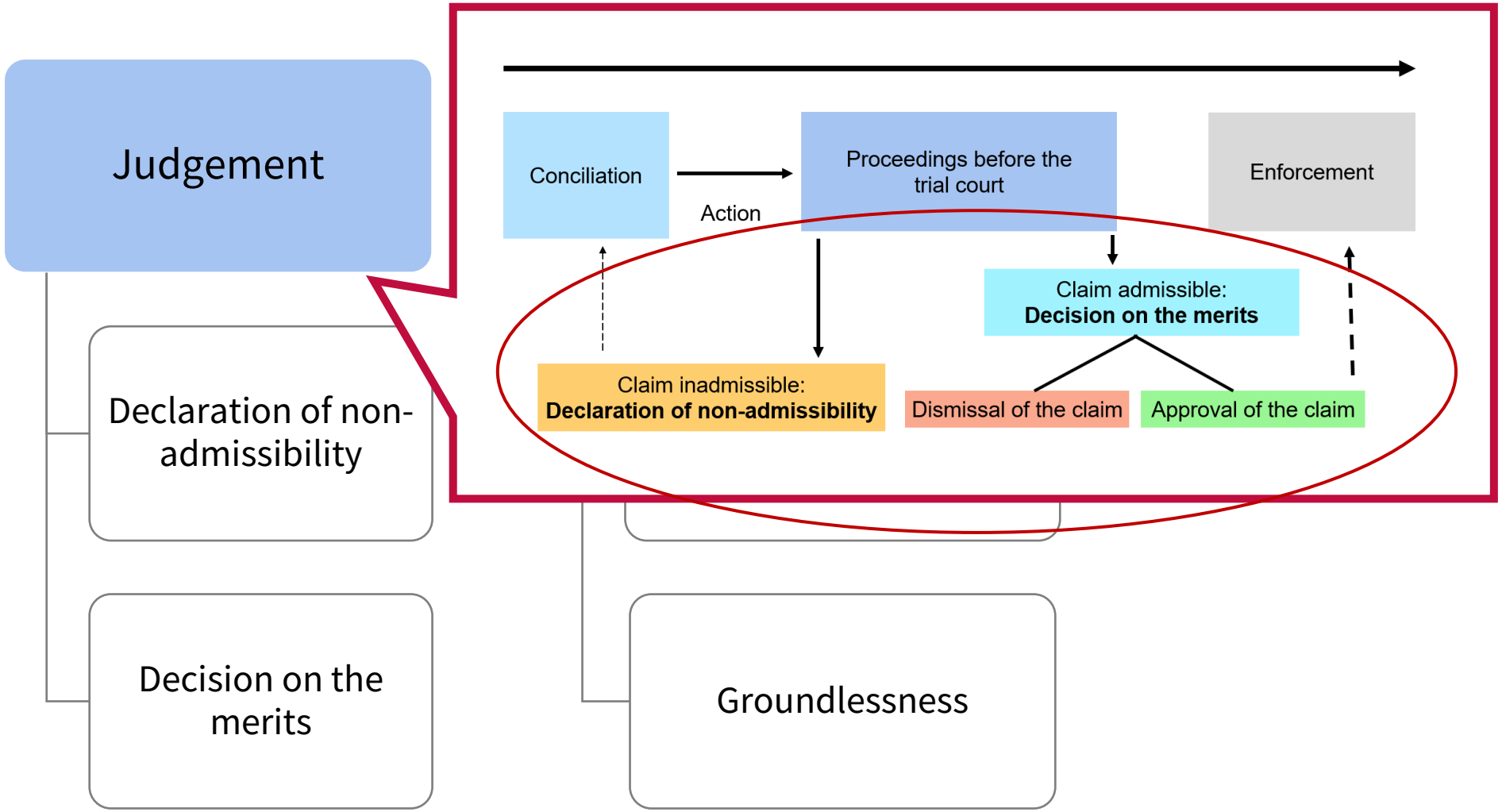
Judgement

and settlement, acceptance, withdrawal

Judgement: Close of proceedings



Judgement: Close of proceedings



Judgement: Effects of judgements and settlements

- both **judgements and settlements become *res judicata*** (exact meaning for settlements unclear)
- settlement leads to **termination of the proceedings *ipso iure*** (i.e. without a judgement)
- ***res judicata***
  - between the parties (*inter partes*)
  - limited to the object of the dispute (*Streitgegenstand*), no collateral estoppel/issue preclusion
- **third-party intervention** (*Nebenintervention*) and **third-party notice** (*Streitverkündung*): binding effect of reasons (Articles 77 and 80 ZPO)

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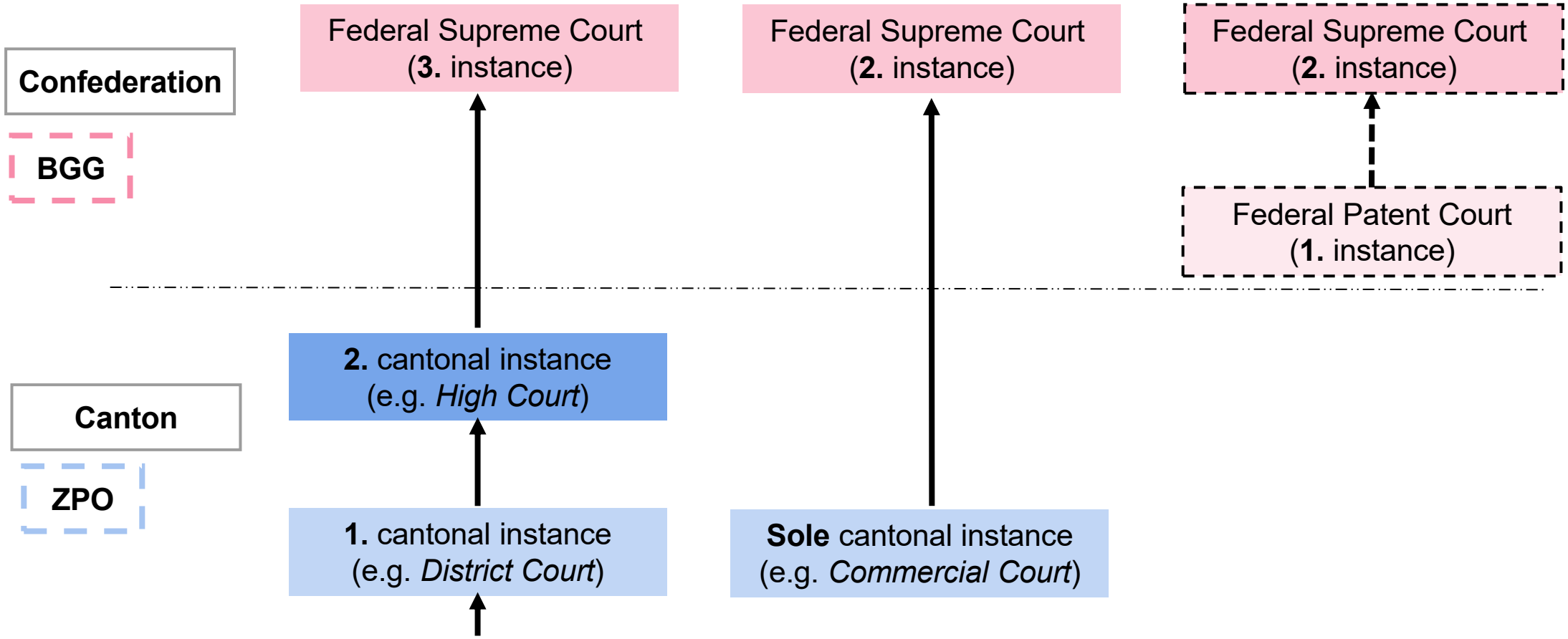
Appeals

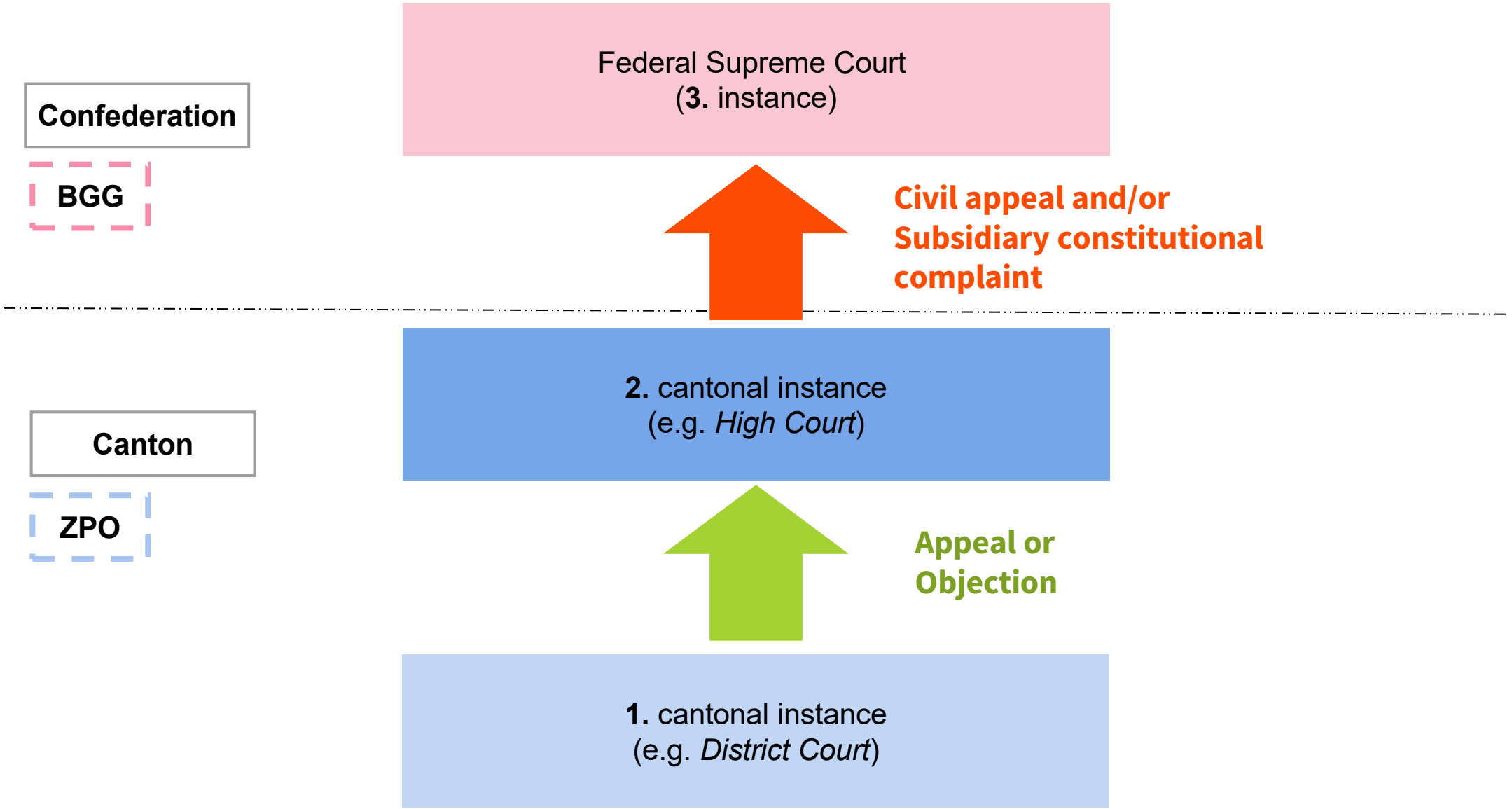
Appeal: Court hierarchy (repetition)



Appeals against judgements

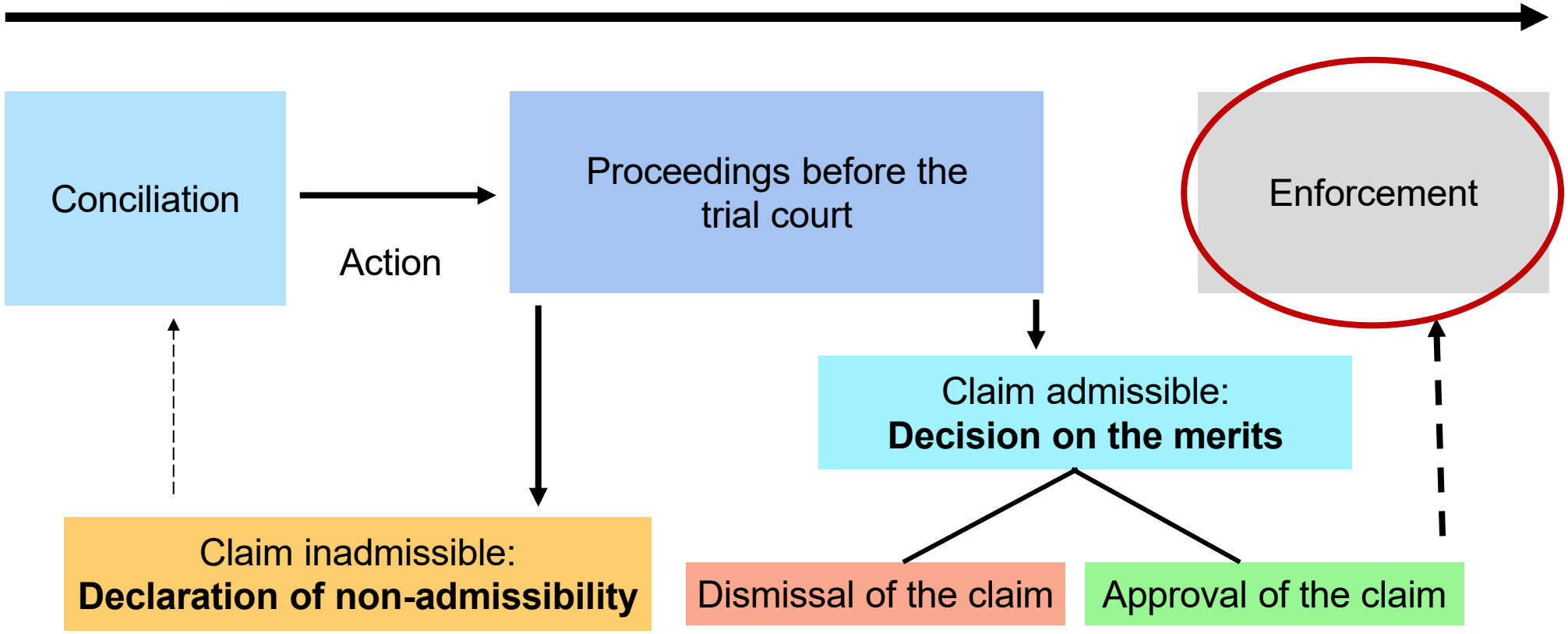
- **Appeal** (*Berufung; Article 308 et seq. ZPO*) and **objection** (*Beschwerde; Article 319 et seq. ZPO*) to higher cantonal court
  - depending on type of judgement and value of the dispute
  - appeal: full review
  - objection: full review on points of law; facts: only cases were “obviously incorrectly” established
- **Civil appeal** (*Beschwerde in Zivilsachen*) and **subsidiary constitutional complaint** (*subsidiäre Verfassungsbeschwerde*) to the Federal Court

Appeals against judgements

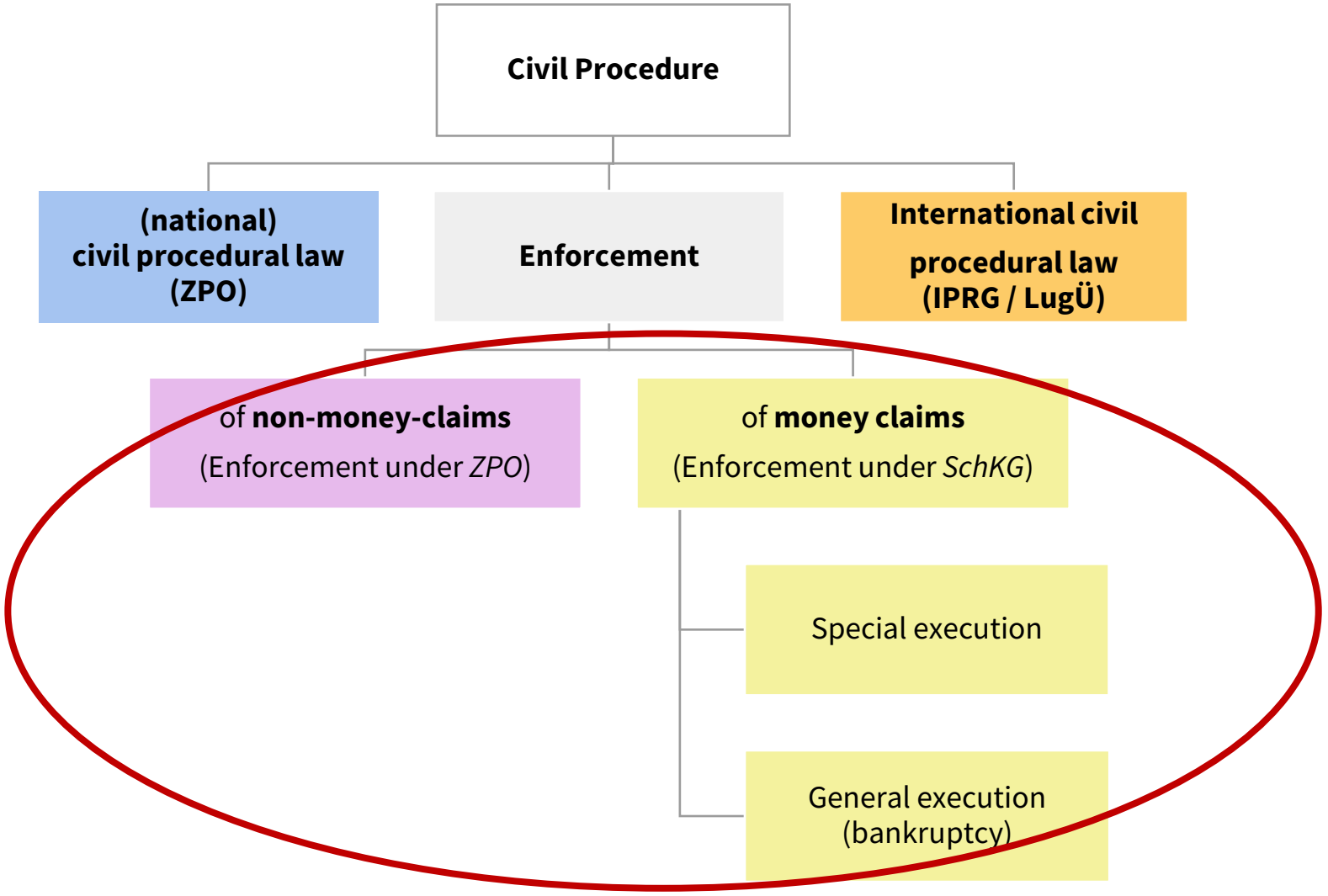


Enforcement

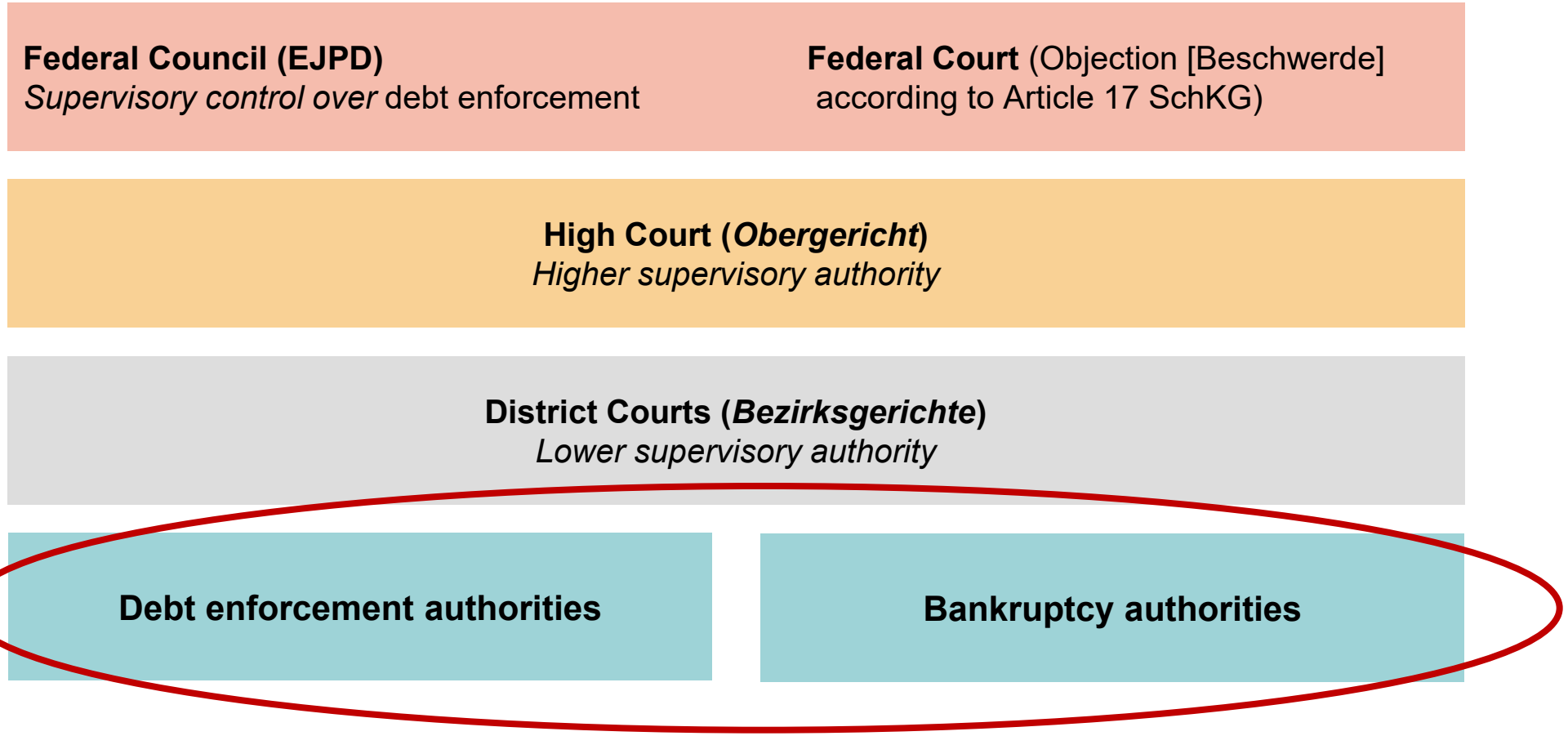
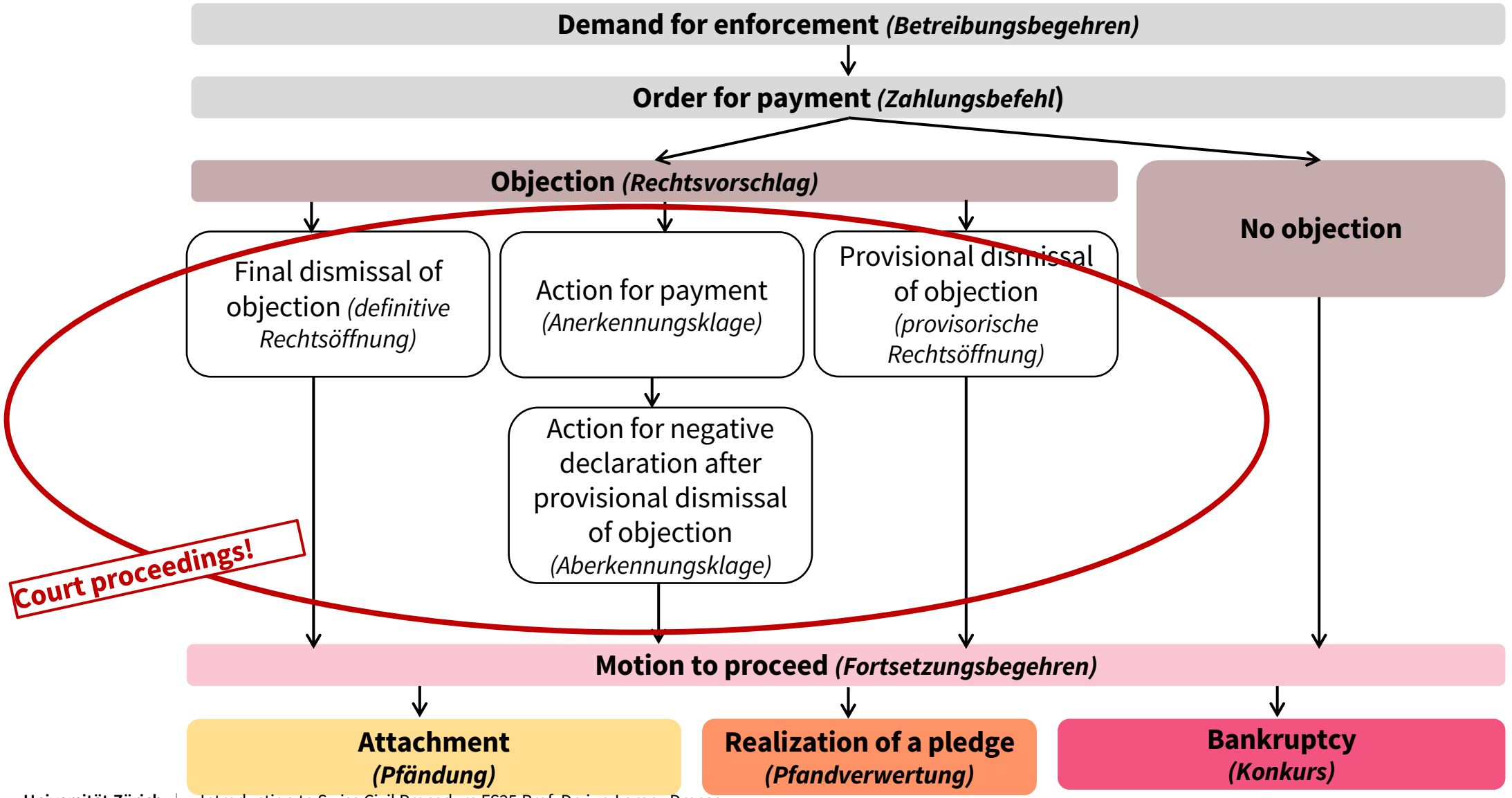
Enforcement



Enforcement (Repetition)



Enforcement: Organisation



Enforcement: Money claims