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## **Introduction to Swiss Law**

### **27 October 2016 (08:30-09:30)**

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**Duration: 60 minutes**

**Maximum score: 60 points**

- Please check both at receipt as well as at submission of the exam the number of question sheets. The examination contains (without this cover) **5 pages and 10 questions**.

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

- Every question contains of 5 answers or statements
- For each of them must be decided whether it is correct or incorrect
- It is possible, that 1, 2, 3, 4, 5 or none of the answers/statements are correct.
- A right answer gives 1 point.
- A wrong answer gives -1 point.
- No answer gives 0 points.
- Maximum possible points per question : 5
- Minimum possible points per question : -5
- Make clear which is your final answer

#### **Notes concerning solution**

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

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

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

### Question 1 (Law of Obligations)

Madeleine, a lawyer with special knowledge in insurances, is planning to open an insurance broker boutique. 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
In a company limited by shares the company's liability is limited to the share capital.	X	
If Madeleine runs her business as a sole proprietorship she would not be fully liable in person for the liabilities of the business.		X
With a company limited by shares Madeleine's business seems more trustworthy than with a limited liability company.	X	
In order to set up a company limited by shares Madeleine needs at least CHF 100'000.	X	
A company limited by shares makes the business less dependent on the person of Madeleine than a limited liability company.	X	

### Question 2 (Law of Obligations)

Nullity and defeasibility of a contract are different concepts. Rate the following statements:

	correct	incorrect
According to Art. 20 para. 1 CO a sale contract about drugs is null.	X	
A party that has entered into a contract under duress from the other party can without time limit defeat that contract.		X
Maria sells Barbara her cat. But that cat is not available any more, it had died one month ago. That is therefore a contract with an impossible content and null.	X	
A contract for the sale of immovable property is valid only if done as a public deed (Art. 216 para. 1 CO).	X	
Maria sells Barbara a painting from Picasso. It turns out that the painting is a falsification. Barbara can successfully defeat that contract within one year upon discovery of the error because of fundamental error.	X	

**Question 3 (Swiss Constitutional Law)**

Switzerland and international law:

	correct	incorrect
Switzerland is a member of the European Free Trade Association (EFTA), but not of the European Economic Area (EEA).	X	
The 2014 newly introduced Article 121a of the Federal Constitution (Initiative “Stop Mass Immigration”) obliges the Confederation to restrict the number of residence permits for foreign nationals in Switzerland by annual quantitative limits and quotas. The introduction of quantitative limits and quotas would not be compatible with the Agreement on the Free Movement of Persons between Switzerland and the European Union. The termination of the Agreement on the Free Movement of Persons would mean that all the other agreements of the bilateral agreements of 1999 (Bilaterals I) would automatically be terminated as well as these agreements are interlinked with a so-called “Guillotine clause”.	X	
Switzerland is a party to the Council of Europe, but is not bound by the European Convention on Human Rights (ECHR).		X
<i>Ius cogens</i> prevails over Swiss law in any case.	X	
With respect to a popular initiative to amend the Federal Constitution: 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

**Question 4 (Swiss Constitutional Law)**

The Confederation and the Cantons:

	correct	incorrect
The Cantons are sovereign except to the extent that their sovereignty is limited by the Federal Constitution.	X	
If it is deemed necessary to create a new competence (which does not yet exist) for the Confederation, it is necessary to amend the Federal Constitution accordingly.	X	
It is necessary to collect 50'000 signatures in order to request a vote on a proposed revision of the Federal Constitution.		X
If a Canton wishes to leave the Confederation and to become a new and independent state, it is enough to notify this wish to the Confederation (usually after a general referendum is held in the Canton at issue), and negotiations between the Confederation and the Canton at issue on the conditions of the withdrawal can start.		X
Switzerland consists of 26 Cantons (whereby six Cantons are so-called half-Cantons).	X	

**Question 5 (Swiss Civil Law)**

When interpreting the statutes of a foundation it can be necessary to apply, inter alia, the principles of

	<b>correct</b>	<b>incorrect</b>
Intention and indication	X	
Trust and intention		X
Good faith and intention	X	
Good faith and indication	X	
Contract law		X

**Question 6 (Swiss Civil Law)**

D dies and is survived by his spouse S and his children X, Y and Z. If these surviving persons were to receive their forced shares only the forced shares would amount to:

	<b>correct</b>	<b>incorrect</b>
S: 1/2; X: 1/6; Y: 1/6; Z: 1/6		X
S: 1/4; X: 1/12 Y: 1/12; Z: 1/12		X
S: 1/4; X: 3/24; Y: 2/24; Z: 3/24		X
S: 1/2 ; X: 3/24; Y: 3/24; Z: 3/24		X
S: 1/4; X: 1/4; Y: 1/4; Z: 1/4		X

**Question 7 (Swiss Tax Law)**

Thomas is a Swiss citizen who lives in Zurich. He is an IT specialist and derives net income from employment of CHF 100'000 per year. Further, he owns a cottage in Tuscany (Italy) which he occasionally rents to colleagues. In 2016, he realised rental net income from the cottage of CHF 20'000. Finally, he owns shares in Swiss companies with a net value of CHF 400'000.

Which of the following statements with regard to the taxation of Thomas are correct or wrong:

	correct	incorrect
As a Swiss tax resident, Thomas is subject to the federal income tax, to the cantonal income tax and to the municipal income tax.	X	
As a Swiss tax resident, Thomas is subject to the federal income tax but due to the fact that he already pays federal income tax he is exempted from the cantonal and municipal income taxes.		X
On the cantonal level, Thomas is subject to the net wealth tax. The applicable net wealth tax rate of the Canton of Zurich amounts to 2.3 % whereas the applicable net wealth tax rate of the Canton of Zug would amount to 1.0 %. Thomas is of the opinion that these different tax rates infringe the Federal Constitution.		X
On the federal level, based on the principle of totality, the income tax is levied on the entire income derived by Thomas of CHF 120'000.		X
On the federal level, the federal income tax is levied on the income derived from employment (CHF 100'000), the income derived by Thomas from the cottage in Tuscany (CHF 20'000) is exempted.	X	

**Question 8 (Swiss administrative Law)**

Which of the following sentences are correct? An administrative decision ...

	correct	incorrect
... can typically be challenged.	X	
... can typically be challenged before the Federal Administrative Court (Bundesverwaltungsgericht).		X
... can typically be challenged before the Federal Administrative Court (Bundesverwaltungsgericht) if based on federal law.		X
... can be successfully challenged if based on an unduly vague cantonal law.	X	
... can be successfully challenged if the right to be heard has not been respected.	X	

**Question 9 (Swiss Criminal Law)**

Substantive Criminal Law

	<b>correct</b>	<b>incorrect</b>
Law of sanctions: If two or more measures are necessary, the court may order these concurrently.	X	
Law of sanctions: Measures always take precedence over custodial sentences.		X
Law of sanctions: Measures can only be ordered, if the offender is mentally inculpable as of the date of the court judgment.		X
Criminal liability: At a restaurant Tom accidentally takes someone else's umbrella and leaves. He thus committed theft by negligence.		X
Criminal liability: After a ship has sunk two passengers fight over a life jacket that can only keep one of them afloat. Passenger A wins the fight, passenger B drowns. A is charged with intentional homicide of B (Art. 111 SCC). The court however finds A not guilty. It argues that A acted culpably but that his action is justified because he " <i>could not have been reasonably expected to abandon the endangered interest</i> ". The argument of the court is...		X

**Question 10 (Swiss Criminal Procedure)**

Swiss Criminal Procedure, rate the following statements:

	<b>correct</b>	<b>incorrect</b>
The Swiss Criminal Procedure Code was drafted by Carl Stooss		X
John is accused of intentional homicide (Art. 111 SCC). He has the right to choose a defence lawyer at any stage of the proceeding.	X	
In the case mentioned before: If John does not want to be defended by a lawyer, according to the Swiss Criminal Procedure Code, he is allowed to defend himself.		X
Before the public prosecutor issues a summary penalty order, the accused person has to be interrogated by the police and/or the prosecutor.		X
A duty defence lawyer is obliged to be present at the first examination hearing, otherwise evidence obtained in this hearing is inadmissible.		X