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Fall 2017

Introduction to Swiss Law

27 October 2017 (13:00-14:00)

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) **6 pages** and **11 questions**.

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 about the Federal Assembly, the Federal Council and the Federal Supreme Court are correct or incorrect:

	correct	incorrect
The Federal Assembly (Parliament) consists of two chambers: the National Council and the Council of States. The two chambers are equal and have similar powers. In particular, both chambers must agree on the enactment of federal acts and the conclusion of international treaties.	X	
Acts adopted by the Federal Assembly can be challenged before the Federal Supreme Court, and the Supreme Court can annul Acts if they violate the Constitution (this is also known as constitutional review).		X
There is only limited constitutional review in Switzerland. The Federal Supreme Court does, however, hear cases in which it is called upon to review federal acts in light of the European Convention on Human Rights (ECHR).	X	
It is a Swiss particularity that all major political parties are represented in the Federal Council. To this effect, the so-called magic formula was established (through practice, rather than being based on an explicit provision in the Constitution).	X	
The Federal Council consists of a Prime Minister and six other ministers. The Prime Minister represents Switzerland abroad and enjoys special powers. He/she can dissolve the Federal Assembly and thus trigger general elections.		X

Question 2 (Swiss Administrative Law)

Please indicate whether the following statements are correct or incorrect. The principle of proportionality...:

	correct	incorrect
... is explicitly required to be respected in cases where fundamental rights are restricted.	X	
... is relevant for all forms of administrative action.	X	
... binds the cantonal legislator.	X	
... is applicable only to cases involving taxes.		X
... is regulated in Article 5 of the Swiss Constitution.	X	

Question 3 (Swiss Tax Law)

Paul is a non-married, employed Swiss citizen living in the city of Zurich (canton of Zurich). His girlfriend Christine lives in Zurich as well, but works in Aarau (canton of Aargau). She commutes to Aarau every day.

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
The canton of Zurich wants to introduce a cantonal VAT. The cantons have the right to create and introduce any taxes. Therefore, the canton of Zurich is allowed to introduce a VAT without any restrictions.		X
Christine lives in Zurich, but works in Aarau. Therefore, she is required to pay tax in the canton of Aargau regarding her salary income and required to pay tax in the canton of Zurich regarding all other remaining income (e.g. interest income).		X
Paul wants to marry Christine, but he is afraid that after they marry, their total tax burden might be higher than before their wedding, as they will be assessed together after they marry, as long as they actually live together.	X	
After their marriage, Paul and Christine buy a holiday home in Lugano (canton of Ticino) and rent it to friends and family members. According to a general rule of Swiss inter-cantonal tax law, immovable property may only be taxed where it is located: thus, the holiday home will only be subject to tax in the canton of Ticino.	X	
A friend of Paul and Christine who lives abroad wants to learn German. She stays with Paul and Christine in their apartment in Zurich for two months and takes care of their first child. This friend is paid a market-based salary for the child-care. Due to this arrangement, she becomes subject to unlimited tax liability in Switzerland.	X	

Question 4 (Swiss Civil Law)

X wins the lottery. Enthusiastically, his father-in-law advises him to set up a foundation (Art. 80 ff. Swiss Civil Code). However, he tells X that a foundation's purpose...

	correct	incorrect
... cannot be modified once the assets have been endowed (under the principle of separation).		X
... is interpreted using the principle of trust.		X
... is permitted to facilitate the transfer of wealth at death, as a will substitute.	X	
... is determined solely by the foundation's statutes (under the principle of indication).		X
... can cover specific needs of family members as beneficiaries.	X	

Question 5 (Swiss Contract Law)

On October 15, 2017, Carolina and Giuseppe DeCecco celebrate their 40th wedding anniversary. In honour of this special day, they ordered their dream car: a Fiat cinquecento cabriolet. They wanted to go on a sort of second honeymoon with it, starting on the day of their anniversary. The car dealer knew this and guaranteed that the car would arrive by the end of September 2017. Unfortunately, the car did not arrive by October 15, 2017 and the DeCeccos had to rent a rental car for their two-week trip. What can the DeCeccos do once they return from their holiday, when they are still without the Fiat cinquecento cabriolet?

	correct	incorrect
To set the car dealer in default, the DeCeccos have to remind him of the agreement.		X
If we are told that the car dealer is in default and also have failed to comply with a new time limit which the DeCeccos provided them with, this would mean that the DeCeccos can decide if they want to compel or forego subsequent performance.	X	
The DeCeccos cannot sue the car dealer for the extra cost they incurred by renting another car for their trip.		X
If prices for the Fiat have risen in the meantime, it would be favourable for the DeCeccos to forego subsequent performance and withdraw from the contract.		X
Although the trip is over, the choice that best meets the desires of the DeCeccos under the circumstances is to compel performance in addition to suing for damages in connection with the delay.	X	

Question 6 (Swiss Criminal Law)

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

	correct	incorrect
The Swiss Criminal Code of 1937 was heavily influenced by the ideas of Carl Stooss, to the extent that he is often perceived as the “father” of the Swiss Criminal Code.	X	
The Swiss Criminal Code contains all of the substantive criminal offences that exist in Switzerland.		X
The cantons have no power to legislate on substantive criminal law, as Art. 123 I confers this power exclusively to the federation.		X
The Swiss Criminal Code, as well as laying down substantive criminal offences, provides the rules on the territorial application of the Swiss criminal law.	X	
The substantive criminal law system allows for the imposition of sentences and measures. However, they cannot be imposed on an offender simultaneously, partly because their underlying aims (retribution and prevention, respectively) are so different.		X

Question 7 (Swiss Civil Procedure)

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

	correct	incorrect
Before some Swiss civil courts, parties cannot litigate without being represented by a lawyer.		X
In Switzerland, judges are often appointed on the basis of their affiliation with a political party.	X	
In Switzerland, judges tend to get very actively involved in the establishment of the facts in civil cases.		X
The rules of the Swiss Code of Civil Procedure on territorial jurisdiction were influenced by the Lugano Convention.	X	
In Switzerland, opinions delivered by party-appointed experts qualify as evidence in civil proceedings.		X

Question 8 (Roman Law)

Please indicate whether the following statements about real securities – for example, a pledge on moveable property (pignus) – are correct or incorrect:

	correct	incorrect
In all European legal systems, real securities follow the principle of ‘accessory’ without exception.		X
In Roman law, the existence of real securities depended on the existence of the secured debt for their effective constitution: that is to say, they followed the principle of ‘genetic’ accessory.	X	
Real securities followed the principle of ‘accessory’ more radically in Roman law than they do today in Swiss law.		X
Under Roman law, real securities tended to be extinguished together with the credit only if the credit was extinguished with satisfaction of the creditor's interests.	X	
In Swiss law, real securities tend to be extinguished together with the credit only if the credit is extinguished with satisfaction of the creditor's interests.		X

Question 9 (Legal History)

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

	correct	incorrect
The coniuratio was one of the defining concepts of law-making, in particular during the period of the Old Confederacy.	X	
The Old Swiss Confederacy was dominated by hierarchical and monarchical structures of government.		X
Codifications were a defining concept of law-making in the Old Swiss Confederacy.		X
Swiss codifications, both on a cantonal and federal level, were strongly influenced by both the Roman legal tradition and foreign legal cultures.	X	
The concept of self-regulation did not quite emerge in modern Swiss legal tradition.		X

Question 10 (Legal Sociology)

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

	correct	incorrect
Legal sociology regards law as a realm embedded within broader societal dynamics.	X	
Legal sociology avoids re-importing the knowledge about law gained from other perspectives back into law.		X
Legal sociology is not concerned with the study of law in books.		X
An important research method in legal sociology is empiric observation.	X	
In legal sociology, the use of inductive and deductive theories makes the study more complex.		X

Question 11 (Legal Philosophy)

Justice is regarded as a central purpose of the law. There has been a rich and intensive cross-cultural debate about justice since antiquity. Please indicate whether the following statements about legal philosophy are correct or incorrect:

	correct	incorrect
It is an uncontested element of the theory of justice that questions of justice can only be answered according to subjective attitudes.		X
In the classical theories of Plato and Aristotle, justice is based on the decisions of the Olympian gods.		X
According to the much criticised principle of proportional equality, the equality of human rights is unjust.		X

The principle of proportional equality is key to understanding why equality of results can be just.	X	
In the contemporary theory of justice (for example Rawls' theory), the equal liberty of every person is justified by considerations of efficiency.		X