

Dr. Tina Huber-Purtschert
Dr. Nadine Zurkinden
Prof. Dr. Matthias Oesch
Prof. Dr. Peter Georg Picht
Prof. Dr. Madeleine Simonek
Prof. Dr. Marc Thommen
Prof. Dr. Felix Uhlmann
Prof. Dr. José Luis Alonso
Prof. Dr. Christoph Beat Graber
Prof. Dr. Elisabetta Fiocchi Malaspina
Prof. Dr. Andreas Thier
Prof. Dr. Matthias Mahlmann
Prof. Dr. Tanja Domej

Fall 2018

Introduction to Swiss Law

2 November 2018 (09:30-10:30)

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 2-pages cover) **5 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 (Constitutional Law)

Please indicate whether the following statements concerning the principle of the separation of powers on the federal level are correct or incorrect:

	correct	incorrect
The Federal Council consists of seven members which are elected by the Federal Assembly. Re-elections are possible and usually occur as a matter of routine.	X	
The so-called “magic formula” means that all the relevant political parties have a <i>de facto</i> right to be represented with a member in the Federal Council. Thus, the Federal Council consists of seven members representing seven different parties.		X
The federal judges are elected on the basis of party membership. The term of office is six years, with the possibility to be re-elected. This combination – party membership and a relatively short term of office – is not unproblematic with a view to the judges’ independence.	X	
The people are actively involved in the law-making process on the federal level as they can propose, with a popular initiative (100’000 signatures), to enact a new law, even in cases in which the Federal Assembly does not want to do so.		X
The Federal Assembly has the last word on the constitutionality of new acts which it puts into force (subject to a referendum if requested by the people). It is not possible for the Federal Supreme Court to declare a federal act put into force by the Federal Assembly invalid.	X	

Question 2 (Administrative Law)

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
In general, there are no legal remedies on the federal level against decisions of Cantonal Administrative Courts.		X
As a rule, an appeal against a decision of a Cantonal Administrative Court must be filed to the Swiss Federal Administrative Court. The appeal may be lodged to the Swiss Federal Supreme Court only in a second step.		X
The possibility of an appeal to a Cantonal Administrative Court is sufficient to meet the requirements of the guarantee of access to the courts (Article 29a Federal Constitution) even if this Court does not review questions of administrative discretion.	X	
As a rule, an appeal against a decision of a Cantonal Administrative Court must be brought directly to the Swiss Federal Supreme Court.	X	
When considering an appeal against a decision of a Cantonal Administrative Court, the Swiss Federal Supreme Court does, in principle, not review whether the Cantonal Administrative Court correctly interpreted cantonal law.	X	

Question 3 (Tax Law)

Anne lives in Zurich (Canton of Zurich) and works as a law clerk in Bern (Canton of Bern). She commutes daily to Bern. She would like to know whether the different items of income she earned in 2017 are subject to the federal and/or cantonal income taxes.

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
The employment income of Anne is subject to the federal income tax and the income tax of the Canton of Bern.		X
Anne earned interest on her Swiss bank account which is subject to the federal income tax and the income tax of the Canton of Zurich.	X	
Anne derived dividends from a participation in a French company. The dividends are exempted from Swiss federal and cantonal income taxes.		X
Anne inherited a higher amount of money from her deceased uncle, who also lived in the Canton of Zurich. She has to pay federal income tax and cantonal inheritance tax on the inheritance.		X
Anne owns a cottage in the mountains, situated in the Canton of Nidwalden. The rental income derived from this cottage is subject to the federal income tax and the income tax of the Canton of Nidwalden.	X	

Question 4 (Civil Law)

Article 1 of the Swiss Civil Code can be regarded as the civil law's expression of the constitutionally protected and fundamental principle of the rule of law. Please indicate whether the following statements concerning its provisions are correct or incorrect:

	correct	incorrect
Article 1 provides for the separation of powers by requiring a court to apply the law in cases where it is applicable.	X	
When interpreting the law, the courts must refer exclusively to doctrine and tradition.		X
The court can freely decide in accordance either with the rule that it would make as legislator or with customary law.		X
In the absence of customary law, the court shall decide in accordance with the law.		X
Article 1 contains the prohibition of arbitrary decisions.	X	

Question 5 (Law of Obligations)

The Swiss Code of Obligations is governed by different principles. Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
Freedom of Contract is a concept inherent to Swiss Contract Law.	X	
Freedom of Contract means e.g. that one can establish the contracts content without any limits.		X
To conclude a contract, a valid offer and a valid acceptance are always needed at some point.	X	
Swiss Company Law is governed by the freedom to create any kind of company.		X
According to the principle of will, the interpretation of a contract is based on the common intention of the parties, therefore has in a first step to be interpreted subjectively.	X	

Question 6 (Civil Procedure)

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
In Swiss civil proceedings, it is generally the task of the judge to establish the facts of the case ex officio.		X
In Switzerland, the Federal Constitution lays down the principle that the defendant should be sued at their domicile.	X	
In Switzerland, both the civil courts system and the rules of civil procedure differ from canton to canton.		X
To bring a claim in a civil court in Switzerland, an authorisation to proceed (Klagebewilligung) from a conciliation authority is normally required.	X	
In Switzerland, the “mirror principle” applies with respect to the recognition and enforcement of foreign judgments (i.e., the same rules that govern the jurisdiction of Swiss courts are applied to verify whether the foreign court had jurisdiction from the Swiss perspective).		X

Question 7 (Criminal Law)

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
The death penalty for all crimes was abolished with the entering into force of the Swiss Criminal Code on 1 January 1942.	X	
The death penalty for political crimes was abolished by the First Swiss Constitution in 1848.	X	
Assisting in suicide is an offence in some Swiss cantons, but not in others.		X
The Swiss federal Supreme Court considers hiking in the nude a sexual offence.		X
Criminal liability is a two stage concept with <i>actus reus</i> as the first and <i>mens rea</i> as the second step.		X

Question 8 (Roman Law)

Please indicate whether the following statements are correct or incorrect: Roman Law ...

	correct	incorrect
... was throughout its history fundamentally developed through legislation.		X
... had absolute binding force for the jurisdictional magistrates, like the praetors.		X
... grew for centuries through the interpretation of purely private legal experts.	X	
... was mostly based on unwritten customs, applied with discretionary freedom for each case by the judge.		X
... never knew any sort of official compilation.		X

Question 9 (Legal History)

Coniuratio as a device to create legal rules was of special importance in Swiss Legal Tradition. Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
By ways of <i>coniuratio</i> municipal laws could be issued and enacted.	X	
<i>Coniuratio</i> was a kind of customary law.		X
<i>Coniuratio</i> referred to the idea of legislation by a ruler.		X
<i>Coniuratio</i> was based on the idea of the binding force of an oath.	X	
<i>Coniuratio</i> was basically the legal device, which stood at the beginning of the Swiss confederation.	X	

Question 10 (Legal Sociology)

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

	correct	incorrect
Legal science as a sub-domain of Sociology is well suited to reveal the difference between „is“ and „ought“.		X
A legal sociologist's perspective on law is interdisciplinary and aims at improving the law's mechanisms for the sake of society.	X	
As opposed to positivistic sciences, the method of law is objective and value-neutral.		X
Legal Sociology develops theories which offer a better understanding of the law's workings and its impact on society.	X	
Theories of Legal Sociology and social theories both offer descriptions and causal explanations.	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 the theory of justice are correct or incorrect:

	correct	incorrect
A central element of the theory of justice of Socrates, Plato and Aristotle is the concept that justice is a matter of insight, not of subjective opinion.	X	
Since antiquity, justice has been identified with equality.	X	
According to the much criticised principle of proportional equality, grading the worst exam with the best score is just.		X
The principle of proportional equality helps explain why inequality of results can be just.	X	
In the contemporary theory of justice (for example Rawls' theory), liberty – rather than equality – is the guiding principle.		X