

Prof. Dr. Samuel Kern Alexander
Prof. Dr. José Luis Alonso
Prof. Dr. Ruth Arnet
Prof. Dr. Tanja Domej
Prof. Dr. Christoph Beat Graber
Prof. Dr. Elisabetta Fiocchi Malaspina
Prof. Dr. Matthias Mahlmann
Prof. Dr. Matthias Oesch
Prof. Dr. Madeleine Simonek
Prof. Dr. Marc Thommen
Prof. Dr. Felix Uhlmann
Dr. Federico Battaglia
Dr. Tina Huber-Purtschert
Dr. Nadine Zurkinden

Fall 2019

Introduction to Swiss Law

6 January 2020 (17:00-18:00)

Duration: 60 minutes

Maximum score: 65 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) **7 pages and 13 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 0 point.
- Providing no answer will receive 0 points.
- Maximum possible points per question : 5
- Minimum possible points per question : 0
- 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 are correct or incorrect:

	correct	incorrect
Switzerland is a member of the European Free Trade Association (EFTA), but not of the European Economic Area (EEA).	X	
Switzerland is a party to the Council of Europe, but is not bound by the European Convention on Human Rights (ECHR).		X
Ius cogens prevails over Swiss law in any case.	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 (by practice, not 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 (Administrative Law & Procedure)

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
If state action has only limited effects, it may still be suitable and, thus, proportionate.	X	
The constitutional principles of administrative law set out in the Federal constitution only apply with respect to activities of the Swiss confederation. However, they do not apply vis-à-vis the cantons.		X
If a party successfully abstractly/directly challenges legislation, the attacked legislation is rescinded. If a party, however, successfully concretely/indirectly challenges legislation, the underlying legal provision is not annulled. Only the administrative decision is repealed.	X	
The possibility of an appeal to an administrative authority is sufficient to meet the requirements of the guarantee of access to courts as long as this authority reviews questions of administrative discretion.		X
The Federal Supreme Court can revoke cantonal legislation. However, it cannot revoke federal laws/acts. Also, it must apply federal laws/acts which it considers to be unconstitutional.	X	

Question 3 (Tax Law)

Eric is a Dutch citizen who accepted a job offer in the city of Zürich and just moved to Switzerland with his wife Clara and two children. He has rented a little house in the countryside close to the city of Baden (canton of Aargau, 35 minutes by bus and train from Zürich). Eric and Clara still own an apartment in Amsterdam that they rented out.

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
The income derived from the apartment in Amsterdam is not taxable in Switzerland.	X	
Nevertheless, they must declare the income derived from the apartment in Amsterdam in their Swiss tax return.	X	
Since Eric works in the canton of Zürich but lives in the canton of Aargau, his income from employment may be taxed by the canton of Zürich.		X
Eric has to pay a federal income tax, a cantonal income tax and a communal income tax. Such a triple income taxation infringes the constitutional prohibition of inter-cantonal double taxation.		X
Eric and Clara can choose whether they want to be taxed together or separately.		X

Question 4 (Civil Law I, Law of Persons & Family Law)

Capacity of judgment is a key concept of Swiss law of persons. Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
According to the of the Swiss Civil Code, a person is capable of exercising judgement within the meaning of the law if he or she does not lack the capacity to act rationally by virtue of being below a certain age or because of mental disability, mental disorder, intoxication, or due to other similar circumstances.	X	
The capacity of judgment is determined once in a lifetime, when the person has reached the age of 18.		X
Under Swiss law, in order for one's actions to create legal effect one must not necessarily have capacity of judgement.		X
Capacity of judgement is presumed under Swiss civil law.	X	
The capacity of judgment is not determined abstractly, but in light of each legal transaction or event taking place.	X	

Question 5 (Civil Law II, Succession Law & Property Law)

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
The 2 nd parentel includes the parents of the deceased person and their descendants.	X	
If the deceased person did not make a will and if he/she leaves his/her father and a brother, but no children, and if his mother predeceased, the father and the brother get ½ each of the estate without taking any action.	X	
The acquisition of land ownership, including the building thereon, takes place when the acquirer gets the full possession of the building.		X
Mortgages and pledges, including the claim to be secured thereby, are rights in rem.		X
Animals have no legal capacity like a person nor are they legally treated as objects; they rather form a third category of legal entities in property law.		X

Question 6 (Law of Obligations I, Contract Law)

Swiss contract law is governed by different principles. Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
A contract is void if there is a defect in the conclusion of it.	X	
When diverging interpretations of a contract of both parties are equally admissible, there is no consent but rather dissent and therefore no contract has ever come to legal existence.	X	
A contract suffering from a fundamental error is voidable by the party that was acting under error.	X	
According to the principle of good faith, the interpretation of a contract is based on normative consensus, therefore has to be interpreted objectively.	X	
The party suffering from a fundamental error must notify the other party of his or her defect in consent within one year since the defect has been discovered, otherwise the contract is deemed to have been ratified.	X	

Question 7 (Law of Obligations II, Commercial Law)

Please indicate whether the following statements are correct or incorrect:

Swiss commercial law...

	correct	incorrect
... is based on a comprehensive codification of the civil code in the 2000s.		X
... allows companies to be registered as limited or unlimited liability companies.	X	
... requires that a shareholder of a company contribute only cash to become a shareholder of the company.		X
... could be changed by the Responsible Business Initiative by creating potential liability for Swiss-based multinational companies in Swiss court for violations of international norms by their foreign subsidiaries.	X	
... permits the registration of limited liability partnerships.	X	

Question 8 (Civil Procedure)

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
In Swiss civil proceedings, it is generally open to the parties to appoint experts for the purpose of giving evidence.		X
In Swiss civil proceedings, an arbitral tribunal can generally make a binding decision on its own jurisdiction without any possibility for scrutiny by a state court.		X
It is possible for parties in Switzerland to litigate in person (i.e. without being represented by a lawyer) before all civil courts including the Federal Court.	X	
Judgments given in Swiss civil proceedings become <i>res judicata</i> not only between the parties but against any person who has an interest in the matter.		X
In Switzerland, it is possible to enforce a money debt without obtaining a court judgment if the debtor does not object to an order for payment issued in enforcement proceedings.	X	

Question 9 (Criminal Procedure)

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
A "victim" in Swiss criminal proceedings is a person who directly and adversely suffered physical, sexual or mental harm by an offence.	X	
In Swiss criminal proceedings, the accused person never has to be represented by defence counsel if he/she doesn't want to.		X
Evidence obtained in violation of administrative rules is fully admissible in Swiss criminal proceedings.	X	
The public prosecutor decides whether detention on remand and security detention are permitted.		X
A penal order can be issued by the public prosecutor if he/she regards a custodial sentence of up to 12 months as appropriate.		X

Question 10 (Roman Law)

Please indicate whether the following statements are correct or incorrect:

The treasure found on alien property...

	correct	incorrect
... belongs under most contemporary legal systems in halves to the finder and the landowner.	X	
... had to be divided in halves between finder and landowner according to the opinion of the Roman legal experts, who found this to be the most equitable solution.		X
... quite likely belonged under Republican Roman law entirely to the landowner.	X	
... raised in classical Roman law the question whether possession is possible without knowledge.	X	
... is a good example of how contemporary law occasionally needs to depart from the old Roman solutions.		X

Question 11 (Legal History)

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
The Code of Obligations of 1881 comprised provisions regarding the general and specific law of obligations (contracts and torts) and commercial and exchange law.	X	
Johann Caspar Bluntschli, Gustave Moynier and Emer de Vattel were among the founding members of the Institute of International Law (<i>Institut de Droit International</i>) (1873).		X
In 1866, Gustave Moynier wrote <i>Das moderne Kriegsrecht</i> (The Modern Law of War).		X
In 1874 the Federal legislative power was authorised to legislate on obligations-, commercial- and exchange law, civil capacity, copyright law, debt enforcement and bankruptcy law, according to Article 64 of the Federal constitution.	X	
With the Helvetic Republic the pre-revolutionary confederate structure was restored.		X

Question 12 (Legal Sociology)

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
According to the sociologist Niklas Luhmann, the values “power” and “not power” constitute the political system’s code.	X	
According to the theory of autopoietic social systems, the legal system triggers democratic impulse for changes in politics.		X
In Switzerland’s direct democracy, education is considered a key element for the regeneration of cultural resources. In this sense, the Swiss constitution provides for an extensive public education.	X	
The Swiss Broadcasting Corporation (SRG) is mainly financed by a levy, which all households in Switzerland are required to pay. This ensures the SRG to fulfil its mandate in favour of democracy, cohesion and in reaching the entire population.	X	
The Swiss constitution does not consider the function of the Swiss radio and television to provide “education” and “cultural development”, but only mentions “entertainment”. This enables the free shaping of opinions.		X

Question 13 (Legal Philosophy)

Human rights take centre stage in contemporary constitutions and international public law. Please indicate whether the following statements about human rights are correct or incorrect:

	correct	incorrect
Human rights are a modern invention.		X
Human rights cannot be justified outside of the context of Western culture.		X
What should be protected by means of human rights depends on, amongst other things, a background theory of human goods.	X	
Any justification of human rights must eventually refer to spiritual sources of legitimacy.		X
An attempt to justify human rights without recourse to religion is called "methodologically secular".	X	