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Fall 2018

Introduction to Swiss Law

7 January 2019 (08:00-09:00)

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 2-pages cover) **7 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 fundamental rights are correct or incorrect:

	correct	incorrect
The Federal Constitution contains an impressive catalogue of fundamental rights. This catalogue is based on the European Convention on Human Rights (ECHR), but it also contains additional rights, which are not guaranteed by the ECHR, such as economic freedom.	X	
When an individual invokes in a case a fundamental right which is enshrined in the ECHR, the Federal Supreme Court is ready to review a federal act as to its conformity with the ECHR; in case the Federal Supreme Court finds that the federal act is not compatible with the ECHR, it does not apply the act.	X	
Limited constitutional review which is a particularity of the Swiss political system also encompasses cantonal acts and ordinances: The Federal Supreme Court is not empowered to review cantonal acts and ordinances as to their compatibility with the fundamental rights guaranteed by the Federal Constitution.		X
It is problematic when a popular initiative, such as the initiative “against the construction of minarets” (2009), is incompatible with the ECHR. Nonetheless, it is possible to propose such an initiative, and it is submitted to the vote of the people and the cantons, if the necessary 100'000 signatures are collected.	X	
The fight of the Swiss women for equal treatment with respect to political rights was won as late as 1971 (federal level) and 1990 (Canton of Appenzell Innerrhoden). Before, women could not participate in elections and referenda.	X	

Question 2 (Administrative Law)

Y is 13 years old and attends public elementary school. The government of the Canton where Y lives issued a disciplinary code in the form of an ordinance. § 25 of the ordinance states that students “may be suspended from school for up to six months in case they disturb class.” One day, Y throws a paper plane at a classmate during class. The classmate is not injured from the incident. In the following, the headmaster of the school bans Y from school for five months.

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
The suspension of Y from school must be ordered in the form of an administrative decision because it is deliberately aimed at the restriction of Y’s right to basic education according to Article 19 of the Federal Constitution.	X	
As is the case with all disciplinary measures in public schools, the suspension of Y qualifies as real act. Thus, no administrative decision must be issued.		X
It is an important question under which requirements a school suspension may be ordered. Thus, these requirements must be contained in an ordinance.		X
There is a high chance that an appeal body finds the school suspension to violate the principle of proportionality.	X	
The general constitutional principles laid out in Article 5 of the Federal Constitution are not relevant in the case of Y because the suspension is based on cantonal law.		X

Question 3 (Tax Law)

Marcus and Susanne are married and live in Zurich (Canton of Zurich). Both work in Zurich. Marcus is a high school teacher, Susanne works as a market analyst for a Swiss bank. They have some questions regarding the tax return they have to complete for the income tax 2018.

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
On the federal level, Marcus and Susanne can choose whether they want to be jointly or separately assessed and taxed.		X
Marcus and Susanne believe that a joint taxation on the federal level will most likely lead to a higher income tax burden than separate taxation.	X	
On the cantonal level, Marcus and Susanne are subjects 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 ‰. They are of the opinion that these different tax rates infringe the Federal Constitution.		X
In spring, Susanne worked for 3 month for the bank's Geneva office (Canton of Geneva). Her entire income from employment that she earned in 2018 is still taxable in the Canton of Zurich.	X	
During the summer, Marcus attended an intensive 5-week English language course because he would like to participate in an international teacher exchange programme that would give him the opportunity to teach for half a year at a high school in South Africa. He can deduct the costs for the language course from his taxable income.	X	

Question 4 (Civil Law)

Part 4 of the Swiss Civil Code contains rules regarding, among others, ownership, limited rights *in rem*, possession. Please indicate whether the following statements concerning property law are correct or incorrect:

	correct	Incorrect
Real rights have legal effect only between the parties of a contract or other bilateral legal relationship.		X
Rights in rem can be enforced against everyone.	X	
According to Art. 714 I SCC, transfer of chattel ownership requires the delivery of possession to the acquirer.	X	
Swiss property law does not follow a strict principle of numerus clausus of rights in rem.		X
More than one person is able to possess the same chattel at the same time.	X	

Question 5 (Law of Obligations)

The Second Division of the Swiss Code of Obligations covers types of contractual relationship. Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
Each type of contractual relationship in the Second Division is characterized by standard principal obligations of the contractual parties.	X	
The essential characteristics of a contract for work and services are the contractor's duty to provide a certain result in the form of the agreed outcome.	X	
In any case a contract you conclude falls under one of the types in the second division.		X
Compensation (rent) is compulsory in order for a contract to be characterised as a lease.	X	
The simple agency contract is the traditional type of contract governing activities of professionals like doctors or lawyers.	X	

Question 6 (Civil Procedure)

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
In Switzerland, a strict reciprocity principle applies with respect to the recognition and enforcement of foreign judgments.		X
Only lawyers are allowed to represent parties before Swiss courts.		X
In Switzerland, it is the responsibility of the court to take care of the formal aspects of case management, such as setting hearings, ordering the service of documents and the like.	X	
In Switzerland, the general rule of territorial jurisdiction is that the defendant should be sued at their domicile, but there are many exceptions.	X	
In Switzerland, in some cases the conciliation authority may issue a binding judgment on the matter in dispute.	X	

Question 7 (Criminal Procedure)

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
Court hearings are of high practical importance in Switzerland: 80 percent of the opened proceedings are heard by a court.		X
Criminal courts of first and second instance are, as a general rule, cantonal courts. A criminal case only departs from the cantonal level if the judgment of the final cantonal court is challenged before the Federal Supreme Court	X	
The prosecution is a party to the principal proceedings.	X	
Hearsay evidence is prohibited and therefore inadmissible in criminal procedure.		X
The prosecutor can promise the accused who is implicated in a crime together with others to drop charges against him, if the crime can only be proven by the testimony of this accused.		X

Question 8 (Roman Law)

Please indicate whether the following statements are correct or incorrect:

Real securities, such as pledge on movable property (pignus)...

	correct	incorrect
... are today in all European legal systems wholly independent from birth and subsistence of the secured obligation.		X
... tend to depend on the existence of the secured debt for their effective constitution: s.c. 'genetic' accessory.	X	
... behaved as 'accessories' more absolutely in Roman law than they do today in Swiss law.		X
... tended under Roman law to be lost together with the credit only if the latter was extinguished with satisfaction of the creditor's interests.	X	
... tend in Swiss law to be lost together with the credit only if the latter is extinguished with satisfaction of the creditor's interests.		X

Question 9 (Legal History)

The rise of legislation was a defining element of modern legal Swiss tradition. Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
Laws and legislation were present in Swiss legal history only after 1798 and the emergence of the <i>Helvetic Republic</i> .		X
Codifications of law emerged in Switzerland during the 19 th century first on a federal level.		X
19 th century Swiss constitutional laws as the federal constitution of 1848 and 1874 included already fundamental rights.	X	
Swiss codifications of law were strongly shaped by foreign legal traditions particularly from Austria, France and Germany.	X	
By the late 19 th century Swiss cantons ceased their legislator power to the federal level.		X

Question 10 (Legal Sociology)

Please indicate whether the following statements regarding the media in Switzerland are correct or incorrect:

	correct	incorrect
Empiric findings among the Swiss population show that people who primarily inform themselves via social media (YouTube, Facebook etc.) have less confidence in the media system than people who often inform themselves via public service broadcasting.	X	
The Swiss Constitution's understanding of electronic mass media in Article 93 is democracy-functional. This understanding enables the cohesion across different languages, cultures and mentalities in the country.	X	
Admeira is a joint venture between the Swiss Broadcasting Corporation (SRG), telecom company Swisscom and the media company Ringier. Admeira's purpose is to foster online advertising by using personalisation technologies. If the latter is also used for news and other type of online content, the SRG may infringe the legal requirement to contribute to the free shaping of opinion according to Article 93(2) of the Swiss Constitution.	X	
The democratic-functional understanding of electronic mass media in the Swiss Constitution does not consider economic differences between regional media markets.		X
In Switzerland, the constitutional principles of accurate presentation of events and diversity of opinion are justiciable and enforceable against any radio and television broadcaster established in Switzerland.	X	

Question 11 (Legal Philosophy)

Human rights are of foundational importance for the current civilisation of law. Please indicate whether the following statements about human rights are correct or incorrect:

	correct	incorrect
According to Kant's principle of humanity, human trafficking can be justified.		X
Human rights can only be based on religious faith. There is consequently no point of methodological secularism.		X
Agency, personhood, needs or capabilities play no role in current human rights theory.		X
According to some, a theory of universal human goods plays a central role in the theory of human rights.	X	
Normative principles like justice and solidarity are regarded as key building blocks in contemporary justifications of human rights.	X	