

Prof. Dr. Samuel Kern Alexander  
Prof. Dr. José Luis Alonso  
Prof. Dr. Ruth Arnet  
Prof. Dr. Tanja Domej  
Prof. Dr. Elisabetta Fiocchi Malaspina  
Prof. Dr. Christoph Beat Graber  
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

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## Introduction to Swiss Law

**15 November 2019 (09:00-10:00)**

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**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
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.	X	
Acts adopted by the Federal Assembly can be challenged before the Federal Supreme Court, which might annul them in case they violate the constitution (constitutional review).		X
Referenda against the adoption of new acts by the Federal Assembly (Parliament) are advisory, i.e., the Federal Assembly must take the result into account, but it is not bound by it.		X
A popular initiative which envisages the introduction of a new provision into the constitution violating international human rights law (such as the European Convention on Human Rights, ECHR), must be declared invalid by the Federal Assembly and will not be put to the vote of the people and the cantons.		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 & Procedure)

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
If there is a sufficient legal basis for state action, this action is, without further ado, always proportionate.		X
If a party successfully concretely/indirectly challenges legislation, the administrative decision as well as the underlying legal provision are annulled.		X
Posters and TV-spots that are published as part of an official information campaign qualify as administrative decisions. It is possible to lodge an appeal directly against them.		X
Appeals against decisions of cantonal administrative courts cannot be brought directly to the Federal Supreme Court. They must, in a first step, always be filed to the Federal Administrative Court.		X
If a private party trusts an information made by an authority, the information can, under certain conditions, be binding for the authority even if it is incorrect and if the law is, consequently, applied incorrectly.	X	

**Question 3 (Tax Law)**

Eric is a Dutch citizen who accepted a job offer in Zürich. He will take up his new position in Zürich in January 2020. Before moving to Switzerland, he would like to learn more about the Swiss tax system. In particular, he has not yet decided whether he wants to rent an apartment in Zürich or outside of Zürich, maybe even in another canton.

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
In Zürich, Eric would be subject to an income tax rate of 21.6% (federal, cantonal and communal income taxes). However, if he decides to move to another canton, his income tax rate could be much lower.	X	
Eric is about to marry Clara. They plan to get married in December 2019 before moving to Zürich together. However, from a Swiss tax point of view, it may be better not to get married.	X	
Eric knows that the VAT rate on the federal level amounts to 7.7%, which is very low compared to other countries. However, since the majority of the cantons additionally levy a cantonal VAT, the total VAT rate (federal and cantonal level) does not deviate much from other countries.		X
If Eric decides to live in Wollerau (canton of Schwyz) and not in the city of Zürich, he will be allowed to deduct the travel expenses (daily travel by train from Wollerau to Zürich) from his income from employment.	X	
In Switzerland, regardless of the canton, Eric will be subject to a cantonal net wealth tax. On the federal level, however, no net wealth tax is levied.	X	

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

Part 2 of the Swiss Civil Code contains rules regarding, among others, marital property law. Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
Spouses are subject to the provisions governing separation of property, provided they have not agreed otherwise in a marital agreement and provided no extraordinary marital property regime has come into effect.		X
A marital agreement may be concluded before or after the wedding.	X	
Under the statutory marital property regime of participation in acquired property, acquired property comprises the assets which a spouse acquired for valuable consideration during the marital property regime.	X	
Under the statutory marital property regime of participation in acquired property, by operation of law a spouse's individual property does not comprise inherited property.		X
The marital property regime is dissolved through divorce.	X	

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

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
The principle of the oldest parentel means that only the members of the oldest generation alive are heirs of the deceased person: if the deceased person leaves children as well as parents, the parents are his/her legal heirs.		X
The fiancés, engaged by mutual promise to marry each other, are legal heirs.		X
The testator may attach burdens or conditions to the disposition in his/her last will, the fulfilment of which may be requested by any interested party once the disposition becomes effective.	X	
Chattel ownership relates to movable physical objects; therefore, forces of nature (like electricity) may not be the subject of legal rights.		X
The validity of ownership transfer by means of possession depends on the validity of the underlying contract.	X	

**Question 6 (Law of Obligations I, Contract Law)**

Dr. Genius estimates the value of a real estate in the canton of Lucerne on demand of Katrina. Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
Estimating the value of a real estate is an agreement on a measurable result that can be guaranteed.		X
Katrina can revoke the contract with Dr. Genius at any time.	X	
Every contract falls under one of the types in the second division of the Swiss Code of Obligations.		X
Paying a remuneration is in any case compulsory in order for a contract to be characterised as a simple agency contract.		X
If Katrina revokes the contract at an inopportune point in time, she must compensate Dr. Genius for any resulting damage.	X	

**Question 7 (Law of Obligations II, Commercial Law)**

Please indicate whether the following statements are correct or incorrect:

Swiss commercial law ...

	correct	incorrect
... requires a commercial partnership to act in its own name in legal proceedings.	X	
... requires a limited partnership to have only partners with limited liability.		X
... prevents shareholders in a limited liability company from being liable for losses greater than their investment in the company.	X	
... requires a company's articles of association to contain a statement of the company's objects or purpose.	X	
... requires Swiss banks in all circumstances to disclose the account information of their customers to foreign tax authorities.		X

**Question 8 (Civil Procedure)**

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
In Swiss civil proceedings, the parties can always make new factual submissions and introduce new evidence in the main oral hearing without restriction.		X
In Swiss civil proceedings, the parties can normally appeal against the decision of the last-instance cantonal court to the Federal court.	X	
In Swiss civil procedure, a very broad concept of <i>res judicata</i> applies. Findings of fact and legal assessments made in a case become binding for all subsequent disputes between the parties.		X
In Swiss civil proceedings, it is open to the court to refuse admitting evidence if it is irrelevant for the outcome of the case.	X	
In Switzerland, a foreign judgment and a foreign insolvency decree can be recognised and enforced irrespective of whether Swiss judgments and Swiss insolvency decrees would also be recognised and enforced in the state of origin of the foreign judgment or decree.	X	

**Question 9 (Criminal Law)**

Please indicate whether the following statements are correct or incorrect:

	<b>correct</b>	<b>incorrect</b>
In Switzerland, criminal law provisions exist on a federal and on a cantonal level. However, the cantons may only legislate on contraventions that are not the subject matter of federal legislation.	X	
Carl Stooss advocated that sanctions for committed offences may only be retributive: offenders shall pay for the offence they committed.		X
According to the Swiss Criminal Code, penalties and measures can never be combined.		X
If an offender lacks criminal capacity, a measure can still be imposed on him or her.	X	
Intention is defined in the specific part of the Criminal Code.		X

**Question 10 (Roman Law)**

Please indicate whether the following statements are correct or incorrect:

The “Digest” (or “Pandects”) ...

	<b>correct</b>	<b>incorrect</b>
... was compiled from works written by Roman legal experts between the 1st century BCE (Before the Common Era) and the 3rd century CE (Common Era).	X	
... was conceived as a short introduction to Roman Law for the students of Berytus and Constantinople.		X
... compiled and promulgated in Constantinople in the 6th century CE by order of Justinian I.	X	
... consists of twelve books of Imperial decisions, spanning from the 2nd to the 6th century CE.		X
... has had a marginal impact on the Western legal tradition, compared to that of the so-called Justinian Code.		X

**Question 11 (Legal History)**

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
The international community formally recognized the neutrality of Switzerland with the Peace of Westphalia in 1648.		X
In 1892, Eugen Huber was appointed to prepare a first draft of the Swiss Civil Code.	X	
The <i>Convention for the Amelioration of the Condition of the Wounded in Armies in the Field</i> was held on 22 August 1864.	X	
The scientification of law in Switzerland during the 19th century was most prominently promoted by Friedrich Ludwig Keller and Johann Caspar Bluntschli.	X	
With the Act of Mediation in 1803 Napoleon founded the Helvetic Republic.		X

**Question 12 (Legal Sociology)**

Please indicate whether the following statements are correct or incorrect:

	correct	incorrect
Legal sociology follows the same logic formality as legal doctrine.		X
Legal sociologists first prescribe a normative end and then observe societal phenomena.		X
Legal sociology develops theories which simplify segments of reality in an exemplary way.	X	
In legal sociology it is recommended to use incompatible theories simultaneously, which do not distinguish between “is” and “ought”.		X
In legal sociology it is recommended to observe a real legal problem from the perspective of legal doctrine and then to reintroduce the findings into the legal system.		X

**Question 13 (Legal Philosophy & Legal Theory)**

Legal theory and legal philosophy deal with various kinds of questions, they investigate in various ways. Please indicate whether the following statements are correct or incorrect:

	<b>correct</b>	<b>incorrect</b>
Whether people have a duty to help one another, and under what conditions, is a normative question.	X	
Whether the law is but the superstructure of the relations of production is a descriptive question.	X	
A theory that justifies human dignity based on human autonomy is a purely explanatory one.		X
Whether and how humans can come to know moral truths is a question of ontology.		X
The question as to whether moral terms denote any entities that exist in the world is one of ontology.	X	