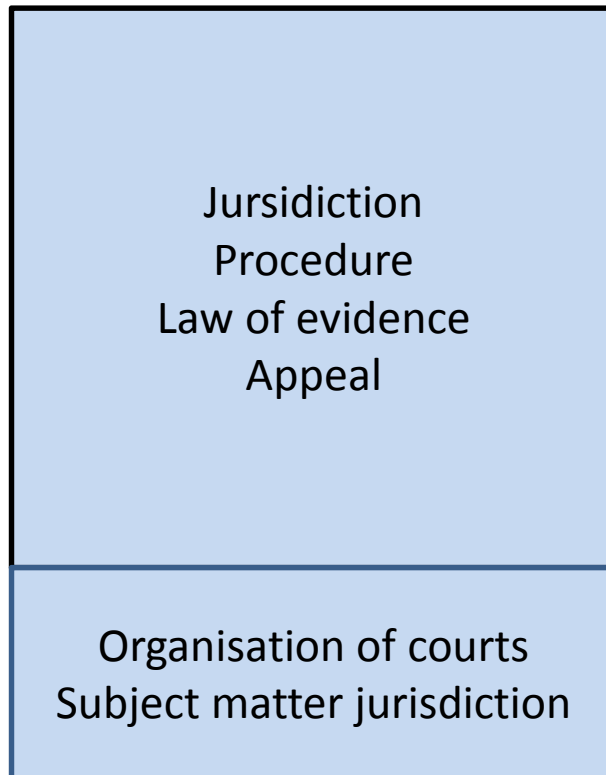


Swiss Civil Procedural Law

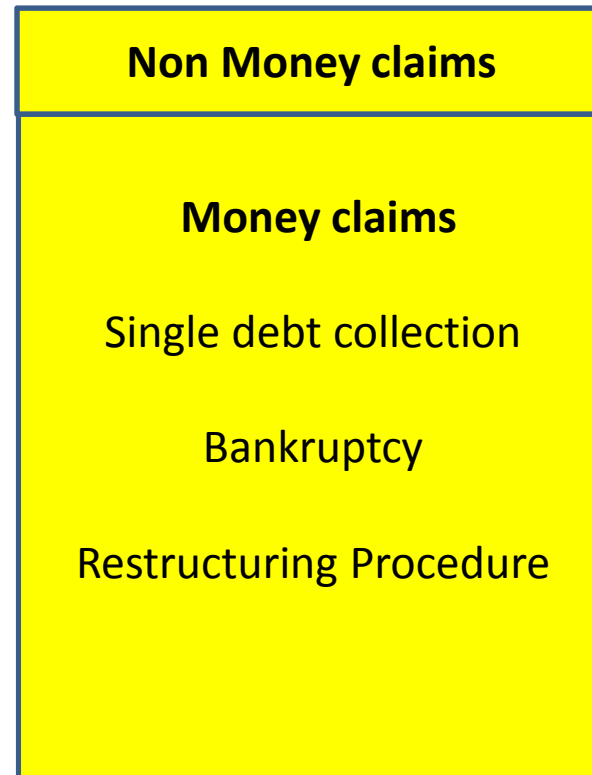
Prof. Isaak Meier

Civil Procedural Law

Adjudication



Enforcement



Civil procedural code: CCP 2008

Adjudication

Enforcement

Procedure
Law of evidence
Appeal

Non Money claims

Organisation of courts

Cantonal law = GOG ZH

Insolvency Code of 1889/1997

Adjudication

Introductory procedure =
Summary proceeding for
money claims

Enforcement

Money claims

Single debt collection

Bankruptcy

Restructuring Procedure

- Federal statute on the federal supreme court
- Federal statute on private international law
- Lugano-Convention
- Constitution and european human rights convention

Swiss Constitution

Art. 30 Judicial proceedings

1 Anyone whose case falls to be judicially decided has the right to have their case heard by a legally constituted, competent, independent and impartial court. Ad hoc courts are prohibited.

2

3 Unless the law provides otherwise, court hearings and the delivery of judgments shall be in public.

Supreme Court

High Court

Commercial
Court

District Court

Justice of the peace

Conciliation Authorities



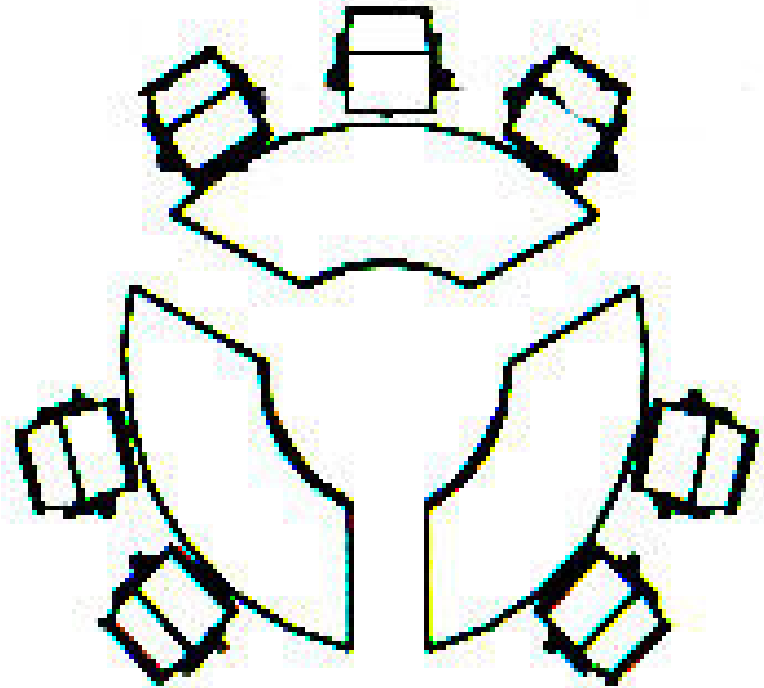




Swiss judges

- Single judges or bench of judges
- Laymen/-women and jurists
- Elected by the people or parliament
- Political influence





Swiss lawyers

- Swiss and cantonal bar associations; ethical rules
- Federal statute mainly concerning admission requirements for lawyers, ethical rules and the lawyer's monopoly
- Admitted in every canton and at the federal supreme court
- Do duty to be represented by a lawyer

Combining adjudication and conciliation

Adjudication	Conciliation
Conciliation proceedings (197 ff. CCP)	
procedural condition of admissibility	conciliation hearing
Ordinary procedure	
Exchange of pleadings and preparation of main hearing (220 ff. CCP)	
statements of claim and defence	Preparing the direction hearing
Direction hearing (226 CCP)	
Formal Part: Parties can complete their statements	Settlement conference lead by a judge
Main hearing	
Exchange of arguments, taking evidence and closing statements	Second settlement conference
Decision on the merits	
The court decides the dispute on the merits	Settlement conference influences the court's decision

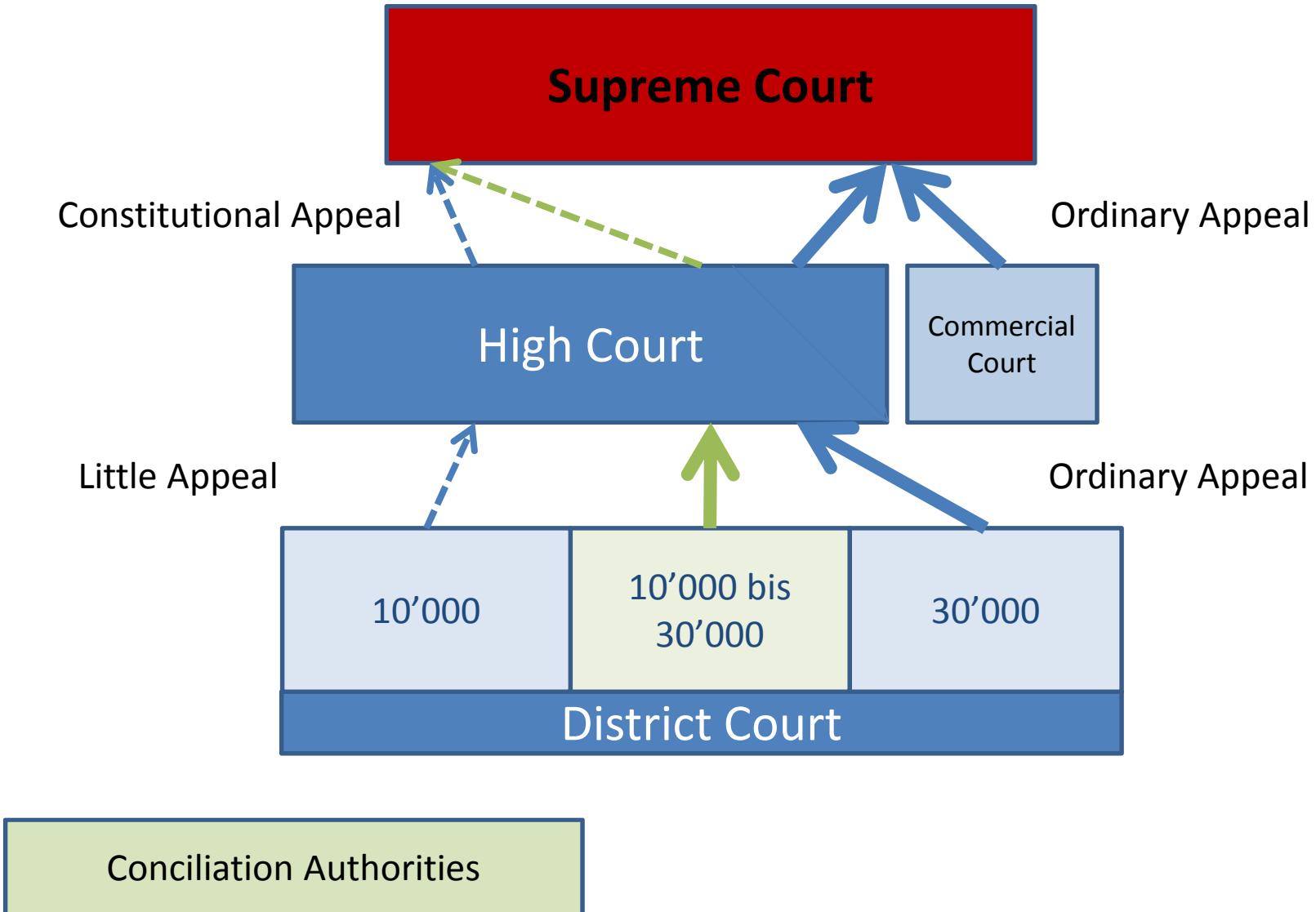
Special procedure for money claims

- Order of payment = function of a default judgment; issued by the enforcement officer; the claim is not checked on the merits
- No objection by the debtor: Seizure of the debtor's assets or bankruptcy
- Objection of the debtor: the creditor has to take legal action in a summary or ordinary proceeding

Order of payment Data

- 1,8 Mio orders of payment (7, 5 Mio inhabitants)
- 12 % objections of the debtors

Appeal



Costs

Losing party pays all the costs = lawyer's fees and court costs.

	1000	100 000	1 Mio.
District Court	1000 – 1750	31 165 – 61 715	94 790 – 188 340
Inclusive cant. appeal	1416 – 2334	47 181 – 84 999	146 474 – 260 956
Inclusive federal appeal	2816 – 15 334	<u>54 681 – 109 999</u>	165 474 – 324 956

Legal aid = only with an income below subsistence level

Law of evidence

- Limited catalogue of evidence, but “document” as general notion for all kinds of evidences
- Formal limitations for evidence
- General duty of third parties and the involved parties
- Preventive taking of evidence (art. 158 CCP)
- Burden of proof (art. 8 CC)

Important institutions of procedural law

- Res judicata = only the judgment itself is binding, not the reasons
- Forum
- Joinder of claims
- ...

ADR

- **Mediation**
- **Ombudsmen – dispute resolution in consumer cases**
- **Conciliation as a part of the formal procedure**

Many others:

- Provisional judgment which becomes final, if the defendant does not object etc.

Mediation

- Introduced in the last 20 years
- Mediation is understood in the sense of a comprehensive and sophisticated dispute resolution procedure
- Regulated mainly in the new CCP (213 ff.)

Statistics

Survey 2008 amongst the about 1000 members of the SDM:

Extension:

3'513 mediations

Divorce cases: mediation in approx. 10 % of the cases.

Main fields:

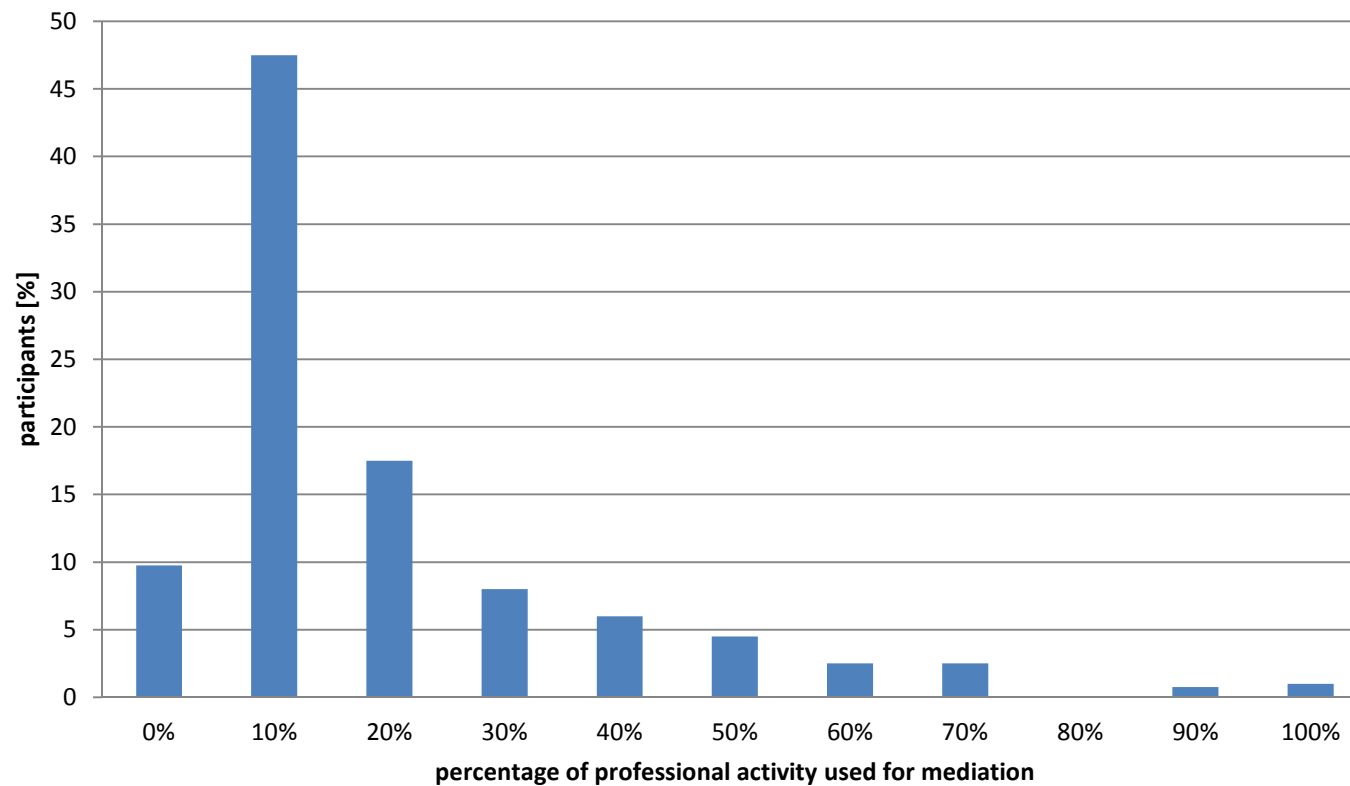
Family mediation 40% (child custody, ...)

Employment mediation; commercial mediation ...

Mediation as a part-time job

What percentage of your professional activity is used for mediation?

Number of participants: 319



Mediation “scene” in Switzerland

- Mainly self-regulated; some rules in CCP.
- Various societies, groups and other institutions
- Wide range of education and trainings
- Mediators
 - Lawyers
 - Psychologists
 - Public and semi-public institutions.

Mediation

CCP:

- Mediation instead of conciliation
- Ratification of the agreement by the justice of the peace or by the court
- Guarantee of confidentiality
- Statute of limitations

ADR for consumers

Ombudsmen-Institutions

- Banking industry, insurance business, travel industry and telecommunications sector
- Self regulated; exception: telecommunications sector

Proceedings

Consumer

Supplier

Contacting the Ombudsman

Settlement/Rejection by OB if unfounded
(60%)

Statement of facts and
documents

Statement of fact and
documents

Solution proposal as a neutral third person

**Negotiating a compromise as an “advocate”
of the consumer.**

Assessment of OB –procedure

- Meets the needs of consumers = often the only practicable way to solve a dispute
- Is in the supplier's interest
- Problem: The consumer only receives a part of what he could have got in a judgment:
 - “Consumer-friendly”, but independency not guaranteed
 - Problem of dealing with the same people of a supplier

International procedural law:

Enforcement of a foreign judgement in Switzerland

Law sources:

- Lugano-Convention = EU regulation on jurisdiction and enforcement of civil judgment.
- CPIL = Code/statute of private international law: venue and enforcement of foreign judgments.
- Bilateral treaties and Hague conventions ...

Examples:

Provisional German money judgment concerning € 300'000.

US – judgment banning a Swiss Company from selling a product worldwide and punitive damages of \$ 200 millions

Provisional German money judgment concerning € 300'000

- Lugano-Convention,
- Requirements according to the Lugano-Convention:

The judgement itself and the jurisdiction cannot be challenged;

only manifest violation of order public (public policy).

US – judgment banning a Swiss Company from selling a product worldwide and punitive damages of \$ 200 millions

- Applicable law: Federal statute on Private international law
- Requirements of enforcement:
 - No review of the judgment on the merits;
 - No violation of the principles of order public;
 - Jurisdiction of the US –court according to Swiss law.