



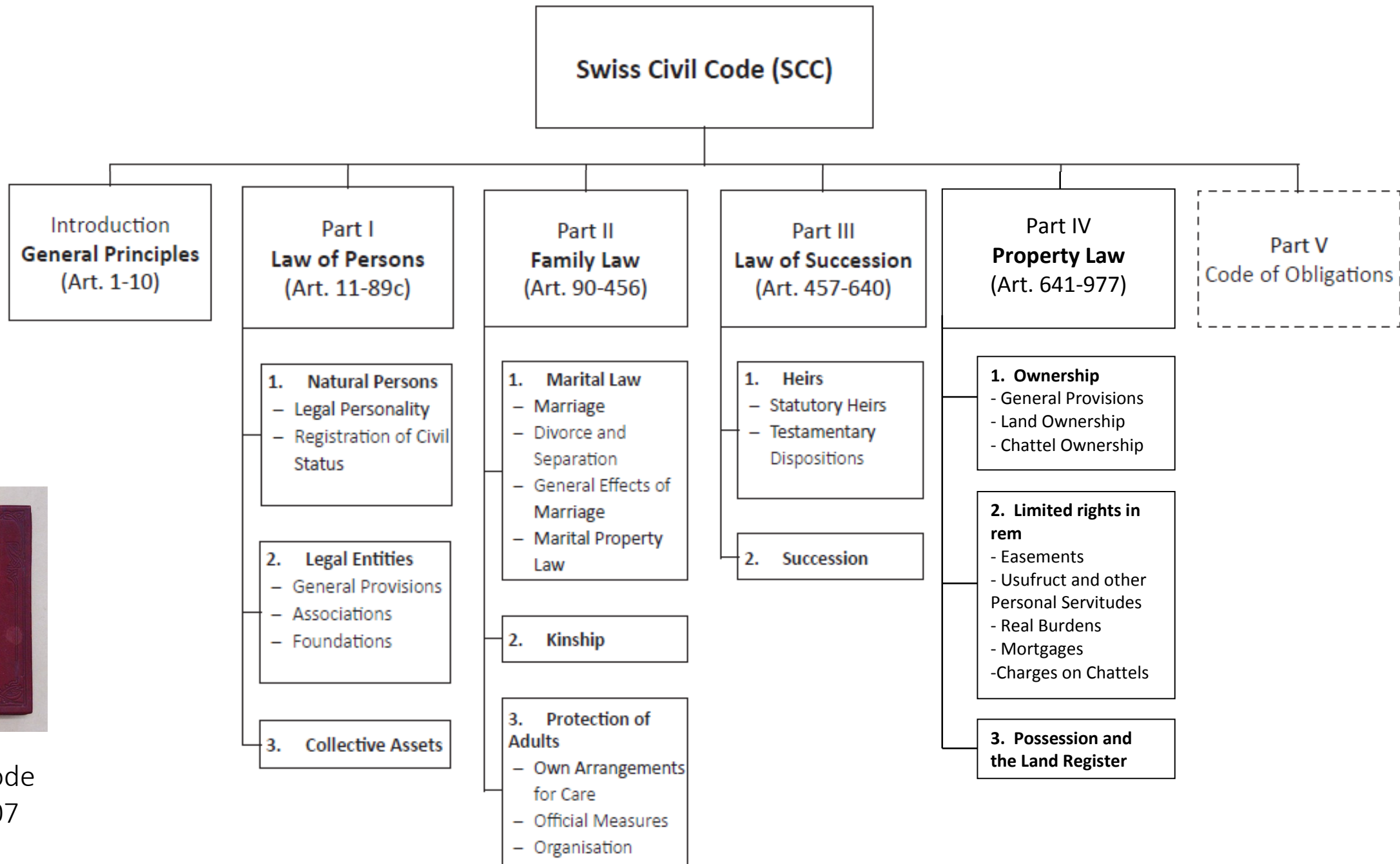
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*HS 18*

**Introduction to Swiss Civil Law**

Dr. iur Federico Battaglia



Swiss Civil Code  
10 Dec. 1907



# 210

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## Swiss Civil Code

of 10 December 1907 (Status as of 1 January 2018)

*The Federal Assembly of the Swiss Confederation,*

based on Article 64 of the Federal Constitution<sup>1,2</sup> and having considered the Dispatch of the Federal Council dated 28 May 1904<sup>3</sup>,

*decrees:*

### Additional informations

This text is in force.

Decision 10 December 1907

In force 1 January 1912

### Tools

[Language comparison](#)



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**SWISS CIVIL CODE**

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*The Federal Assembly of the Swiss Confederation,*based on Article 64 of the Federal Constitution<sup>1,2</sup>  
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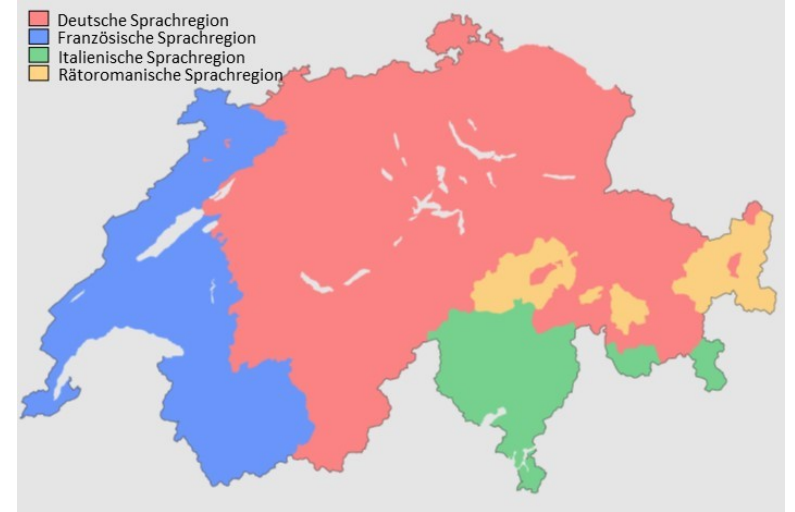
decrees:

**Additional informations**

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Decision 10 December 1907

In force 1 January 1912

**Tools****LangA (2007) - Art. 10**

«Federal enactments and other texts that must be published officially [...] or based on other federal law provisions shall be published in **German, French and Italian** unless the law provides otherwise. Publication shall take place simultaneously in **German, French and Italian** »

Previous **Art. 1 A. Application of the law** Next

English  Deutsch  Français  Italiano  Rumantsch

Synchronised scrolling

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**- Introduction**

**Introduction**

**Art. 1 A. Application of the law**

**Art. 1 A. Anwendung des Rechts**

**Art. 1 A. Application de la loi**

**Art. 1 A. Applicazione del diritto**

**Art. 1 A. Applicaziun dal dretg**

A. Application of the law

A. Anwendung des Rechts

A. Application de la loi

A. Applicazione del diritto

A. Applicaziun dal dretg

<sup>1</sup> The law applies according to its wording or interpretation to all legal questions for which it contains a provision.

<sup>1</sup> Das Gesetz findet auf alle Rechtsfragen Anwendung, für die es nach Wortlaut oder Auslegung eine Bestimmung enthält.

<sup>1</sup> La loi régit toutes les matières auxquelles se rapportent la lettre ou l'esprit de l'une de ses dispositions.

<sup>1</sup> La legge si applica a tutte le questioni giuridiche alle quali può riferirsi la lettera od il senso di una sua disposizione.

<sup>1</sup> La lescha vegn applitgada per tut las dumondas giuridicas, a las qualas il text u l'interpretaziun d'ina da sias disposiziuns po sa referir.

<sup>2</sup> In the absence of a provision, the court<sup>1</sup> shall decide in

<sup>2</sup> Kann dem Gesetz

<sup>2</sup> A défaut d'une disposition légale applicable, le juge prononce selon la

<sup>2</sup> Nei casi non previsti dalla legge

<sup>2</sup> Sche la lescha na



## - Introduction

### - Art. 1 A. Application of the law

#### A. Application of the law

1 ⇒

<sup>1</sup> The law applies according to its wording or interpretation to all legal questions for which it contains a provision.

2 ⇒

<sup>2</sup> In the absence of a provision, the court<sup>1</sup> shall decide in accordance with customary law and in the absence of customary law, in accordance with the

3 ⇒

rule that it would make as legislator.

<sup>3</sup> In doing so, the court shall follow established doctrine and case law.

- 📄 Art. 4 B. Scope and limits of legal relationships / III. Judicial discretion

III. Judicial<sup>1</sup> discretion

Where the law confers discretion on the court or makes reference to an assessment of the circumstances or to good cause, the court must reach its decision in accordance with the principles of justice and equity.

e.g.

- 📄 Art. 126 E. Post-marital maintenance / II. Modalities of maintenance contributions

II. Modalities of maintenance contributions

<sup>1</sup> The court shall fix an amount to be paid periodically by way of maintenance contribution and set the date on which the duty of maintenance commences.

<sup>2</sup> Where justified in specific circumstances a lump sum settlement may be ordered instead of regular payments.

<sup>3</sup> The court may attach conditions to the maintenance contribution.



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## BGE 126 II 145 (Spring Vs. Swiss Confederation)

« Bei aussergewöhnlichen Umständen kann es die obsiegende Partei **aus Billigkeitsgründen** auch verpflichten, die Kosten der unterliegenden ganz oder teilweise zu übernehmen »

«In exceptional circumstances, the winning party may, **for reasons of equity**, be obliged to pay in full or in part the costs incurred»

Entschadigungsrahmen nach Art. 153 II. OG ist sehr flexibel ausgestaltet und räumt dem Gericht einen weiten Ermessensspielraum ein (THOMAS GEISER, Grundlagen, in: GEISER/MÜNCH, Prozessieren vor Bundesgericht, a.a.O., Rzn. 1.9 ff.). Bei aussergewöhnlichen Umständen kann es die obsiegende Partei **aus Billigkeitsgründen** auch verpflichten, die Kosten der unterliegenden ganz oder teilweise zu übernehmen (vgl. JEAN-FRANÇOIS POUURET, Commentaire de la loi fédérale d'organisation judiciaire, Bd. V, Bern 1992, S. 163, N. 4 zu Art. 159).

-  **Part One: Law of Persons**
-  **Title One: Natural Persons**
-  **Chapter One: Legal Personality**
-  **Art. 11 A. Personality in general / I. Legal capacity**

## A. Personality in general

### I. Legal capacity

<sup>1</sup> **Every person** has legal capacity.

<sup>2</sup> Accordingly, within the limits of the law, **every person has the same capacity** to have rights and obligations.



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-  **Art. 12 A.** Personality in general / II. Capacity to act / 1. Nature

II. Capacity to act

1. Nature

A person who has **capacity to act** has the capacity to create rights and obligations through his actions.

-  **Art. 13<sup>1</sup>A.** Personality in general / II. Capacity to act / 2. Requirements / a. In general

2. Requirements

a. In general

A person who is **of age** and is **capable of judgement** has the **capacity to act**.

-  **Art. 14<sup>1</sup>A.** Personality in general / II. Capacity to act / 2. Requirements / b. Majority

b. Majority

A person is **of age** if he or she has reached the age of 18.

-  **Art. 16<sup>1</sup>A.** Personality in general / II. Capacity to act / 2. Requirements / d. Capacity of judgement

d. Capacity of judgement

A person is **capable of judgement** within the meaning of the law if he or she does not lack the capacity to act rationally by virtue of being under age or because of a mental disability, mental disorder, intoxication or similar circumstances.



-  **Art. 17<sup>1</sup>A. Personality in general / III. Incapacity / 1. In general**

III. Incapacity

1. In general

A person does not have the capacity to act if he or she is incapable of judgement or is under age or is subject to a general deputyship.

-  **Art. 18 A. Personality in general / III. Incapacity / 2. Lack of capacity of judgement**

2. Lack of capacity of judgement

A person who is incapable of judgement cannot create legal effect by his or her actions, unless the law provides otherwise.

-  **Art. 19 A. Personality in general / III. Incapacity / 3. Persons capable of judgement but lacking the capacity to act. / a. Principle**

3. Persons capable of judgement but lacking the capacity to act.

a. Principle<sup>1</sup>

<sup>1</sup> Persons who are capable of judgement but lack the capacity to act may only enter into obligations or give up rights with the consent of their legal representative.<sup>2</sup>

<sup>2</sup> Without such consent, they may only accept advantages that are free of charge or carry out minor everyday transactions.<sup>3</sup>

<sup>3</sup> They are liable in damages for unpermitted acts.



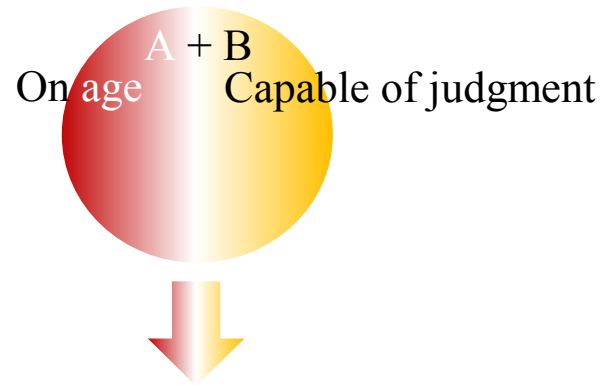
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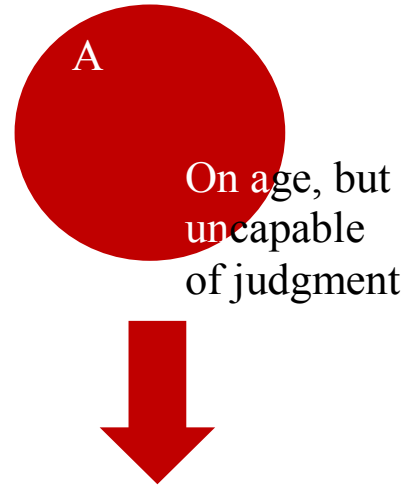
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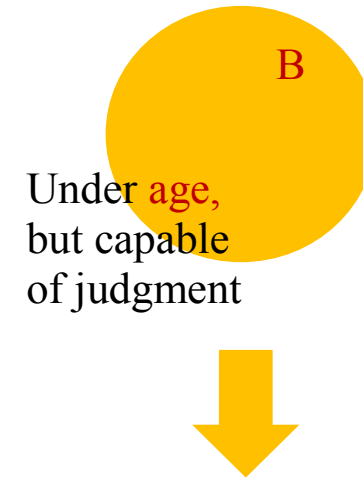
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Art. 13  
 «A person who is **of age** and is **capable of judgement** has the **capacity to act**».



Art. 17  
 «A person **does not have the capacity to act** if he or she is **incapable of judgement** or is **under age** [...]».



Art. 19  
 «Persons who are **capable of judgement** but **lack the capacity to act** may only enter into obligations or give up rights with the consent of their legal representative»

Art. 18  
 «A person who is **incapable of judgement** cannot create legal effect by his or her actions, unless the law provides otherwise».



BGE 90 II 9 s. 9 ff.

**«The capacity for discernment is generally presumed; he who claims that he is defective must prove it»**

3. Sous réserve de l'art. 54 al. 1 CO, le mineur répond du dommage causé par ses actes illicites lorsqu'il est capable de discernement (art. 19 al. 3 CC). A la différence d'autres législations, le droit suisse ne prévoit pas d'âge limite. Jouit de la faculté d'agir raisonnablement (art. 16 CC) celui qui peut se rendre compte de la portée de ses actes et résister d'une façon normale à ceux qui tentent


BGE 90 II 9 S. 12

d'influencer sa volonté (RO 55 II 229 consid. 4; **67 II 52; 70 II 140**). Cette capacité est relative (RO 44 II 449). Le juge doit rechercher in concreto, pour un acte déterminé ou une série d'actes, si le défendeur la possédait au moment où il a accompli celui qui a donné lieu au litige. De par la loi, l'absence de discernement résulte de causes déterminées, dont le jeune âge (art. 16 CC). La capacité de discernement est généralement présumée; celui qui prétend qu'elle fait défaut doit le prouver (RO 44 II 449; **45 II 48** et les citations; EGGER, 2e éd., no 9 ad art. 12 CC). Toutefois, plus un mineur est jeune et plus la présomption s'affaiblit en fait, jusqu'à disparaître. La preuve peut être rapportée par indices, surtout lorsqu'a changé la situation existant au moment de l'acte, notamment en raison de l'écoulement du temps. Dans ce cas, on ne peut recourir à l'expertise ni



## Personality attributes (identification of 'persons' )

1) *relation to relatives*

-  **Art. 20 A. Personality in general / IV. Kinship** by blood and by marriage / 1. Blood kinship

2) *relation to territory*

-  **Art. 22 A. Personality in general / V. Place of origin and domicile / 1. Origin**

3) *relation to other persons*

-  **Art. 29 B. Protection of legal personality / III. Right to use one's name** / 1. Protection of one's name





Art. 31.1  
Personality rights begin on the **birth**  
of the living child and end on **death**.

Art. 31.2  
An **unborn child** has legal  
capacity provided that it survives  
birth.

BGE 118 V 319 f.  
Personality rights **do not**  
**cease** immediately with death



## - 📄 Title Two: Legal Entities

### - 📄 Chapter One: General Provisions

#### - 📄 Art. 52 A. Legal personality

##### A. Legal personality

<sup>1</sup> Associations of persons organised as corporate bodies and independent bodies with a specific purpose acquire legal personality on being entered in the commercial register.

<sup>2</sup> Public law corporations and bodies, and associations that do not have a commercial purpose do not require registration.<sup>1</sup>

<sup>3</sup> Associations of persons and bodies which pursue an immoral or unlawful purpose may not acquire legal personality.

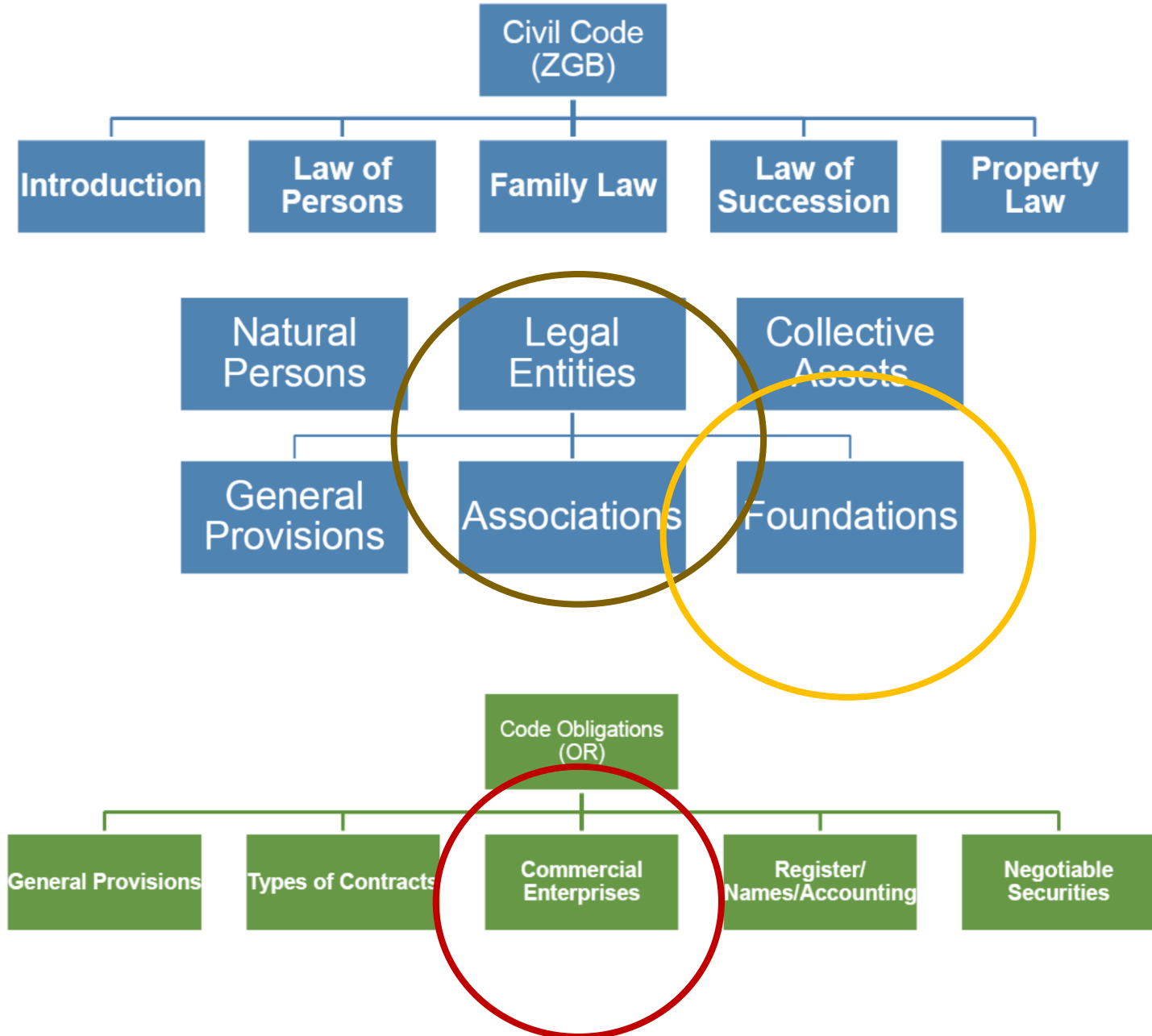
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<sup>1</sup> Amended by No I 1 of the FA of 12 Dec. 2014 on the Implementation of the 2012 Revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

#### - 📄 Art. 53 B. Legal capacity

##### B. Legal capacity

Legal entities have all the rights and duties other than those which presuppose intrinsically human attributes, such as gender, age or kinship.





## Part Three: Law of Succession

### Division One: Heirs

continuity of the assets



Title Thirteen: Statutory Heirs  
Artt. 457-466

freedom to dispose



Title Fourteen: Testamentary Dispositions  
Artt. 467-536

### Division Two: Succession

Title Fifteen: Commencement of Succession  
Artt. 537-550

Title Sixteen: Effect of Succession  
Artt. 551 -601

Title Seventeen: Division of the Estate  
Art. 602-640



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- Title Fourteen: Testamentary Dispositions
- Section One: Testamentary Capacity
- Art. 467 A. Wills

#### A. Wills

Any person who has the capacity of judgement and is at least 18 years old has the right to draw up a will disposing of his or her property in accordance with the limits and forms prescribed by law.

- Art. 468<sup>1</sup>B Contract of succession

#### B. Contract of succession

<sup>1</sup> Any person who is capable of judgement and has reached the age of 18 may conclude a contract of succession as a testator.

<sup>2</sup> Persons subject to a deputyship that covers the conclusion of a contract of succession require the consent of their legal representative.

- Art. 484 D. Legacy / I. Nature

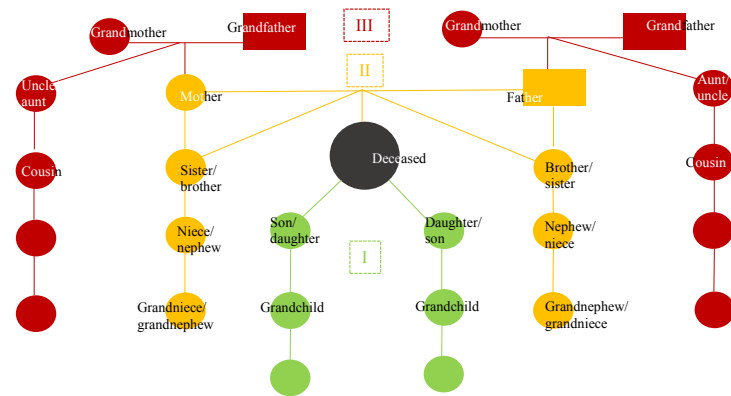
#### D. Legacy

##### I. Nature

<sup>1</sup> The testator may bequeath a legacy to a beneficiary without naming that person as an heir.

<sup>2</sup> He or she may bequeath a specific legacy or the usufruct of the whole or a part of the estate, or he or she may instruct the heirs or other legatees to make payments to that person from the value of the estate or to release that person from obligations.

<sup>3</sup> If the testator bequeaths a specific legacy but the object is not part of the estate and no other intention is evident from the disposition, no obligation is placed on the obligor of the legacy.



**(Class I: issues)**

**Art. 457**

- 1 The nearest heirs of a deceased person are his or her **issue**.
- 2 **Children** inherit in equal parts.
- 3 Predeceased children are replaced by **their own issue** in all degrees per stirpes.



**(Class II: parental line)**

**Art. 458**

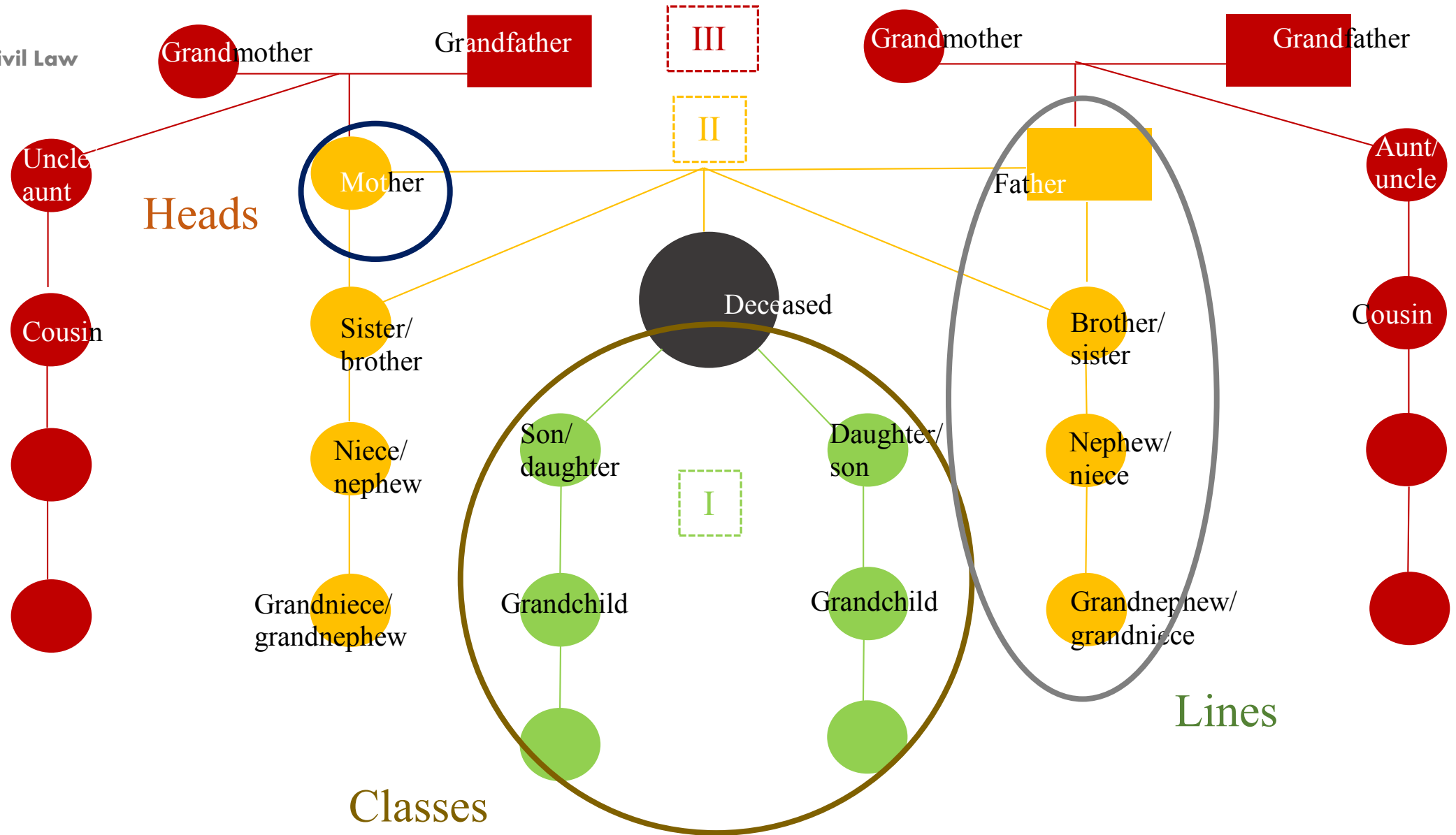
- 1 Where the deceased is not survived by any issue, the estate passes to the parental line.
- 2 The **father and mother** each inherit one-half of the estate.
- 3 A predeceased parent is replaced by **his or her issue** in all degrees per stirpes.
- 4 Where there are no issue on one side, the entire estate passes to the heirs on the other.



**(Class III: grandparental line)**

**Art. 459**

- 1 Where the deceased is survived by neither issue nor heirs in the parental line, the estate passes to the line of the **grandparents**.
- 2 Where the grandparents of the paternal and maternal lines survive the deceased, they inherit in equal parts on both sides.
- 3 A predeceased grandparent is replaced by **his or her issue** in all degrees per stirpes.
- 4 If a grandparent on the paternal or maternal side has predeceased without issue, that entire half of the estate is inherited by the heirs on that side.
- 5 If there are no heirs in either the paternal or the maternal side, the entire estate passes to the heirs in the other side.





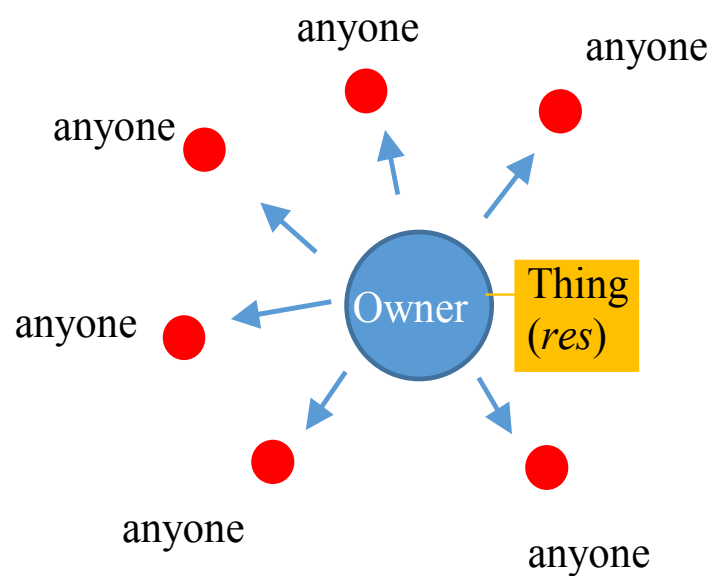
-  **Part Four: Property Law**
-  **Division One: Ownership**
-  **Title Eighteen: General Provisions**
-  **Art. 641 A. Nature of ownership / I. In general**

## A. Nature of ownership

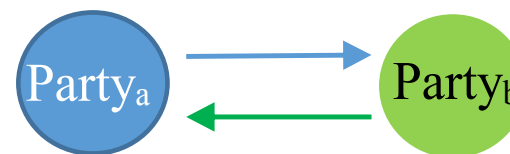
### I. In general<sup>1</sup>

<sup>1</sup> The owner of an object is free to dispose of it as he or she sees fit within the limits of the law.

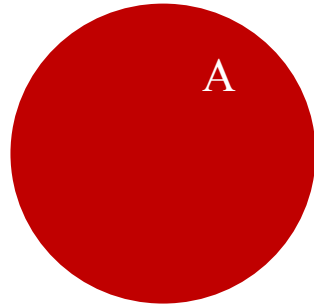
<sup>2</sup> He or she has the right to reclaim it from anyone withholding it from him or her and to protect it against any unwarranted interference.



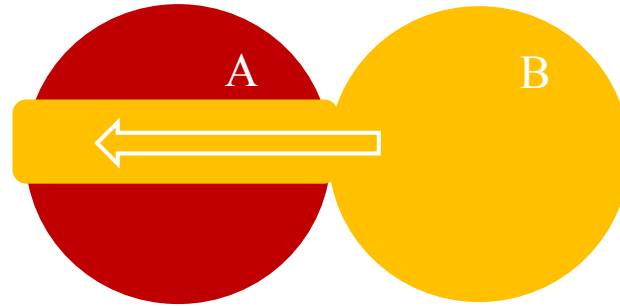
Real rights  
(absolute rights)  
*Erga omnes*



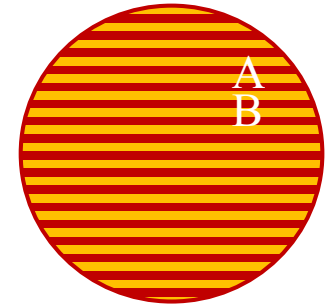
Obligations  
(relative rights)  
*Inter partes*



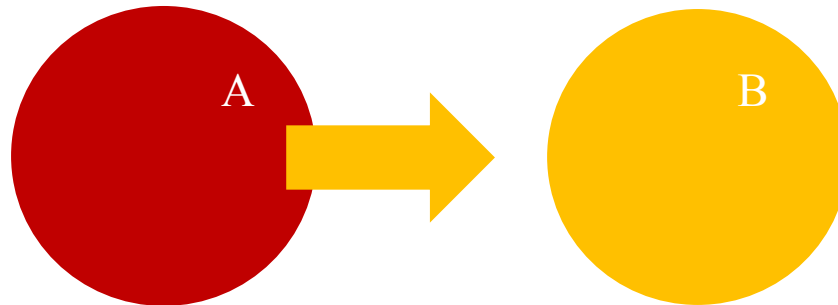
**Ownership**  
(full property right)



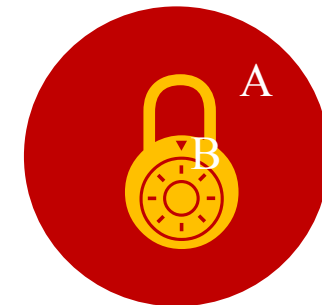
**Easement** (on property)  
(B's right to specific use on  
A's property: e.g. to pass  
through it)



**Usufruct** (personal easement)  
(B's right to use and enjoy  
A's property and to derive profit from it)



**Real burden**  
(A must fulfil an obligation to B, being liable  
solely with the immovable property)



**Liens**  
(B's right to retain A's property until a debt or  
obligation in his/her favor is discharged)



## - 📄 Division Three: Possession and the Land Register

### - 📄 Title Twenty-Four: Possession

### - 📄 Art. 919 A. Definition and types / I. Definition

#### A. Definition and types

##### I. Definition

<sup>1</sup> Effective control over a thing constitutes possession of it.

<sup>2</sup> In the case of easements and real burdens, effective exercise of the right constitutes possession.

### - 📄 Art. 920 A. Definition and types / II. Direct and derivative possession

#### II. Direct and derivative possession

<sup>1</sup> Where the possessor transfers an object to a third party in order to confer on him or her a limited right in rem or a personal right, both are considered to have possession.

<sup>2</sup> The owner of the object has direct possession and any other possessor has derivative possession.