



Introduction to Swiss Civil Law

Introduction to Swiss Civil Code Law of Persons Family Law

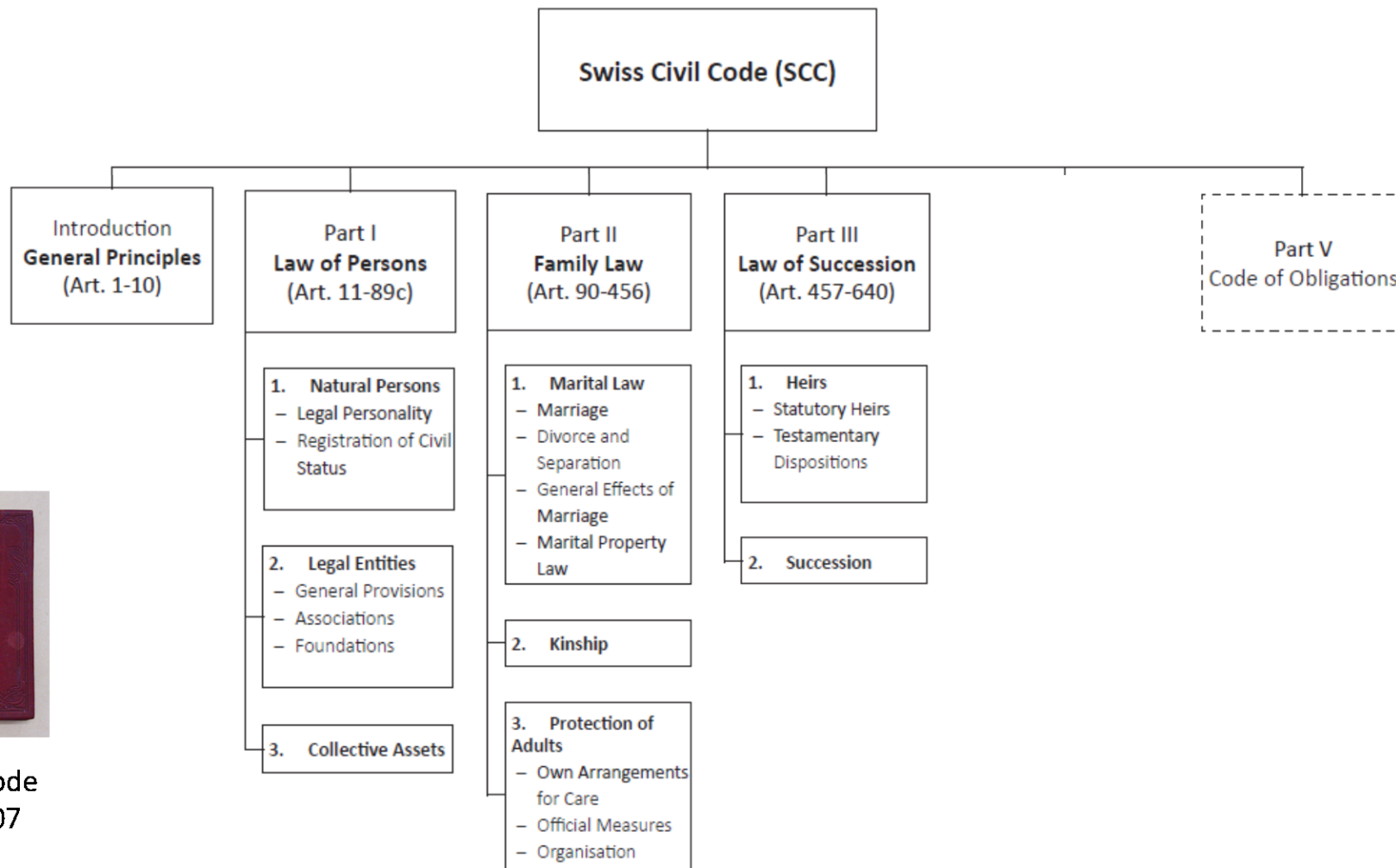
Dr. iur. Federico Battaglia



1. Introduction to SCC



1.1. The structure of the Swiss Civil Code



Swiss Civil Code
10 Dec. 1907

1.1. The structure of the Swiss Civil Code

The federal Council

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

The federal Council
The portal of the Swiss government

Federal Council | Federal Presidency | Departments | Federal Chancellery | Federal law | Documentation

Start > Federal law > Classified compilation > Internal laws > 210 Swiss Civil Code of 10 December 1907

210

English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.

Additional informations

This text is in force.

Decision 10 December 1907

In force 1 January 1912



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

+210

-Introduction

Introduction

Art. 1 A. Application of the law

Art. 2 B. Scope and limits of legal relationships / I. Actin...

Art. 3 B. Scope and limits of legal relationships / II. Good...

Art. 4 B. Scope and

Art. 1 A. Application of the law

A. Application of the law

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

² In the absence of a provision, the court¹ shall decide in

Art. 1 A. Anwendung des Rechts

A. Anwendung des Rechts

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

² Kann dem Gesetz

Art. 1 A. Application de la loi

A. Application de la loi

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

² A défaut d'une disposition légale applicable, le juge prononce selon le

Art. 1 A. Applicazione del diritto

A. Applicazione del diritto

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

² Nei casi non previsti dalla legge

Art. 1 A. Applicaziun dal dretg

A. Applicaziun dal dretg

¹ 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.


² Sche la lescha na



1.1. The structure of the Swiss Civil Code

The federal Council

Contact Advanced search DE FR IT RM EN

 Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

The federal Council
The portal of the Swiss government

Federal Council	Federal Presidency	Departments	Federal Chancellery	Federal law	Documentation
-----------------	--------------------	-------------	---------------------	-------------	---------------

Start > Federal law > Classified compilation > Internal laws > 210 Swiss Civil Code of 10 December 1907

[Start](#)

210

[expand all](#) | [article overview](#) | [collapse all](#) | 

Federal law

Search

Classified compilation

English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.

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^{1,2} and having considered the Dispatch of the Federal Council dated 28 May 1904³,

decrees:

Additional informations

This text is in force.

Decision 10 December 1907

In force 1 January 1912

Tools

[Language comparison](#)

- Introduction

- Art. 1 A. Application of the law

A. Application of the law

1 ⇒

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

2 ⇒

² In the absence of a provision, the court¹ 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.

³ 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. Judicial¹ 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

¹ 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.

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

³ The court may attach conditions to the maintenance contribution.



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 ff. 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).



2. Law of Persons

-  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

¹ Every person has legal capacity.

² Accordingly, within the limits of the law, every person has the same capacity to have rights and obligations.




2.1. Natural Persons

-  **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. 13¹A.** 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. 14¹A.** Personality in general / II. Capacity to act / 2. Requirements / b. Majority

b. Majority

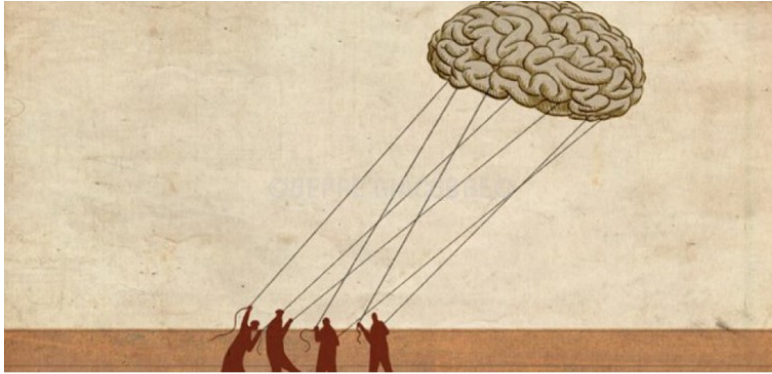
A person is of age if he or she has reached the age of 18.

-  **Art. 16¹A.** 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. 17¹A. 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**

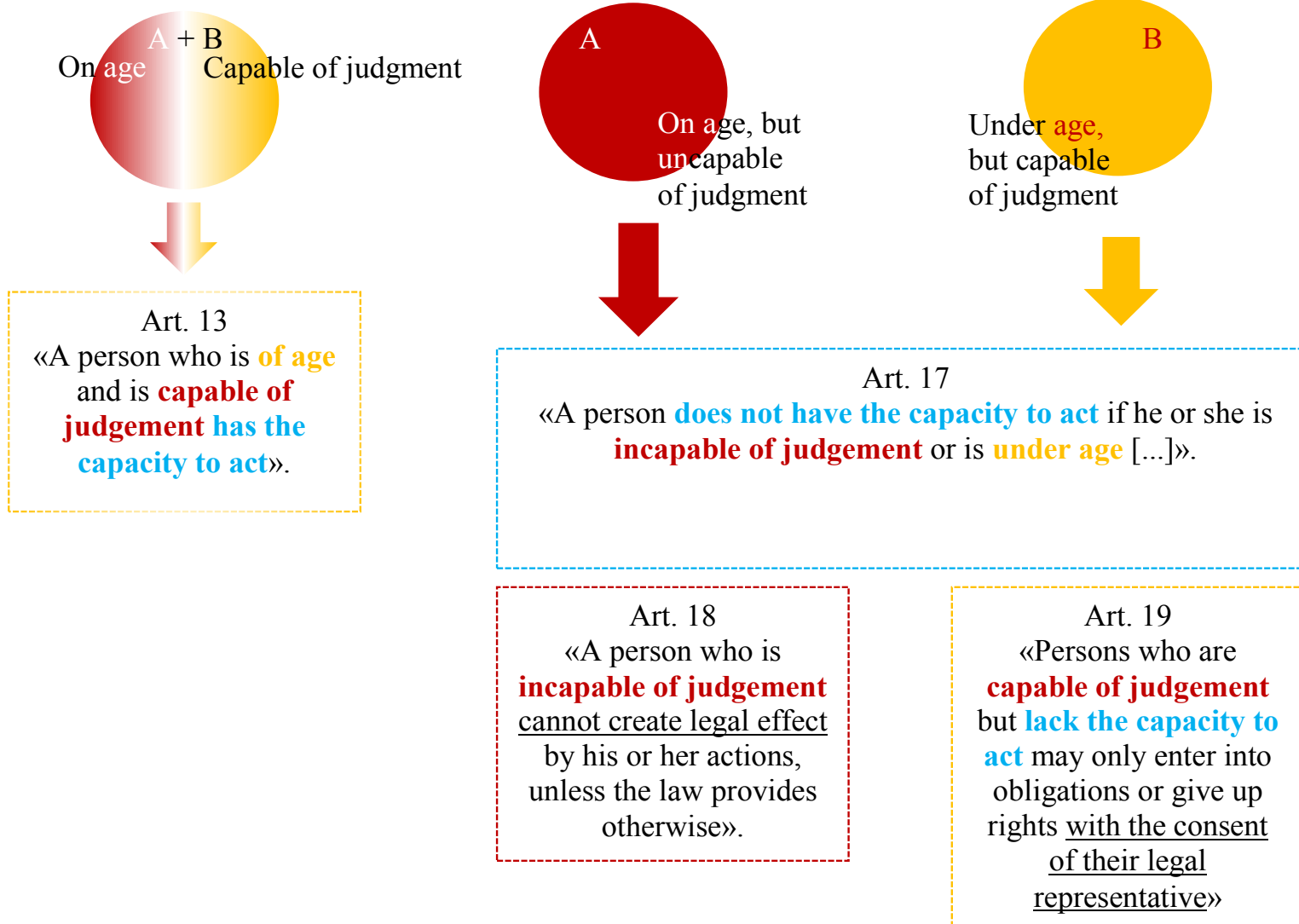
3. Persons capable of judgement but lacking the capacity to act.

a. Principle¹

¹ 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.²

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

³ They are liable in damages for unpermitted acts.



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 440; 45 II 48 et les citations; EGOER, 2^e 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



Vérossaz



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

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

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

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

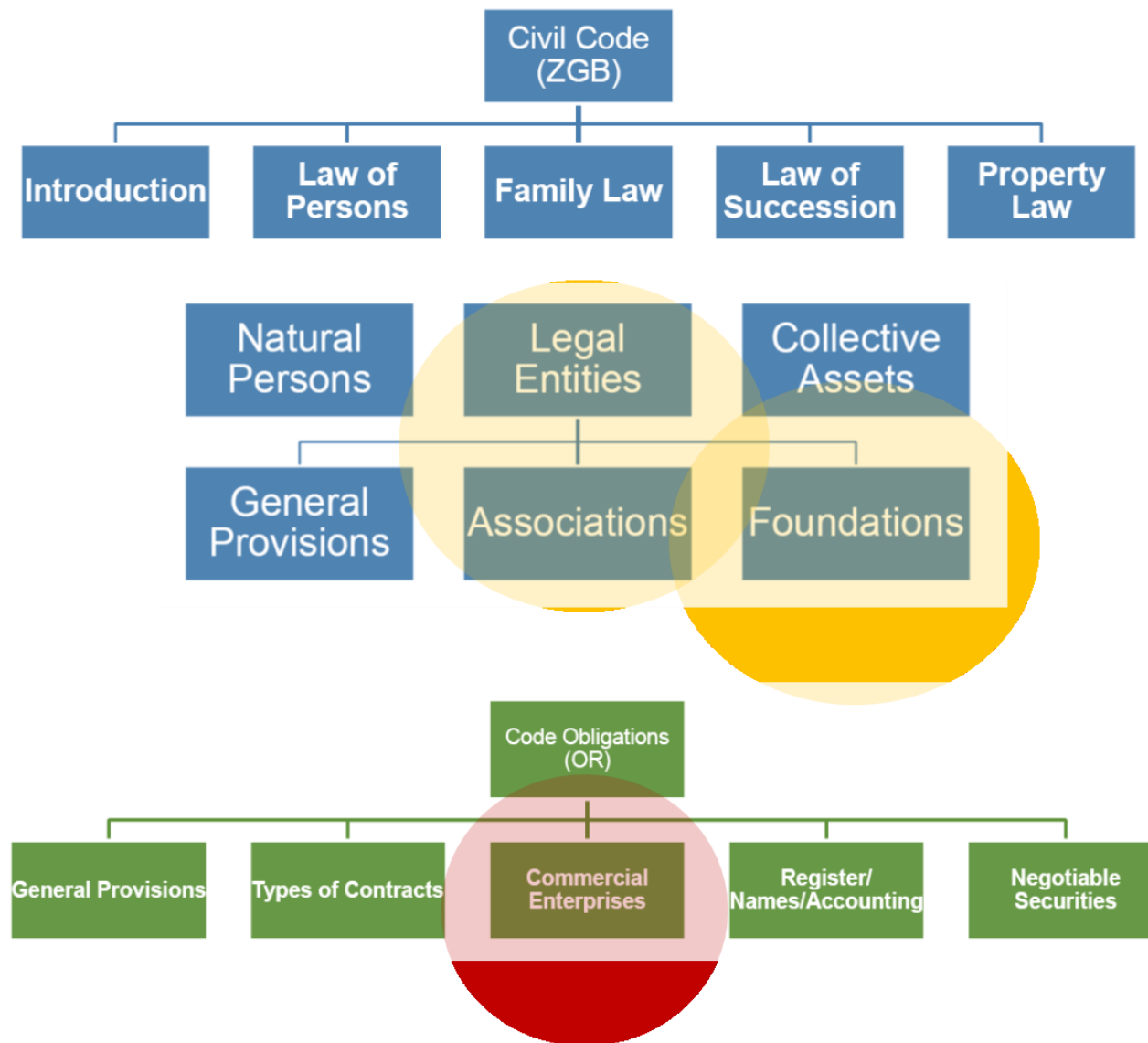
¹ Amended by No I 1 of the FA of 12 Dec. 2014 on the Implementation of the 2012 Revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

- 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.







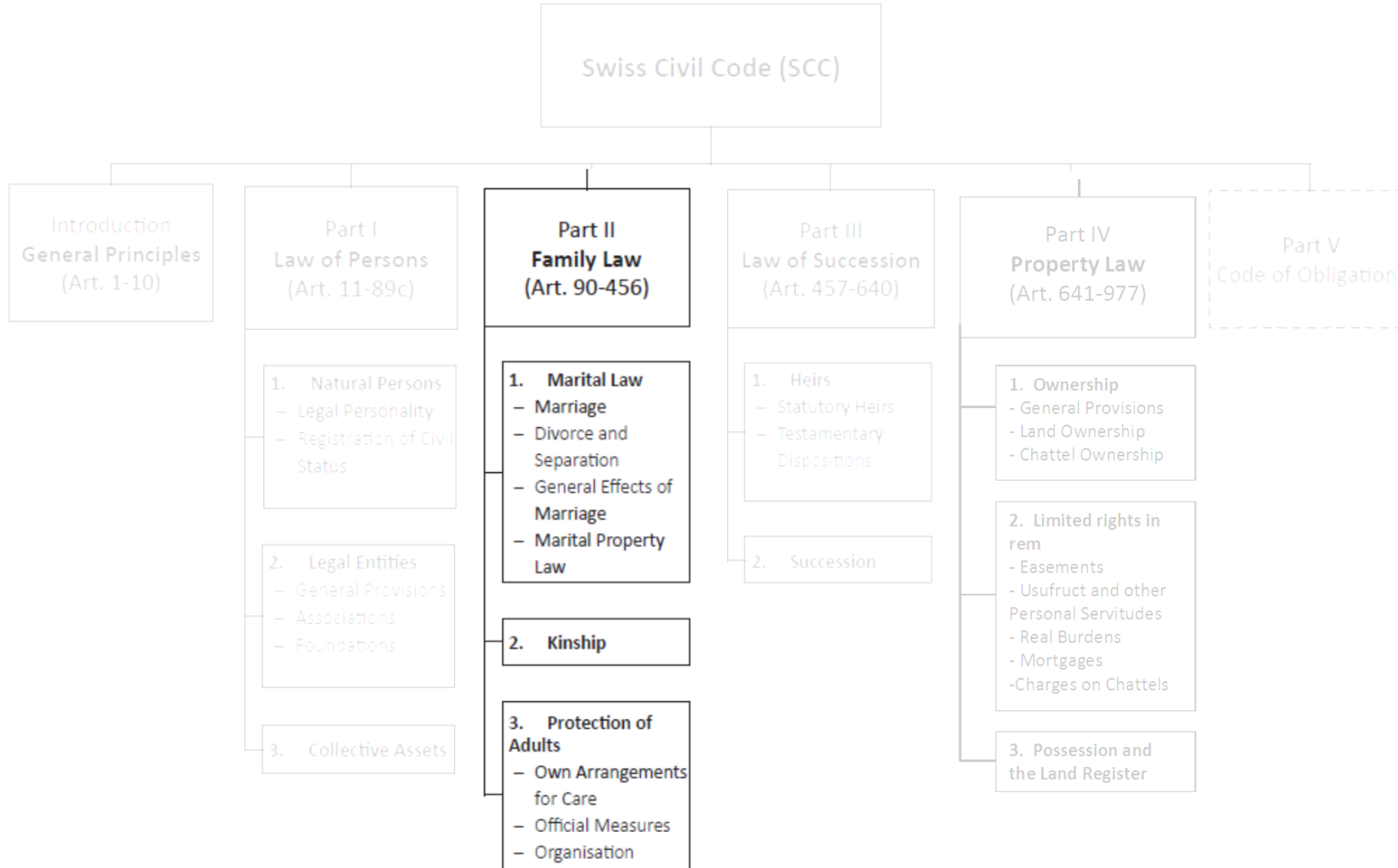
**Universität
Zürich**^{UZH}

Rechtswissenschaftliche Fakultät

3. Family Law



3.1. Part Two of SCC: Structure



- 📄 Title Five:³ General Effects of Marriage
- 📄 Art. 159 A. Marital union; rights and duties of spouses

A. Marital union; rights and duties of spouses

¹ The wedding ceremony binds the spouses in marital union.

² They mutually undertake to strive to safeguard the interests of the marital union and to care jointly for the children.

³ They owe each other loyalty and support.



-  Title Five:³ General Effects of Marriage
-  Art. 159 A. Marital union; rights and duties of spouses

A. Marital union; rights and duties of spouses

¹ The wedding ceremony binds the spouses in marital union.

² They mutually undertake to strive to safeguard the interests of the marital union and to care jointly for the children.

³ They owe each other loyalty and support.

-  **Art. 163 E.** Maintenance of the family / I. In general

E. Maintenance of the family

I. In general

¹ The spouses jointly provide for the proper maintenance of the family, each according to his or her ability.

² They agree on the contributions each of them will make, notably by providing money, looking after the household, caring for the children or supporting the other's career or business.

³ In so doing they take due account of the needs of the marital union and of their own personal circumstances.

-  **Art. 164 E.** Maintenance of the family / II. Allowance for personal use

II. Allowance for personal use

¹ A spouse who looks after the household, cares for the children or supports the career or business of the other spouse is entitled to receive from the latter a reasonable allowance for his or her own personal use.

² When determining said allowance, account must be taken of the personal resources of the receiving spouse and the need to provide conscientiously for the family, career and business.



-  Art. 166 F. Representation of the marital union

F. Representation of the marital union

1)




¹ While living together under the same roof, both spouses represent the marital union with regard to the day-to-day needs of the family.

2)

² A spouse may represent the marital union with regard to the other needs of the family only if:

1. authorised so to do by the other spouse or by court order;
2. the interests of the marital union brook no delay and the other spouse is unable to consent due to illness, absence or other similar reasons.

³ Each spouse is personally liable for his or her own actions and, to the extent that these do not exceed his or her powers of representation in a manner apparent to third parties, also renders the other spouse jointly and severally liable for such actions.

-  Title Six:⁴ Marital Property Law
-  Chapter One: General Provisions
-  Art. 181 A. Ordinary property regime

A. Ordinary property regime

Spouses are subject to the provisions governing participation in acquired property provided they have not agreed otherwise in a marital agreement and provided no extraordinary marital property regime has come into effect.

-  Art. 182 B. Marital agreement / I. Choice of regime

B. Marital agreement

I. Choice of regime

¹ A marital agreement may be concluded before or after the wedding.

² The prospective spouses or the spouses may choose, set aside or modify their marital property regime only within the limits of the law.



categories of properties

- a) the **individual property of each spouse** (e.g. personal effects used exclusively by that spouse; assets belonging to one spouse at the beginning of the marital property regime or acquired later by inheritance)
- b) the **property acquired during the marriage** (assets which a spouse has acquired for valuable consideration during the marital property regime, such as the proceeds from his or her employment, income derived from his or her own property, property acquired to replace acquired property, etc.)
- c) the **common property** (property acquired jointly by the two spouses and under joint ownership in undivided shares)



-  **Art. 205 E.** Dissolution of the property regime and liquidation / II. Taking back property and settling debts / 1. In general

II. Taking back property and settling debts

1. In general

¹ Each spouse shall take back any of his or her property that is in the other's possession.

² Where one spouse shows an overriding interest in gaining sole possession of an object or asset in co-ownership, and notwithstanding any other legal measures available, he or she may request that said object or asset be allocated to him or her in return for compensation.

³ The spouses settle their debts to each other.

-  **Art. 206 E.** Dissolution of the property regime and liquidation / II. Taking back property and settling debts / 2. Participation in increased value

2. Participation in increased value

¹ Where a spouse has contributed to the acquisition, improvement or preservation of an asset belonging to the other without receiving equivalent compensation, and where at the time of the liquidation that asset has increased in value, then his or her claim corresponds to his or her proportionate contribution and is calculated according to the current value of the asset; if, conversely, the asset has decreased in value, his or her claim corresponds to the original contribution.

² If such an asset had already been alienated beforehand, the claim is calculated according to the proceeds obtained and is due immediately.

³ By written agreement, spouses may exclude participation in the increased value or vary the proportion thereof.



-  **Chapter Four: Separation of Property**
-  **Art. 247 A. Management, benefits and power of disposal / I. In general**

A. Management, benefits and power of disposal

I. In general

Within the limits of the law, each spouse shall administer and enjoy the benefits of his or her own property and has power of disposal over it.

-  **Art. 248 A. Management, benefits and power of disposal / II. Proof**

II. Proof

¹ Any person who asserts that a specific object or asset is owned by one or other spouse bears the burden of proof.

² If no such proof may be adduced, there is a presumption of co-ownership.



- Chapter Three: Community of Property
- Art. 221 A. Ownership / I. Categories

A. Ownership

I. Categories

The marital property regime of community of property comprises the common property and the individual property of each spouse.

- Art. 222 A. Ownership / II. Common property / 1. General community of property

II. Common property

1. General community of property

¹ The general community of property combines the assets and income of the spouses into common property, with the exception of those assets which by law constitute individual property.

² The common property belongs to both spouses jointly.

³ Neither spouse is entitled to dispose of his or her share of the common property.

- Art. 223 A. Ownership / II. Common property / 2. Limited community of property / a. Community restricted to acquired property

2. Limited community of property

a. Community restricted to acquired property

¹ By marital agreement, the spouses may restrict community of property to the property acquired during marriage.

² Revenue from individual property becomes common property.