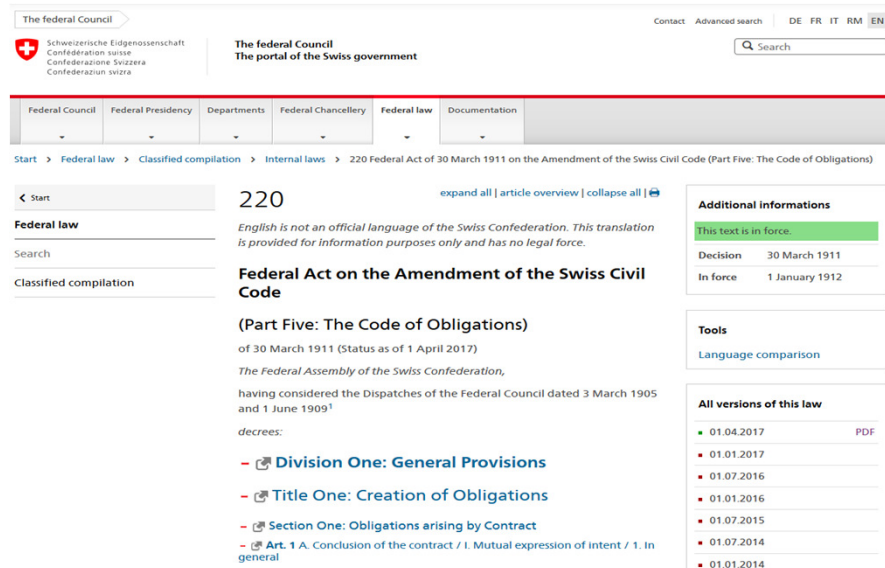


# Introduction to Swiss Law

## Block 2: Private Law

### Law of Obligations



The screenshot displays the official website of the Swiss Federal Council. The header includes the Swiss flag and the text "The federal Council" in multiple languages. A navigation menu is visible, with "Federal law" selected. The main content area shows the title "220" and the text "English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force." Below this, the title "Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations)" is displayed, along with the date "of 30 March 1911 (Status as of 1 April 2017)". The text continues with "The Federal Assembly of the Swiss Confederation, having considered the Dispatches of the Federal Council dated 3 March 1905 and 1 June 1909<sup>1</sup> decrees:" followed by a list of sections: "Division One: General Provisions", "Title One: Creation of Obligations", and "Section One: Obligations arising by Contract". The final item is "Art. 1 A. Conclusion of the contract / 1. Mutual expression of intent / 1. In general". On the right side, there are sections for "Additional informations" (indicating the text is in force), "Tools" (Language comparison), and "All versions of this law" (listing various dates from 2014 to 2017).

Friday, September 28<sup>th</sup> 2018, KOL-G-221  
Dr. Tina Huber-Purtschert, attorney at Law  
tina.huber-purtschert@uzh.ch

# Introduction to Swiss Law

## Overview



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- I. Objectives
- II. Literature
- III. Translations
- IV. Useful Links
- V. Code of Obligations: Structure
- VI. Swiss Contract Law
- VII. Swiss Company Law
- VIII. Did we meet the Objectives?

# Introduction to Swiss Law

## Objectives



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being able to **find** the **law text** and secondary **literature**

getting to **know** the **structure** and **functioning** of the Swiss code of obligations

being able to **enumerate** general **principles** of swiss contract and company law and being able to **find** the **respective provisions** in the law text

starting **reflexions** about the **similarities** and **differences** to the jurisdiction of the respective „**home country**“

# Introduction to Swiss Law

## Literature



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## Law of Obligations

- HUBER-PURTSCHERT TINA, Law of Obligations, in: Marc Thommen (ed.), Introduction to Swiss Law, Berlin/Berne 2018, pp. 305

## Contract and Tort Law

- BUCHER EUGEN, The Law of Contracts (Chapter 8), in: François Dessemontet and Tuğrul Ansay (eds.), Introduction to Swiss Law, 3<sup>rd</sup> ed., The Hague 2004, pp. 107.
- TERCIER PIERRE / DREYER DOMINIQUE, Torts (Chapter 9), in: François Dessemontet and Tuğrul Ansay (eds.), Introduction to Swiss Law, 3<sup>rd</sup> ed., The Hague 2004, pp. 145.

## Company Law

- HANDSCHIN LUKAS, Swiss Company Law, 2nd ed., Zurich/St. Gall 2015.
- LENGAUER DANIEL/SCHAAD MARTIN/AMSTUTZ THERESE (eds.), Company Law in Switzerland, Zurich/Basel/Geneva 2009.
- DÖRIG ADRIAN, Switzerland, in: Frank Dornseifer (ed.), Corporate Business Forms in Europe, A Compendium of Public and Private Limited Companies in Europe, Berne 2005, pp. 809.
- DESSEMONTET, FRANÇOIS, Corporations and Partnerships (I. of Chapter 10), in: François Dessemontet and Tuğrul Ansay (eds.), Introduction to Swiss Law, 3<sup>rd</sup> ed., The Hague 2004, pp. 165.

# Introduction to Swiss Law

## Translations



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### English Translations of the Swiss Code of Obligations

- <http://www.admin.ch/ch/e/rs/2/220.en.pdf>.
- Federal Office of Justice (ed.): Swiss law (Civil Code, Code of Obligations, Private International Law: Arbitration), Berne 2012.
- Swiss-American Chamber of Commerce (ed.): Swiss Code of Obligations I, Contract Law (Articles 1-551), 6<sup>th</sup> ed., Zurich 2011.
- Swiss-American Chamber of Commerce (ed.): Swiss Code of Obligations II, Company Law (Articles 552-964), 5<sup>th</sup> ed., Zurich 2010.

### **An English version of each article of the code of obligations can also be found in:**

- Amstutz Marc et al (eds.): Handkommentar zum Schweizer Privatrecht, 3<sup>rd</sup> ed., 10 volumes, Zurich/Basel/Geneva 2016.

# Introduction to Swiss Law

## Useful Links



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### **Federal Acts and Ordinances:**

*[www.admin.ch/bundesrecht](http://www.admin.ch/bundesrecht) or [www.bundesrecht.admin.ch](http://www.bundesrecht.admin.ch) (choose EN)*

### **The Jurisdiction of the Swiss Federal Tribunal:**

*[www.bger.ch](http://www.bger.ch)*

### **Federal and Cantonal Jurisdiction, Literature (especially Law Journals and Commentaries):**

*[www.swisslex.ch](http://www.swisslex.ch); [www.legalis.ch](http://www.legalis.ch)*

# Introduction to Swiss Law

Code of Obligations: Structure (I/II)



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## The Swiss Code of Obligations

- federal act on the amendment of the Swiss Civil Code (part five: Code of Obligations)
- No. 220 (classified compilation of federal legislation)
- in force since January 1<sup>th</sup>, 1912

Contract and Tort Law		Company Law (including Law on Securities)		
<b>Division One</b> General Provisions (arts. 1-183 CO)	<b>Division Two</b> Types of Contractual Relationship (arts. 184-551 CO)	<b>Division Three</b> Commercial Enterprises and the Cooperative (arts. 552-926 CO)	<b>Division Four</b> The Commercial Register, Business Names and Commercial Accounting (arts. 927-964 CO)	<b>Division Five</b> Negotiable Securities (arts. 965-1186 CO)

# Introduction to Swiss Law

Code of Obligations: Structure (II/II)



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Other federal acts (ordinances) beside the Swiss Code of Obligations (selection):

## Contract and Tort Law

- Convention of International Sale of Goods (No. 0.221.211.1), «CISG»
- Consumer Credits Act (No. 221.214.1)
- Product Liability Act (No. 221.112.944)
- Package Travel Act (No. 944.3)

## Company Law

- Merger Act (No. 221.301)
- Ordinance on the Commercial Register (No. 221.411)
- Fair Trade Act (No. 241)
- Cartel Act (No. 251)
- Banking Act (No. 952.0)
- Stock Exchange Act (No. 954.1)
- Collective Investment Schemes Act (No. 951.31)



# Swiss Contract and Tort Law

## Overview



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## Principles

- a) Conclusion of a contract
- b) Interpretation of a contract
- c) Defects in the conclusion of a contract
- d) Defects in consent
- e) Unfair advantage
- f) Claims according to the general provisions of the CO
- g) Quasi-contractual claims
- h) Time limits
- i) Types of contractual relationship
- j) Innominate contracts

# Swiss Contract and Tort Law

## Principles



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## Freedom of contract

Freedom...

- to **conclude** or not conclude a contract
- to **choose the contractual partner**
- to establish the contracts **content**
- of **formality**
- to **terminate** or **alter** a contract

# Swiss Contract and Tort Law

## a) Conclusion of a contract (I/II)



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### Conclusion of the contract, art. 1 CO

«<sup>1</sup>The conclusion of a contract requires a mutual expression of intent by the parties.»

«<sup>2</sup>The expression of intent may be express or implied.»

#### Consensus

- parties must consent in every basic point of the contract (**essentialia negotii**)
- less important points may be left open



e.g. contract of sales, art. 185 CO:

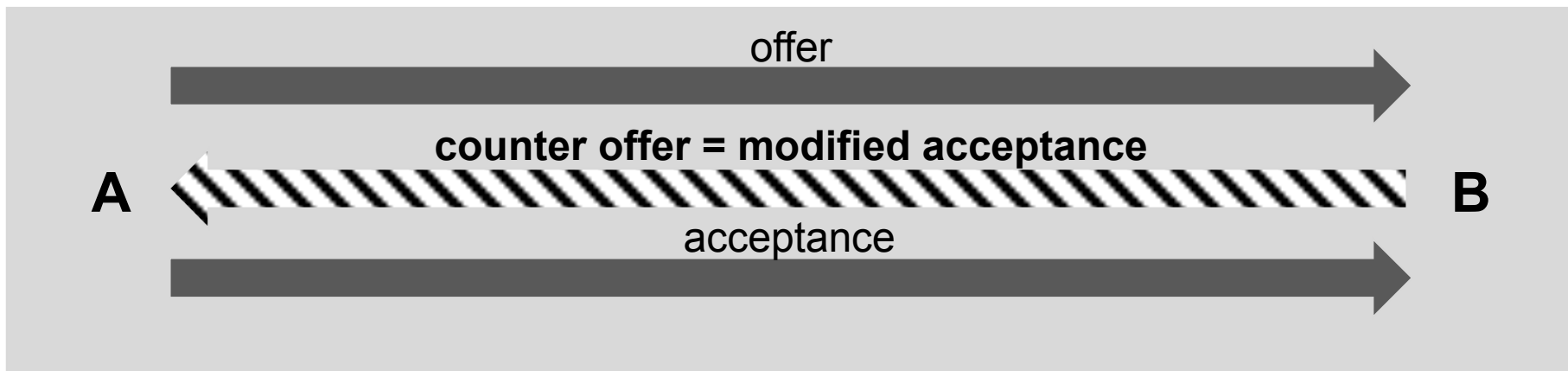
- Basic points that have to be determined: the **price of the good** and the **good itself**.
- Less important points may be e.g.: the place or the time of fulfillment of the contract

# Swiss Contract and Tort Law

## a) Conclusion of a contract (II/II)



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# Swiss Contract and Tort Law

## b) Interpretation of a contract



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### Principle of will: Subjective Interpretation → natural consensus

«<sup>1</sup>[...] the **true and common intention of the parties** must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement.» art. 18 para. 1 CO

### Principle of good faith: Objective Interpretation → normative consensus

**Acting in good faith,**  
art. 2 CC (Civil Code)

«<sup>1</sup> Every person must act in good faith in the exercise of his or her rights and in the performance of his or her obligations.»

A declaration of intention is understood the way the other party of the contract could and did in good faith understand it.

# Swiss Contract and Tort Law

## c) Defects in the conclusion of a contract



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### impossibility

art. 20 para. 1 CO

### unlawfulness, immorality

art. 20 para. 1 CO

### non-respect of the required form

art. 11 CO

#### Nullity, art. 20 CO

«<sup>1</sup> A contract is **void** if its terms are impossible, unlawful or immoral.»

«<sup>2</sup> However, where the defect pertains only to certain terms of a contract, those terms alone are void unless there is cause to assume that the contract would not have been concluded without them.»

#### Formal requirements and significance in general, art. 11 CO

«<sup>1</sup> The **validity** of a contract is not subject to compliance with any particular form unless a particular form is prescribed by law.»

«<sup>2</sup> In the absence of any provision to the contrary on the significance and effect of formal requirements prescribed by law, the contract is valid only if such requirements are satisfied.»

# Swiss Contract and Tort Law

## d) Defects in consent (I/II)



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### Error

arts. 23 et seqq. CO

#### art. 23 CO, error

«A party labouring under **fundamental error** when entering into a contract is not bound by that contract.»

#### art. 24 CO, cases of mistake

«<sup>1</sup> An **error is fundamental** in the following cases in particular:

1. where the party acting in error intended to conclude a contract different from that to which he consented;

2.-3. ...

4. where the error relates to specific facts which the party acting in error considered in good faith to be a necessary basis for the contract.

<sup>2</sup>...

<sup>3</sup>...»

### Fraud

art. 28 CO

#### art. 28 CO, fraud

«<sup>1</sup> A party induced to enter into a contract **by the fraud of the other party** is not bound by it even if his error is not fundamental.»

### Duress

arts. 29 et seq. CO

#### art. 29 CO, consent to contract

«<sup>1</sup> Where a party has entered into a contract **under duress** from the other party or a third party, he is not bound by that contract.»

#### art. 30 CO, definition of duress

«<sup>1</sup> A party **is under duress** if, in the circumstances, he has good cause to believe that there is imminent and substantial risk to his own life, limb, reputation or property or to those of a person close to him.

<sup>2</sup>...»

# Swiss Contract and Tort Law

## d) Defects in consent (I/III)



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Effect of an error, fraud or duress:

### Defect of consent negated by ratification of the contract, art. 31 CO

«<sup>1</sup> Where the **party acting under error, fraud or duress** neither **declares** to the other party that he intends not to honour the contract nor seeks restitution for the performance made **within one year**, the contract is deemed to have been ratified.»

«<sup>2</sup> The one-year **period runs** from the time that the error or the fraud **was discovered** or from the time that the duress **ended**.»

«<sup>3</sup> ...»



# Swiss Contract and Tort Law

## e) Unfair advantage



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## Unfair advantage

art. 21 CO

### art. 21 CO, unfair advantage

«<sup>1</sup> Where there is a **clear discrepancy** between **performance** and **consideration** under a contract concluded as a result of **one party's exploitation** of the other's straitened circumstances, inexperience or thoughtlessness, the injured party may **declare within one year** that he will **not honour** the contract and **demand restitution** of any performance already made.

<sup>2</sup> The one-year period runs from the time that the error or the fraud was discovered or from the time that the duress ended.

<sup>3</sup> ...»

# Swiss Contract and Tort Law

## Discussion



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**Have a «mini-conference» (5') with your neighbour and find examples for:**

- **null/void contracts**
- **voidable contracts**



# Swiss Contract and Tort Law



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f) Claims according to the general provisions of the CO (I/II)



1. Contractual claims: breach of contract

2. Unjust enrichment

3. Obligations in tort

# Swiss Contract and Tort Law



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f) Claims according to the general provisions of the CO (II/VII)



## Breach of contract:

non-performance

defective performance

default of performance

**Obligor's duty to compensate – in general,  
art. 97 CO**

*«<sup>1</sup> An obligor who fails to discharge an obligation  
**at all or as required** must make amends for the  
resulting loss or damage unless he can prove  
that he was not at fault.»*

# Swiss Contract and Tort Law



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f) Claims according to the general provisions of the CO (III/VII)



## Prerequisites for a liability after art. 97 CO:

- damage
- breach of the contract
- causality between the damage and the breach
- misconduct attributable to the obligor (assumed)

# Swiss Contract and Tort Law



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f) Claims according to the general provisions of the CO (IV/VII)



**Default of obligor** (arts. 102 et seqq. CO)

## Requirement, art. 102 CO

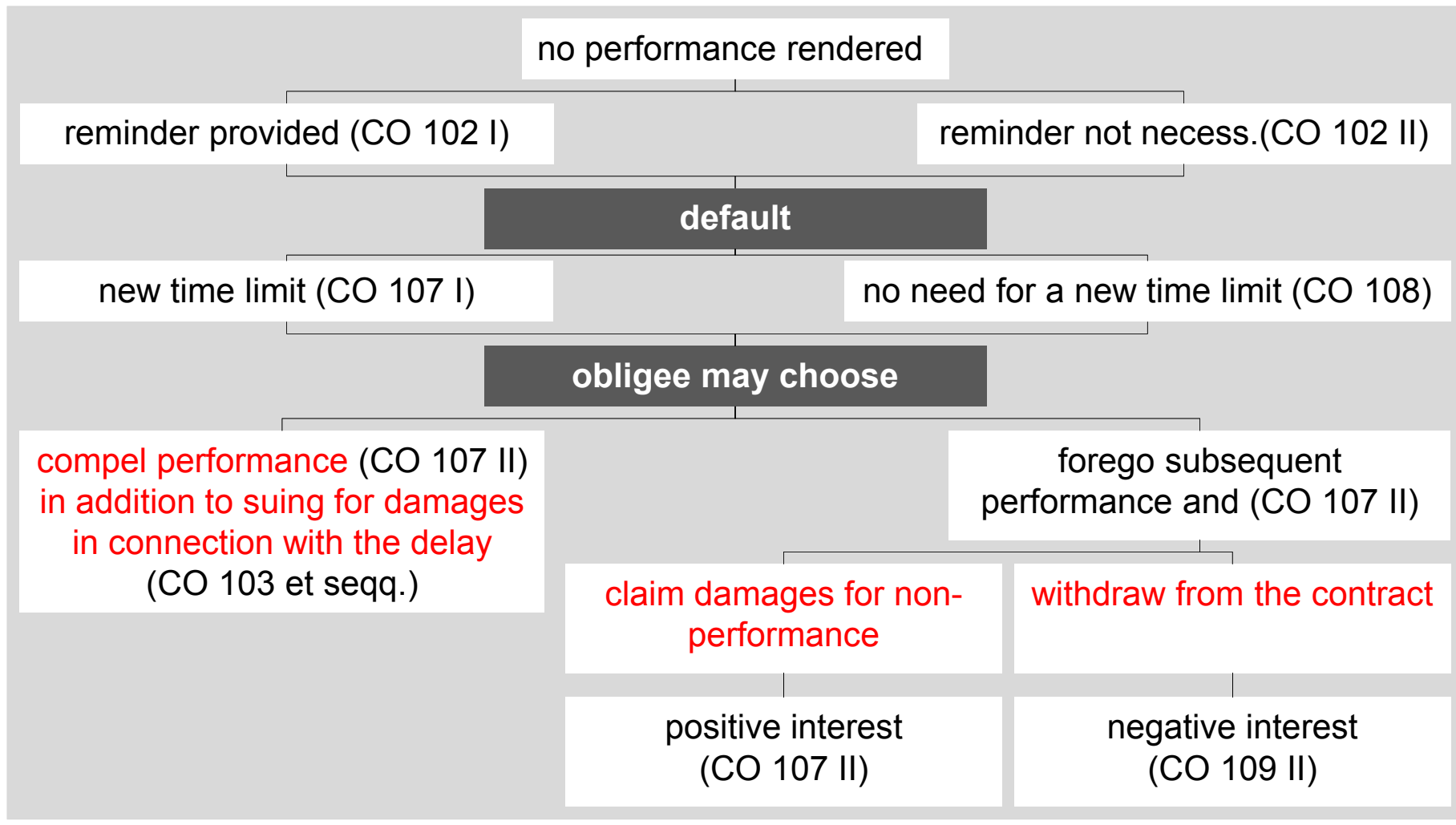
«<sup>1</sup> Where an obligation **is due**, the obligor is **in default** as soon as he receives a **formal reminder** from the obligee.»

«<sup>2</sup> Where a **deadline for performance** of the obligation **has been set by agreement** or as a result of a duly exercised right of termination reserved by one party, the obligor **is automatically in default** on expiry of the deadline.»

# Swiss Contract and Tort Law



f) Claims according to the general provisions of the CO (v/vII)



# Swiss Contract and Tort Law

## Discussion



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### Friday, October 21<sup>th</sup> 2018 – Maria's wedding:

- **Wedding dress** ordered, agreement that dress will be finished 3 weeks before wedding day, dressmaker has not even started, other dressmaker can tailor one in a hurry, which costs 1/3 more than the originally ordered one.
- Ordered a **new car** quite some time ago, it did not arrive yet, but the couple wants to go on the honeymoon with it.
- Maria ordered **white almonds** («confetti»). Her intention was to decorate the wedding table with them. The almonds did not arrive. The couple decides that the flower decoration will be so abundant, that they are not needed any more.

Today (Friday, 28<sup>th</sup> September) we are three weeks before the wedding.

**How should Maria proceed? Discuss with your neighbour. (10')**



# Swiss Contract and Tort Law



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f) Claims according to the general provisions of the CO (VI/VII)



## Unjust enrichment:

arts. 62-67 CO

Requirement – in general, art. 62 CO

«<sup>1</sup> A person who has **enriched himself without just cause** at the expense of another is **obliged to make restitution.**»

Prerequisites  
for a restitution  
according to  
art. 62 CO

- enrichment of a person
- (loss of property/assets of another person)
- no justification for the enrichment

# Swiss Contract and Tort Law



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f) Claims according to the general provisions of the CO (VII/VI)



## Obligations in tort:

arts. 41-61 CO

**General principles – conditions of liability, art. 41 CO**

«<sup>1</sup> A person who **unlawfully causes loss or damage** to another, whether **willfully or negligently**, is obliged to provide compensation.»

Prerequisites  
for a valid claim  
according to  
art. 41 CO

- damage
- illegality
- causality between the damage and the illegality
- misconduct attributable to the defendant

# Swiss Contract and Tort Law

## g) Quasi-contractual claims (I/II)



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### Quasi-contractual claims

- parties interact in a **contractual context** but act **without a contract**
- (at least partial) application of contractual provisions leads to a more appropriate result than application of non-contractual ones
- CO provides **only a few** quasi-contractual claims, e.g. art. 26 para. 1 CO
- Court-practice and doctrine widened the category of quasi-contractual claims
  - Liability after inspired confidence based on trust
  - Liability for the fault in concluding a contract (culpa on contrahendo = c.i.c)

# Swiss Contract and Tort Law

## g) Quasi-contractual claims (II/II)



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### Landmark Case: Swissair-Case (BGE 120 II 331)

#### Liability after inspired confidence based on trust introduced

- Claimant concluded a contract with a subsidiary company of the Swissair Group concerning membership rights to use luxurious residences near golf courses and paid CHF 90'000.
- Project came to nothing, subsidiary company went bankrupt
- Claimant had no contractual claim nor obligation in tort against Swissair
- Federal Supreme Court recognised liability after inspired confidence based on trust of Swissair since
  - the subsidiary company **emphasized in publicity heavily its affiliation to the Swissair group** and the latter's approval of the project
  - Swissair group had **tolerated the behaviour**

# Swiss Contract and Tort Law

## f) Time limits (I/II)



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### All claims become time-barred

#### Contract law

art. 127 CO

after **ten years** unless otherwise provided by federal civil law.

art. 128 CO

after **five years**:

- **rent**, interest on capital, other periodic payments
- claims in connection with delivery of food, lodging, hotel
- claims in connection with work of trades-/craftsmen, medical treatments, legal representatives, notaries, **work of employees**

art. 131 CO

Limitation period is counted from the moment debt becomes due

# Swiss Contract and Tort Law

## f) Time limits (II/II)



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<b>obligations in tort</b>	art. 60 CO	<b>one year</b> from the date on which the injured party became aware of the loss/damage and of the identity of the person liable; in any event <b>ten years</b> after the date on which the loss/damage was caused
<b>unjust enrichment</b>	art. 67 CO	<b>one year</b> after the date on which the injured party learned of his claim and in any event <b>ten years</b> after the date on which the claim first arose
<b>new</b>	arts. 60, 67 CO	<b>three years</b> (relative time limit)
<b>(referendum deadline: 4/10/18, in force?)</b>	arts. 60, 128 CO	<b>twenty years</b> (absolute time limit) when killing or bodily injury of a human

# Swiss Contract and Tort Law

## i) Types of contractual relationship (I/VII)



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### Nominate contracts (codified contracts)

- **sale** and exchange (arts. 184-238 CO)
- gifts (arts. 239-252 CO)
- **lease** and **usufructuary lease** (arts. 253-304 CO)
- loan (arts. 305-318 CO)
- **employment contracts** (arts. 319-362 CO)
- **contract for work and services** (arts. 363-379 CO)
- publishing contract (arts. 380-393 CO)
- **agency contracts** (arts. 394-418 CO)
- agency without authority (arts. 419-424 CO)
- commission contract (arts. 425-439 CO)
- contract of carriage (arts. 440-457 CO)
- payment instruction (arts. 466-471 CO)
- contract of bailment (arts. 472-491)
- contract of surety (arts. 492-512 CO)
- gambling and betting (arts. 513-515 CO)
- life annuity contract and lifetime maintenance agreement (arts. 516-529 CO)

# Swiss Contract and Tort Law

i) Types of contractual relationship (II/VII)



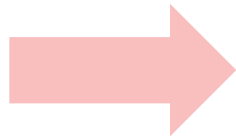
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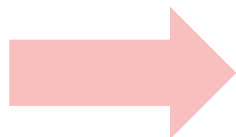
## Nominate contracts

### Secondary terms, art. 2 CO

«<sup>1</sup> Where the parties have agreed **on all essential terms**, it is presumed that the contract will be binding [...].»



characterized by **standard principal obligations** of the contractual parties («standard» essentialia negotii)



**every type of contract has his own «specialities»**,  
(depending also on the fact, how much protection is needed in the eyes of legislation for the «weaker» party)



# Swiss Contract and Tort Law

i) Types of contractual relationship (III/VII)



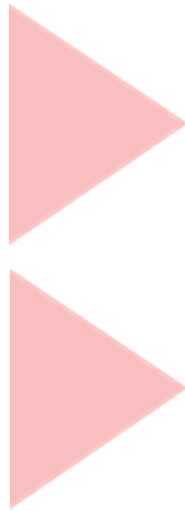
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## Nominate contracts

### Sale, art. 184 CO

- Seller:  
«***deliver the item sold and transfer ownership***»
- Buyer:  
«***payment of the sale price***»



**Chattel sale,**  
arts. 187-215 CO

**Sale of immovable property,**  
art. 216-221 CO

# Swiss Contract and Tort Law

i) Types of contractual relationship (V/VII)



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## Nominate contracts

**Lease,**  
arts. 253-273c CO

- landlord or lessor:  
granting «*a tenant or lessee the use of an object*»
- tenant or lessee:  
payment of a **rent**

**Usufructuary lease,**  
arts. 275-304 CO

- lessor:  
granting a «*lessee the use of a productive object or right and the benefit of its fruits or proceeds*»
- lessee:  
payment of a **rent**

# Swiss Contract and Tort Law



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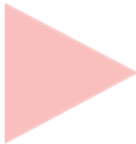


i) Types of contractual relationship (VI/VII)

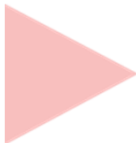
## Nominate contracts

### individual employment contract, art. 319 CO

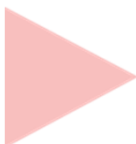
- employee:  
«*work in the service of the employer for a limited or unlimited period*»
- employer:  
payment of «*a **salary based on the amount of worked time (time wage) or the tasks performed (piece work)***»



apprenticeship contract  
(arts. 344-346a CO)



commercial traveller's contract  
(arts. 347-350a CO)



homeworker's contract  
(arts. 351-354 CO)

- collective employment contract  
(arts. 356-358 CO)
- standard employment contract  
(arts. 359-360f CO)

# Swiss Contract and Tort Law

i) Types of contractual relationship (VII/VII)



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## Nominate contracts

### contract for work and services, art. 363 CO

- contractor:  
«*carry out a work*»
- customer:  
**payment** for the work

### simple agency contract, art. 394 CO

- agent:  
**conduct a business or provide a service**
- principal:  
paying a remuneration if agreed or customary

### art. 404 para. 1 CO

«*The agency contract may be **revoked** or **terminated at any time** by either party.*»

# Swiss Contract and Tort Law

## j) Innominate contracts



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### Innominate contracts (non-codified contracts)

Principle of freedom of contract → parties can conclude contracts, that do not follow characteristics of a nominate (= codified) contract

Examples:

- «leasing» contract (which is not the same as a lease contract!)
- exclusive distribution contract
- licence contract

Handling:

- **General provisions** of the CO apply
- Legal practice and doctrine regulate where **provisions of the nominate contracts** are to be applied **directly** or **analogously**

# Swiss Contract and Tort Law

## Discussion



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Think about the jurisdiction of your own country.

- Where do you see the main difference in contract law to Switzerland?
- Are there any questions regarding swiss contract law?

**Discuss with your neighbour. (5')**

# Introduction to Swiss Law

## Code of Obligations: Structure



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## The Swiss Code of Obligations

- federal act on the amendment of the Swiss Civil Code (part five: Code of Obligations)
- No. 220 (classified compilation of federal legislation)
- in force since January 1<sup>th</sup>, 1912

Contract and Tort Law		Company Law (including Law on Securities)		
<b>Division One</b> General Provisions (arts. 1-183 CO)	<b>Division Two</b> Types of Contractual Relationship (arts. 184-551 CO)	<b>Division Three</b> Commercial Enterprises and the Cooperative (arts. 552-926 CO)	<b>Division Four</b> The Commercial Register, Business Names and Commercial Accounting (arts. 927-964 CO)	<b>Division Five</b> Negotiable Securities (arts. 965-1186 CO)

# Swiss Company Law

## Overview



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## Principles

- a) Company forms
- b) Sole proprietorship
- c) Company limited by shares
- d) Limited liability company



# Swiss Company Law

## a) Company forms (I/VI)

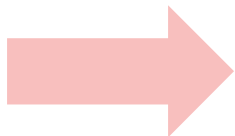


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### Closed number of company forms

- Swiss Company Law does **not provide freedom to create** any kind of company with its own provisions
- People are bound to choose from the types the law is offering
- Most types of business associations are regulated in the CO



Which type to choose depends on the intentions and interests of the people creating the company

# Swiss Company Law

## a) Company forms (II/VI)



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### sole Proprietorship

„one-man business“  
without separate legal personality



- non-registered
- registered (art. 934 CO, art. 36 Ordinance on the commercial register)

### Partnerships

association of persons  
without separate legal personality

### Corporations

legal entity  
with separate legal personality

### Legal entities outside of the CO

legal entity  
with separate legal personality

# Swiss Company Law

## a) Company forms (III/VI)



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### **sole Proprietorship**

„one-man business“  
without separate legal personality

### **Partnerships**

association of persons  
without separate legal personality

### **Corporations**

legal entity  
with separate legal personality

Legal entities outside of the CO

legal entity  
with separate legal personality

### **simple Partnership,**

arts. 530-551 CO

### **general Partnership,**

arts. 552-593 CO

### **limited Partnership,**

arts. 594-619 CO

# Swiss Company Law

## a) Company forms (IV/VI)



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### **sole Proprietorship**

„one-man business“  
without separate legal personality

### **Partnerships**

association of persons  
without separate legal personality

### **Corporations**

legal entity  
with separate legal personality

Legal entities outside of the CO

legal entity  
with separate legal personality

**Company Limited by Shares,**  
arts. 620-763 CO

Partnership Limited by Shares,  
arts. 764-771 CO

**Limited Liability Company,**  
arts 772-827 CO

Cooperative,  
arts. 828-926 CO

# Swiss Company Law

## a) Company forms (V/VI)



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### **sole Proprietorship**

„one-man business“

### **Partnerships**

association of persons without  
separate legal existence

### **Corporations**

legal entities

Legal entities outside of the CO

Legal entity  
with separate legal personality



**Association, arts. 60-79 CC**

**Foundation, arts. 80-89a CC**

Collective Investment Schemes Act  
(CISA) with inter alia the  
**investment company with variable  
capital (SICAV)**

# Swiss Company Law

## a) Company forms (VI/VI)



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Number of private businesses registered in the commercial register	01.01.2018
Sole proprietorship	158'758
General partnership	11'415
Limited partnership	1'616
Company limited by shares	215'194
Limited liability company	188'428
Cooperative	8'683
Association	9'117
Foundation	17'141

# Swiss Company Law

## b) Sole proprietorship (I/II)



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### Sole proprietorship

#### Creation

- automatically, when a natural person starts own commercial activity under his/her own name and own responsibility
- if turnover p.a. amounts up to at least CHF 100'000, must be registered in the commercial register, below that level it is optional (entry only declaratory)

#### Liability

as a sole proprietor, the founder is fully, personally liable for the liabilities of the business

#### Company name

must contain the family name of the sole proprietor

#### Employment

Founder is self-employed by working under his/her own name and at his/her own expenses, autonomously, at own risk

# Swiss Company Law

## b) Sole proprietorship (II/II)



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## Sole proprietorship

### Applicability:

- to embark upon first commercial activities
- where commercial activities are small
- generally for „one-man-show“ with max. a few employees
- budget is insufficient to set up a corporation

### Legal basis:

- art. 934 CO (provision concerning registration in the commercial register)
- art. 936a CO (business identification number)
- arts. 945 et seq. CO (business name)
- arts. 36-39 ordinance on the commercial register
- tax law

→ regulation is very basic



# Swiss Company Law

## c) Company limited by shares (I/III)



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### Company limited by shares (Ltd)

#### Creation

- when founding members declare by public deed that they are forming a Ltd, lay down articles of association therein and appoint governing bodies
- acquires legal personality upon being entered into comm. reg.
- share capital must amount to at least CHF 100'000

#### Liability

- shareholders are not personally liable for the debts of the company
- the company's liability is limited to its assets

#### Company name

can be freely chosen by respecting the general principles on the composition of business names and must indicate the legal form (Ltd) in a national language (German: AG; French/Italian: SA)

# Swiss Company Law

c) Company limited by shares (II/III)



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## Company limited by shares (Ltd)

### Governing bodies

- general meeting  
supreme governing body of the company
- board of directors  
leads the company, role can be delegated to individual members of the board or third parties (directors)
- external auditors  
by law, required intensity of the audit depends on the size of the company

### Duties of a shareholder

- shareholders may not be required to contribute more than the amount fixed for subscription of a share on issue
- if more duties intended: shareholders must regulate them by a separate contract (shareholders' agreement)

# Swiss Company Law

c) Company limited by shares (III/III)



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## Company limited by shares (Ltd)

### Applicability:

- commercial activities with a broader impact
- intention to employ people
- existence and operation of the company should not depend on the people owning it
- looking for limitation of the liability for the owners of the company
- budget sufficient to set up a company limited by shares

### Legal basis:

- arts. 620-763 CO
- art. 936a CO (business identification number)
- arts. 950 et seq. CO (business name)
- arts. 43-70 ordinance on the commercial register
- tax law

→ **most intensively regulated business association!**

# Swiss Company Law

## d) Limited liability company (I/III)



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### Limited liability company (Ltd liab. Co)

#### Creation

- when founding members declare by public deed that they are founding a Ltd liab. Co, lay down articles of association therein and appoint management bodies
- acquires legal personality upon being entered into comm. reg.
- Nominal capital must amount to at least CHF 20'000

#### Liability

- members are not personally liable for the liabilities of the company
- the company's liability is limited to its assets

#### Company name

can be freely chosen by respecting the general principles on the composition of business names and has to indicate the legal form (Ltd liab. Co) in a national language (German: GmbH; French: S.á.r.l.; Italian: S.a.g.l.)

# Swiss Company Law

## d) Limited liability company (II/III)



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### Limited liability company (Ltd liab. Co)

#### Governing bodies

- members' general meeting  
supreme governing body of the company
- management  
leads the company; company members are jointly responsible for the management unless articles of association adopt alternative provisions
- auditor  
by law, required intensity of the audit depends on the size of the company

#### Duties of a member

- company members are obliged to pay the issue price of their capital contribution and can have additional material duties
- company members have a duty of loyalty and are subject of prohibition of competition

# Swiss Company Law

## d) Limited liability company (III/III)



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## Limited liability company (Ltd liab. Co)

### Applicability:

- commercial activities with a more local/regional impact
- intention to employ people
- existence and operation of the company **should depend** on the people owning it
- limitation of the liability for the owners of the company
- budget is insufficient to set up a company limited by shares

### Legal basis:

- arts. 772-827 CO
- art. 936a CO (business identification number)
- arts. 950 et seq. CO (business name)
- arts. 71-83 ordinance on the commercial register
- tax law

→ **well-regulated business association!**

# Swiss Contract Law

## Discussion



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### **What kind of business association would you choose in the following cases? Motivate your decision! (15')**

- Michael makes a profession out of his hobby: organizing personalized trips to Asia.
- Your sister Paula loves to knit in her spare time. She thinks to sell her items on one of the online marketplaces like *etsy.com* or *ansalia.ch*.
- Eugene is planning to open an insurance broker boutique.

### **Which «features» would be core for the following situations?**

- Some elderly people would like to buy a house and live there together. Inhabitants should also dedicate time to the house community.
- Some neighbours would like to organize regularly film evenings in the street.
- A very wealthy person would like to invest his money in financing higher education for women with a migration background

# Introduction to Swiss Law

Did we meet the objectives?



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being able to **find** the **law text** and secondary **literature**



getting to **know** the **structure** and **functioning** of the Swiss code of obligations



being able to **enumerate** general **principles** of swiss contract and company law and being able to **find** the **respective provisions** in the law text



starting **reflexions** about the **similarities** and **differences** to the jurisdiction of the respective „**homecountry**“

