

Business & Contract Law



Week 1

PART 1: GENERAL ASPECTS

A/Law

1. Legal Systems
2. Sources of Law
3. Swiss Law Classification

1 - Legal systems

Three systems:

1-1/ Roman-continental:

- 1) laws are cases codified by legislator;
- 2) codes are used by judges to take decisions;
- 3) case-law (jurisprudence) is established as the particular interpretation of the law which is in essence general

1 - Legal systems

1-2/ Anglo-Saxon :

- 1) judges take decisions based on precedence i.e. case law (jurisprudence) and common law practice; - the legislator supplements such practice;
- 2) the repeatability of case decisions make up consolidated law into codes

1 - Legal systems

Some countries use a mix of both; in some cases religious law is also applicable: <http://chartsbin.com/view/aq2>

Reading:

Comparing systems:

http://www.fd.unl.pt/docentes_docs/ma/wks_MA_22856.pdf

2 - Sources of Law

Types of sources:

2-1/ Customary (primary): those resulting from historical and social development; it is applied if an applicable legislative provision is not found ([CC art 1](#)).

e.g. property relations of neighbors - VD

2-2/ Enacted (secondary): those resulting from formulation by legislators.

e.g. Civil Code

2 - Sources of Law

2-3/ Norms: supplement existing provisions

e.g. SIA

2-4/ Judicial decisions (secondary): those resulting from decisions made by judges in higher courts ([CC art 1](#)).

e.g. decisions of the Swiss Federal Tribunal

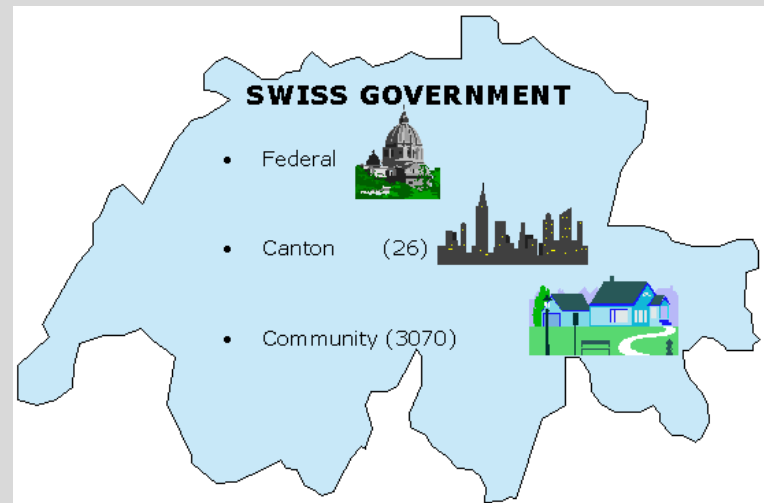
2-5/ Works of legal scholars (secondary): those resulting from academics and legal researchers.

e.g. commentaries

2 - Sources of Law

Main Swiss enacted law:

- Federal statutes
- Cantonal statutes = adoptions of Federal statutes (e.g. CC, CO) + cantonal proper (e.g. taxes, education)
- Communal regulations = application of Cantonal law (e.g. zoning and building)



Reading:

<http://www.llrx.com/features/swiss.htm>

2 - Sources of Law

Main Swiss texts:

On the Federal level

<http://www.admin.ch/ch/e/rs/rs.html>

On a cantonal level – e.g. Geneva

<http://www.ge.ch/>

3 – Swiss Law Classification

3-1/ Public law: concerned with the organization of the State and other public bodies (classified compilation [sections 1-9](#) except for 2):

- constitutional law
- administrative law
- tax law
- criminal law
- criminal procedure
- law of collection of debts and bankruptcy

3 – Swiss Law Classification

3-2/ Private law: civil codes that seek to cover an entire area in a systematic manner to regulate the relations between individuals or groups of individuals; it includes (classified compilation [section 2](#)):

- civil code
- code of obligations
- civil procedure
- private international law
- national labor conventions

3 – Swiss Law Classification

3-3/ International law: regulates relations between states
(classified compilation [international law](#)):

- public international law
- private international law