



University of St.Gallen



University of St.Gallen (HSG)

Contracts I

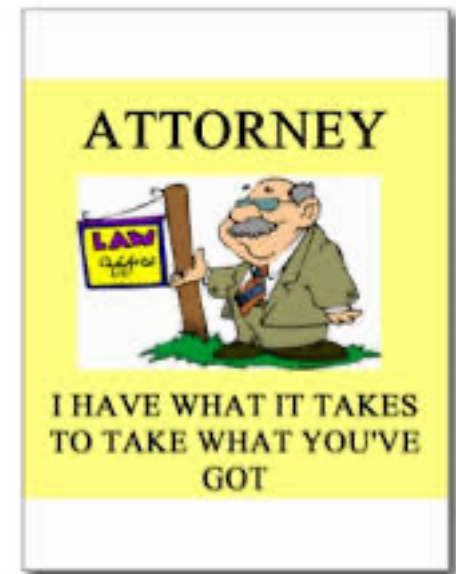
Prof. Dr. M. Müller-Chen, February 12, 2024

*"From insight
to impact"* 



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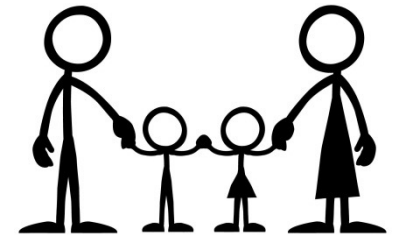
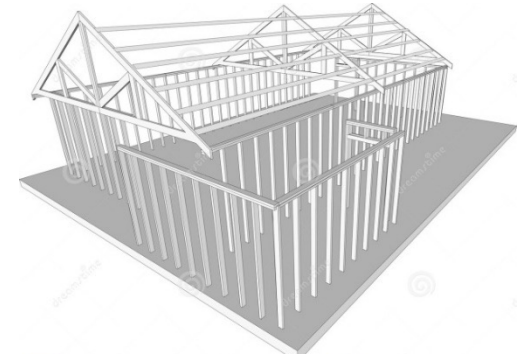
Lawyers....





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Importance of Private Law





A. Sources of Private Law

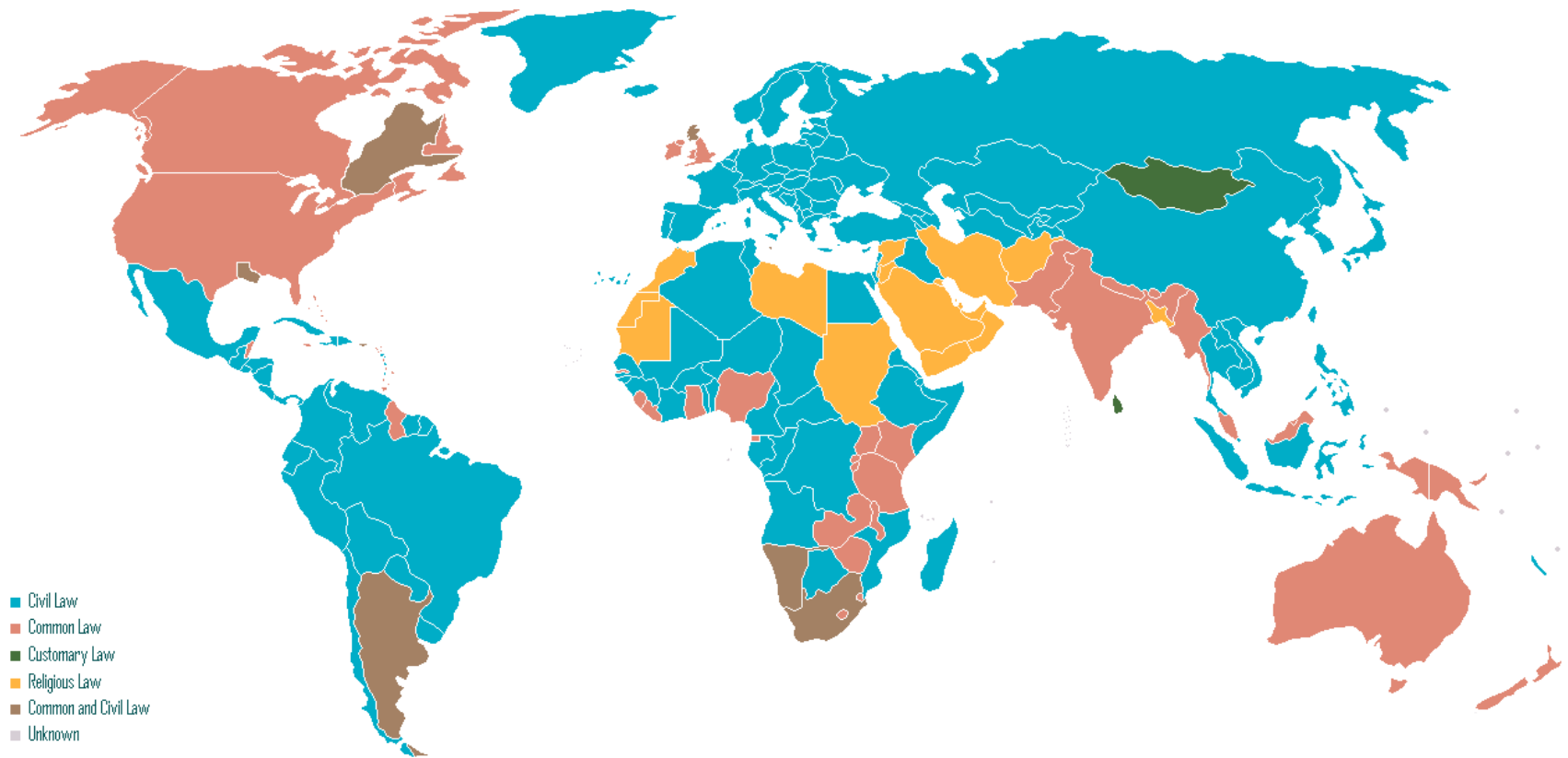


Civil Law vs. Common Law

Legal system	Main source of private law
Civil law	Codes (in Switzerland: the Civil Code and the Code of Obligations)
Common law	Case law
Hybrids	Combination of codes, case law, religious law, customary law

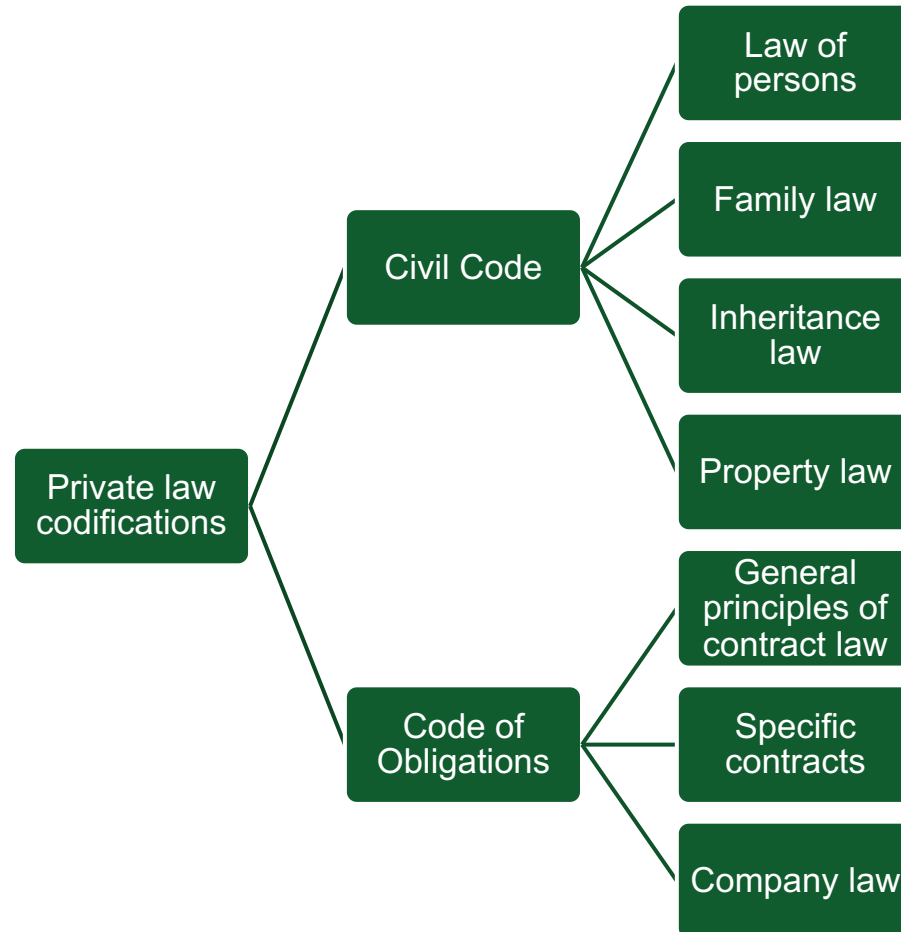


Civil Law vs. Common Law Countries





Swiss Private Law: Civil Code and Code of Obligations





B. Private Law Subjects



Natural Persons

- Every person has **legal capacity** (art. 11 CC)
- The ability to create rights and obligations is called the **capacity to act** (art. 12 et seq. CC): min. 18-year old (art. 14 CC) and capable of judgement (art. 16 CC)

Example I: 16-year old Bob wants to buy a motorcycle. Issues?



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Example II: 9-year old Susanna buys candy with money she received from her parents for doing her chores. Issues?



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- Every person must have – and can only have – one **legal domicile** (art. 23 para. 2 CC)

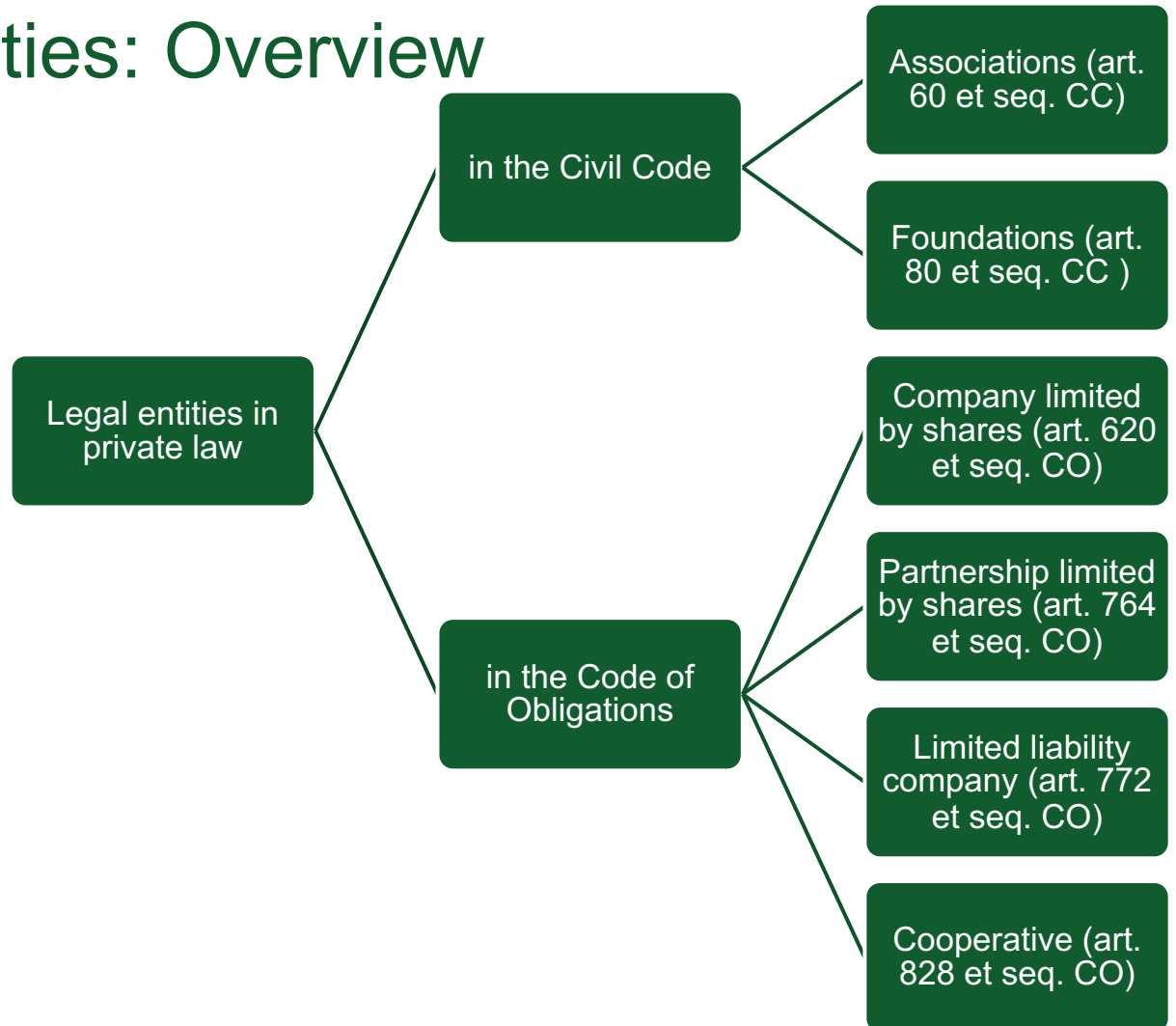
Example: Fred works four days a week in St. Gallen, but spends the other three days with his family in Zurich, where he is also a member of a tennis club.



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Legal Entities: Overview

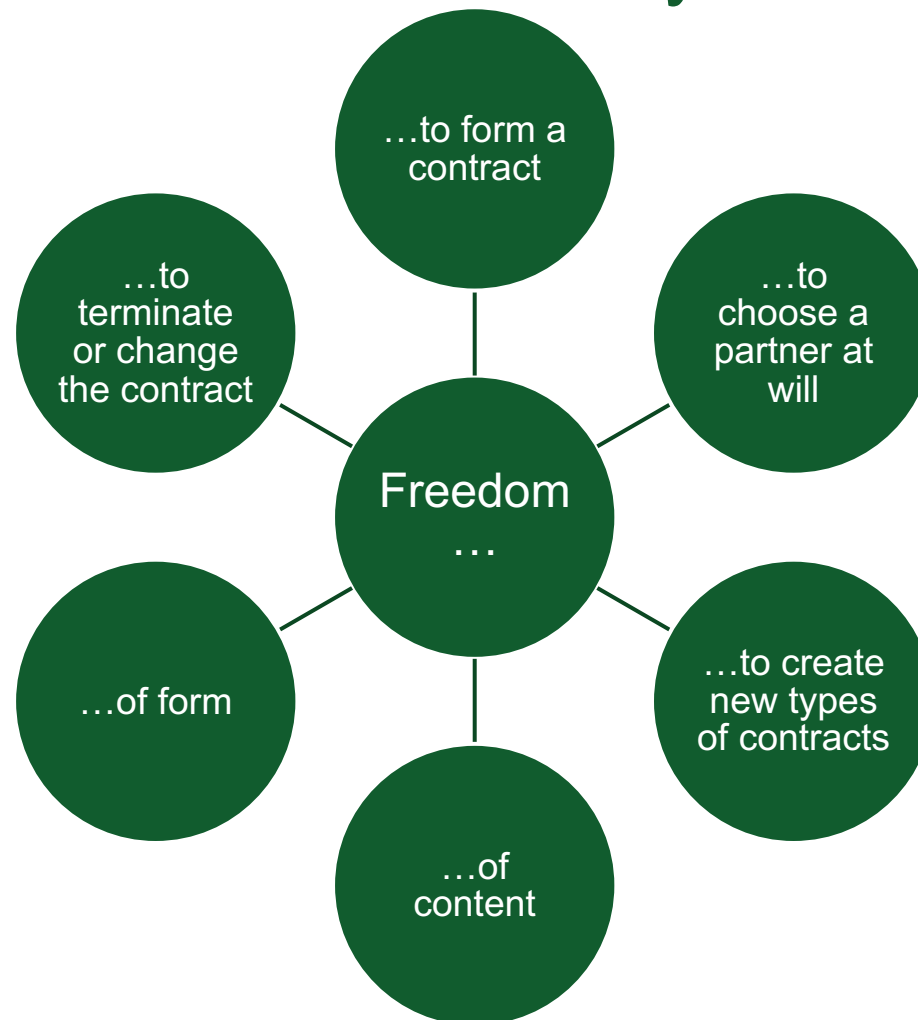




C. Fundamental Principles of Contract Law



Principle of Private Autonomy





Mandatory vs. Optional Provisions

Mandatory law

- No deviation by way of agreement
- «Must»-provisions
- Often found in rent and employment law

Optional provisions

- Parties can deviate from rules
- «should»-provision
- Default rule



General Provisions of Private Law: Art. 8 CC

Art. 8

Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact.

Example: Amy loans 100 CHF to Ben. Ben refuses to give the 100 CHF back and insists that it was a donation. Amy initiates court proceedings against Ben. Who must prove what?



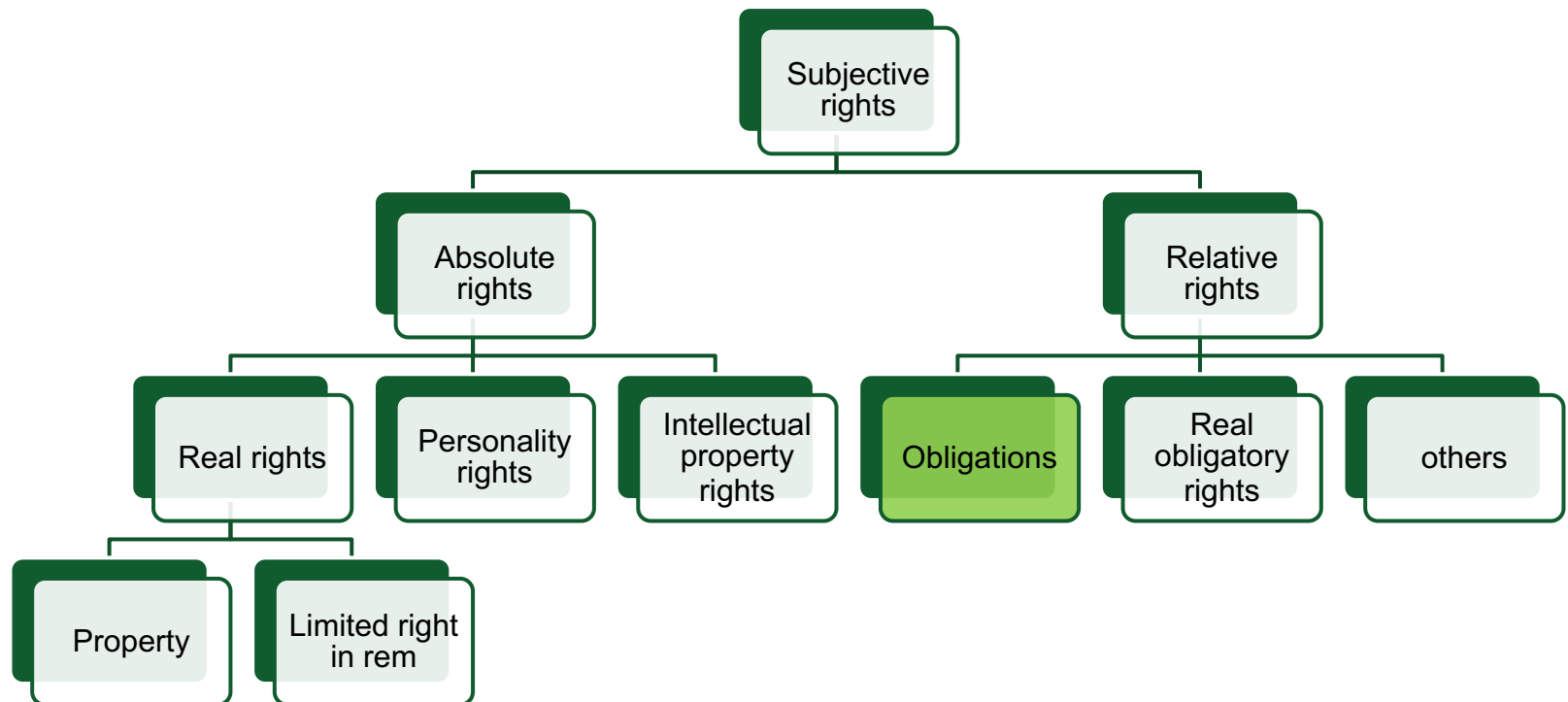


D. Obligations



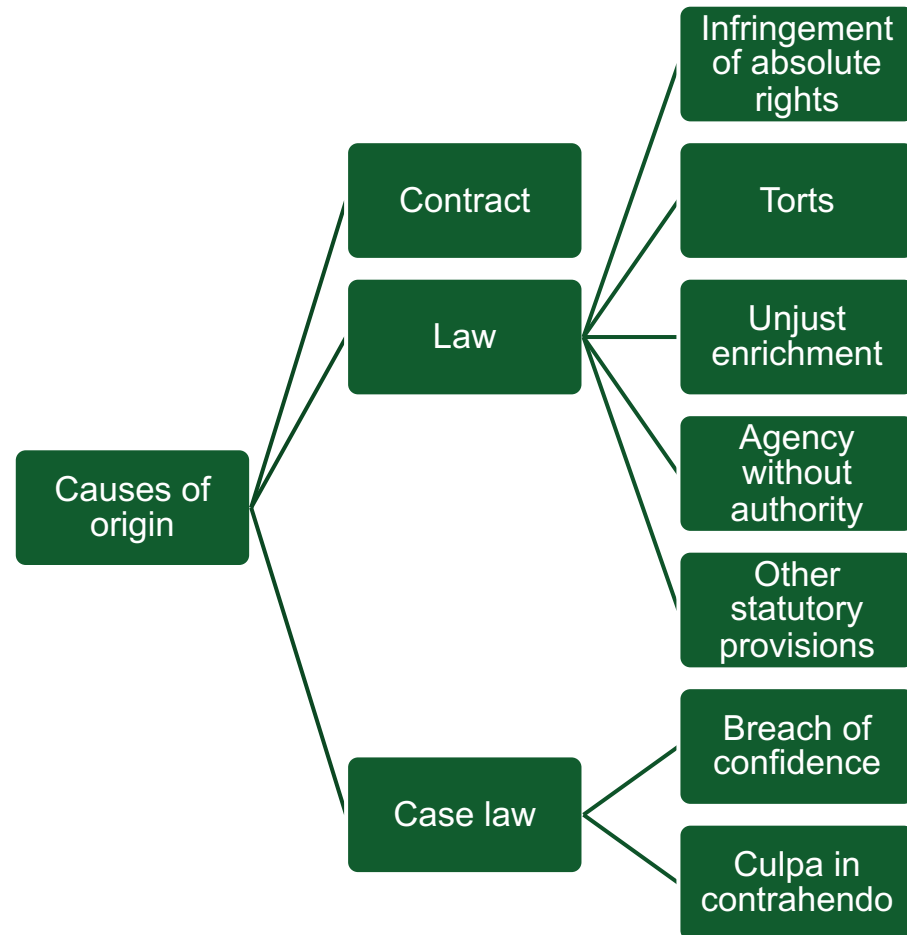
Definition of an Obligation

- Legal relationship between a debtor and a creditor: the debtor is obligated to perform, the creditor has the right to demand that performance.





Reasons for the Creation of Obligations





Transaction Constituting an Obligation and Disposition of the Right

Example: Marshall wants to buy a present for his wife Lily. He goes to a jewelry store and chooses a diamond necklace. The shop assistant wraps the present while Marshall puts the money on the counter. The shop assistant counts the money, puts it in the register and hands the necklace to Marshall.

Transaction constituting an obligation = the commitment to buy the object (the sales contract). The corresponding rules can be found in the Code of Obligations.

Disposition of the right = transfer of ownership of the object. The corresponding rules can be found in the Civil Code (property law).

University of St.Gallen (HSG)
Law School
Bodanstrasse 3
CH-9000 St.Gallen
Switzerland

Prof. Dr. Markus Müller-Chen
Professor for Private and Commercial Law as
well as Comparative Law

+41 71 224 30 09
markus.mueller-chen@unisg.ch
www.ls.unisg.ch

