

Question I:

The so-called functional method of comparative law: briefly explain its origin and its name; explain also – and critique – the notions of tertium comparationis, functional equivalence, and praesumptio similitudinis.

Question II:

H Parsons (Livestock) Ltd v Uttley Ingham & Co Ltd [1978] QB 791: Parsons (P) owned a pig farm. They made a contract with Uttley Ingham (U) to provide a bulk-storage hopper in which to store pig food. U knew that the hopper was to be used to store the pigs' food. The contract held that the hopper should be fitted with a ventilated top. However, U did not unseal the ventilator when the hopper was erected. As a result, the pig food went mouldy and 254 pigs died from eating the mouldy food. P sued for the loss of the pigs (loss of profit).

1. How would the court argue and decide in this case?
2. Which provision from an international convention contains a similar criterion as the one applied in the case at hand? What are the differences?
3. Can this criterion be considered as a common core of private law?

Question III:

Carbonnier stated that "interpretation is the intellectual form of disobedience". Do you think that this statement applies to the Court of Cassation in regard to its relationship with the Parliament? (Be sure to argue by giving the advantages and disadvantages!)

Question IV:

1. Please name the three main principles of German Tort Law!
2. How is it possible that the German Federal Constitutional Court rules in procedures with two opposing private individuals? Please take into account:
 - a. the role of fundamental rights under the German Constitution of 1945, and
 - b. the role of general clauses and indefinite legal terms in this respect.
3. Give one example for a case, where the German Federal Constitutional Court decided against the Civil Law Courts in a Private Law suit and explain the facts and the main divergences!

Question V:

Illustrate the main features of African customary law and discuss the "colonial encounter"!