

## **Comparative Private Law Examination Fall Term 2022**

NB: Please answer all the questions!

### FIRST PART (16.5%)

Consider the following text: “Under this new viewpoint, the task of comparative law is less to indefinitely collect exhumed laws than to formulate a natural – that is, rational – classification of juridical types, of branches and families of law.” (Gabriel Tarde, *Le droit comparé et la sociologie*, in *Congrès international de droit comparé tenu à Paris du 31 Juillet au 4 Août 1900, Procès Verbaux des Séances et Documents*, 1905, 439–440). Explain the occasion out of which this text emerged, its importance for the history of comparative law, and its position towards the preexisting tradition of comparative studies. Describe the intellectual roots of Tarde's 'law families' proposal, its historical importance and its shortcomings.

### SECOND PART (16.5%):

*Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256: The defendant, the Carbolic Smoke Ball Company, placed an advertisement for their products in a newspaper. They stated that any person who purchased and used their product but still contracted influenza despite properly following the instructions would be entitled to a £100 reward. “£100 reward will be paid by the Carbolic Smoke Ball Company to any person who contracts the influenza after having used the ball three times daily for two weeks according to the printed directions supplied with each ball. £1000 is deposited with the Alliance Bank, shewing our sincerity in the matter.” The claimant, Mrs Carlill, thus purchased some smoke balls and, despite proper use (she used the smoke balls for two weeks and continued to use them as prescribed thereafter), contracted influenza. She then attempted to claim the £100 reward from the defendants. The defendants contended that they could not be bound by the advert as it was an invitation to treat rather than an offer; that the advert was mere “puff” and lacking true intent; that an offer could not be made “to the world”; that the claimant had not technically provided acceptance; that the wording of the advertisement was not clear enough (the time was not fixed), and that there was no consideration, as necessary for the creation of a binding contract in law.

Question: If you had been Mrs Carlill’s barrister, how would you have argued in her favour?

### THIRD PART (16.5%):

In our journey through American law, both private (contract/tort/property) and governmental regulation of private economic relations we have spoken of the term “precedent.” Define the conventional meaning of the term. Consider the extent to which the cases that we have studied observe that meaning or somehow redefine it.

### FORTH PART (16.5%)

Question 1: What are the main features of the German civil Code (BGB)? Please explain the (historical) reason for these features!

Question 2: In what respect can fundamental rights be relevant for the solving of private law cases under German law? Explain the leading case “Lüth” and give the main facts and arguments!

### FIFTH PART (16.5 %)

Is case law subject to Parliament in France? (Be sure to organize your answer into two distinct parts!)

### SIXTH PART (16.5 %)

Australia law and Aboriginal people: illustrate the importance of the *Mabo v Queensland (No 2)* (1992) and of Native Title Act 1993!