



**Institut für Versicherungswissenschaften
an der UNIVERSITÄT ERLANGEN - NÜRNBERG
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Final Test DVA Oct.2009

Time: 1 hour; since all questions are equally difficult, you should take about 15 minutes for each, and further 15 minutes for the complete revision. Please write down your name on top of each page and answer in English, as far as possible. Never say yes or no, simply, but make remarks of reasons for. Answers in German will be accepted fully, if they do not exceed 33% of the full text.

- I. Courts have power to control standard terms of (insurance) contracts:
1. because they contain provisions which allow more than one interpretation;
 2. because they are not integrated into the main contract adequately. What is necessary for adequate integration in general contract law;
 3. in insurance contract law?
 4. Some comparative remarks of German law.

Possible answers:

1. yes, it is called contra proferentem rule. The one who formed the contract terms, shall bear the burden of risk to be misunderstood, because he knows best, how to avoid misunderstandings. It is a kind of legal intent of prevention.
2. Terms must be communicated adequately between the contract parties before contract conclusion.
3. While other standard terms may be published at the place of contract conclusion, adequateness in insurance business means that the standard terms have to be submitted to each customer. This strictness seems to be necessary, since the insurance product is essentially defined by the standard terms, and the consumer shall have a better opportunity to read the main parts of the market offer, before he decides where to place his demand. The general legitimation of the freedom of contract and the related competition functions do not apply if the law does not impose relatively strict communication requirements.
4. The contra proferentem rule is provided in § 305c BGB, the general control of integration of general contract terms is provided in 305 subsection 3 BGB, and for the specific one for insurance contracts the equivalent provision see § 7 VVG 2008 in connection with the InfoV 2008.

- II. Please, explain the duty to provide consumer information with reference to the following topics:
1. What is provided for, under the so-called suitability doctrine, with respect of objective/subjective circumstances (differentiation of agents and brokers)?
 2. Does UK law provide for documentation duties?
 3. Is the insurer obliged to such information (before/ after contract conclusion)?
 4. Some comparative aspects to German law.

Extra Points:

- *The 3rd Insurance Directives of 1992 required duties to inform the consumer for insurers about all factual and legal circumstances which normally seem to be relevant for the decision to prefer the respective offer to competing products, including esp. the general terms of contracts. Before such information was provided, no contract was allowed to become binding.*

- *Since the EC-requirements of 1992 were issued imposed on the member states in the form of directives, the UK had to implement them either by national statutes or by regulations.*
- *The consumer shall be well informed for being able to compare the competing offers of the market and to give preference to the one fulfilling his needs best. This is clearly a competition concept as opposed to a concept of state control of contract terms.*
(Extra points: Many doubts about the underlying principle of well informed consumers have been published – most of them arguing that the typical non-commercial customer would not be willing nor able to read and to understand the consumer information. Other scholars refer to the fact that market alternatives are normally evaluated by professional analysts and that this kind of intermediary action sufficiently supports the insured. The EC Directive seems to be based on the legal concept of a well informed consumer, an understanding which had to be accepted by the UK implementation.)

- III. British non-life insurance policies are typically different from the German ones with respect to the time period they are concluded for.
1. Please, describe this difference in more detail (esp. time span);
 2. Which could be the legal reasons for the difference (pre-contractual information duty/duty to give information of increased risk)?
 3. Does UK-law/German law provide for maximum time of insurance contracts (mention statutory authority of German law)?
 4. Are there economic consequences of the differences of UK-law and German law, especially in terms of competition functions?

Keywords of answers:

1. UK practice normally provides for a 1 year period, but German law contains no equivalent. Life insurances are concluded for a longer time, even in the UK, but very often need prolongation every year.
2. The pre-contractual duties of utmost good faith and the respective information by the insured do not extend to the time after contract conclusion (post-contractual), but with any renewal of the contract utmost good faith is owed again.

Extra Points:

Recently the House of Lords held that the information duties only refer to the circumstances which are relevant for the prolongation of the contract. Risk increasing facts, however, seem to be relevant anyway.

3. UK-law: no; German law: yes, see § 11 subsection 4: after 3 years the insured can terminate the contract 3 months before the end of the year.
4. The requirement to renew or prolong the contract opens the possibility to check the contract conditions and premium clauses with respect to competitive offers by other insurers. Market orientation of insurance law is more typical in UK-law than in German law.