

Final Test DVA Oct. 2011 (possible answers in different writing)

*Time: 1 hour; since the questions are equally difficult, you should take about 20 minutes for each and further 20 minutes for controlling your language. Please write down your name on top of each page and answer in English, as far as possible. Never simply say yes or no, but make remarks of reasons for. Answers in German will be accepted fully, if they do not exceed 25% of the full text.*

I.1. What is meant by the term utmost good faith with regard to duties of information before the conclusion of an insurance contract?

*Utmost good faith is more than ordinary good faith. The potentially insured has to disclose all matters of facts which seem to be relevant for the decision of the Irer. or for deciding to take the risk or not. In general law, under the principle of ordinary good faith, no duty of risk information comes into play, because the contractual risk allocation is different.*

2. Is there a general duty of the potentially insured person to make investigation, if he is unsure about a sickness of himself, which he is asked for?

*No investigation duty, in principle, even if questions are asked by the insurer. Unknown risks are left to the insurer by his taking the risk for getting premium payment.*

3. Ird. tells the agent A of his illness, but A, acting for the insurance company I, does not mention it in the offer form, because he wants to get the provision for the contract conclusion. Can I deny cover of certain costs of a treatment of the sickness?

*No, because the knowledge of the agent is taken as knowledge of the insurer. The major reason for that is that the agent acts on the side and within the responsibility of the insurer.*

4. Some comparative remarks to German law.

*(1) Also § 19 VVG provides for specific duties of information, which have no equivalence in general contract law. Comparable to Brit. ins. law.*

*(2) Same, because § 19 II VVG provides for known risk facts only. However, the answers must be true, provided that the insurer has asked for, and even then there is no right to step back from the contract fully, if the incorrect answer is made by regular negligence, and not by gross negligence. In cases of gross negligence, no full denial of the claim can be done.*

*(3) § 70 VVG (Auge und Ohr-Rspr. legislated).*

II.1. A clause of the general terms of an insurance contract obligated the assured „...to notify as soon as possible all incidents that may result in a claim...“. Is such a clause controllable under the UTCCR 1999?

*Yes. The UTCCR 1999 provides for contract control, but with the exemption of clauses to the main subject. The notification duty does not belong to this kind of provisions of the general contract terms.*

2. Does it make a difference, if the clause expressly is called a basic to the contract term?

*These terms are taken as warranties under case law. The control can be extended to warranties, however, despite the fact that they could belong to the main subject. This is true for the transparency provision of the UTCCR 1999.*

3. Which argument of contract terms control can be made?

*The clause can be taken as unclear or non-transparent. Controllability under the second aspect only.*

4. Some comparative remarks to German law.

*German law does not provide for warranties, but for risk exclusions. The notification duty, in this case, is not a risk exclusion clause. Even if this would be done, it would have been taken as a hidden obligation (verhüllte Obliegenheit). In any case, it is controllable, because § 307 I.2 BGB extends the power of control on reasons of transparency to main subjects, as Brit. law does. The reason for the comparability in this respect is, that both regulations have a basis in a EU-directive on misuses in consumer contracts.*