Final Test DVA Spring 2013

Possible Answers

I. The acceptance of a life insurance of Irer has added a clause to the offer form providing that no cover shall be owed as long as the first premium is not paid fully.
1. Under which preconditions will this clause become part of the insurance contract?

By acceptance of the Ired, because the "acceptance" of the Irer is taken as counter offer, which has to be accepted by the other party.

Different if the "acceptance" is done by a formal policy document. The policy becomes binding automatically, provided that no protest of the Ird. is send back within 7 months.

2. Before having paid, Ired. fell mortally ill, but he did not give information to Irer. Can Irer. deny liability?

Yes, because the utmost good faith duty to disclose the new risk circumstances is relevant until the time of final contract conclusion.

3. Some comparative aspects of German law to both questions.

For counter offer cf. § 151 sentence 1 BGB.

For policy effect cf. § 5 I VVG after 1 month.

For disclosure duty cf. § 19 VVG. Under § 19 subsection 4 the Ired cannot reject the claim, if he offers contracts for such higher risks. In casu, however, this cannot be assumed.

II. The general contract terms of a commercial fire insurance provide for a "strict duty" to give notice of a fire damage within 24 hours after the event. This is explained as "basic" to the risk cover since eventual fire causing actions of third persons must be proved very shortly after the fire. The insured gave notice after 2 days and apologised for the delay on psychological reasons.
1. Can the insurer decline to pay the damage because the notice of the insured was too late?

The word "strict" could be read as an implied warranty since it seems to be basic to the contract. In warranty cases aspects of negligence can be left aside as well as reasons of causality. Therefore the psychological apologise of Ird. is irrelevant. Legal consequence would be that payment can be denied. Warranties law is applicable since an industrial insurance is in dispute.

However, the case law of basic to the contract clauses is going to be restricted, and abandoned, even (see Royal Commissions, 2012/3). One argues that the wording as "basic to the contract" is not clear enough for indication of the hard legal consequences of warranties, and that it needs an explicit intent of the Irer. to provide for a warranty. The overruling of warranties law in consumer insurance cases is a further argument to narrow the application of basis to the contract interpretation.

If one follows this trend a warranties offence must be denied, and the delay of the loss notice cannot be more than a regular disclosure violation, which would give reason for cover denial only under the precondition that it is done negligently. After a bigger fire some more time than 24 hours (36?) can be given to the Ired. without allegation of negligence.

2. Does it make a difference, if the fire has been reported next morning in the local newspapers as well as by radio and television, the insurer knew of it, but did not know that the property of the insured was destroyed?

No, warranty law is strict, and knowledge of the insurer does not lead to irrelevance of the violation (but see Reform Commission, as quoted).

3. Can you make some comparative comments on the German law to a case like this?

Warranties cannot be provided in German contracts, since §§ 19, 28, 30 is ius cogens for the advantage of the insured (§ 32 VVG).