Final Test Spring 2015 / Recommended Answers

1 hour working time. Since all questions are supposed to be equally difficult, you should take about 15 - 25 minutes for each. Please write your name on top of each page and answer in English as far as possible. One or more proposed answers can be correct. Do not answer simply yes or no, but always explain some reasons why. Answers in German will be accepted by half value, if they do not exceed 50% of the full text. Comparable remarks to German law will only be evaluated for improvement.

I. Ired. owned a small business in Birmingham. In spring 1999 vandals entered his premises and wrecked his machinery. Irer. denied liability on wholly spurious grounds and it was not until three years later that the Ired. received any substantial payment under the policy. The business of Ired. collapsed because of lack of liquidity.

1. Which would be the legal basis of a compensation claim against the Irer.?
2. Can the insolvency damage be claimed from the Irer. on reasons the of late payment (please give some arguments pro and contra such a claim.)?
3. Do you know about recent recommendation of reform to this point?
4. Some comparable remarks on German law.

Recommended Answers:

I.1. Since there is no special case law of insurance contracts, one could only refer to tort law. There is a general provision giving a damage claim against anybody who has caused a damage negligently to another person. Primary asset damages are sufficient, as different from § 823 I BGB.

2.a. pro: Tort law is general, and can be applied to torts in insurance practice also. It seems just and adequate to have a liability of Irers. not being less strict than the one for banks and others.

2b. contra: SC, in Sprung of 1997 has argued that there is no insurance on insolvency of the Ired. Also case law does not provide for damages of damages.

While this is correct there is a causality link between the late payment and the insolvency of the Ird. Negligence of Irer. can be assumed, since it is said that Irer. relied on "wholly spurious grounds".

3. The Insurance Contract Act 2015 did not overrule Sprung. The Royal Commission, however, has announced that it will publish a further reform paper in 2016. Since there was an earlier recommendation of overruling of Sprung, one can expect something like that in the upcoming statement.

4. § 286 BGB would give a claim under general law of debts. More special is § 14 VVG. On reasons of legal speciality, this provision prevails. A damage claim could be given, if there is no justification of the Irer., e.g. because it took him so much time to check the relevant circumstances and prepare proof for an eventual denial of cover.

II. Ired. promised in a business interruption insurance contract of April 2013 that the machinery of his enterprise was in "good order and condition". When a technical fault caused a business interruption in Febr. 2014, it was proved that there was no inspection or repair until fall of 2013, despite the fact that, under special regulation of public law, it should have been done every 6 months.

1. Can Irer. deny cover relying on the argument that Ired. has violated a warranty?
2. Does it make a difference, if the good order clause was called in the standard terms "basic to the contract"?
3. Would the law be different if the good order clause would be part of a consumer property policy referring to inspection and repairs of a sprinkler and theft warning system of the Ired.?
4. Some comparable remarks on German law.

Recommended Answers:

II.1. The clause could be seen as a declaratory warranty, only, which is less than a promissory one. The Ired. declares correctly that inspections have been done carefully in the past. Hence there is no breach of the warranty.

2. No., the clause could be taken as a warranty by the fact that it is declared to be basic to the contract. It makes sense, however, that even a declaratory warranty is basic enough.

3. No. The CIA provides for an interpretation of basis to the contract clauses as not being warranties (no.6 II in parentheses). But even if the clause would be taken as a warranty, it would be a declaratory one which has not been violated (see supra).

4. There is no equivalent to the declaratory warranties, in German law. One can only take the clause as an Obliegenheit vor Eintritt des Versicherungsfalles under § 28 VVG. For such an obligation one has to rely on public law provisions of security standards. However, if these are violated, it could be done with slight negligence, because it is a relatively small time gap of the inspections. If so, there would not be a right of Irer. to step back from the contract under § 28 II VVG providing for gross negligence.