

## Final Test Sept. 2016

*1 hour working time. Since all questions are supposed to be equally difficult, you should take about 25 -30 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 and refer to legal authorities as much as possible. Answers in German will be accepted by half value, if they do not exceed 50% of the full text.*

- I. What is meant by the main subject rule in the law of standard terms control?
1. Some general remarks;
  2. Some economic purposes of the rule;
  3. Does the rule apply to warranties?
  4. intelligent language?
  5. Some comparative remarks to German law.

### Possible answers:

1. Contract provisions which define the nature of the transaction and belong to the agreement of the price, but not price adjustment clauses. Fairness control of standard terms cannot be done to main subject clauses.
2. Court control seems to be not necessary, since competition forces can be workable for these purposes. Also the typical customer will have an eye on it and will base his decision to make the conclusion of the contract or not on main subject matters. Minor provisions of the contract can also be workable in competition functions, but the effectiveness of these functions is lower.
3. Warranties are held to belong to the main subject by British case law. The courts do not follow the lines of German case law, which applies the main subject rule to primary exclusion clauses only. Even secondary exclusion clauses are controllable under the fairness test.
4. Transparency control is possible to main subject clauses, since nothing can work under competition conditions if it is not understandable to the average consumer.
5. Same restriction of court control of standard terms, but the computation of clauses to the main subject is a little different. The differentiation of primary and secondary exclusion clauses does not have an exact equivalent in British law. Only primary clauses are counted to the main subject. They define the type of the insurance contract. Warranties, e.g. do not define the type, despite the fact that they are taken as basic to the contract.

II.1. Is an insurance agent obliged to give suitable advice after examination of the personal needs and interests of the consumer? Please, make the difference of general insurance law and the law of capital life insurance contracts.

2. Is there an obligation to give information to the insured about being obliged to give warning information or not?

3. Does an agent have the duty to give warning advice, once he realises that the insured makes wrong disclosure when filling out the proposal form? Please, give an example.

4. Some comparative remarks to German law.

Possible answers:

1. Agents must make analysis of the needs and the demands of the customer (suitability test, part 1), but can deny to give advice. However, once given the advice, it must be suitable (suitability test, part 2).

In cases of capital life insurance contract it is argued that the suitability doctrine of the capital investment law must be generalized. The new legislation on this point, however, does not make the difference. The question seems to be open.

2. No, only information is necessary on whether or not the agent will give advice. Transparency purposes and the related competition arguments can be seen as reasons behind it. Once the consumer knows about the willingness of the agent to give or give not advice, he can decide whether to go on taking him as assistant for the contract conclusion or turn to an eventual better agent.

3. Yes, the agent has to assist the customer in filling out the proposal form. In cases of wrong facts in the proposal form the agent must give a warning notice that Irer can avoid liability because of misrepresentation. If agent violates his duty in this respect, he can be liable personally for the damage of the uncovered risk.

Example: Wrong amount of value of insured property is announced in the proposal form, e.g. insured forgets to mention a new building of his property. Agent must care for correction, when he knows of the further building and its additional value.

4. § 61 subsec. 2 VVG: duty to give advice. Also § 6 VVG: duty of advice by the Irer himself. This has no equivalent in British law.