Final Test DVA Sept. 2013

One hour working time. Since both questions are equally difficult, you should take about 20 - 25 minutes for each and the remaining time for corrections. Please write your name on top of each page and answer in English as far as possible. 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.

I.1. The policy of the insurer (Irer) contains a clause which has not been provided for in the offer form filled out by the the insured (Ired.) Under which precondition will the clause become part of the insurance contract?

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

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

Possible Answers

I.1: Under general contract law the parties would no have concluded a binding contract, because offer and demand are not congruent. Insurance case law, however, contains the rule that the content of the policy becomes binding, if the Ird. does not make objections within 7 months.

2. Under a running contract the Ird. has no duty of disclosure of risk increasing facts, if there is no specific provision in the contract standard terms. In the case of the question, however, the contract has not been concluded with binding force, because the premium payment clause was not integrated in the offer form. This is why the acceptance is taken as a counter offer, which has to be accepted separately for perfect conclusion of the contract. Until this time, the pre-contractual duty of utmost good face is applicable, under which the Ird. has to give notice of all relevant facts. His sickness had to be disclosed. Cover can be denied by the Irer.

3. The equivalent provision of German law is § 5 Abs. 1, but it is 1 month only during which the objection of the Ired. has to be declared. For no. 2 of the question the equivalent is § 150 Abs. 2 BGB (Annahme unter Abänderung).

II. 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?

II.1. British common law does not provide for information duties of the insured in cases of risk increase, no matter if it is caused by the insured himself (subjective), or by third persons, or by circumstances (objective) , but see §§ 23 ss. VVG**.** Contract durations, therefore, are consented as shortly as practicable. For a renewal of a contract the insured has the duty of disclosure, which is applicable law for every new contract conclusion.

2. After conclusion of the contract the Irer has taken the risk over. Even increases normally fall in his risk sphere. In cases of subjective risk increase the law of good face during can help him, because wilful risk increases could be unconfident.

3. Nothing like that in UK law, but see § 11 Abs. 4: the VVG 2008 minimized the time span from 8 years to 3 years. There are different cancellation periods and periods of cooling-off contracts in § 8 VVG. The cooling-off period in UK law is only applicable in cases that the consumer information has not been handed out before the final contractual declaration of the Ired.