Final Test May 2014

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 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 the legal difference between an utmost good faith duty of information and a warranty in cases of violations and denial of cover by the insurer…

1. with respect to the causality test?
2. with respect to the materiality test?
3. Is it a warranty offence once the customer declares that the insured building has been protected against fire by certain technical and organizational means in the past, but does not continue to do so after contract conclusion?

Possible Answers:

I.1. The test must be done in cases of utmost good faith, as different from warranty cases in which the insurer can step back from the contract because of a violation without any causal link; but see reasonability precondition under the Insurance Conduct Sourcebook of 2008 and the CIA 2012 (applicable for consumer cases only).

Example: Warranty of a marina insurance policy, providing for 50 hands on board. While the insurance case happened when 25 employees were on board any lack of personal during the voyage before was held sufficient to give the insurer the right to step back from the contract referring on a breach of the warranty (elder SC decision, which is still quoted in the textbooks).

I.2. The causal link must be of some significance in cases of utmost good faith, as different from warranties.

Example: Conviction of robbery some 12 years ago. Despite the fact that an insurer might be reluctant to have a contract with a person having been convicted of such a heavy criminal act, the fact seems to be not significant enough for the assessment of the insured risk before the conclusion of the contract.

I.3. No, because the statement on fire protection in the past does not mean that the insured promises strict continuation of such measures for the future. However, it must be correct, that the protection has been undertaken in the past.

If that is wrong the insurer can deny cover, because it does not need a causal link or materiality.

II. Are risk increases after contract conclusion to be dissolved to the insurer?
1. No, but it is different once the new risk factor becomes known to the insured before first payment of the premium;
2. no, but it differs in cases of contract renewals.
3. Some comparative remarks on German law.

Possible Answers:
II.1 UK case law does not provide for risk increase information after contract conclusion. From the beginning oft he contract on, it is the risk of the insurer, how the risk changes. The payment of contractual premiums is not decisive for the question whether a binding contract exists.

II.2 . Yes, it differs in cases of contract renewals because the old contract is replaced by the new one. During the logical second between the two contracts, the parties have no contractual relation, and there is a pre-contractual relation with respect to the second contract. This is why the pre-contractual information duty comes into play.

II.3. §§ 23, 26 VVG provide for information duties of this kind, but there is no exact equivalent in UK-law. This is why British law practice provides for 1 year contracts very often. After 1 year, the contract has to be renewed, and the information duties of renewed contracts become applicable (see supra no.2).