

## Final Test DVA 9/12

*Time: 1 hour; since both questions are equally difficult, you should take about 20 minutes for each and further 20 minutes for the complete revision. Please write down your name on top of each page and answer in English as far as possible. Do not answer yes or no only, but give some reasons why. Answers in German will be accepted partially if they do not exceed 50% of the full text.*

I. Please, describe what utmost good faith means in insurance contract law

1. by making the difference of warranties in respect of the required diligence, causality test and materiality test.

*Ad 1: means that the Ird. has to dissolve all circumstances being relevant for the decision of Irer. to take or not to take the risk of the Ird. and concluding the insurance contract with him. If the duty is violated, the Irer. can avoid liability provided that the misrepresentation was causal for the occurrence of the insured risk. The causation must not be unimportant (not material), and the Ird. must have caused the damage by negligence. Light negligence suffices, in Brit. law.*

*Violations of warranties, however, can lead to denial of coverage without materiality, causation and negligence test.*

*Extra points: This is trough under case law, still, but special self-regulation activities of insurers have developed this law into several directions: information warranties can only be assumed, if Irer has asked relevant questions; materiality and causality tests shall be done before denial of cover, except in cases of fraud. The actual self-regulation of GISC has been taken over by the FSA-ombudsman regulation, to a certain extent.*

2. Are there investigation duties of the insured, in principle/in special cases? (please, give an example)?

*Ad 2: In principle not, but it is provided Marina Insurance Act (1776) that a captain has to be aware of every risk increase happening or occurring during on the ship, if they are known to one of the employees. So he is supposed to make investigation to any knowledge of the personal on the ship. This provision has been generalised to general insurance law in cases*

*that the Ired. has transferred the responsibility for the insured risk to a different person, e.g. to the runner of an independent subsidiary of his enterprise.*

3. Please explain in which main points the new Consumer Insurance (Disclosure and Representations) Act (2012) will change the case law of warranties and/or the law of utmost good faith.

*Ad 3: The Act is not in force, despite the fact that the Queen has assented, already. FSA was authorised to promulgate a statutory instrument for the Act. This has not been done, because FSA meant that some provisions of the Act would be outdated. In this case, the full version of the Act must be passed to Parliament again for making it able to decide on the criticised changing proposals. This part of the legislator procedure has not been terminated now, but one expects it to be done until beginning next year.*

*Warranties should no more be possible in consumer contracts. As to the utmost good faith duties, no unreasonable deny of cover shall be allowed (rule of reason), and the denial can be done in proportionality, only. The degree of causation of the undisclosed event must be estimated and related to the amount of the damage. The denial cannot exceed the estimated percentage of causation.*

4. Some comparative remarks to German law.

*Ad 4: §§ 19, 28 VVG contain the proportionality principle similarly to the British law proposal, but leaves the slight negligent causation of a damage unsanctioned. In the case of § 19 the Ired. is bound to continue the contract at conditions he would have provided for, if he would have known about the undisclosed circumstances.*

II. The term “days of grace” is very common in British insurance contracts practice. Can you explain its meaning by focussing on the following points:

1. main legal consequences if payment is not made;

*Ad 1: Ired. leaves some time for Ired. to make the payment owed. If Ired. does not pay within the days of grace, he has no right of prolongation and, if the risk occurs during the time period left to Ired. Ired. can deny coverage.*

2. main legal consequences if payment is made during days of grace.

*Ad. 2: In this case, the mentioned legal consequences do not come into play. Also no interest is to be paid in addition, because days of grace cause dispense of the payment duty during the given time span.*

3. main legal consequences if payment is made during days of grace, but after the insured event has happened?

*Ad. 3: Cover must be done in cases of life insurances, because these are long term policies. Also right of prolongation is given. In non-life policies the consequences depend on the contract provisions.*

*If Irer wants to cancel the contract, he can do so, provided that he does it after the time span and under the reasons stipulated in the contract.*

4. Do you think there is an equivalent in German statutory law?

*Under §§ 37 s. VVG the premium has to be paid strictly, and cover if not done before the damage event. But VVG is dispositive to this point. Days of grace can be provided for within the range of liberty of contract.*