Final Test with Answers 10/08

I.1. What are the main differences between a warranty and regular disclosure duties?

Warranties do not provide for a materiality test, for causality links and for negligence, in cases of being violated, and the insurer wants to deny liability.

2. Why have standard contract clauses, headlined as „basic to the contract", been taken as warranties, and do you know about modern reasons against this construction? (Always make distinction between reasons being based on actual binding law, and on political discussion only.)

If a duty is taken as basic, the insurer wants to have it performed strictly. By the conclusion of the contract, the insured gives his consent to such an intention of his contractual partner.

Modern argumentation against it, mainly, is based on the argument that the mere wording as "basic" is not clear enough, and that it is part of the general contract terms, which will not be read in detail by the customer. The FSMA, by inclusion of the GISC, provides for further information, which means that the mere headline of "basic to the contract" should not transform the respective duty into a warranty. This applies to b2c as well as to b2b and is binding law, because the GISC rules have become part of the FSMA.

The Reform Commission and the Scottish Reform Commission have abandoned the warranty law completely, with applicability, however, only to b2c.

3. How has the warranty law been weakened by self regulations of the insurance business and by the FSMA (Distinguish between b2b and b2c.)

See above, no.2. The GISC-Rules also provide for not relying on warranties in unreasonable respects. By inclusion into the FSMA, this has become binding law. Judgements like in the case of a warranty to garage a car in a certain place instead of another garage seem to be overruled.

4. Some comparative aspects to German law?

§ 6 VVG 07/§ 28 VVG 08 provide for (gross) negligence of the insured, when violating an "Obliegenheit". Warranties cannot be consented to, because the mentioned provisions are half-sided mandatory (halbzwingend).

II.1. What is a risk increase as opposed to other risks of an insurance contract?

The risk has changed after conclusion of the contract. It is called an increase, because the risk the insurer has taken by the contract is lower.

2. Do you know about differences of British and German law as to risk increase information duties?

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 a third persons, or by circumstances (objective), but see §§ 23 ss. VVG old and new.

3. How does British practice handle the problem of risk increase after contract conclusion?

Contract durations are as short as practicable, because for a renewal of a contract the insured has the duty of disclosure, which applies to every new contract conclusion.

4. What is the difference of a contract prolongation and a renewal of a contract, especially in respect of the information duties?

See above, no 3. Prolongation means, that there is no interruption of the old contract, and that hence there is no duty to inform the insurer of risk changes.