

Final Test DVA 2019

I.

1. *The Ired lied to the questionnaire of a health insurance contract asking for pre-contractual sicknesses. What are the legal consequences when the lie is done intentionally?*
2. *The lie, mentioned under no. 1, is done by negligence (please give an example).*
3. *The lie is to a question of pre-contractual criminal convictions, despite the fact that the Ired has been convicted of theft in a grocery store.*
4. *Some comparative remarks to German law.*

Possible Answers

1. No cover of insured risk. In cases of fraud the all or nothing principle is still applicable. Cover will be reduced to zero, not to a proportional level only (proportionality principle, as in cases of not intentional lies or false answers of the questionnaire, has been introduced by the Consumer Insurance Act 2012, but is not applicable in cases of intentional lies).
2. For negligence cases, as mentioned above, the proportionality principle applies. E.g. the question is misunderstood as asking for sicknesses of body only. The Ired did not give information about an epileptic event, which he thought to be of psychological nature. Due diligence would have led to the knowledge of the Ired. that epilepsy sickness was asked for, also.
3. The lie should be taken as a collateral lie. Modern case law avoids the strict consequences of fraud, once the lie is on collateral circumstances, e.g. the lie is on the facts of an alarm system of a ship, which would have been destroyed by a storm, anyway.

The mentioned SC decision is on industrial insurance. Binding force for consumer insurance, as in the case of the question, could be discussed. Better reasons, however, speak for not to make the differentiation, because the weakening of fraud case law should be applicable for consumer insurance contracts even more than in cases of industrial insurances.

4. German law makes difference between slight and gross negligence. Slightly undiligent false information does not give a right to denial of cover (§ 19 III VVG). The problem of collateral lies does not occur, because legal consequences for wrong information of the insured are provided for, once the Ired answers to posed questions of the insurer; and in respect of these a reasonable relation to the insurance contract is provided for.

II.

1. **Damage claims of the Ired by reasons of late payment for a covered insurance event have been disputed in case law and was denied by a recent SC decision. Do you know what the main reason was ?**
2. **Are you aware of a more recent provision of statutory law overruling the case law?**
3. **Some aspects of overruling in case law and by statutory law.**
4. **Comparative aspects to German law?**

Possible Answers

II.

1. The denial decision of the SC was Sprung (1997). The court argued that insurance contracts shall cover risks as defined in it, not a further one of damages caused by late payments.
2. The Enterprise Act (2015), however, overruled this case law and is now basis for late payments of the Ired, once cover is not been made in right time. Reasonable time to make inquiry in the causes of the claim is given, but damages like insolvency of the Ired can be claimed after non-payment within this time span. Sprung was decided on the case that Ired denied cover on reasons which have been obviously irrelevant. Under actual law, however, late payment without reasonable objection seems to be sufficient for a damage claim. Insolvency damage is included.

Sprung was a case on industrial insurance, while the asked question is on a health insurance of privat nature, which consumer law is applicable for. One cannot make differentiation, however, on this basis. In consumer cases, late payments can also cause hard damages to the Ired.

3. Statutory law, like the Enterprise Act (1925) can overrule case law, as well as later case law overrules earlier court decisions. Both legal authorities have binding effect for courts deciding cases which the facts of are to be taken as meant by the wording or legal purpose of them.
4. German law does not provide for general binding effect of court decisions. There is a so called inter partes binding only, which makes the decision binding between the parties after the time of calling an appeal court is over.

Late payment of an Ired can be taken as “Verzug” under § 286 BGB. For late payment of money there is a special legal basis under § 286, but this provision cannot be applied in insurance cases of late payment, because §§ 14, 106 VVG are special. Reasonable time for insurance investigations is provided for, also.