Final Test DVA Fall 2018

Time: 1 hour; since the questions are equally difficult, you should take about 30 minutes for each. Please write down your name on top of each page and answer in English, as far as possible. Never say yes or no, simply, but make remarks of reasons for. Answers in German will be accepted fully, if they do no exceed 25% of the full text.

I.1. Can an insurance contract be concluded by silence to a letter of confirmation (main pre-conditions)? Attached to the letter the standard contract terms have been sent to the contract partner.

2. Is a contract binding, after letters of confirmation have crossed and none of the parties has objected to the confirmation of the other part, but the clause on the time of premium payment differs by 3 month? Which letter contains the binding clauses?

3. Suppose, the letter of the insurer contains the policy. Does it make a difference?

4. Some comparative remarks to German law.

Possible Answers

I.1. Yes, possible. Key points of the upcoming contract must have been consented some time before, and the eventual corrections can not be unfaithfull (like kaufm. Bestätigungsschreiben). The basic decision of wanting the contract with the mentioned key points must have been done at the occasion of a meeting of representatives of both parties. The letter of confirmation (loc.) is for confirmation only, not for finding out, if the contract shall be concluded or not.

Case law provides for an initiative of the party relying on the principles of the loc. Unfaithful details would be clauses which have not been in discussion during the preparing meeting, despite the fact that they are of some economic relevance.

2. The content of the letter becomes binding which has arrived last (last shot rule). The court of the leading case decision argued that the latest letter should be treated as a counter offer. Being silent after having received the latest letter, one is taken as having accepted this counter offer.

3. Policies' content prevails once it is not objected during 6 month after reception of the counter offer. Case law of regular policies applies without differences of loc.

4. Under German case law loc. is possible, as it is in British law, but there are no intiative preconditions. As to the policy, it needs some warning information by the insurer, making sure that objection in time is necessary for avoiding clauses become binding which one does not want.

II.1. Does British case law provide for information duties of the insured because of risk increase after contract conclusion?

2. Is risk increase to be disclosed if the relevant facts come to the knowledge of the insured after the acceptance of a preliminary cover, but before the final conclusion of the main insurance contract?

3. Can the insurer care for risk increase information by making short term contracts; and does this make a difference to competition effects in the markets?

4. Some comparative remarks to German law and to the possibilities to provide for risk increase information duties by standard contract terms.

Possible Answers

1. Disclosure duties before conclusion of the contract, but not after it. They are based on the theory of utmost good faith, which shall care for sufficient information to calculate the risk. The lack of risk increase information duties after contract conclusion leads to the practise of shorter contract time. It is left to the insurer to provide for short time renewal of the contract. Before the conclusion of a renewed contract, duties of utmost good faith become applicable.

2. Preliminary covers are taken as separated contracts, despite the fact that they may be concluded at the same time or in an economic relation to the main contract. Disclosure in utmost good faith is required. Increased risks, which the insured has become aware of, must be disclosed.

3. Short time contracts seem to be preferable; and both parties have the opportunity to make use of alternative market offers. Costs of preparing new contracts are to be balanced against market innovation chances.

4. §§ 23 ss. VVG provide for information duties in cases of subjective and objective risk increases during a running contract. One cannot provide for stricter duties under German law of standard terms (halbzwingende Wirkung). British law, however, allows standard terms on information duties of risk increases during running contracts, provided they are not unfair, e.g. information duties without preconditions of negligence/diligence of the consumer.