

The Characteristics of Duty of Disclosure in Insurance Law

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Abstract

This study is to analyze on the duty of good faith in the insurance contract and to define the differences of the “Obliegenheit” between Civil Law and Insurance Law. In order to evaluate and control the risks undertaken by insurers, it is necessary to maintain the doctrine of non-disclosure. As a result, an insured should disclose the material information, which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk. In the breach of this duty, the remedy for non-disclosure is recession of the contract and may recover damages based on the tort of deceit. The duty of non-disclosure has been categorized as “Obliegenheit” in German Insurance Law (V.V.G.), which are different from other duties such as “Nebenpflicht”. The main difference between “Obliegenheit” and other “Pflicht” is the remedy of these duties. The remedy of “die obliegenheiten” would only affect the right of the claimant. The remedy of this duty in Taiwan Insurance Law, however, is quite different from the duty described in the context of section 217 of the Taiwanese Civil Code. While the purpose of disclosure is to enable the insurer to decide whether to make the contract of insurance, it would consequently involve with several legal issues, such as mistake, misrepresentation, fraud and tort. This paper will employ England, U.S., German and Japanese articles on the duty of disclosure to discuss the characteristic of the duty of disclosure and its remedy thoroughly.

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