STUDY ON MATRIMONIAL PROPERTY REGIMES
AND THE PROPERTY OF UNMARRIED COUPLES
IN PRIVATE INTERNATIONAL LAW AND INTERNAL LAW

NATIONAL REPORT
DENMARK

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CHAPTER 1

MATRIMONIAL PROPERTY. INTERNAL LAW

1.1 GENERAL ISSUES

The population in Denmark is app. 5.3 million. In recent years, the number of weddings has been around 37,000 and the number of divorces has been approximately 14,000 yearly. In approximately 2/3 of the divorces there are minor children. The number of cohabitants living together without being married is approximately 600,000 (corresponding to more than 20% of all couples). Many of these cohabiting couples have children. About one half of the Danish adult population, comprising approximately 1 1/2 mill. people, live alone without any partner. The number of single mothers is approximately 100,000 and the number of single fathers approximately 20,000.

1.1.1 Sources

1.1.1.1 Denmark has a codified system of law. The primary sources of family law are Acts of Parliament supplemented by court decisions, in which judges have interpreted the legislation. The most important Acts are: Act 256.1969 regarding the formation and dissolution of marriage (hereafter called Marriage Act 1) and Act 56.1925, regarding the legal effects of marriage (hereafter called Marriage Act 2). Family law also comprises the law of parents and children. The principal statutes are: Act 200.1960 on child maintenance (460.2002 on paternity), Act 387.1995 on custody and visiting rights, and Act 388.1995 on guardianship. The law governing inheritance is contained in Act 215.1963, (hereafter called the Succession Act). Most of these statutes have undergone subsequent changes.

In Danish law the explanatory reports play a significant role, when interpreting the legislation.

1.1.1.2 There are no family courts in Denmark. Family cases are heard by judges in the ordinary courts. Most cases are, however, settled by the County Governor under an administrative procedure, which is usually faster and cheaper than judicial proceedings. This dual system has deep historical roots in Denmark. Cases concerning the estates of spouses, before and after death, are heard by the probate court.

Most family law disputes, particularly those relating to maintenance and property, are settled out of court by private agreements between the parties or by negotiation between lawyers. Most practitioners recommend a conciliatory rather than litigious approach to the resolution of disputes. In some cases, particularly with respect to arrangements for children, the parties can be offered out-of-court conciliation services.

1.1.1.3 Law Reform Commissions are dealing with
- Act on Inheritance, including cohabitants
- Pensions at divorce and death
- Children, including private international law regarding child maintenance and paternity
1.1.2 Historic development

Viewed from a historical perspective, the family was characterized early on by mutual dependency and a very close-knit fellowship. The family group was united by strong economic, social and work ties, probably because of social necessity: the family took care of the fundamental interests of society with respect to reproduction and education of the children, and it performed the functions of supporting as well as caring for the sick and the old. The family functions were reflected in the family law where kinship and the extended family played a predominant role with respect to property rights, succession rights, etc. The organization of the family was hierarchical and patriarchal.

During the 19th century, industrialized society led to the weakening of the extent and substance of the sense of community. The importance of the family as a production unit crumbled away, since the husband now often worked outside the home. The extended family was succeeded by the nuclear family. The aspect of solidarity between the spouses as well as the importance of the family, however, was still strongly emphasized. The marriage was decisive also for the status of the spouses and their children. Marriage, which constituted the only accepted form of ‘family’ could only be dissolved for serious reasons.

The standard pattern for the family – according to which the husband, the father dominated when decisions had to be made because he was responsible for providing for the material needs of the family, while the wife, the mother was in charge of the housekeeping and the children – was the basis for extensive family legislation in Denmark during the 1920’s. The changes were inspired by liberal ideals of liberty and the women’s liberation movement. The family ideology focused on equality and independence and brought about extensive statutory changes. Both spouses were included in the marriage legislation of the 1920’s, which contained the first provision for separate rights for men and women to dispose of property and separate liability for debts incurred during marriage; further, an obligation for maintenance was introduced, which could be met both by financial support and by work in the home. In case of divorce, considerations regarding the idea of equality should have led to equal sharing of property and renunciation of financial support; however, the social realities led to a preservation both of maintenance and of the standard of equal sharing of property with the express intention of assisting the home-working spouse, who was regarded as having taken part in obtaining the property through domestic work.

The period around the middle of the 20th century has been described as ‘the happy period of family law’, as the most persistent areas of injustice in family law were solved. General principles were established which kept marriage as the legal framework of family life, but removed the paternalism of the turn of the 19th century.

Recent decades have brought about extensive changes in formation, functions, and support of the family. Today the family unit may be defined either inside or outside the framework of marriage: marriage has been supplemented by unmarried cohabitants, the number of which has been increasing continuously, since the end of the 1960’s. In many cases, the nuclear family no longer lasts a lifetime, cf. the number of divorces mentioned below. The functions of the family have become limited: the care of children has been taken on partly by public day care centres, and the care of the old and the sick has been taken on by public nursing homes, etc. Finally, the leisure-time sector has grown, and there is a tendency for family members to enjoy their leisure on an individual basis rather than as a group. It has been said that today’s family functions mainly as a partnership for sexuality, feelings, children, and consumption. Support of the family has partly been taken over by public authorities. Examples include children allowances, old-age pension for each elderly person, and maintenance allowances for the sick or the unemployed. At the same time, family support today is often based on the double-income family, since the earnings of both adult members of the family are considered to be necessary.
1.1.3 Primary regime

The main feature of Danish marriage legislation is that spouses are considered two independent persons with equal rights. Marriage Act 2 provides that husband and wife shall support each other and jointly safeguard the interests of the family. This policy is an expression of the idea that the spouses are equal, and that necessary decisions concerning the life of the family shall be reached jointly. There are few legal consequences flowing from this policy.

Spouses have a mutual duty to support each other during marriage and each spouse is obliged to contribute to maintaining a standard of living for the family according to his or her means (Marriage Act 2, Chapter 2). These obligations can be fulfilled by financial contribution or by work in the home. Application for financial provision during marriage for the applicant spouse can be made to the County Governor when, inter alia, the spouses are living apart due to disagreement. Such applications are common. An application for financial provision for a child can also be made to the County Governor under the child legislation. The county governor can vary or terminate maintenance if the economic circumstances of the parties change. The court may also vary maintenance by a further order if circumstances and particular reasons require this or it would be unreasonable to continue an agreement.

During marriage spouses can enter into binding contracts with each other and may be liable to each other in tort.

Creditor can only take proceedings against the property of the debtor spouse, although both spouses may be liable to a creditor for purchases bought for the household or necessities for children. Furthermore, a wife may make not only herself but also her husband liable for purchases she makes own respect of her own needs. A husband has no similar right.

The system of matrimonial property ownership in Denmark is deferred community of property, which applies to all spouses except those who have chosen to opt out of the system by agreement (Marriage Act 2, chapter 2). The spouses may, however, agree upon separate property, which is then limited to certain accepted types.

1.1.4 Secondary regimes

1.1.4.1

Spouses can opt out of the system of community property and be subject to total or partial separate property ownership by making an agreement, which must be registered in a public registry (Marriage Act 2, chapter 4).

1.4.2.2

‘Matrimonial property system’ primarily covers property held by the spouses, whereas maintenance, pension rights etc are seen as something separate.

1.1.4.3

The legal scheme is deferred community property as described below. It extends not only to acquisitions during marriage including gifts and inheritance but also the property that each spouse brings into marriage.

1.1.4.4

Marriage contracts are allowed. They are frequently made, especially to secure the surviving spouse, see below.

The advantages of the most common marriage contract is that the surviving spouse is secured most of the community property. The disadvantages are primarily that the normal marriage
contract will mean that the spouse, who is not well off economically, will get very little at divorce (and the children of the deceased spouse very little at his/her death).

1.1.4.5

The specific matrimonial property regimes are regulated by law, which means that only the stipulated marriage contracts will be accepted by court.

1.1.4.6

The matrimonial property regimes can change if a new marriage contract is made (and if a donor or testator decides that a gift or legacy shall be separate property).

1.1.4.7

No special regimes are allowed locally.

1.2 TYPES OF REGIMES

1.2.1 Comments as to the primary regime

1.2.1.1

Under the Danish system, community of property is deferred; it does not come into effect until termination of the marriage, either by legal separation, divorce or death. During marriage the system is similar to a separate property system with each spouse entitled, on his or her own behalf, to dispose of property which he or she has brought into the marriage or has acquired in any way during the marriage (including gifts and inheritances.). However community of property remains indirectly relevant during marriage, as neither spouse may misuse the right to dispose of property to the detriment to the other spouse. Where there is misuse, or risk of loss by misuse, the other spouse can ask that the community be dissolved and the property be divided and/or claim compensation.

Spouses can opt out of the system of community property and be subject to total or partial separate property ownership. Alternative property arrangements can only be made by written agreement which must be registered in a public registry.

Spouses have considerable autonomy as to how they can own property, e.g. they can agree that they shall at all times, even on death or divorce, own property separately or agree that separate property shall apply on divorce only; or as separate property in case of divorce and in case of death only for the surviving spouse no matter which spouse this turns out to be. The latter possibility is widely used in practice. Separate property only in case of death but not divorce is excluded. Spouses who have agreed to own property separately can register a new agreement, in which they agree that community property shall apply in whole or in part.

Separate property can also arise, where a donor or testator has specifically stated that a gift or legacy shall be separately owned; spouses normally cannot change such property into community property without the donor’s consent. With separately owned property no property division takes place on marriage dissolution or death. While the surviving spouse in a community property regime may retain undivided possession of the entire community property, even where there are children, this advantageous rule does not apply to separate property. Rules relating to damages for misuse of the property and restricted rights to dispose of the matrimonial home do not apply either. The surviving spouse cannot retain undivided estate with separate property.

During marriage spouses can enter into binding contracts with each other and may be liable to each other in tort.
Gifts between spouses may require formalities. (Marriage Act 2 sec 30). Except for usual gift, which are not disproportionate to the donor’s financial circumstances, a registered settlement is required for a gift to be valid between spouses, and more important, to be valid in respect if creditors or heirs of the donor. If a gift is made by a valid and registered settlement, creditors with a prior claim against the donor spouse can demand that the donee spouse pay an amount corresponding to the value of the gift, if the debtor is unable to pay. (Marriage 2 sec 33).

1.2.1.2

Spouses have a mutual duty to support each other during marriage and each spouse is obliged to contribute to maintaining a standard of living for the family according to his or her means (Marriage Act 2, Chapter 2). These obligations can be fulfilled by financial contribution or by work in the home.

1.2.1.3

Spouses have restricted rights to dispose of the matrimonial home (and any business with which the other spouse or both spouses are connected). A spouse may not sell, give away, lease or mortgage the matrimonial home without the consent of the other spouse. The same rule applies to furniture in the matrimonial home and equipment needed for the work of the other spouse. (Marriage Act 2 sec 18 and 19).

1.2.1.4

The legislation does not have special provisions about professional occupation of one of the spouses, except from the provision that the support obligation may be fulfilled by financial contribution or by work in the home.

1.2.1.5

Each spouse is free to open bank accounts etc. The rights and duties in connection with the account will normally be connected to that spouse, see above.

1.2.1.6

Both spouses may be liable to a creditor for purchases bought for the household or necessities for children. Furthermore, a wife may make not only herself but also her husband liable for purchases she makes in respect of her own needs. A husband has no similar right. (Marriage Act 2 sec 11)

If a spouse during marriage due to illness or the like is unable to attend its affairs, the other spouse is entitled to do everything that cannot be postponed, including be entitled to income, and – where it is absolutely necessary for the support of the family sell or mortgage assets. Real estate cannot, however, be sold or mortgaged without the consent of the county Governor. (Marriage Act 2 sec 13).

1.2.1.7

Each spouse is obliged to perform the disposal over community property in a way that does not endanger the property in an improper way – to the detriment of the other spouse (Marriage Act 2 sec 17). The provision is not sanctioned as such, but where there is misuse, or risk of loss by misuse, the other spouse can ask that the community be dissolved and the property be divided and/or claim compensation.
1.2.2 Matrimonial property regime provided by law

1.2.2.1
A secondary regime is not provided by law apart from marriage contracts (and wills/gifts by third parties).
A testator or a donator of a gift may decide that the legacy or gift shall be separate property (Marriage 2 sec 28 a). This also includes the portion of inheritance to which an heir is entitled by law.
A beneficiary may also according to a be nefit clause receive a life insurance sum as separate property.

1.2.2.2
Inheritance, which is tied up (trust funds) is however separate property according to the legislation on Inheritance.

1.2.3 Marital settlements

1.2.3.1
The regime provided by law is community of property.
Separate property may be agreed upon in a marriage contract.
The spouses can agree that they shall at all times, even on death or divorce, own property separately or agree that separate property shall apply on divorce only. They can also agree upon separate property in case of divorce and in case of death only for the surviving spouse no matter which spouse this turns out to be. The latter possibility is widely used in practice. Separate property only in case of death but not divorce is excluded.
They may also agree that a certain fraction of their estate shall be separate property.
Gains from separate property and substitutes for separate property will also be separate property, unless otherwise agreed.
Spouses who have agreed to own property separately can register a new agreement, in which they agree that community property shall apply in whole or in part.

1.2.3.2
A marriage contract on separate property may be limited in time, e.g until 15 years after the marriage or 10 years after the marriage contract. Separate property may also be gradually changed to community property. Community property cannot be limited in time. This means for instance that separate property cannot be agreed to take effect 10 years from marriage. Other kinds of conditions than time limits for separate property than time limits will not be accepted (e.g. as long as the spouses have no children, until divorce because of adultery from a spouse or the like). Such conditions would be seen as invalid
Spouses may enter into marriage contracts before or during marriage.
There are conditions regarding both content and form.
The requirements regarding form are legal conditions, which means that the marriage contract is invalid if they are not fulfilled.
Marriage contracts shall be made in writing and be signed by both spouses personally. A married spouse under the age of 18 years and a person under guardianship may normally on their own make marriage contracts.
Marriage contracts must be registered in a public registry to be valid. If it is not registered it has no legal effects neither towards creditors etc. nor between the spouses.
A certain specification is needed to fulfil the requirements of public registration. The annual number of marriage contracts is app. 9.000 (2000).

1.3 **CHANGE OF MATRIMONIAL PROPERTY REGIMES**

1.3.1 **Principles**

1.3.1.1 The matrimonial property regime may be changed during marriage. Community property may be changed to separate property by a marriage contract. (Marriage Act 2 sec 28). Separate property may be changed back to community property by a marriage contract. (Marriage Act 2 sec 28 b). This may embrace all or part of the separate property. If separate property has been established by a testator or donator change can only take place if this is not in contradiction with the provisions of the testator or the donator. Thus the spouse cannot change to community property by a marriage contract if the testator/donator is dead or if consent cannot be obtained, unless the testator/donator has established a possibility for the spouses to change the clause on separate property.

1.3.1.2 The possibilities for change differ according to the way the property regime has been established.

A contract may be changed by a new contract. A clause established by a third party must as the point of departure be respected, but it has been debated to which extent it seems fair that a deceased person may decide the property regime for spouses long after their death.

1.3.2 **Modalities for change**

While change of property regime normally happens by agreement (marriage contract) the courts may declare a marriage contracts invalid if it would be unfair to enforce it. (Marriage Act 2 sec 36).

The conditions regarding the contract, the content of the contract or later circumstances may influence the decision. The contract may be considered invalid or changed. Such court decisions are, however, very rare. Indirectly the marriage contract on separate property on divorce may be changed by a compensation granted by the court, see below. (Marriage Act 1, sec 56).

1.4 **PUBLICATION OF THE REGIME**

1.4.1 **Principles**

As community of property is the regime established by law, this is not published. Marriage contracts must be registered in a public registry to be valid. If it is not registered it has no legal effects neither towards creditors etc. nor between the spouses. The registration always takes place at the same place in Denmark (Århus).

The justification is a.o. protection of the creditors. It has been criticized that registration is also a condition towards the other spouse, and that publishing of the registration of the marriage contract may be seen as an intrusion in the spouses’ private life.
1.4.2 Modalities for publication

Each of the spouses has the right to ask for public registration of the marriage contract. It may take place several years after the contract has been entered into. Registration cannot take place after the death of a spouse or legal separation or divorce.

The formal requirements for public registration are checked at the public registry. The registration of the marriage contract is published in ‘Statstidende’. Any person asking for a copy of registered marriage contracts is entitled hereto.

1.5 Administration of Estates

1.5.1 Under the regime provided by law

During marriage the community property system is similar to a separate property system with each spouse entitled, on his or her own behalf, to dispose of property which he or she has brought into the marriage or has acquired in any way during the marriage (including gifts and inheritances).

However community of property remains indirectly relevant during marriage, as neither spouse may misuse the right to dispose of property to the detriment to the other spouse. Where there is misuse, or risk of loss by misuse, the other spouse can ask that the community be dissolved and the property be divided. Moreover the spouse may, at divorce, or the heirs by death claim compensation.

Spouses have restricted rights to dispose of the matrimonial home (and any business with which the other spouse or both spouses are connected). A spouse may not sell, give away, lease or mortgage the matrimonial home without the consent of the other spouse. The same rule applies to furniture in the matrimonial home and equipment needed for the work of the other spouse. (Marriage Act 2 sec 18 and 19).

1.5.2 Under marital settlements

If the spouses have separate property the restrictions regarding disposal of the matrimonial home are not relevant.

Moreover, there is no obligation to towards misuse of property.

The right to make purchases bought for the household or necessities for children with the consequence that both spouses are liable to the creditor (Marriage Act 2 sec 11) and the right for a spouse to do what cannot be postponed, if a spouse during marriage due to illness or the like is unable to attend its affairs (Marriage Act 2 sec 13) are also relevant even the spouses have separate property.

1.5.3 Contracts between spouses during marriage

1.5.3.1 Spouses may make sales to each other.

1.5.3.2 Gifts can be made but are invalid if the required formalities are not fulfilled. (Marriage Act 2 sec 30). Except for usual gift, which are not disproportionate to the donors financial circumstances, a registered settlement is required for a gift to be valid be tween spouses, and more important, to be valid in respect if creditors or heirs of the donor. If a gift is made by a valid and registered settlement, creditors with a prior claim against the donor spouse can demand that the
donee spouse pay an amount corresponding to the value of the gift, if the debtor is unable to pay. (Marriage 2 sec 33).

1.5.3.3

Companies between spouses are permitted.

1.5.3.4

Employment contracts between spouses are permitted.

1.6 DISSOLUTION; LIQUIDATION AND DIVISION OF THE MATRIMONIAL PROPERTY REGIME

1.6.1 Following dissolution of the marital bond (divorce..)

On divorce or separation spousal maintenance can be ordered by the court, or be agreed upon by the parties. Maintenance is not common in Denmark, and when granted is usually of limited duration, and maintenance for life can only be granted in special circumstances. The duration of maintenance is determined by court and the amount by the County Governor. When decisions regarding maintenance are taken, the court applies the following criteria: needs of the applicant; the defendant’s ability to pay; duration of the marriage; and the applicant’s need for financial support for education or training. In practice the primary consideration is the applicant’s needs, and maintenance is normally refused, if the applicant has an adequate actual or potential income. In most cases maintenance is either refused by or agreed upon by the parties. Maintenance, if any, is often assessed by the County Governor as one fifth of the difference between the applicant’s income and that of the other party.

1.6.1.1

On divorce or separation community property ceases and the net estate will have to be divided. In today’s economic situation in Denmark it is often a problem that in cases where the debt of one spouse exceeds his assets, the debt is not divided between the spouses.

Property which must be divided includes, e.g. any money held by the parties, the value of the family home, if the parties own it, which is very common in Denmark, investments, business assets, stocks and shares etc. A special Danish ‘capital pension’ is also included in the division of property which is of considerable economic importance. Certain personal assets (e.g. clothes and jewellery) and certain rights (e.g. certain copyrights, personal good-will and compensation for personal injury) are not taken into consideration when the net estate is calculated. Pension rights which entitle a party to lifelong periodical payments are not included in the division of property. This creates a schism between a ‘capital pension’ which is included in the property division and lifelong periodical payments which are not. Cases are now starting to appear before court, where one spouse has a pension included within the property division, while the other has a pension which is excluded. The legal situation is complicated and uncertain and a law reform commission appointed by the Minister of Justice is considering the treatment of pension rights on divorce (and death).

1.6.1.2

Division of property is usually effected by private agreement, but either party can refer the matter to the local probate court. Only 1 % of disputed settlements end up in the probate court, partly because of the costs attached thereto.

A spouse who owns an asset is normally entitled to demand possession of it. Where the value of the asset exceeds his share of the property after property division the difference must be
paid to the other spouse. Special provision is made for the matrimonial home and household and the court can order that the non-owner spouse be entitled to remain in the matrimonial home. This does not, however, influence property division, as the matrimonial home is valued and taken into account when the property is divided. In practice this means that it may often be difficult for the spouse who has custody of the children to stay in the former matrimonial home because this is too expensive. The legislation makes it possible to make part payment. Any asset which neither spouse wishes to keep is sold and the proceeds of sale divided between them.

1.6.1.3

A spouse may be entitled to more than half of the property to the extent that furniture and household goods are necessary for maintenance of the home.

If a spouse has misused his or her right to dispose of property brought into the marriage, and this has considerably reduced the property available for division, the court may grant the other spouse damages. Claims may also be accepted by the court in other cases where there is no damage, eg when money from community property is used to improve separate property or personal assets or rights.

If the marriage is of short duration (less than 5 years) and division of the net estate would be unjust because one spouse brought into the marriage a larger share of the estate, the court may determine that the net estate should not be divided into equal shares. In practice equal division is seldom denied.

Where spouses own property separately, division of property does not take place on separation or divorce. However, in special circumstances, the court can order that a spouse, who owns separate property, shall give the other spouse a share of that property to ensure that he or she is not placed in an unreasonable financial situation on separation or divorce. Duration of the marriage and the economic circumstances of the spouses are taken into consideration in reaching a decision to make a discretionary judgment. Special consideration is given to the economically weaker spouses need to obtain new housing, and any contribution in money or moneys worth made by that spouse to the acquisition of the property owned by the other party. (Marriage Act 1 sec 56). This provision is widely used in practice.

A spouse who has been deserted has a right to claim division of community property. In these cases, the assets taken into account are the assets each of the spouses owns on the day of the application for division of community of property (‘bosondring’). A spouse may take precautions against the former matrimonial home being sold without the consent of both spouses by registration of a marriage certificate in order to restrict a disposal of the property. There is no procedure by which an order freezing all assets of the respondent may be obtained.

1.6.1.4

Separations and divorces can be granted by a court or administratively by the County Governor. To obtain an administrative decree, both spouses must agree to the separation or divorce and be in agreement about certain related matters (i.e. spousal maintenance). They need not reach agreement on how community property is to be divided, as this issue can be decided by a probate court. Both parties must attend before the County Governor. When the separation or divorce is sought in the court, a party is usually represented by a lawyer. The State can assign a lawyer where necessary.

Legal separation lapses automatically without any formalities if the spouses continue or resume cohabitation. In that case community of property is in force between the spouses. If the have divided their community property their new shares will be the shares they obtained at the division of property.
Division of community property is decided by the probate court in case of disagreement between the spouses. The procedure is costly and may take a long time.

1.6.2 Following the death of one of the spouses

1.6.2.1 Community property ceases on death whereupon the property must normally be divided into halves unless the spouses have agreed otherwise. The surviving spouse takes his or her part of the community property and the deceased’s spouse’s estate comprises his statutory share of the community property, which is normally half, plus his separate property, if any. At present marriage contracts establishing that the surviving spouse is entitled to retain his or her estate as separate property are seen in many marriages with property. The consequence is, that the surviving spouse retains his or her property as separate property, whereas the estate of the deceased spouse will be community property and thus be divided in halves (or retained as undivided estate, see below). This way the deceased spouse’s heirs are only entitled to a smaller amount of his or her estate compared with the surviving spouse (and his or her heirs).

1.6.2.2 In many cases the estate is not divided but the surviving spouse retains the whole community property without sharing the deceased’s share of the estate with joint issue. This is possible regardless of the age of the surviving spouse and joint issue and of the value of the property. The surviving spouse has no right, however, to retain an undivided estate consisting of separate property, unless separate property shall apply on divorce only. Where the deceased spouse has children from a previous marriage, children born out of wedlock, they, or if they are minors, the probate court, must consent to the spouse retaining the undivided estate. An undivided estate comprises everything acquired by the surviving spouse, provided it is not part of the separate property, and the survivor is liable for the obligations of the deceased spouse. During his or her lifetime the surviving spouse has the powers of an owner. He or she may at any time request that the undivided estate be divided and must divide the estate if he or she remarries. Where an undivided estate is divided while the surviving spouse is alive, two thirds passes to the surviving spouse (half as community property and one third of the rest as inheritance), while one third passes to the heirs of the deceased spouse. Where the undivided estate ceases on the death of the surviving spouse, one half of the property passes to the descendants of the deceased spouse and the other half to the heirs of the surviving spouse.

1.6.2.3 If a spouse has misused his or her right to dispose of property brought into the marriage, and this has considerably reduced the property available for division, the court may grant the heirs of the other spouse damages. Claims may also be accepted by the court in other cases where there is no damage, eg when money from community property is used to improve separate property or personal assets or rights.

The right to compensation in case of separate property (Marriage Act 1 sec 56) cannot be used by the heirs when community property is divided at a spouse’s death.

1.6.2.4 Division of community property is dealt with by the probate court in case of disagreement.
CHAPTER 2
MATRIMONIAL PROPERTY. PRIVATE INTERNATIONAL LAW

2.1 GENERAL REMARKS
In cases where conventions are expected to be described by other countries they are not dealt with in detail in the following. Choice-of-law regarding property regime has been almost unchanged in Denmark for many, many years. Legislation in Denmark on private international law regarding marriage is almost absent and practise (and theory) is very scarce.

2.1.1 Sources
Denmark is embraced by:
Brussel I
NOT Brussel II
Haag-convention of 1 June 1970
Nordic convention of 1931.

2.1.1.2 Denmark has not – as Sweden and others – any general legislation on private international law regarding spouses.

2.1.1.3 There are few court decisions in the area.

2.1.1.4 A reform of the private international law regarding children – paternity and maintenance – is embraced by the tasks of a Law Reform Commission on children. There are reform plans regarding the Nordic Convention of 1931. There are no other plans for reform regarding private international law.

2.1.2 Historic development
A foreign marriage is recognized as formally valid in Denmark if celebrated in accordance with the formal requirements of the law of the country where it was celebrated (lex loci celebrationis), except where such marriage is contrary to Danish public policy, e.g. a polygamous marriage, an informal marriage, or a marriage by proxy.
Under the Danish Nationality Act (Act 252.1950 with subsequent amendments) citizenship is not acquired through marriage.
According to Article 44 of the Danish Constitution no alien can obtain Danish citizenship except by law.
The Danish Nationality Act provides a.o:
- A child born in Denmark of married parents is a Danish citizen if at the time of birth his or her father or mother is a Danish citizen.
- A child born in Denmark of unmarried parents is a Danish citizen if at the time of birth the mother is a Danish citizen. An unmarried minor child of an unmarried Danish father and a
foreign mother acquires Danish citizenship if the child is born in Denmark. Danish citizenship will also be acquired on his or her parents’ marriage.

c- Special provisions exist for adopted children.

d- Naturalization normally embraces the applicant’s unmarried children under 18 years if they live in Denmark provided that, in the event of a parent being divorced or separated, the parent seeking naturalization has custody.

e- A party to a marriage does not automatically acquire Danish citizenship, but can do so after a period of residence. In case of marriage the required period of domicile in Denmark is not as strict as normally.

f- Special provisions exist in relation to persons who acquired Danish citizenship at birth, but lost it at a later time.

A Danish woman does not loose citizenship by marrying a foreign man.

A residence permit can be requested by a foreign person over 18 years under certain conditions, which include that the person is married to or cohabiting with a person resident in Denmark over 18 years, and having Danish citizenship or citizenship in another nordic country.

A court has jurisdiction to hear an application for a separation or divorce if either party is domiciled in Denmark or has lived in Denmark during the preceding two years or was previously domiciled in Denmark. Special provisions exist for citizens of Nordic countries to enable them to divorce in Denmark whether or not resident or domiciled in Denmark.

Danish courts also have jurisdiction where
- the applicant is a Danish citizen and because of that is unable to seek a divorce in the country where he or she is domiciled;
- both spouses are Danish citizens living abroad provided the defendant does not oppose the proceedings; and
- in any case where a legal separation has been granted in Denmark within the last 5 years.

In the absence of an international convention, recognition of foreign court decisions on civil matters is determined by the Minister of Justice (Administration of Justice Act s. 223 a).

Foreign separations and divorces are usually recognized in Denmark provided the foreign court has international competence as recognised in Denmark, and recognition does not conflict with Danish public policy (ordre public). Recognition only covers the dissolution of the marriage (i.e. the new status of the spouses) not related matters such as maintenance.

Denmark is a party to the Hague Convention of 1 June 1970 relating to the Recognition of Divorces and Judicial Separation. Under the Hague Convention, foreign divorces and separations granted in a contracting state are recognized in Denmark if decided by a court or other body officially recognised by the Contracting State.

Special provisions exist for citizens of Nordic countries. Under the Nordic Marriage Convention of 3 February 1931, administrative and legally binding judicial decisions made in one contracting state are recognized in another contracting state, without specific confirmation and without proof of domicile and citizenship. Thus, divorces and legal separations in a contracting state will be recognised.

According to an administrative order (627.1989) the County Governor can decide maintenance disputes if the person with the maintenance obligation or the applicant is resident in the county. The applicable law will be Danish law.

Special provisions are contained in the Nordic Marriage Convention of 6 February 1931, with subsequent amendments, for recovery of maintenance, see Nordic Convention of 23 March 1962. See also the Hague Convention of 2 October 1973 on maintenance and UN Convention of 20 June 1956 regarding recovery of maintenance, to both of which Denmark is a party.
2.1.3 General notions of private international law

As a point of departure renvoi will not be used by Danish courts unless the legislation explicitly states this. Nevertheless renvoi is to a certain extent acknowledged regarding the property system. Probably the law of the husbands domicile will be accepted if the legislation regarding private international law in this country accepts the autonomy of the spouses and they have agreed that the property system of their marriage shall be embraced by another law than that of the law of the domicile. (Legal theory advocates at least that this should be the case).

Ordre public is seldomly used in Danish law.
Fraud plays a very modest role in Danish private international law.

2.1.4 General problems of private international law

Denmark does not have a highly developed law of domicile. A party is domiciled in Denmark if he or she is residing in Denmark and has an intention to remain there permanently, or at least has no intention of only staying temporarily. The Danish concept of domicile is close to that of habitual residence, but also refers to a person’s intention. A Danish domiciled person resident in another country because of education or work may well be regarded as habitually resident in that country, but will not be treated as domiciled there, unless he intends to reside there permanently. If a Danish citizen returns to Denmark, he or she may regain Danish domicile after a short period of residence, even if domiciled elsewhere, if he or she intends to stay. A person may be without a domicile, but cannot have more than one domicile.

2.2 International Jurisdiction over Matrimonial Property Issues

As mentioned division of property is dealt with by the probate courts in case of disagreement.

The Danish probate courts have jurisdiction if the defendant spouse is domiciled in Denmark or if the applicant spouse continues to have domicile in the Danish jurisdiction where the spouse’s latest joint residence was situated. The Minister of Justice can decide that the Danish Probate Court has jurisdiction if one of the spouses has some affiliation with Denmark. See Administration of Estates Act s 64 (a).

According to Marriage Act 2 sec 53 a the Minister of Justice may make arrangements (conventions) with other states to about the relationship between Danish Maw and foreign law about the legal effects of marriage. Moreover, the Minister of Justice may establish rules about the relationship the regulation in Denmark and the other Nordic countries about the legal effects of marriage. Such rules have, however, not yet been established.

2.3 Law Applicable to the Matrimonial Property Regime

In respect of property division, the choice of law will be determined by the husbands domicile at the time of the marriage. This rule has long tradition in Danish law. It is used regarding legal property systems as well as contracts entered into before marriage.

2.3.1.1

Traditionally it is accepted that the formal and material validity of a marriage contract is dependant on the domicile of the husband at the time of the marriage contract. (Marriage Act 2 sec 53).

According to this rule the Danish Marriage Act 2 is used on marriage contracts, established in a foreign country, when the husband is domiciled in Denmark.
A marriage contract which is established by a husband, who is not domiciled in Denmark, is valid in Denmark, if it is valid according to the law in his country of domicile and he gets domicile in Denmark. It is a condition that the marriage contract is not contrary to the provisions in Marriage Act 2. In relation to third parties the validity is dependant on registration in the public registry within a month after the husband is domiciled in Denmark.

The Nordic Convention on Marriage contains special regulations on choice-of law regarding marriage contracts.

According to Marriage 2 sec 53 a marriage contract established according to the Nordic Convention art 4 must be registered in the public registry to be valid towards third parties in Denmark, if one of the spouses are resident in Denmark at the time the marriage contract was established.

2.3.1.2

As mentioned the choice of law will be determined by the husbands domicile at the time of the marriage.

If the man changes domicile in connection with the marriage it is assumed, that choice of law will be the new domicile of the husband.

Rules of procedure in connection with division of the estate are based on Danish law, even if the property system followed by the probate court is that of a foreign state.

Choice of law is based on the principle that all of the estate is covered by the same choice of law - lex causae. Thus real estate owned by a spouse in another country is not embraced by the country where the real estate is situated but by the domicile of the husband at the time of marriage. Lex situs will however be used regarding disposal of real estate in a foreign country, e.g. consent conditions etc.

According to another principle choice of law remains the same even if the spouses change domicile during marriage.

The reasoning behind this principle is to secure protection, clarity and predictability. It is, however, acknowledged that the principle may be inadequate if the spouses’ relation to the new country is stronger.

The point of departure is, that the spouses cannot change choice of law by agreement/contract. In legal theory this is, however, being questioned and modified and acceptance of autonomy for the spouses is gaining ground.

In practise it is unclear, whether the possibility for a spouse to obtain an amount in case of separate property (Marriage Act 1 sec 56) can be used in Denmark if the spouses’ property regime is embraced by another country and is thus separate property.

Special provisions exist for Nordic marriages, according to the Nordic Marriage Convention from 1931.

2.3.2 Scope of the law applicable to the matrimonial property regime

Choice of law regarding maintenance will be Danish law.

2.4 RECOGNITION AND ENFORCEMENT OF FOREIGN COURT DECISIONS ETC. IN RESPECT OF MATRIMONIAL PROPERTY REGIME

A foreign judgment is not enforceable in Denmark; the issue must normally be relitigated in Denmark.

Where proceedings have been commenced abroad and the jurisdiction is accepted by both parties, the Danish courts can stay proceedings in Denmark. In practise, however, the Danish courts rarely stay proceedings.
Regarding enforcements of maintenance orders internationally Denmark is a party to the Brussels Convention I and to the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 1968. Under an agreement between the Nordic countries maintenance payments which have been determined in one of the Nordic countries may be recovered in another.
CHAPTER 3

UNMARRIED COUPLES INTERNAL LAW

3.1 SOURCES OF THE LAW OF UNMARRIED COUPLES

There is no general legislation of unmarried couples of different sexes in Danish Law, but legislation on registered partnership from 1989. Thus the property systems of cohabitants are not dealt with by law. Court decisions are of great importance in this respect, see below.

Even if there is no general legislation applicable to cohabitees and their families, an increasing number of rules apply expressly to cohabitees, e.g. in respect of social security, compensation, taxes, housing and children. The effect is that a deep division has arisen between traditional family legislation on the one hand and provisions applying to ‘selected areas’ of increasing importance to families on the other hand.

Denmark was the first country in the world to introduce partnership registration for two persons of the same sex – homosexual marriages – in 1989 (Act 372.1989). The main purpose of the legislation was to equalize the social status of homosexual and other forms of cohabitation.

3.2 HISTORIC DEVELOPMENT

Living together unmarried is not a new phenomenon in Danish society, but in recent years the number of cohabitants has escalated at a fast pace. The number is app 20% of all persons living together (app 600,000 persons are cohabiting).

As of 1 January 2001, the number of persons who had entered into a registered partnership stood at app. 5,000 persons – app 3000 male and 2,000 female. Most men were between 40-59 when entering a partnership, while the women were a bit younger, namely between 35-50.

3.3 THE LEGAL CHARACTER

In some respects the legislation has made special provisions regarding cohabitants, but this is not the case regarding property issues.

The point of departure is that the cohabitants can make contracts regarding their cohabitation. Such contracts may deal with a.o. property issues.

Registered partnership is embraced by legislation. In order to register the parties need not intend to live together or have sexual relations. The introduction of registered partnership has caused few problems.

3.4 PROPERTY

Cohabitees have no obligation to support each other financially.

Cohabitees have no obligation to support each other financially. Community property rules do not apply to cohabitees. On termination of cohabitation an application can be made to the court for compensation to ensure that the cohabitee, who owns most of the assets, does not leave the other cohabitee in an unreasonable financial situation. Compensation is discretionary, i.e. the net estate is not divided into two equal shares and there is no right to a fixed amount. Several applications for compensation have been successful.

The leading case is U 1980 p. 480, where the Supreme Court in a majority judgment held that a non-owning female cohabitee was entitled to compensation as she had made an indirect financial contribution to household expenses which enabled the man to pay for the house. The cohabitants lived together for 4 years and the man earned twice as much as the woman. They had a joint household and economy. In another Supreme Court case U 1984 p. 166 substantial
compensation was granted to a non-wage earning female cohabitee where the man had considerable business assets, the relationship had lasted 16 years and she had stayed at home and brought up their three children.

Registration has the same legal effects as marriage, except where otherwise provided by legislation. Thus legislation relating to maintenance, community property, tax and social security benefits, separation and divorce and inheritance etc. applies to registered partnership. References to ‘marriage’ or ‘spouse’ in Danish law automatically include registered partnerships and registered partners. The parties to a registered partnership cannot, however, adopt a child and cannot have joint custody of a child, although one party can have sole custody. A partner can adopt the other partner’s child (stepchild adoption), unless the child comes from a foreign country. Furthermore, provisions in Danish legislation that use the terms ‘husband’ or ‘wife’ or rules that define the spouse by sex do not include registered partnership.

3.6 DEATH

A cohabitant of a different sex does not have any rights of inheritance according to the legislation. The cohabitant thus only inherits if a will is made.

Any children of the deceased cohabitant are entitled to a share of the deceased cohabitant’s estate.

There is no right to undivided estate for the surviving cohabitant.

The fact that cohabitants have no legal right of inheritance is a great problem, as most of them have made no will. The children, if any, inherit, but until the child is 18 years old the inheritance is to be administered by a bank according to special provisions. Thus it may be necessary for the surviving cohabitee to sell the home to give the joint issue their inheritance from the deceased cohabitee. If the cohabitants have made a will, they may be entitled to beneficial taxation on death similar to that of spouses.

A law reform commission is considering legislation regarding inheritance for cohabitants.

A right of compensation may be granted on the same conditions as mentioned regarding dissolution of cohabitation.

A registered partner has the same rights of inheritance as a spouse, see above.
There is no special legislation on international private law regarding cohabitants of different sexes. In 1989 it was a.o. argued that the Danish legislation on registered partnership could not be expected to be recognized in other countries, including the other Nordic countries – because of viewpoints related to ordre public. Nevertheless similar legislation has later been introduced in other countries, including the other Nordic countries.

Normally one of the parties in a registered partnership must be a Danish citizen, in order to be registered in Denmark, but if both parties have been living in Denmark 2 years before registration, registration can also take place. Citizenship in Norway, Sweden or Iceland is similar to Danish citizenship and the Minister of Justice may decide that this also goes for other countries with legislation on registered partnership similar to the Danish legislation. Persons from Denmark and The Netherlands will thus be able to enter a registered partnership in Denmark if one of them is resident in Denmark.

In a court case from 1993 (UfR 1993.849 H) the Danish Supreme Court stated that a registered partnership entered in Denmark between two citizens from Russia was valid even if they did not fulfil the legal conditions.

According to a special provision in the Act on registered partnership dissolution of registered partnership can always take place in Denmark if it was entered into in Denmark. This special provision was considered necessary, as it was not obvious that dissolution could take place in any other country.

Provisions in international treaties cannot be used on registered partnership, unless this is accepted by the states who have signed the convention.

Where certain provisions in international treaties require the other country’s recognition of a marriage, the registered partners will not be placed on an equal footing with spouses.

The regulation on jurisdiction etc regarding spouses will also be applicable regarding registered partnership.
ANNEXES

Linda Nielsen, and Jesper Vorstrup Rasmussen,
FamilieRetten (2001), GEC Gads Forlag

Finn Taksøe-Jensen
Lærebog i Arveret (2001) (Juristforbundet)

Ingrid Lund-Andersen, Noe Munck, Irene Nørgaard, Jørgen Nørgaard, Marianne Højgaard Pedersen and
Peter Vesterdorf
Familieret, (1996) Juristforbundet

Torben Svenne Schmidt (ed), Jørgen Nørgaard og Peter Vesterdorf
Arveret (1995) Juristforbundet

Torben Svenne Schmidt
International Person- Familie- og Arveret (1990) Juristforbundet

Peter Arnt Nielsen
International Privat- og Procesret 1997
The Registered Partnership Act


WE MARGRETHE THE SECOND, by the Grace of God Queen of Denmark, do hereby make known:

The Danish Folketing has passed the following Act, which has received Royal Assent:

1. Two persons of the same sex may have their partnership registered.

Registration

2.-(1) Part 1 and section 12 and section 13(1) and (2), first sentence, of the Danish Marriage Act shall apply correspondingly to the registration of partnerships, cf., however, subsection (2).

(2) A partnership can only be registered if

1) either of the parties is resident in this country and is a Danish national; or

2) both parties were resident in this country during the two years immediately preceding the registration.

(3) Norwegian, Swedish or Iceland nationality shall be treated as equivalent to Danish nationality in accordance with paragraph 1) of subsection (2). The Minister of Justice may determine that nationality in another country having passed legislation on registered partnership equivalent to the Danish legislation shall be treated as equivalent to Danish nationality. *

(4) Rules governing the procedure of registration of partnerships, including examination of whether the conditions for registration are satisfied, shall be laid down by the Minister of Justice.

Legal effects

3.- (1) Subject to the exceptions set out in section 4, the registration of partnership shall have the

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The Registered Partnership Act

same legal effects as the contracting of marriage.

(2) The provisions of Danish legislation governing marriage and spouses shall apply correspondingly to registered partnerships and registered partners.

4.- (1) The provisions of the Danish Adoption Act on spouses shall not apply to registered partnerships. However, a registered partner may adopt the other partner's child unless it is an adopted child from another country.

(2) Section 11, second sentence, and section 14(4) of the Danish Custody and Access Rights Act shall not apply to registered partnerships.

(3) Provisions of Danish legislation which contain special rules concerning either party to a marriage determined by the sex of that party shall not apply to registered partnerships.

(4) Provisions of international treaties shall not apply to registered partnerships unless this is accepted by the other contracting parties.

Dissolution

5.- (1) Parts 3, 4 and 5 of the Danish Marriage Act and Part 42 of the Danish Administration of Justice Act shall apply correspondingly to the dissolution of a registered partnership, cf., however, subsections (2) and (3).

(2) Section 43(1) and section 46 of the Danish Marriage Act shall not apply to the dissolution of a registered partnership.

(3) Notwithstanding section 448 c of the Danish Administration of Justice Act, registered partnerships can always be dissolved in this country.

Commencement provisions etc.

6. This Act shall enter into force on 1 October 1989.

7. This Act shall not apply to the Faroe Islands and Greenland but may by Royal Decree be made effective in whole or in part for these provinces subject to such deviations as are dictated by the special circumstances of Greenland and the Faroe Islands.

Act No. 360 of 2 June 1999 relating to section 2(2) and section 4(1) contains, inter alia, the following provisions:

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Section 2

This Act shall enter into force on 1 July 1999.

Section 3

(1) This Act shall not apply to the Faroe Islands and Greenland, cf., however subsection (2).

(2) This Act may by Royal Decree be made effective for the Faroe Islands and Greenland subject to such deviations as are dictated by the special circumstances of Greenland and the Faroe Islands.

Given at Christiansborg Palace, 7 June 1989

Under Our Royal Hand and Seal

MARGRETHE R.

/H. P. Clausen

* Section 2(2) and (3) and section 4(1), second sentence, have been inserted by the Danish Act Amending the Danish Registered Partnership Act No. 360 of 2 June 1999.

** Section 4(2) has been inserted by section 36 of the Danish Custody and Access Rights Act No. 387 of 14 June 1995, section 36.
The Formation and Dissolution of Marriage Act


Part 1

Marriage conditions

1. A person who is under 18 years of age may not contract marriage without the permission of the County Governor's Office (statsamtet). When giving a young person under 18 permission to marry the County Governor's Office may lay down conditions to the effect that despite the marriage the young person is still a minor and consequently legally incompetent until he or she attains the age of 18.

2.-(1) A person who is under 18 years of age and has not previously been married shall not marry without the consent of the parents.

(2) If either of the parents is dead, of unsound mind, mentally deficient or does not share custody or if his statement cannot be obtained without special difficulty or delay, the other parent's consent shall be sufficient.

3. A person under guardianship according to section 5 of the Danish Guardianship Act or under guardianship involving deprival of his legal capacity, cf. section 6 of the Danish Guardianship Act, shall not be allowed to marry without the consent of the guardian.

4. Where consent is refused under sections 2-3, the County Governor's Office (statsamtet) may give permission to the marriage if there is no reasonable ground for the refusal.

5. (Repealed).

6. Marriage between relatives in lineal ascent and descent or between brothers and sisters shall not be allowed.

7. Marriage shall not be contracted without the permission of the Minister of Justice between persons, of whom one has been married to the other person's relative in lineal ascent or descent. If there are children of the former marriage, permission may only be granted if it is not undesirable in the interests of the children.

8. An adopter and an adopted child shall not be allowed to marry as long as the adoptive relationship exists.

http://www.civildir.dk/regler/MarriageAct.htm

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9. A person who has previously been married or has been a party to a registered partnership shall not be allowed to marry as long as the former marriage or registered partnership exists.

10. A person who has been married or has been a party to a registered partnership shall not be allowed to remarry until the administration of the estate of the deceased spouse by the court or by an administrator has been commenced, or the administration out of court has been closed. However, this shall not apply if community of property did not exist between the spouses or exemption from administration is specially authorised. Further, the Minister of Justice may permit that the provision in the first sentence be derogated from where there are special reasons which make it desirable.

11. Marriage shall not be allowed without either party having declared to the other party and the authority which is to examine the marriage conditions whether the person concerned has or is expecting children with another man or woman. The duty of disclosure shall include adopted children but not children whom the party concerned has had adopted to somebody else.

Part 2

Examination of marriage conditions and marriage ceremony

12. Before marriage is contracted, it must be proved that the marriage conditions are satisfied. The Minister of Justice shall lay down rules thereon.

13.-/(1) The examination of the marriage conditions shall be carried out by the chairman of the local council. In municipalities with a corporation system or a form of government where the administrative management is divided, cf. sections 64 and 64 a of the Danish Local Government Act, the local council may decide in the government by-laws that the examination shall be carried out by a member of the corporation or a committee chairman respectively.

(2) The examination shall be carried out at the place where either of the parties is resident. Where neither party is resident in this country, the examination shall be carried out at the place where either of the parties is staying.

(3) On the lodging of a request for examination of the marriage conditions, an amount of DKK 500 shall be paid if neither party is resident in this country.

(4) The Minister of Justice may lay down rules governing payment of the cost of translating documents required in connection with the examination of the marriage conditions. Furthermore, the Minister of Justice may lay down rules on the payment of the cost of interpreter assistance in connection with the examination of the marriage conditions in cases where neither party is resident in this country.

14. If desired by the parties, banns can be published from the pulpit. Rules thereon shall be laid down by the Minister of Ecclesiastical Affairs.

15.-/(1) Marriage may be contracted as a religious or civil marriage.
(2) Spouses may have their civil marriage blessed by a minister of the Danish National Church. Rules thereon shall be laid down by the Minister of Ecclesiastical Affairs.

16.- (1) A religious ceremony can take place:

1) within the Danish National Church if either of the parties is a member of the Church.

2) within recognised religious communities if either of the parties is a member of the religious community concerned.

3) within other religious communities if either of the parties is a member of the religious community concerned and the religious community has ministers who are authorised by the Minister of Ecclesiastical Affairs to perform marriage ceremonies.

(2) The Minister of Ecclesiastical Affairs may determine that members of foreign Evangelical Lutheran communities shall be treated as the members of the Danish National Church with respect to the right to a religious ceremony.

17.- (1) Religious marriage ceremonies within the Danish National Church shall be performed by its ministers. The Minister of Ecclesiastical Affairs shall lay down rules specifying which ministers of the Danish National Church may perform religious marriage ceremonies and in which cases they are under an obligation to do so.

(2) A religious ceremony outside the Danish National Church shall be performed by ministers specially authorised for this purpose.

18.- (1) The right to a civil marriage is open to everybody. The marriage ceremony is conducted by the authorities mentioned in section 13(1).

(2) The authority examining the marriage conditions may authorise one or more persons to perform the marriage ceremony at its responsibility.

19.- (1) No marriage ceremony shall be performed until one of the authorities mentioned in section 13(1) has certified that the marriage conditions are satisfied. The certificate shall have been issued within the last four months.

(2) Where, however, due to the illness of either of the parties, there is a serious risk that a postponement of the marriage ceremony will cause it not to take place, the marriage ceremony may be performed even though the marriage conditions have not been examined or only partially examined.

(3) A marriage ceremony may never be performed if the marriage authority is aware that the marriage conditions are not satisfied.

20.- (1) A marriage ceremony shall be conducted in the presence of at least two witnesses.

(2) Appearing simultaneously the parties shall when asked by the marriage authority declare their willingness to marry each other, after which they are pronounced man and wife.

(3) The rules of procedure governing marriage ceremonies in the Danish National Church and civil ceremonies shall be laid down by the Minister of Ecclesiastical Affairs and the Minister of Justice respectively. Recognised religious communities shall be subject to their own special rules. For other religious communities the procedure governing marriage ceremonies under paragraph 3) of section 16(1) shall be approved by the Minister of Ecclesiastical Affairs.
(4) The Minister of Justice may lay down rules on the payment of the cost of interpreter assistance during the marriage ceremony in cases where neither party is resident in this country.

21.- (1) A marriage shall only be valid if it is conducted by an authority which according to the Act may conduct marriages, and in compliance with the provision in section 20(2).

(2) A marriage which is void under subsection (1) may be approved by the Minister of Justice as valid where there are special reasons which make it desirable.

22.- (1) The Minister of Ecclesiastical Affairs may lay down rules on the right of Danish ministers to perform marriage ceremonies abroad.

(2) The Minister for Foreign Affairs may lay down rules on the right of diplomatic and consular officers to perform marriage ceremonies abroad.

(3) The provisions of the Act on marriage conditions and marriage shall apply to marriage ceremonies performed under subsections (1) and (2). The marriage conditions may be examined by a diplomatic or consular officer authorised by the Minister for Foreign Affairs for the purpose.

(4) By an agreement with a foreign State it may be determined that marriages conducted by the ministers of the country concerned or diplomatic or consular officers in this country shall be valid in Denmark.

Part 3

Marriage annulment

23.- (1) A marriage shall be annulled by a judicial decree if contracted in contravention of section 6 or section 9.

(2) However, a marriage contracted in contravention of section 9 cannot be annulled if the former marriage was dissolved before proceedings were instituted.

(3) Annulment proceedings may be instituted by the Minister of Justice or anyone authorised by him for the purpose or by either of the spouses. If the marriage was contracted in contravention of section 9, the spouse of the former marriage may also institute proceedings.

24.- (1) A marriage may also be annulled by a judicial decree based on a claim made by either spouse:

1) if at the time of marrying he was in a state which made him unable to manage his own affairs;

2) if he was forced to contract marriage;

3) if by mistake he was married to a person other than his fiancée or without being willing to marry; or

4) if he was induced to contract marriage, being misled by the other spouse through false
information or fraudulent non-disclosure of the truth about who the other person was or about such circumstances in the other person's previous life which would with reasonable cause have deterred him from marrying and which must still be considered to be of such significance to the relationship between the spouses that the marriage cannot reasonably be required to be maintained.

(2) Proceedings shall be instituted within six months after the state or force mentioned in paragraphs 1)-2) of subsection (1) has stopped or after the spouse has become aware of the facts mentioned under paragraphs 3)-4). Proceedings shall be instituted within three years after the marriage was contracted.

25.-(1) Annulment shall have the same legal effects as a divorce.

(2) The provisions in section 69 of the Danish Administration of Estates Act shall apply to the division of property.

26. If a marriage is annulled and if, at the time when the marriage was contracted, either spouse was in good faith with respect to the ground for annulment while the other spouse knew or ought to know it, the decree may award the former spouse compensation which shall be fixed having regard to both spouses' financial and other circumstances.

27.- (1) In the event of the death, before annulment, of either of the parties to a marriage which could be annulled under section 23, the surviving spouse or any of the heirs may demand application of the provisions of section 69 of the Danish Administration of Estates Act and the spouse may demand compensation under section 26.

(2) The spouse who may institute proceedings under section 24 shall have the same right if the other spouse dies before the marriage has been annulled and before the expiration of the time-limits set out in section 24(2). Where proceedings have been instituted and the spouse thereafter dies, any of the heirs may demand application of the provisions in section 69 of the Danish Administration of Estates Act.

(3) Claims under subsections (1)-(2) shall be made within six months after the death.

28. Where a spouse who has contracted a marriage in contravention of section 9 dies before the marriage has been annulled, any right against a third party to compensation, pension or any other financial benefit accruing to a surviving spouse by reason of the death shall accrue to the spouse of the first marriage unless the circumstances require otherwise.

Part 4

Legal separation

29. A spouse who feels unable to continue the marital cohabitation shall be entitled to legal
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30. The effects of legal separation shall lapse for the future if the spouses resume or continue the marital cohabitation.

**Divorce after legal separation**

31.- (1) A spouse shall be entitled to a divorce after one year's legal separation.

(2) Spouses shall be entitled to a divorce after six months' legal separation if they agree on a divorce.

**Living apart for two years**

32. A spouse shall be entitled to a divorce if the spouses have lived apart for the past two years due to disagreement.

**Adultery**

33.- (1) A spouse shall be entitled to a divorce if the other spouse has committed adultery or has participated in equivalent sexual relations. However, divorce cannot be demanded if the spouse has agreed to the act or may later be deemed to have waived his or her right.

(2) A divorce cannot be granted because of sexual relations which took place during the spouses' legal separation.

(3) An application for an administrative divorce decree shall be lodged or legal proceedings instituted within six months after the spouse having become aware of the act and within two years after it was committed.

**Violence**

http://www.civildir.dk/regler/MarriageAct.htm
34.- (1) A spouse shall be entitled to a divorce if the other spouse has intentionally committed violence of a serious nature against the spouse or the children.

(2) An application for an administrative divorce decree shall be lodged or legal proceedings instituted within one year after the spouse having become aware of the act and within three years after it was committed.

**Bigamy**

35. A spouse shall be entitled to a divorce if the other spouse has remarried in contravention of section 9.

36. - 41. (Repealed).

**Procedure for obtaining legal separation or divorce**

42.- (1) Legal separation and divorce shall be granted by a judicial decree or an administrative decree.

(2) An administrative decree can only be granted if the spouses are agreed on a legal separation or divorce by an administrative decree and on the conditions set out in sections 46, 49 and 54-56, cf., however, section 45.

The spouses may refer the question of the amount of maintenance payment to the County Governor’s Office (statsamtet) for determination.

(3) Where it is found to be inadvisable to grant an administrative decree, the grant of a decree shall be refused.

42 a.- (1) An administrative decree shall be granted by the Minister of Justice or by the County Governor’s Office (statsamtet) as authorised by the Minister of Justice.

(2) On the lodging of an application for an administrative divorce decree DKK 500 shall be paid to the County Governor’s Office.
(3) If, however, the applicant has lodged an application for divorce within the last three months, for which payment has been made, no new payment shall be made.

**Mediation**

43.-{(1)} If desired by both parties, mediation may be carried out by a minister. Rules thereon shall be laid down by the Minister of Ecclesiastical Affairs in consultation with the Minister of Justice.

(2) The Minister of Justice may lay down rules on voluntary counselling of spouses before a legal separation or divorce is granted.

**Negotiation of conditions concerning legal separation or divorce**

44.-{(1)} Before a legal separation or divorce is granted, a negotiation of conditions shall take place. If, however, divorce is desired under section 31 and the conditions of the legal separation also apply to the period following the divorce, no negotiation of conditions shall be required.

(2) Rules on the negotiation of conditions shall be laid down by the Minister of Justice. These rules may provide that the negotiation of conditions shall not apply to a spouse who is not resident in this country.

**Part 5**

**Legal separation and divorce conditions and change of the conditions etc.**

45. Any conditions determined in a judicial separation decree granted in this country shall also apply to the period following a divorce, achieved on the basis of the legal separation. However, the judicial separation decree may determine otherwise as regards any maintenance obligation.
46. The provisions in the Danish Custody and Access Rights Act shall apply to the custody of the children in connection with a legal separation or divorce.

47. (Repealed)

**Change of agreement or decision on custody**

48. (Repealed)

**Maintenance payments**

49. In connection with a legal separation or divorce, a decision shall be made as to whether a spouse shall be under an obligation to pay towards the maintenance of the other spouse.

50.-(1) If the spouses make no agreement thereon themselves, the court shall decide the question of maintenance obligation, including the question of duration of the obligation while the County Governor’s Office (statsamtet) shall determine the amount of the payment. Unless special circumstances exist, the court may only impose a maintenance obligation on a spouse for a specified period not exceeding ten years.

(2) Decisions under subsection (1) shall be made having regard to the extent to which the person requesting payment can maintain himself or herself adequately having regard to the standard of living enjoyed by him or her and whether the other party is able to pay a maintenance payment having regard to his or her financial conditions and other circumstances. Further, account shall be taken of the duration of the marriage. In addition, account may be taken of whether the person requesting payment needs support for training or the like.

51. The maintenance obligation shall lapse when the person entitled to maintenance remarries or either of the spouses dies.

**Change of agreement or decision on maintenance payments**

52. An agreement made by the spouses on the maintenance obligation or the amount of the maintenance payment may be changed by a judicial decree if, by reason of materially changed conditions, it would be unreasonable to maintain the agreement.

53.-(1) A decision made by a judicial decree on the maintenance obligation of the spouses may be
changed by a new judicial decree where there are materially changed conditions as well as other
special reasons which make it desirable.

(2) A decision made by the County Governor’s Office (statsamtet) on the amount of the maintenance
payment may be changed by the County Governor’s Office where the circumstances of the case
require it.

Other conditions

54. The special rules of Danish legislation shall apply to the right to a spouse pension after a divorce.

55.(1) The provisions of Danish rent legislation shall apply to the right of the spouses to continue
the lease of a common flat.

(2) If a flat in a building which belongs to the property contributed by either of the spouses or to his
or her separate property and which contains several flats has so far served as the family home, the
court may in connection with a judicial separation or divorce decree order the spouse to lease the flat
to the other spouse and determine the lease conditions.

56. Where a spouse has had separate property and where the matrimonial property, the duration of
the marriage and circumstances in general make it particularly desirable, it may be determined, based
on a claim made by the other spouse in connection with a judicial separation or divorce decree, that
either spouse shall pay to the other spouse an amount to ensure that that other spouse is not placed in
an unreasonably bad financial position after the legal separation or divorce. This rule shall also apply
to rights which are not assignable or otherwise of a personal nature and which are not included in the
division of the estate.

Temporary provision concerning custody

57. (Repealed)

Change of certain agreements on conditions etc.

58. Where, on the occasion of a legal separation or divorce, spouses have agreed on the division of
the property, the maintenance obligation or any other conditions, the agreement may be changed by a
judicial decree or held not to be binding if at the time of its making it is deemed to be unreasonable for either spouse.

Part 6

Commencement provisions etc.

59. This Act shall enter into force on 1 January 1970.

60. The provision in section 21(2) shall also apply to marriage ceremonies performed before the entry into force of the Act.

61.-1) Where, before the entry into force of this Act, proceedings for legal separation, divorce or marriage annulment have been instituted or application for an administrative separation or divorce decree has been lodged, the provisions of the previous legislation shall apply.

(2) Where, however, both parties so request before a final judicial or administrative decree is granted, the provisions of this Act shall apply.

(3) Where a marriage contracted before the entry into force of this Act is annulled, the provisions of the Act concerning the effects of marriage annulment shall apply.

62.-1) The provisions of the previous legislation shall apply to the right of spouses to obtain a divorce on the basis of a legal separation granted before the entry into force of this Act.

(2) However, notwithstanding the provision in subsection (1) either spouse may demand a divorce from 1 January 1971.

(3) Otherwise the provisions of this Act may at the request of both spouses be applied in whole or in part.

63. The provision in section 48 shall also apply to agreements and decisions on custody made before the entry into force of this Act.

64.-1) The provisions in sections 52 and 58 shall only apply to agreements made after the entry into force of this Act.

(2) Any change of decisions on maintenance payments made before the entry into force of this Act shall be made in accordance with the provisions of this Act.

65. From the entry into force of this Act, cf., however, sections 61, 62 and 64, the following Regulation and Acts shall be repealed:
1) Regulation of 30 April 1824 on the Duties of Ministers relating to Marriage;

2) Act of 13 April 1851 on Marriage outside the Danish National Church;

3) Act No. 79 of 19 February 1892 on Marriages Conducted by Danish Consuls Abroad;

4) Act No. 269 of 14 December 1906 on Agreements concerning Marriages Conducted by Diplomatic or Consular Officers;

5) Act No. 276 of 30 June 1922 on the Formation and Dissolution of Marriage; and


66. Provisions governing the relationship between Danish legislation and another State's legislation on the formation and dissolution of marriage may be laid down in an agreement with a foreign State or by the Minister of Justice.

67. This Act shall not apply to the Faroe Islands and Greenland but may by Royal Decree be made effective in whole or in part for these provinces subject to such deviations as are dictated by the special circumstances of Greenland and the Faroe Islands.

Act No. 230 of 6 June 1985 relating to sections 46-48 and section 57 contains, inter alia, the following provisions:

Section 3

The Act shall enter into force on 1 January 1986.

Section 4

(1) Where, before the entry into force of the Act, legal separation or divorce proceedings have been instituted or an application for an administrative separation or divorce decree has been lodged, the provisions of the previous legislation shall apply.

Where, however, both parties so request before a final judicial decree or an administrative decree is granted, the provisions of section 1 and 2 shall apply.

(3) Where, before the entry into force of the Act, an agreement or a decision on custody has been made which is not to apply to any subsequent legal separation or divorce, a decision shall be made

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during the legal separation or divorce proceedings as to who is to have custody.

Act No. 209 of 5 April 1989 relating to sections 2, 5, 29-44, 50, 52 and 58 of the Danish Marriage Act contains, inter alia, the following provisions:

Section 6

The Act shall enter into force on 1 October 1989.

Section 7

(1) Where, before the entry into force of the Act, an application for an administrative separation or divorce decree has been lodged or legal separation or divorce proceedings have been instituted, the provisions of the previous legislation shall apply.

(2) Where, however, both parties so request before an administrative decree or a final judicial decree is granted, the provisions of section 1 shall apply.

(3) The provisions in section 1 shall apply to the right of spouses to a divorce on the basis of legal separation granted before the entry into force of the Act.

Section 8

The change in section 52 and section 58(1) of the Danish Marriage Act mentioned in paragraph 8) of section 1 shall apply to all agreements made after 1 January 1970.

Act No. 373 of 7 June 1989 relating to sections 9 and 10 of the Danish Marriage Act lays down in section 5 that the Act shall enter into force on 1 October 1989.

Act No. 845 of 20 December 1989, section 1 of which concerns section 42 of the Danish Marriage Act, provides in section 3 that the Act shall enter into force on the day after its publication in the Danish Law Gazette.

Act No. 396 of 13 June 1990, section 7 of which concerns sections 1, 4, 10, 20, 42, 50 and 53 of the Danish Marriage Act, provides in section 16 that the Act shall enter into force on 1 July 1990.
The Formation and Dissolution of Marriage Act

However, paragraph 4) of section 7, which concerns section 20 of the Danish Marriage Act, shall not enter into force until 1 October 1990.

Act No. 386 of 20 May 1992, section 4 of which concerns sections 13, 20, 42 and 42 a of the Danish Marriage Act, provides in section 12 that the Act shall enter into force on the day after its publication in the Danish Law Gazette and shall have effect from 24 April 1992.

Act No. 387 of 14 June 1995, section 35 of which concerns sections 13, 20 and 46 of the Danish Marriage Act, provides in section 33 that the Act shall enter into force on 1 January 1996. However, paragraphs 1) and 2) of section 35, which concern sections 13 and 20 of the Danish Marriage Act, shall enter into force on the day after its publication in the Danish Law Gazette.

Act No. 389 of 14 June 1995, section 8 of which concerns sections 1 and 3 of the Danish Marriage Act, provides in section 23 that the Act shall enter into force on 1 January 1997.

Act No. 385 of 22 May 1996, section 7 of which concerns section 10 of the Danish Marriage Act, provides in section 15 that the Act shall enter into force on 1 January 1997.

Act No. 232 of 2 April 1997, section 9 of which concerns sections 13 and 18 of the Danish Marriage Act, provides in section 14 that the Act shall enter into force on 1 January 1998.

Danish Ministry of Justice. 9 March 1999

Frank Jensen

Dorrit Sylvest Nielsen

Official Notes

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ENGLISH TRANSLATION

of the Danish Act on the Legal Effects of Marriage as at September 1, 1992.

Act on the Legal Effects of Marriage

PART 1
General Provisions

1. Husband and wife shall give one another their support and jointly safeguard the interests of the family.

2. By providing money, working in the home or otherwise, husband and wife shall contribute, to the best of their ability, to providing such maintenance for the family as is considered appropriate to their way life. Maintenance shall be considered to include the funds necessary for housekeeping and bringing up the children, as well as for meeting the special needs of either spouse.

3. Where the expenses for either spouse's special needs and the expenses for the duties which he shall undertake according to custom and the spouses' circumstances in order to provide maintenance for the family cannot be met out of the contribution which he shall make in accordance with the provisions of section 2 above, the other spouse shall make the requisite funds available to him in appropriate instalments. However, this shall not apply where other arrangements are required due to a spouse's inability to manage his financial affairs, or where warranted by other special circumstances.

4. Any funds made available to a spouse in accordance with sections 2 and 3 above to meet his special needs shall be considered to have been brought into the spouses' community property by him.
5. Where a spouse fails to meet his obligation to provide maintenance for the family, as laid down in section 2 above, he may be ordered, upon request, to make financial contributions to the other spouse to the extent considered reasonable under the circumstances.

6. Where the spouses are living apart due to incompatibility, the rules laid down in section 2 above shall apply mutatis mutandis. The contribution which one spouse shall accordingly make towards the maintenance of the other spouse and the children living with that spouse may, upon request, be fixed as a financial contribution. However, a spouse who bears the primary responsibility for the spouses' separation shall not be entitled to claim a contribution towards his own maintenance, unless where warranted by very special reasons.

7.-(1) In the cases referred to in section 6, to the extent considered reasonable according to the spouses' way of life and other circumstances, the relevant government office may, upon request, order one spouse to allow the other spouse use of the personal property which formed part of the spouses' joint household goods or the other spouse's work equipment at the time of the separation.

(2) The right to use personal property which has been handed over to one of the spouses in accordance with the above cannot be encroached upon by agreement between a third party and the other spouse.

(3) The spouse entitled to use such personal property may demand possession thereof through summary proceedings for delivery of possession in accordance with section 609 of the Danish Code of Civil and Criminal Procedure of April 11, 1916.

8.-(1) Questions about contributions towards the maintenance of either spouse, in accordance with sections 5 and 6 above, shall be decided by the relevant government office. At the re-
quest of either spouse, the government office may review its decision when circumstances have changed considerably.

(2) Either spouse may only be directed to make contributions towards the maintenance of the other spouse, in accordance with sections 5 and 6 above, for a period which precedes the date of the request by more than 12 months, where warranted by special reasons.

9. In making decisions according to the provisions of sections 5, 6 and 7 above, an agreement entered into between the spouses may be departed from if it is deemed obviously unreasonable, or if circumstances have changed considerably.

10. Spouses shall give one another such information about their financial affairs as is required for assessing their duty to provide maintenance.

11.-(1) While cohabiting, either spouse shall be entitled to enter into such contracts with a third party, with liability for both spouses, as are usually made for the purpose of meeting day-to-day household needs or the children's needs. The wife shall also have the right to enter into ordinary contracts for the purpose of meeting her special needs. The contracts referred to above shall be considered to have been concluded with liability for both spouses, unless otherwise appearing from the circumstances.

(2) Even when a spouse is a minor, he may enter into such contracts as are referred to in subsection (1) hereof.

(3) Where the party with whom the contract was concluded realized or should have realized that the content of the contract could not be considered reasonable under the circumstances, the other spouse shall not become liable. If the contract was concluded by a minor under the same circumstances, the minor shall not become liable, either.
12.-(1) Where either spouse abuses the right accruing to him according to section 11 above, the relevant government office may, at the request of the other spouse, divest him of such right. Where a spouse under age is guilty of such abuse, he may also be divested of this right at the request of his guardian.

(2) The said right shall be restored to the spouse when circumstances have changed or when requested by the other spouse and, where a minor has been divested of this right, also when requested by the guardian.

(3) The decision of the government office cannot be enforced against a third party in good faith, unless it has been entered in the register of marriage settlements in accordance with the rules laid down in Part 6.

13. If, during the continuance of cohabitation, one spouse is prevented from discharging his duties due to absence or illness, the other spouse shall have the right, where no other party is so authorized, to do and execute all such acts and things as cannot be postponed without inconvenience, including the right to collect income, and, where it is absolutely necessary for the subsistence of the family, to dispose of and pledge or mortgage property. However, real property may in no case be disposed of or mortgaged without the consent of the relevant government office.

14. Where personal property which is at the disposal of one spouse has been taken over for use in a business carried on by the other spouse, with the first spouse's consent, any contracts concluded by the other spouse in respect of such personal property shall become binding on the first spouse, unless the contracting third party realized or should have realized that the other spouse was not entitled to enter into the contract.
PART 2
Real and personal property

15.- (1) All property owned by the spouses upon contracting marriage or later acquired by them shall become community property in so far as it has not been made separate property under a marriage settlement, cf. section 28 below.

(2) However, the rules on community of property shall only become applicable to unassignable rights or rights of a personal nature to the extent that this is compatible with the special rules applying to such rights.

16.- (1) Either spouse shall be entitled inter vivos to dispose of all the property which he has brought into the community property, subject to the restrictions following from the rules laid down in sections 17 to 20 below.

(2) Upon dissolution of the marriage, division of the spouses' community property or judicial separation, each spouse or his beneficiaries shall take half of the residuary community property, unless any exceptions are specifically warranted by legislation.

17. Both spouses shall administer the spouses' community property in such a way that it is not unduly exposed to the risk of deterioration to the detriment of the other spouse.

18.- (1) Without the consent of the other spouse, neither spouse may dispose of or mortgage real property which forms part of the community property, in the event that such real property serves as accommodation for the family, or in the event that the spouses' or other spouse's business activities are related to the said property. Nor may such real property, be leased or let without the consent of the other spouse, if this means that it can no longer be used as the spouses' joint dwelling or as the base for the other spouse's business ac-
tivities. Where the other spouse does not have full legal capacity, consent shall be granted by his guardian.

(2) Where one spouse has entered into such a contract without obtaining the requisite consent, the other spouse may obtain a judgment for its rescission, if the acquirer or mortgagee realized or should have realized that the relevant spouse was not entitled to enter into the contract. However, proceedings shall be instituted within three months of the contract becoming known to the other spouse and within 12 months of its entry in the land register.

19.-(1) A spouse may not dispose of, pledge or mortgage personal property which forms part of the community property without the consent of the other spouse, in the event that such personal property forms part of the household goods in the spouses' joint home, or forms part of the other spouse's necessary work equipment or is used by the children for their personal needs. Even when a spouse does not have full legal capacity, he may grant his consent, provided that he does not suffer from insanity or any other mental disorder; where this is the case, or where the spouse's opinion can only be obtained with considerable difficulty or delay, no consent shall be required.

(2) Where one spouse has entered into such a contract without obtaining the requisite consent, the other spouse may obtain a judgment for its rescission, unless the acquirer, pledgee or mortgagee was in good faith. However, proceedings shall be instituted within three months of the contract becoming known to the other spouse and within 12 months of the delivery of the relevant property, or in case of a mortgage, within 12 months of its entry in the register of persons.

20. Where the other spouse or the guardian withholds his consent in the cases referred to in sections 18 and 19 above, the relevant government office may, upon request, uphold the con-
tract if it considers that there are no reasonable grounds for withholding consent.

21. (Repealed)

22. Either spouse may demand that the other spouse participate in drawing up a list showing which assets in the community property the individual spouse can dispose of and which assets are the individual spouses' separate property. The court shall decide in each individual case how much evidentiary value shall be accorded to any such list, based on all circumstances of the case.

23.- (1) Where, through mismanagement of his financial affairs, abuse of his right to dispose of the community property or through other negligence, one spouse has substantially detracted from the value of that part of the community property which is at his disposal, the other spouse or his beneficiaries shall be entitled to claim compensation herefor out of the residuary community property, or, if necessary, to claim that the first spouse pay half the deficit out of his separate property.

(2) The right to such compensation shall also accrue to a spouse or his beneficiaries if the other spouse has spent funds out of the community property to acquire or improve his separate property or the rights referred to in section 15(2) above.

24. Any claim for compensation, as provided for by section 23 above, cannot be made until the community property is divided. If settlement of the claim is not received in full in connection with the division of the community property, no subsequent claim can be made for payment of the balance.
PART 3
Liability for debt

25. Either spouse shall be liable to the extent of the community property at his disposal and his separate property for any debts incumbent on him, whether incurred before or during the marriage.

26. Claims against the wife, of the nature referred to in section 11 above, shall be barred by the statute of limitations in the course of 12 months when the husband is also liable for the debt. The rules laid down in Act No. 274 of December 22, 1908, the last period of section 1, as well as in sections 2 and 3, shall apply mutatis mutandis in case of such limitation.

27. The provisions of section 26 above shall not, be applicable if the wife has assumed more extensive liability.

PART 4
Marriage settlements and other contracts concluded between spouses

28.-(1) The spouses may agree on the following in a marriage settlement:

1) that in connection with division of the spouses' property upon judicial separation or divorce, each spouse shall retain his own separate property, but that the spouses shall have community of property in connection with division of the property upon the death of either spouse (separate property regime to apply in case of judicial separation and divorce only), and

2) that, in addition to applying in case of judicial separation and divorce, the separate property regime shall apply in connection with division of the property upon the death of either spouse (entirely separate property).
(2) A settlement made in accordance with the provisions of subsection (1) may concern part of the spouses' property, may be limited in time, and may only be applicable in case of the death of either spouse.

(3) A settlement made in accordance with the provisions of subsection (1) shall extend to any property that may replace the property comprised by the settlement, as well as any income from such property, unless otherwise stipulated in the settlement.

28 a. A donor, whether making a gift inter vivos or mortis causa, may, in respect of such gift, give directions similar to those outlined in section 28 above. Such directions may also be made in respect of a beneficiary's statutory share of the deceased's estate. Directions regarding a gift mortis causa shall be laid down in a will.

28 b.- (1) A marriage settlement can be amended by a subsequent settlement.

(2) No directions may be given in a marriage settlement which are contrary to a donor's or testator's stipulations with respect to making the gift separate property for the donee or beneficiary.

29. Subject to the restrictions laid down by this present Act, spouses may conclude contracts with one another regarding the property at either spouse's disposal, and may thus incur liability towards one another.

30.- (1) Gifts made between fiancés which are to pass into the ownership of the donee upon the contraction of marriage, and gifts between spouses shall be made under a marriage settlement in order to be valid. However, this shall not apply to ordinary gifts whose value is not out of proportion to the donor's circumstances, and to gifts made by way of life assurance, as a
survivorship annuity or like maintenance secured for the other spouse.

(2) A stipulation to the effect that all property acquired by one spouse in future shall accrue to the other spouse without any consideration shall not be valid, whether if laid down in a marriage settlement or in any other way.

31. A spouse whose income in any calendar year has yielded a net profit may, before the end of the subsequent year, transfer up to half of such profit to the other spouse without consideration, and without drawing up a marriage settlement. However, such transfer shall only be enforceable against the transferor's creditors if he has indicated the amount of his profit in a document signed by him, and if, moreover, he has retained completely adequate funds to meet his own liabilities.

32. If the spouses have made an agreement for transfer of property from one spouse to the other without drawing up a marriage settlement, such agreement shall only be enforceable against the transferor's creditors if it can be substantiated that its legal enforceability did not require a marriage settlement.

33.-(1) Where one spouse has made a gift to the other spouse, any party having a claim against the donor may, in the event that full settlement of his claim is considered unobtainable from the donor, advance his claim against the donee in respect of the value of the gift, unless it can be substantiated that the donor retained completely adequate funds to meet his liabilities. If partial consideration was given by the donee, such consideration shall be deducted from the value of the gift. However, the donee shall be exempt from liability if he can prove that the property transferred was lost through no fault of his.
(2) This section shall not be applicable to the gifts referred to in section 30(1), the second period.

34. (Repealed)

35. A marriage settlement shall be drawn up in writing and be duly signed by both parties; a minor or legally incapacitated party shall also sign. The consent of the guardian or curator shall be given by his signature on the marriage settlement.

36. (Repealed)

37. In order to be valid, a marriage settlement shall be entered in the register of marriage settlements in accordance with the rules laid down in Part 6.

**PART 5**

Division of the spouses' community property

38. A spouse may demand division of the spouses' community property in the following cases:

1) Where, through mismanagement of his financial affairs, abuse of his right to dispose of the community property or through other negligence, one spouse has substantially detracted from the value of that part of the community property which is at his disposal, or has exposed the community property to any such risk,

2) Where bankruptcy proceedings have been initiated in respect of the other spouse's property,

3) Where one spouse has been deserted by the other spouse, and an application for division of the community property is submitted within 12 months of such desertion,
(3) Where possible, the other spouse shall be given an opportunity to state his case, for which purpose the divorce court may request that he appear before the court. If the other spouse refuses to make any statements or if he fails to enter an appearance without due cause, this may be considered as if he had no intention of defending himself against the allegations made by the applicant. Where the other spouse has no known place of residence or sojourn in this country, the divorce court may, if considered necessary, order that a guar-
dian be appointed to make a statement on behalf of such spouse before the court decides the matter.

40.-(1) On the basis of the declarations and evidence available, the divorce court shall decide whether to grant the application for division of the community property or to refuse it. The order shall be made as early as possible, usually within 14 days of the application being submitted.

(2) An appeal against the order of the divorce court may be brought before the Danish High Court in accordance with the rules laid down in Part 58 of the Danish Code of Civil and Criminal Procedure of April 11, 1916.

(3) When an order on division of the community property has been made, the carrying into effect of such order shall not be stayed by an appeal against the order. However, until the matter has been finally decided, neither spouse may demand that he be allotted his share of any community property which is at the other spouse's disposal.

41. When an application for division of the community property is granted, the community property shall be divided between the parties in accordance with the rules laid down in Part 6 of the Danish Administration of Estates Act.

42. Any property distributed to a spouse in connection with the division of the community property, whether an application in this respect is granted or otherwise, shall belong to him as his separate property.

43. An application for division of the community property filed with the divorce court shall, at the court's instigation, be entered in the register of marriage settlements.

44. (Repealed)
PART 6

Registration of marriage settlements

45-48. (Repealed)

49. Registration of the marriage settlement, which may be effected at either spouse's request, shall be made by the court having jurisdiction at the husband's place of residence. In the event that the husband is not subject to the jurisdiction of a court in this country, the marriage settlement shall be registered by the Copenhagen City Court. If the spouses move to another jurisdiction, no new registration shall be required.

50.-(1) At the instigation of the Ministry of Justice, a record shall be kept of all registered marriage settlements. Therefore, when a marriage settlement has been registered by the court, the relevant clerk of the court shall submit a report to the office keeping a record of marriage settlements, indicating that a marriage settlement has been drawn up and stating the parties' occupations, names and address, as well as the date of registration.

(2) Upon submitting a written request to the aforesaid office with an indication of the spouses' names, and, as far as possible, their occupations, and against payment of a fee fixed by the Ministry of Justice, the general public shall have the right to be informed whether a marriage settlement has been drawn up, and, in the affirmative, when and where it was registered.

(3) More detailed rules on the establishment, maintenance and content of these records shall be laid down by the Minister of Justice. The expenses herfor shall be provided for in the annual Finance Acts. At the end of each month, any new entries made in the records in the course of the relevant month shall be published in 'Statstidende' (the Danish Official Gazette); towards meeting the expenses herfor, a fee fixed by the Min-
istry of Justice shall be paid upon registration of the marriage settlement.

51. Rules corresponding to those laid down in sections 45 to 50 above shall apply to applications registered according to sections 12 and 43.

PART 7
Miscellaneous provisions

52. When a spouse has been placed under guardianship, the other spouse, if having full legal capacity, shall, together with the guardian, administer that part of the community property which was at the incapacitated spouse’s disposal. Such administration of property is not subject to the supervision of the Minister of Justice.

53.- (1) The provisions of this present Act shall also apply to marriage settlements made outside this country, when the husband is a Danish resident. However, the wife's capacity to enter into the marriage settlement shall be judged according to governing law in her country of residence.

(2) A marriage settlement drawn up by a man who is not a Danish resident, provided such settlement is valid according to governing law in his country of residence, shall also be valid in this country if he takes up residence here, in so far as the marriage settlement is not contrary to the provisions of this present Act. However, it shall only be enforceable against third parties in the event that an application for entry of the marriage settlement in the register of marriage settlements is submitted within one month of the husband taking up residence in this country; if the application for registration of the marriage settlement is submitted at a later date, it shall have legal effect from the date of submission of the application.
(3) A marriage settlement made pursuant to Article 4 of the Convention entered into on February 6, 1931 between Denmark, Finland, Iceland, Norway and Sweden, provided that both parties or either of them resides in this country at the time of drawing up the settlement, shall be registered here in order to be enforceable against a third party in this country. If the spouses or either of them takes up residence in this country after drawing up the marriage settlement, the legal effects of registration shall commence according to the same rules as those laid down in the second period of subsection (2) above.

53 a.—(1) The government may enter into treaties with other states on the reciprocal recognition of the provisions of Danish law and foreign law on the legal effects of marriage. Any such treaty shall become effective in this country following its promulgation in 'Lovtidende' (the Danish Law Gazette).

(2) Moreover, the Minister of Justice may lay down rules on the reciprocal recognition of the provisions of Danish law and the law of the other Nordic countries on the legal effects of marriage.

PART 8
Transitional provisions

54. This present Act shall enter into force on January 1, 1926.

55.—(1) After the date mentioned in section 54 above, this present Act, subject to the more detailed provisions set out below, shall also apply to spouses contracting marriage at an earlier date. If such spouses previously had community of property, either spouse shall retain his right to dispose of that part of the community property which was previously at his disposal.
(2) The provisions laid down in Act No. 75 of April 7, 1899, section 11(1), the second and third periods, cf. subsection (3), shall continue to apply to any property mentioned therein which was brought into the marriage by the wife prior to the commencement of the provisions of this present Act. Claims in respect of obligations which have become incumbent on the community property, in pursuance of section 12 or 13 of the above-mentioned act, without any personal liability for the husband, may be raised against that part of the community property which is at the husband’s disposal. Section 21(2) of the same act shall continue to apply to separate property which was acquired before the commencement of the provisions of this present Act.

(3) Where a spouse is entitled to advance a claim for compensation against the other spouse under the provisions of sections 13, 16 or 24 of the Act of April 7, 1899, or where, following the commencement of this present Act, he has fulfilled an obligation previously incurred whose fulfilment would have entitled him to such a claim for compensation, he can claim compensation in accordance with the rules laid down in sections 23 and 24 of this present Act.

56.- (1) Spouses who have complete or partial community of property upon commencement of this present Act may decide, in a marriage settlement, which shall be registered on the commencement date at the latest, that the rules laid down in the former legislation shall continue to apply to their property ownership relations. However, in marriages where such a marriage settlement is drawn up, the rules laid down in sections 1-3 and sections 5-14 of Part 1, in section 19 of Part 2, in sections 26 and 27 of Part 3, as well as in Parts 5-7 of this present Act shall be applicable.

(2) Such marriage settlement shall be valid without royal confirmation; it shall be exempt from stamp duty and other public duties.
57.—(1) With respect to marriages contracted prior to July 1, 1922, under the provisions of section 3(2) or 3(3) of Act No. 212 of June 1, 1922, amending Act No. 258 of June 28, 1920 on the introduction of Danish law of capacity, Danish family law and the Danish law of succession in North Schleswig, where the spouses' property ownership relations are governed by the property regime existing prior to the aforesaid act, such property regime shall continue to be applicable.

(2) In the event that the spouses wish to adopt the Danish property regime or to otherwise alter their property ownership relations, this shall be done by a marriage settlement to be drawn up and entered in the register of marriage settlements in accordance with the rules laid down in sections 35 and 37, cf. Part 6.

58.—(1) As from the commencement of this present Act, the fifth Book, Part 1, Art. 13 of Christian the V's Danish Code (and, with respect to the Faroe Islands, the same king's Norwegian Code), as well as Act No. 75 of April 7, 1899, and Act No. 131 of May 27, 1908, section 2, shall be repealed.

(2) Further, any other statutory provisions which conflict with the provisions of this present Act shall cease to apply.
Act No. 387 of June 14, 1995

Act on Custody and Access

We, MARGRETHE THE SECOND, by the Grace of God Queen of Denmark, hereby make known:
Folkeetinget has passed and we have provided the following Act with our Royal Assent:

PART 1
Custody

1. Children and young persons under the age of 18 are subject to custodial care, unless they have contracted marriage.

Content

2.-(1) The person with custody shall take care of the child and may make decisions about its personal circumstances in light of the child's interests and needs.

(2) Custody involves the duty to protect the child against physical violence and mental cruelty and any other violation of the child's rights.

(3) The parents may apply the child's income towards its maintenance to a suitable extent, in considering their own and the child's situation.

3. Where the parents have joint custody of the child, and they disagree about who is to have sole custody of the child, both parents shall consent to the child leaving the county.

Holders of custody

4. If the parents are married to each other at the time of the child's birth, or if they contract marriage later, they shall
have joint custody. However, if the parents are judicially separated at the time of the child's birth, the mother shall have sole custody of the child, unless the spouses resume cohabitation or the parents have entered into an agreement about joint custody in pursuance of section 6 below.

5. If the parents are not married to each other, the mother shall have sole custody of the child, unless the parents have entered into an agreement about joint custody in pursuance of section 6 below.

Agreement about joint custody

6. The parents may agree that they shall have joint custody of the child. Any such agreement shall only be valid following notification to the appropriate government office. Where a custody case has been brought before the court, notification may be made to the relevant court.

Judicial separation and divorce

7.- (1) In case of judicial separation or divorce, a decision shall be made on custody, unless an agreement or decision has previously been made in this respect.

(2) The parents may agree that they shall continue to have joint custody of the child. Any such agreement shall only be valid following notification to the appropriate government office. Where a case regarding judicial separation or divorce has been brought before the court, notification may be made to the relevant court.

(3) If joint custody is to cease, the provisions of section 9 below shall be applied.
Living apart

8. If the parents live apart, or if either one of them intends to leave the other, either parent may demand that joint custody shall cease.

Cessation of joint custody

9.- (1) If joint custody is to cease, the parents may agree, subject to approval by the appropriate government office, who is to have sole custody of the child. Any such agreement will be approved, unless it is contrary to the child's best interests. Where a custody case has been brought before the court, the agreement may be approved by the relevant court.

(2) If the parents disagree, or if approval of their agreement is not granted, the court shall decide, in consideration of the child's best interests, which of the parents shall have sole custody of the child.

Resuming cohabitation

10. Where an agreement or decision has been made in pursuance of section 9 above to the effect that one of the parents shall have sole custody, joint custody shall be reestablished, if married parents, including those judicially separated, resume or continue cohabitation. If the parents are unmarried or divorced, they shall not reacquire joint custody, unless they enter into an agreement to this effect in pursuance of section 6 above.

Transfer by agreement

11. Subject to an agreement approved by the appropriate government office, custody may be transferred to the non-custodial parent or to third parties. Custody may be transferred to a married couple jointly, including one of the parents and his or her spouse. Any such agreement will be approved, unless it is
contrary to the child’s best interests. Where a custody case has been brought before the court, the agreement may be approved by the relevant court.

Transfer of custody to the father by judgment

12.-(1) Where parents who are not married to each other have lived together for a long period of time without having joint custody, and the father demands custody when they cease cohabitating, the court shall decide, in consideration of the child’s best interests, which of the parents shall have sole custody of the child.

(2) In other cases, the court may transfer sole custody from the mother to the father, if this is in the child’s best interests. In making the decision, the court shall attach weight to the question of whether the person with custody prevents access without reasonable grounds.

Variation by judgment

13.-(1) Where, upon an agreement or a judgment, custody has been vested in one parent alone, the court may, where warranted by special reasons, transfer custody to the other parent, if this is in the child’s best interests, in particular due to a major change of circumstances. In making the decision, the court shall attach weight to the question of whether the person with custody prevents access without reasonable grounds.

(2) Subsection (1) shall also apply if the father has not been granted custody in a custody case as referred to in section 12 above.

(3) An agreement made in pursuance of section 11 above or a decision made in pursuance of section 14 below may be varied by the court, subject to the conditions set out in subsection (1) hereof.
Death

16.-(1) Where the parents have joint custody, and one parent dies, custody shall be retained by the other parent. If the child does not live with the surviving parent at the time of the other parent's death, a third party may apply for custody upon the death of such parent. Any such application will only be met if the consideration for the child's best interests does not warrant vesting custody in the surviving parent. If, at the time of death, the child lives with the surviving person with custody, and such person caused the death of the other person with custody, a third party may apply for custody. Any such application will only be met if it is vital for the child that custody is not vested in the surviving person with custody.

(2) Where one of the parents has sole custody of the child, and such parent dies, or if the death of any party has the effect that no-one has custody of the child, it shall be decided, in considering the child's best interests, who shall have custody. If the surviving parent applies for custody, the application will be met, unless this is considered contrary to the child's best interests.

(3) Where one of the parents has sole custody of the child, and such parent has caused the other parent's death, a third party may apply for custody. Any such application will only be met if it is vital for the child that custody is not vested in the surviving parent.

(4) Custody may be vested in a married couple jointly, including the surviving parent and his or her spouse.

(5) Decisions in pursuance of subsections (1) to (4) shall be made by the appropriate government office, and cannot be appealed to a higher administrative authority.
(6) Within eight weeks of the date on which the relevant party was informed of the decision made by the government office, such decision may be brought before the court in proceedings instituted against the person to whom the government office granted custody.

15. The persons with custody may express a preference as to who should be granted custody upon their death. This request will be complied with, unless it is considered contrary to the child's best interests. However, the surviving person with custody shall retain his or her preferential position, in accordance with section 14 above, regardless of any request to the contrary.

PART 2
Access, etc.

16. Attempts should be made to maintain the child's relations with both parents by granting a right of access to the parent with whom the child does not reside.

17.-(1) Upon application, the appropriate government office shall decide the amount of access and define the access arrangement, and may make the necessary stipulations in this respect. The decision shall be made in light of the child's best interests.

(2) The government office may vary an agreement or decision on access, where such variation is in the child's best interests, in particular due to a change of circumstances.

(3) The government office may refuse to define access or revoke an agreement or decision in this respect, where this is necessary due to the welfare of the child.

(4) The Minister of Justice may lay down rules and regulations regarding supervised access.
Other contact

18. In special cases, the appropriate government office may make stipulations regarding other contact between the child and the parent with whom the child does not reside, in the form of telephone conversations, letters and the like.

Information about the child

19.-(1) Upon application, the non-custodial parent shall be entitled to information about the child's circumstances from schools, day care institutions and the health and social services. The relevant authority or institution may refuse to disclose information, where this is detrimental to the child's interests. No confidential information may be disclosed about the circumstances of the person with custody.

(2) In special cases, upon an application from the person with custody or one of the authorities or institutions mentioned in subsection (1) above, the government office may deny the non-custodial parent access to information as provided for in subsection (1) above. A decision made in pursuance of the first clause hereof shall have effect from the time that the authority or institution is notified of the decision.

PART 3

Contracts of service

20. Where a child or young person who is under custodial care, cf. section 1 above, has of his or her own accord undertaken services or other personal work, subject to the consent of the person with custody, thus enabling the child or young person to provide for his or her own maintenance, such child or young person, provided that he or she has attained the age of 15, may terminate such contract of service and engage in work of a
corresponding nature, unless otherwise decided by the person with custody.

21. A contract of service or a contract for other personal work that a child or young person has made of his or her own accord may be terminated by the person with custody, where warranted by the consideration for the child's or young person's upbringing or welfare. However, to the extent possible, any such contract should be terminated subject to reasonable notice, and where justified, suitable damages may be awarded to the other party.

PART 4

Temporary decisions

Custody

22. Where a custody case is pending, the court may make an order, upon an application in this respect, determining who shall have temporary custody of the child. The order shall be made in consideration of the child's best interests during the proceedings. The order shall remain in force until a judgment that is enforceable has been pronounced, and the order shall no longer apply if the custody case is discontinued or dismissed.

23. Where the parents have joint custody, and there is a risk that one of them will take the child out of the country, thus preempting the decision on custody, the Minister of Justice, or the authority so empowered by the Minister, may temporarily award the other parent sole custody.

Death

24. During a custody case pending before the government office following the death of a person with custody, cf. section 14 above, the government office may decide to whom temporary custody shall be awarded. Any such decision shall remain in force until an enforceable decision on custody has been made.
Hindrance in making decisions

25. Where the person with sole custody, one of the two persons with joint custody, or both persons with joint custody are hindered from making decisions about the child's personal circumstances, the government office may decide who shall have custody for the duration of such hindrance.

Access

26. During a pending case regarding custody or access, the government office may, upon an application in this respect, make a decision on temporary access. The decision shall be made in considering the child's best interests during the proceedings.

Variation

27. A temporary decision made in pursuance of sections 22 to 26 may be varied, if this is considered in the child's best interests. Where proceedings are pending before the court, the decision on custody shall be made by the court.

PART 5

Advice by an expert on child behaviour

28.- (1) The government office shall offer parents and children advice by an expert on child behaviour in case of disagreement about custody and access. The purpose is to help the parties resolve their conflict in considering the child's best interests.

(2) The government office may also offer advice on custody and access by an expert on child behaviour, where a special need is considered to exist in this respect.
(3) The government office may refrain from offering advice in accordance with subsection (1) above, if this is considered unnecessary or inappropriate in individual cases.

PART 6
Custody and access proceedings

29. Where a child has reached the age of 12, a conversation shall be held with the child before a decision is made in a case concerning custody or access. However, such a conversation may be dispensed with, if it must be assumed to be detrimental to the child's interests or to be of no relevance to the case.

30. The government office shall obtain an opinion from the non-custodial parent, before a decision is made in pursuance of section 11 or section 14(2), unless this may be to the serious detriment of the child or involve an inordinate delay in the proceedings.

31. The Minister of Justice may lay down rules and regulations regarding the hearing by government offices and courts of cases brought under the provisions of this Act, including more specific rules about the conditions for notification of agreements about joint custody.

PART 7
International treaties

32.- (1) The Government may enter into treaties with foreign states about the reciprocal recognition of the provisions of Danish law and the law of foreign countries on custody and access. Any such treaty shall become effective in this country following its promulgation in 'Lovtidende' (the Danish Law Gazette).

(2) Moreover, the Minister of Justice may lay down rules and regulations on the reciprocal recognition of the provisions of
Danish law and the law of the other Nordic countries on custody and access.

PART 8
Commencement, etc.

33.-(1) This Act shall enter into force on January 1, 1996. However, the provisions of paragraphs (i) and (ii) of section 35 shall enter into force on the day following their promulgation in 'Lovtidende' (the Danish Law Gazette).

(2) On January 1, 1996, the provisions of PART 2 and sections 35, 36 and 37 of the Act on Minors and Incapacitated Persons, Consolidated Act No. 443 of October 3, 1985, shall be repealed. In section 72(1) and (2) of that Act, the words "custody and access" shall be deleted.

(3) If, prior to January 1, 1996, no final judgment has been pronounced in a case brought under the existing provisions of sections 14 or 17 of the Act on Minors and Incapacitated Persons, the provisions of sections 12 or 13 of this Act shall be applied.

(4) The provisions of sections 13 and 17(2) and (3) of this Act shall also apply to agreements or decisions on custody and access made before January 1, 1996.

(5) The provisions of section 14 of this Act shall also be applicable, if death occurred before the Act became operative.

34. In the Administration of Justice Act, Consolidated Act No. 905 of November 10, 1992, as most recently amended by section 1 of Act No. 209 of March 29, 1995, the following amendment shall be made:

In section 450A, the first clause, for "section 26 of the Act on Minors and Incapacitated Persons", there is substituted "section 29 of the Act on Custody and Access".

11
35. The Act on the Contraction and Dissolution of Marriage, Consolidated Act No. 148 of March 8, 1991, as amended by section 4 of Act No. 386 of May 20, 1992, shall be amended as follows:

1. In section 13, there shall be added subsection (4):

"(4) The Minister of Justice may lay down rules and regulations regarding the payment of fees for the translation of documents necessary for reviewing the conditions of marriage. Further, the Minister of Justice may lay down rules and regulations regarding the payment of fees for the participation of an interpreter in connection with the review of the conditions of marriage, in those cases where neither party resides in this country."

2. In section 20, there shall be added subsection (4):

"(4) The Minister of Justice may lay down rules and regulations regarding the payment of fees for the participation of an interpreter during the marriage ceremony, in those cases where neither party resides in this country."

3. In section 46, for "the provisions of the Act on Minors and Incapacitated Persons", there shall be substituted "the provisions of the Act on Custody and Access".

36. Act No. 372 of June 7, 1989 on Registered Partnerships, as amended by Act No. 821 of December 19, 1989, shall be amended as follows:

Section 4(2) shall be worded as follows:

"(2) Section 11, the second clause, and section 14(4) of the Act on Custody and Access shall not apply to the registered partnership."
37. This Act shall not extend to the Faroe Islands and Greenland. However, under an Order in Council, the Act, with the exception of section 34, may also become operative for these territories, with any variations dictated by the special conditions prevailing in the Faroe Islands and Greenland.

*Given at Christiansborg Palace, June 14, 1995*  
*Under Our Royal Hand and Seal*  
*MARGRETHE R.*  

/ðjørn Westh
The Children Act

We, MARGRETHE THE SECOND, by the Grace of God Queen of Denmark, hereby make known: Folketinget has passed and We have provided the following Act with Our Royal Assent:

Part 1

Registration of paternity at the birth of the child

1.-(1) If a child is born to a married woman, her husband shall be considered the child’s father. Registration of paternity shall take place in connection with the registration of the birth of the child.
   (2) The provision of subsection (1) above shall not apply if
      (i) the spouses were separated at the time of the birth of the child,
      (ii) the mother was married to another man, without being separated from him, within the ten-month period immediately preceding the birth of the child,
      (iii) both spouses request that paternity proceedings be instituted.
   (3) The provision of subsection (1) above shall apply mutatis mutandis if the husband died within the ten-month period immediately preceding the birth of the child.
   (4) The provision of subsection (3), see subsection (1), shall not apply if
      (i) the spouses were separated at the time of death,
      (ii) the mother was married to another man, without being separated from him, within the ten-month period immediately preceding the birth of the child,
      (iii) the mother requests that paternity proceedings be instituted.

2. -(1) If a child is born to an unmarried woman, and the mother and a man make a joint statement in writing declaring that they agree to share the care and responsibility for the child, such man shall be considered the child’s father. Registration of paternity shall take place in connection with the registration of the birth of the child.
   (2) The provision of subsection (1) above shall not apply if
      (i) the mother was married to another man, without being separated from him, within the ten-month period immediately preceding the birth of the child; or
      (ii) either or both parties are under age, legally incompetent or under guardianship at the time the statement is made.

3. If, before the birth of the child, paternity has been acknowledged pursuant to section 14(1) or section 14(2)(i), the paternity may be registered on this basis in connection with the registration of the birth of the child.
Part 2

Administrative paternity proceedings before the County Governor’s office [‘statsamtet’]

Starting a paternity case

4. Before the birth of the child, paternity proceedings may be instituted by the mother or the County Governor’s office.

5.- (1) If paternity has been registered or acknowledged before the County Governor’s office, paternity proceedings may be instituted by the mother, father or child’s guardian within six months after the birth of the child.

(2) If paternity has been registered pursuant to section 1 above, the father’s estate may institute paternity proceedings within the above-mentioned time limit, unless the father is deemed to have acknowledged paternity of the child.

6.- (1) A man who has had sexual relations with the mother during the period when she became pregnant is entitled to have his paternity tested (but see subsection (2) and section 10 below). A request for paternity testing shall be made in writing no later than six months after the birth of the child, unless paternity proceedings are pending at the time the request is made.

(2) If a man has been registered as the child’s father pursuant to sections 1, 2 or 3, see section 14(1), another man cannot institute paternity proceedings pursuant to subsection (1) above. Notwithstanding the provision of the first sentence hereof, a man may nevertheless institute paternity proceedings if he was married to the mother, without being separated from her, or cohabited with her in a quasi-marital relationship during the period when she became pregnant.

(3) A man who was married to the mother, without being separated from her, within the ten-month period immediately preceding the birth of the child shall be notified in writing of the birth of the child as soon as possible and shall receive guidelines about his right to institute paternity proceedings. But this shall not apply if he is already a party to such proceedings.

7.- (1) If paternity has not been registered pursuant to sections 1-3, and no other party has instituted paternity proceedings, the County Governor’s office shall institute paternity proceedings (but see subsection (2) below).

(2) If the child has died, attempts to establish paternity shall only be made if the mother or a party with a legal interest in establishing paternity so requests.

Processing paternity cases

8.- (1) The mother shall state who is or may be the father of the child (but see subsection (2) below).

(2) The provision of subsection (1) above shall not apply if paternity is acknowledged pursuant to section 14(1). If paternity has been registered pursuant to sections 1, 2 or 3, see section 14(1), or if paternity is acknowledged pursuant to section 14(1) after the birth of the child, the provision of subsection (1) shall only apply if it is determined or if good cause exists for presuming that the man who has been registered as the child’s father or has acknowledged paternity is not the father of the child.
(3) If the mother fails to disclose who is or may be the father of the child, she shall be informed about the consequences this may have for herself and the child.

9.—(1) The parties to paternity proceedings are
   (i) the child or its estate,
   (ii) the mother or her estate,
   (iii) a man who has been registered as the father or has acknowledged paternity, or his estate,
   (iv) a man who is or may be the father of the child according to information given by the mother, see section 8 above, or his estate; or
   (v) a man who is entitled to have his paternity tested, see section 6 above, or his estate.

(2) If the mother has died, the County Governor’s office shall, at the request of the child’s guardian, make a man party to paternity proceedings if it is probable that he is or may be the child’s father.

10. If the child is the result of a criminal action, the man who has committed the crime cannot be held to be child’s father if there are vital reasons that this would not be in the child’s best interests.

11.—(1) The County Governor’s office will request the mother and the men who are parties to the proceedings to participate in forensic genetic testing if this could be of importance to the case.

(2) The provision of subsection (1) above shall be applicable to persons other than parties to the proceedings where this is assumed to be of vital importance to the case.

12. The County Governor’s office may order a man who is undisputedly not the father of the child to withdraw from the proceedings.

13. The County Governor’s office shall bring the case before the courts if
   (i) any party to the proceedings so requests,
   (ii) the County Governor’s office is concerned about the continuation of the case,
   (iii) a summons is to be made through a notice in ‘Statistidende’ (the Danish Official Gazette) or a letter of request is to be issued pursuant to section 158 of the Danish Administration of Justice Act,
   (iv) the case cannot be concluded by acknowledgement of paternity or the County Governor’s office discontinues the case due to lack of information; or
   (v) any of the parties has been divested of his or her legal capacity pursuant to section 6 of the Danish Guardianship Act.

Acknowledgement of paternity

14. A man can acknowledge paternity of a child by declaring together with the mother that they will jointly care for and take responsibility for the child. This provision shall not apply if the mother was married to another man, without being separated from him, within the ten-month period immediately preceding the birth of the child or the expected date of birth.

(2) A man who has had sexual relations with the mother of the child during the period when she became pregnant can acknowledge paternity if
   (i) according to the information available, the mother has had no sexual relations with other men during the above-mentioned period; or
   (ii) he is the undisputed father of the child.
(3) If the mother has had sexual relations with other men during the period when she became pregnant, one of these men can acknowledge paternity by declaring together with the mother that they will jointly care for and take responsibility for the child. The other men who are parties to the proceedings shall consent to such acknowledgement of paternity.

(4) Paternity pursuant to subsections (1)-(3) above can only be acknowledged in writing. Paternity pursuant to subsection (3) above can only be acknowledged before the County Governor’s office.

(5) If any of the parties has been divested of his or her legal capacity pursuant to section 6 of the Danish Guardianship Act, paternity cannot be acknowledged pursuant to subsections (1)-(3) above. If any of the parties is under age, his or her guardian shall assent to the acknowledgement of paternity.

(6) Prior to acknowledgement of paternity pursuant to subsections (1)-(3) above, the man acknowledging paternity shall have been informed of the legal effects of such acknowledgement and his right to demand that the case be decided by a court.

(7) Paternity cannot be acknowledged pursuant to subsections (2)(ii) and (3) before the birth of the child.

(8) The Minister of Justice may decide that an acknowledgement of paternity made abroad shall be considered equally valid to an acknowledgement made before the County Governor’s office.

Part 3

Paternity proceedings before the courts

Bringing the case before a court

15. Only the County Governor’s office can bring a paternity case before a court.

Hearing paternity cases

16. The mother is under an obligation to appear in court and to make a statement as to who is or may be the father of the child. The provisions of section 8(2) and (3) shall apply mutatis mutandis.

17. The court shall summon the men referred to in section 9, as well as any other men who may be the father of the child, according to the information available. Sections 6(3), 10 and 12 shall apply mutatis mutandis.

18. The court will order that the parties to the proceedings undergo forensic genetic testing if this could be of importance to the case. Section 11(2) shall apply mutatis mutandis.

Acknowledgement of paternity

19. Paternity can be acknowledged before the court. Section 14(1)-(7) shall apply mutatis mutandis.

Judgment establishing paternity

20. (1) A court may rule that a man is the father of a child if the outcome of forensic genetic testing shows that he is undisputedly the father.
(2) In other cases, a man will be ruled to be the father if he has had sexual relations with the mother during the period when she became pregnant, and there are no circumstances rendering it improbable that he is the father of the child. If the mother has had sexual relations with other men during the period when she became pregnant, it is moreover a condition that
   (i) none of these men is the father according to the outcome of forensic genetic testing; or
   (ii) it is highly unlikely that any of these men is the father of the child.
(3) When judgments are made in pursuance of the second sentence of subsection (2), paragraph (ii), the courts will attach importance to whether the mother was married to or lived together with one of the men during the period when she became pregnant.

Part 4
Reopening a case

21.- (1) If the paternity of a child has not been registered or established through acknowledgement of paternity or a court ruling, the case shall be reopened at the request of the mother or her estate, the child or its guardian or estate, or a man who is entitled to have his paternity of the child tested; see section 6.
   (2) A case can only be reopened if it is rendered probable that a certain man is the father of the child.
   (3) If the child is of full age and capacity, the case cannot be reopened against its will.

22.- (1) If the paternity of a child has been registered or established through acknowledgement of paternity or a court ruling, the case shall be reopened if the mother or her estate, the child or its guardian or estate and the father or his estate agree to request a reopening.
   (2) A case can only be reopened if it is rendered probable that another man is the father of the child.

23.- (1) If, in connection with the registration of paternity, an error has been made that may have affected which person was registered as the father, then the mother or her estate, the child’s guardian or estate, the registered father or his estate, or a man who was not registered as the father of the child due to the error, or his estate, may demand a reopening of the case within three years of the birth of the child.
   (2) A case cannot be reopened by the father or his estate if he has acknowledged paternity of the child by treating it as his own even though he was aware of or suspected the error. Nor can a case be reopened by the mother or her estate if she has let the father treat the child as his own even though she was aware of or suspected the error.
   (3) A case shall be reopened at the request of a man who is to be notified of the birth of the child pursuant to section 6(3) above if such notification has not reached him within five months of the birth of the child. The request for a reopening shall be made without undue delay after he has been informed of the birth of the child, and no later than three years after the date of birth.

24.- (1) If the paternity of a child has been registered or established through acknowledgement of paternity or a court ruling, then the mother or her estate, the child’s guardian or estate, or the father or his estate may request a reopening of the case within three years of the birth of the child, if new information is available about circumstances assumed to result in another outcome of the case or if there are special grounds to assume that the case would have a different outcome.
(2) When decisions are made pursuant to subsection (1) above, particular importance shall be attached to the following:

(i) how much time has elapsed since the birth of the child,
(ii) whether the father has acknowledged paternity of the child by treating it as his own even though he was aware of or suspected the circumstances raising doubt about his paternity,
(iii) whether the mother has let the father treat the child as his own even though she was aware of or suspected the circumstances mentioned in paragraph (ii) above,
(iv) if a party who was aware of or suspected the circumstances raising doubt about the identity of the father did not request a reopening of the case within a reasonable time limit; and
(v) whether the reopening of the case will result in the child having a father.

25. The reopening of a case pursuant to sections 23 and 24 may be allowed after the expiration of the above-mentioned time limit, provided that good cause is shown for not making the request before, that the circumstances of the case clearly indicate that a reopening of the case is warranted, and that such reopening is not seriously detrimental to the child’s interests.

26.- (1) The decision to reopen a case shall be made by the County Governor’s office.
(2) The County Governor’s office shall bring the question of reopening a case before the courts if a party so requests within four weeks after the County Governor’s office has made its decision.
(3) If the case is reopened, Parts 2 and 3 shall apply *mutatis mutandis* (but see subsection (4) below).
(4) A man who has previously been a party to the proceedings and was held not to be the father of the child based on the outcome of forensic genetic testing or evidence as to whether he had sexual relations with the mother during the period when she became pregnant, cannot be brought into the reopened proceedings against his will. This provision shall not apply if he gave false evidence before the court about matters pertinent to the case, or if a mistake of identity, confusion of genetic material or similar error was made with his knowledge.

Part 5

*Paternity and maternity in case of artificial insemination*

Paternity

27.- (1) If a woman has been artificially inseminated by a doctor or on the responsibility of a doctor, her husband or partner shall be considered the father of the child if he has consented to the treatment and the child must be assumed to be the result of such treatment.
(2) The consent referred to in subsection (1) above shall be given in writing and shall include a statement in writing to the effect that the man will be the father of the child.

28.- (1) A semen donor cannot be adjudged the father of a child who was the result of the artificial insemination of a woman other than his spouse or partner, if his semen was donated to be used by a doctor for artificial insemination or to a public or private semen bank that meets the health authorities’ requirements for the donation of semen.
(2) If semen has not been donated as set out in subsection (1) above, the semen donor shall be considered the father of the child, unless the semen was used without his knowledge or after his death.

29. The provisions of Parts 1-4 shall apply *mutatis mutandis*.

**Maternity**

30. The woman bearing a child who is the result of artificial insemination shall be considered the mother of the child.

**Part 6**

**Surrogate mothers**

31. An agreement providing that a woman bearing a child will surrender such child to another person after its birth shall be deemed illegal.

**Part 7**

**Guidance to be offered by the County Governor’s office**

32. To the extent necessary, the County Governor’s office shall offer guidance on issues pertaining to this Act, and shall assist in the completion of forms, etc.

**Part 8**

**Miscellaneous provisions**

33.- (1) The Minister of Justice shall lay down provisions on the processing of cases pursuant to this Act, including the procedure for notifying and registering paternity pursuant to sections 1-3, the processing of paternity cases by the County Governor’s office, determining the period when the mother became pregnant and the performance of forensic genetic testing.

(2) The Minister of Justice shall draw up forms for registering paternity pursuant to sections 1-3 and for acknowledging paternity and filing statements pursuant to sections 14, 19 and 27. The Minister of Justice may determine that signatures shall be attested by a lawyer or two witnesses or authenticated in another way.

34.- (1) The Government may enter into agreements with other states about the relationship between the rules of Danish and foreign law on the establishment of paternity and maternity of children. Such agreements shall become applicable in this country upon publication in ‘Lovtidende’ (the Danish Law Gazette).

(2) The Minister of Justice may lay down rules on the relationship between the rules of Danish and other Nordic law on the establishment of paternity and maternity of children.
35. The decisions made by the County Governor’s office pursuant to this Act cannot be brought before another administrative authority.

Part 9

Commencement, etc.

36.- (1) This Act shall enter into force on 1 July 2002.
(2) This Act shall apply to children born after the commencement of the Act. Children born before the commencement of the Act shall be comprised by the statutory provisions previously applicable (but see subsection (3) below).
(3) The provisions of section 22, see section 26, shall also apply to children born before the commencement of this Act.

37. The following amendments shall be made to the Act on the Legal Status of Children, see Consolidated Act No. 293 of 2 May 1995, as most recently amended by section 2 of Act No. 966 of 20 December 1999:

1. In the title of the Act, ‘maintenance’ shall be substituted for ‘legal status’.

2. Part 1, section 20 and section 21(1), the second sentence, shall be repealed.

3. In section 22A(1) and (2), the words “the legal status of children, including on” shall be deleted.

38. This Act shall not extend to the Faroe Islands and Greenland. By an Order in Council, this Act may become applicable to the Faroe Islands and Greenland subject to such deviations as are warranted by the special conditions prevailing in those territories.

Given at Christiansborg Palace, 7 June 2001

Under Our Royal Hand and Seal

MARGRETHE R.

/Frank Jensen