Denmark

Mogens Koktvedgaard*

Denmark is a constitutional monarchy (*Kongeriget Danmark*). In 1948 the Faroes (*Faerøerne*) gained Home Rule in various fields, primarily concerning the economic affairs of the islands. Since 1953 Greenland (*Grønland*) has been an integrated part of Denmark, but for obvious reasons a certain amount of legislation is either not applicable or only applicable to Greenland.

I. CONSTITUTIONAL SYSTEM

1. Nationality

Danish nationality is acquired when a person is born in wedlock and his father is Danish, when he is born outside wedlock and his mother is Danish, and when he is born in Denmark and his mother is Danish, and either his father is without nationality, or he does not acquire his father's nationality. An alien who is born in Denmark and has since then been domiciled there will automatically acquire Danish nationality by notification to the proper authorities, provided the notification takes place after he has obtained the age of 21, but before he is 23. These rules, which are only the more general ones, are found in the Act of Danish Nationality (*lov om dansk indfødsret*) no. 409 of 17 Dec. 1968.

The Constitution states that no alien shall be naturalized except by statute. Thus naturalization is always at the discretion of the legislature. The conditions are usually that the person has been domiciled in Denmark for 10 years or more and that he is between 18 and 50 years of age. However, a woman who marries a Dane is usually only required to stay in Denmark for about one and a half year before naturalization.

Danish nationality is lost if a person acquires foreign nationality on application or after express consent. Hence automatic acquisition of foreign nationality by marriage with a foreigner does not lead to forfeiture.

2. Territorial Division

Denmark is divided into 22 counties (*amter*). These are the local divisions of the central government.

Local self-government is carried out through a large number of local authorities (*kommuner*). The country is divided into around 90 boroughs (*købstaeder*) and 25 country authorities (*amtskommuner*), the latter being divided into about 1 200 districts (*sognekommuner*). The city of Copenhagen and the adjacent local authorities have a special status. The Constitution states that the local authorities are entitled to administer their own affairs under government supervision. At present the number of local authorities is in the process of being reduced.

3. State Organs

According to the Constitution the general structure of the state organs is that the legislative power is vested jointly in the King and the Parliament (*Folketing*), the executive power in the King, and the judicial power in the courts.

a. *The King* is the Head of State. According to the Act of Succession no. 170 of 27 March 1953, the throne shall, on the death of the King, pass to his son or daughter, a son taking precedence over a daughter, and the elder taking precedence over the younger. As mentioned below the King has no actual political power.

b. *The Parliament* consists of only one assembly with 179 members, including two elected in the Faroes and two in Greenland. The suffrage is universal and the voting age is 20. An election must be held every fourth year, but the King may at any time issue writs for another general election. Bills are usually introduced by the government, but members of Parliament are also entitled to do so. No bill can be passed, until it has been read three times. The King must consent to an act passed by Parliament in order for it to become a

* Professor of Law, University of Copenhagen, Copenhagen.

statute. A minority in Parliament is protected in certain ways, *e.g.*, with regard to most bills it can demand postponement or referendum. An amendment to the Constitution is not valid until it has been passed by two successive Parliaments and a referendum where at least 40 per cent of the electorate and a majority of the persons taking part in the voting have voted in favour of the amendment.

c. *The Constitution* vests the executive power in the King and states that he holds supreme authority in all administrative affairs and exercises it through his ministers. The ministers, however, are the actual holders of the executive power as well as the administrative heads of the ministeries. The King cannot be held personally responsible for his participation in government. The ministers are responsible and may be impeached by the King or by Parliament for maladministration of office. Impeachments are tried by a special court (*Rigsretten*), which consists of the Supreme Court judges and an equal number of persons chosen by, but not members of, Parliament. No case has been brought before this court for the last 50 years, as the political responsibility of the Minister to Parliament has sufficed. Since 1901 parliamentarism has been recognized. The Constitution provides that a minister cannot remain in office after a vote of no confidence.

d. *The Constitution* provides in sect. 55 that Parliament can appoint one or two persons, not members of Parliament, to supervise the civil and military services. Parliament has appointed a special official, called the *Ombudsman*, to do this. He is appointed for a period of four years. According to the Ombudsman Act no. 342 of 1 Dec. 1961, all complaints against state officials and also, with certain limitations, against officials of the local authorities may be examined by him, and he is also entitled to start investigations on his own initiative. Though he can make no binding decisions, his findings are usually followed.

e. As regards the *local divisions* of the central government, the head of the county is the *amtmand*, who is appointed by the government. In Greenland the representative of the government is called the *Landshøvding*, and in the Faroes the *Rigsombudsmand*.

f. The *local authorities* are all governed by publicly elected councils, which are called *byråd* in the boroughs, *amtsråd* in the county authorities, *sogneråd* in the rural districts and *Borgerrepræsentationen* in Copenhagen. In Greenland the publicly elected council is called *Landsrådet*. In the Faroes self-government consists of the *Lagting*, which is a publicly elected assembly, and the *Landsstyre*, which is an administration appointed by the *Lagting*.

4. Judiciary

According to the Constitution the judicial power is vested in the courts of justice. The judges, who must have a law degree and some practical legal training, are appointed by the government. Their independence is constitutionally guaranteed. They can only be dismissed by judgment of a special court of law (*Den særlige Klageret*), which consists of a Supreme Court judge, a High Court judge and a lower court judge. The courts have stated several times that a statute which is contrary to the Constitution can be held void. This, however, has never happened in practice.

a. *Organization of the courts.* – According to the Administration of Justice Act (*Retsplejeloven*) no. 90 of 11 April 1916, the country is divided into just over 100 lower-court (*underret*) districts. In a district there is usually only one judge, but in some districts there are two or more, while in Copenhagen there are more than 20. In each case only one professional judge presides.

The Maritime and Commercial Court in Copenhagen (*Sø-og Handelsretten*) tries cases in which special knowledge of either maritime or commercial matters is required. From this court an appeal lies directly to the Supreme Court. The bench of this court consists of a professional judge and two or four lay judges with the necessary special knowledge. Outside Copenhagen the high-courts and lower-courts hearing such cases may be supplemented by two persons with special knowledge of maritime or commercial matters. In tenancy cases the lower-court is supplemented by two lay judges, selected for each case from special lists, representing respectively the owners and the tenants.

There are two high courts (*landsretter*). The *Vestre Landsret* in Viborg consists of about 20 judges and has jurisdiction over Jutland. The *Østre Landsret* in Copenhagen has jurisdiction over the rest of the country and consists of about 30 judges. Each case is heard by at least three judges.

The highest court, the Supreme Court (*Højesteret*), is located in Copenhagen and is composed of 15 judges. At least five judges must hear each case.

Whereas the lower-courts hear cases only in the first instance, and the Supreme Court is a court of appeal only, the high courts are in some cases

courts of first instance and in some courts of appeal. They are courts of first instance only in the most serious criminal cases. As regards civil cases, the high courts are the principal courts of first instance. Because of the numerous exceptions to this rule the great majority of civil cases are, however, tried by the lower courts, *e.g.*, all cases concerning private property rights where the amount in controversy does not exceed 6000 kr. (US $ 900).

While civil cases, as a rule are only decided by professional judges, art. 65 of the Constitution demands that laymen shall take part in criminal proceedings. With the exception of the least serious cases and cases where a confession has been made, all cases in the lower courts are heard by the judge and two laymen (*domsmænd*). When a high court in criminal cases is a court of first instance, the three judges sit with 12 jurors. The jury decides the question of guilt, while the sentence is fixed by the jury and the judges jointly.

Administrative courts have not yet been introduced, although the Constitution expressly allows the establishment of such courts. The ordinary courts may, however, try all cases against the government and the administration, if there is not an express statutory provision to the contrary.

b. *The prosecution.* – The structure of the public prosecution is hierarchial. According to the Administration of Justice Act. no. 90 of 11 April 1916, the highest authority is the Minister of Justice. He supervises the work of the Chief Public Prosecutor (*Rigsadvokaten*), who is the acting head of the prosecution. There are seven local public prosecutors (*statsadvokater*) and about 75 chiefs of police (*politimestre*). In criminal cases proper the decision to prosecute is usually taken by the local public prosecutors. The chiefs of police may decide in minor cases only whether a charge shall be made. The prosecution can withdraw a charge even when a conviction is thought possible. This can always be done by the Chief Public Prosecutor if there are special circumstances, and if it can be done without harm to any public interest. The local public prosecutors and the chiefs of police have also been given wide authority to withdraw a charge.

The general rule is that criminal cases can only be initiated by the public prosecution.

II. SOURCES OF LAW

Denmark's first democratic Constitution (*Grundlov*) dates from 5 June 1849. Though it has been revised four times, most of the original provisions are still preserved in the present Constitution of 5 June 1953 (no. 169). Besides establishing the principal state organs, it contains a Bill of Rights.

1. The principal source of law is *legislation;* yet there exists no general codification of Danish law. Certain fields of law may, however, be said to be codified. The Administration of Justice Act (*Retsplejeloven*) no. 90 of 11 April 1916 and the Criminal Code (*Straffeloven*) no. 126 of 15 April 1930 regulate comprehensively civil and criminal procedure and criminal law proper.

In the field of public law legislation is very detailed and is usually supplemented by numerous administrative regulations. In the field of private law the statutes do not always claim to be exhaustive. Within this field it is characteristic that the legislator has chosen domains, which were regarded as easily determinable. The rules only provide the general principles and are formulated with such elasticity that there is still ample room for free judical interpretation.

2. In some fields of law there is no or very little legislation, *e.g.*, the law of torts and the law of neighbouring rights. Here *judge-made law* is the source of law. *Customary law* was in earlier times a very important source of Danish law, and much of the present legislation within the field of private law is a codification of customary law. Several statutes contain, even today an express provision to the effect that their provisions must cede to customs, especially trade customs.

Danish courts do not recognize the absolute authority of precedents. A judge, however, will not lightly disregard a prior decision, and though it is not usual to indicate in the judgment whether it has been made in reliance upon older decisions, precedents are discussed in court. But it is probably true to say that a Danish judge does not attribute the same weight to precedents as a judge in a Common Law country does. Danish decisions do not provide much guidance for the future. They are usually very concretely motivated, and only few statements of principle can be found in them. This means that the judge does not have to use very subtle techniques in order to disregard earlier decisions, if he regards them wrong.

It cannot be said that any source of law has absolute priority over the others, although statutory law has a tendency to prevail. The judge regards the law as an integrated unity, and it is not possible to say that statutory provisions are given either a wide or a narrow construction. The judge will look for the purpose of the statute. In trying to find the intention of the legislator special weight is put on statements in the reports of the parliamentary committees, also the reports of legislative drafting committees and the comments by the government accompanying the introduction of a bill are important.

3. Although references to *legal writing* are only very rarely made in the premises of the decisions of the courts, there is no doubt that it has very great influence in Denmark. This must be so in a country where no general code exists, and where the decisions in certain fields are scarce and always concretely motivated. It is typical of Danish legal literature that it tries to keep legal theory and practice closely connected. Although a marked respect for legislation and practice is shown, legal writing has an important influence on the evolution of the law.

4. Since 1871 statutes are officially published in Lovtidende (Statute Journal), which also contains the more important administrative regulations. Lovtidende is a journal usually published every week or fortnight depending on the quantity of statutes. The usual way to quote a statute is as follows: Lov nr. ... af ..... 19.. om ... (Act no.... of ... (date) ... 19.. about ... (title) ... The number refers to its place in Lovtidende, and the date to the time when it received the King's signature. Lovtidende is supplemented by an official collection of circulars and decisions of the central administrative authorities, called Ministerialtidende (Departmental Journal). In the private collection Danmarks Love 1665–1949 (Denmark's Statutes) all statutes, which were in force in 1949, can be found. Karnovs Lovsamling (*Karnov's* Collection of Statutes) represents an annotated and highly useful selection of the more important statutes. It is published approximately every sixth year (last edition 1966) and supplements are published every year. An index to all statutes, regulations *etc.* in force is found in the annual Dansk Lovregister (Index to Danish Statutes). The latter is very useful, as Danish statutes especially in the field of public law are amended frequently. After a statute has been amended several times, the amendments are often incorporated into the original statute. The result of this is called a *Lovbekendtgørelse* (revision) and is published as an ordinary statute in Lovtidende. Reports of parliamentary debates and the recommendations of parliamentary committees are found in Folketingstidende (Parliament Journal), which before 1953 was called Rigsdagstidende.

Official printed reports of all decisions of the courts do not exist. Ugeskrift for Retsvæsen (Weekly Law Journal), which has been published since 1867, is the most important collection. It contains reports of cases decided by the Supreme Court, the high courts and recently also a few from the lower courts. When a decision is cited thus: UfR (or just U) 1964 s. 891, the citation refers to Ugeskrift for Retsvæsen, the year of the volume and the page. In Højesteretstidende (Supreme Court Reports), which was published yearly from 1857 to 1958, are found the decisions of the Supreme Court. Sø- og Handelsretstidende (Maritime and Commercial Court Reports) contains the decisions of the Maritime and Commercial Court. Realregistre til Domssamlingerne i Civile Sager (Digests of the Collections of Decisions in Civil Cases) has appeared in two volumes every decennium since 1887.

III. HISTORICAL EVOLUTION OF PRIVATE LAW AND THE STATE DIRECTION OF TRADE

1. The origins of Danish law are found in Germanic law. The first written laws date from the twelfth and thirteenth centuries. Although Denmark was united at this time, there were different areas of jurisdiction, each with their own legislation. Only the law for Jutland, called *Jyske Lov*, was issued from 1241 by the King. A collection of these laws is found in Danmarks gamle Landskabslove (Denmark's old Provincial Laws) (8 vol. 1920–1951) by *Johs. Brøndum-Nielsen*. The principles of *Jyske Lov* were gradually accepted in the entire Kingdom, but were at the same time supplemented by numerous important statutes. A few years after absolute monarchy was introduced *King Christian the Fifth* in 1683 enacted a code for all Denmark, called *Christian den Femtes Danske Lov*. It abolished all previous legislation, including *Jyske Lov*, but as this was the main source of law

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for the new code, legal tradition was not broken. The code has never been officially repealed and a few of its provisions are still in force, *e.g.*, the rule about vicarious liability, DL 3–19–2 (*Danske Lov* book 3, chapter 19, article 2).

2. For about 200 years the code remained the most important source of Danish law. However, even at the time of issue it was not exhaustive, and it was quite casuistic in form, containing very few general principles. Hence legal doctrine became important. The most important name in legal doctrine is *Anders Sandøe Ørsted* (1778–1860), who is regarded as the founder of Danish and Norwegian legal theory. During his lifetime and especially after the abolition of absolutism in 1849 a reform of Danish law began, gradually shaping the law into its present form.

There is a remarkable continuity in Danish law. It was never strongly influenced by any foreign system of law. Roman law was never accepted as the law of the land, although Roman concepts have, of course, filtered into Danish Law, especially during the eighteenth century. Danish law cannot be classified as belonging to any of the well-known families of law. It is, however, closely related to the law of the other Scandinavian countries. The fact that these countries, as far as law is concerned, form a group of their own is due not only to the common historical and geographical background, but also to systematic endeavours to unify the law. These endeavours have taken place since the last decades of the nineteenth century. Committees with members from the different countries have drafted proposals for legislation within well-defined fields, especially in family law and the law of contracts. Many of these proposals have later been enacted in all or at least in some of the countries.

3. The history of *state direction of trade* in the great West European countries has also been the history of state direction of trade in Denmark. When new ideas were introduced and tried in these countries, they were also tried in Denmark, but usually less thoroughly and successfully. During the seventeenth and eighteenth centuries the economy was strictly controlled by the absolute monarchs. State monopolies, franchises and other privileges were much in use. During the second half of the eighteenth century a liberal economy began to develop, and the previous privileges of the artisans and merchants were finally abolished in 1857. During the twentieth century, especially during and after the two World Wars, it was found necessary to control commerce and industry through legislation. In the thirties the first acts concerning monopolies were enacted. The present Monopolies and Restrictive Business Practices Act dates from 1955 (no. 102) and gives, together with related legislation, the administration fairly wide authority to stop restraints of trade and regulate prices. But still the economy is based on private enterprise (a "market economy"). The state has taken over only very little of the means of production, and there is no direct and central planning of the economy.

IV. PRIVATE (CIVIL) LAW

For systematic purposes Danish legal writing divides the law into private law and public law. *Public law* includes constitutional law, administrative law, criminal law and law of procedure. *Private law* is divided into the law of persons, family law, law of wills and succession, and law of property. Within the law of property there is an important systematic distinction between the law of property in a strict sense (*formueret* or *tingsret*) and the law of obligations (*obligationsret*). In *formueretten* the regular property rights and the special rights such as easements and mortgages are dealt with, while contractual relations and torts are treated in *obligationsretten*, partly in a general section with the common rules regulating all contractual relations and partly in special sections about individual types of contracts. It should be noted, however that these distinctions are traditional, didactic and of little practical importance in the application of the law. Danish law is pragmatic and empirical rather than theoretical and abstract.

An important feature of Danish law is that there is no general distinction between private law and commercial law. Another characteristic of Danish private law is that there exist few formal requirements, and that the courts, even where formal requirements exist, often refuse to attach decisive importance to the fact that the formalities are not complied with.

1. Law of Persons

In the law of persons are treated the legal prob-

lems of minors and persons of unsound mind. The most important statute is *lov om umyndighed og værgemål* (Act on Minority and Guardianship) no. 277 of 30 June 1922.

a. All persons are vested with *legal personality* from birth until death,which means that everybody is capable of having rights and obligations. Persons under 20 years of age are minors and cannot act on their own behalf in economic affairs. There are a number of exceptions to this rule, *e.g.*, a minor may enter into labour agreements from the age of 18. Persons, who for certain reasons are found to be unfit to look after their own affairs, can be declared by a court incapable of managing their own affairs. After such a decree they are treated as minors. The assets of such persons and of minors are administered partly by the guardian and partly by a public authority, called *Overformynderiet*. The guardian acts on behalf of these persons in specific economic matters.

If a contract is entered into by an insane person, it is only invalid if the committent was influenced by the insanity. Minors and insane persons are liable for damages just as any other persons, but the courts may under certain conditions reduce or rescind the claim for damages.

b. Legal writing has defined the concept of the *legal entity* as a collective which is treated and acts as an individual person. The collective as such can enter into contracts, be a party in a lawsuit *etc.* The main example of a legal person is the company. However, no conclusions of law can be drawn from this concept. Whether a collective is capable of having rights *etc.*, depends on the rules regulating that particular field of law. The fact that a collective is capable of exercising rights in some respects does not necessarily mean that it can exercise these rights in all respects.

2. Family Law

Family Law deals with the problems concerning marriage and dissolution of marriage, marital property, status of children and adoption. The most important statutes are *lov om ægteskabs indgåelse og opløsning* (Act concerning Marriage and Dissolution of Marriage) no. 256 of 4 June 1969, *lov om ægteskabets retsvirkninger* (Act on the Legal Effects of Marriage) no. 56 of 18 March 1925, *lov om børns retsstilling* (Act on the Status of Children) no. 280 of 18 May 1960 and *lov om adoption* (Act on Adoption) no. 140 of 2 April 1956. The second and the fourth of these statutes are under revision.

a. Under certain conditions a civil as well as a religious celebration of *marriage* is recognized. IV

Husband and wife are regarded as equals. It is provided that they shall support each other and together take care of the interests of the family. The normal matrimonial property system is that of joint property, but as will be seen below, this has not much in common with other joint property systems. The spouses, however, can choose to live under a separate property system or under a system where some property is joint property, and some is separate. Certain conditions have to be fulfilled in order to make property separate. While the marriage lasts, there is little difference between joint and separate property. Each spouse disposes of all the property which he has brought into the marriage or has acquired during the marriage. But when the marriage ceases, either by death of one of the spouses or by dissolution, the difference becomes apparent. Separate property is then kept by the spouses or their estates, while joint property is divided equally between the spouses or their estates.

Separation may be obtained by mutual consent or because of cruelty, lack of support, *etc.* Separation is granted by an administrative act or by a court decree. Divorce is granted after a separation period of one year. Immediate divorce is granted on the usual grounds: adultery, desertion lasting for a certain period, *etc.* The spouses have the right to have their divorce decided by an administrative act, if they agree to this way of deciding the matter, otherwise they must go to the court.

b. The difference between the status of a *legitimate child* and an *illegitimate child* (called a child born out of wedlock) is very small. A child is legitimate if its parents were married at the time of conception or later have married each other. An attempt must always be made to establish the paternity of an illegitimate child.

c. An *adoption* order is always given by royal decree. The order is at the discretion of the administration. In most cases an adoption means that the adopted person changes family completely.

3. Law of Wills and Succession

According to *arveloven* (Act on Wills and Succession) no. 215 of 31 May, 1963 any person who is of sound mind and has attained the age of 18, may dispose of his estate by will. There is, however, the important exception that he can only dispose of one half of his estate, if he has descendants or a spouse.

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If the property is not disposed of by will, it is distributed in the following way. If the deceased has descendants, they take the whole estate. If there are no descendants, the parents of the deceased or their descendants take everything, and if there are no persons in this group, his grandparents and his uncles and aunts take everything. If no such persons are alive, the property belongs to the Danish State. Within the groups ascendants exclude their own descendants, but if an ascendant is dead, his descendants take his share. A surviving spouse takes one-third, if descendants are left, and everything if this is not the case. He also takes everything, if the estate put together with his own property does not exceed 12000 kr. (US $ 1700). The surviving spouse is also given a right to retain possession of the whole estate, if the estate was joint property and certain other conditions are fulfilled, notably that there are minor children to support.

The estate is administered by the probate court (*skifteretten*) or by an executor appointed by the testator, but under certain conditions it may also be administered by the heirs privately. The heirs are never liable for the debts of the estate, unless they sign a declaration to that effect. If the estate is administered by the heirs privately, they have to accept the liability.

4. Law of Property and Obligations

Private ownership and freedom of contract may still be said to be the main principles of Danish private law. The Constitution (sect. 73) provides: "The right of property shall be inviolable. No person shall be ordered to surrender his property, except where required by the public interest. It can be done only as provided by statute and against full compensation." General restrictions, however, can be made without compensation. Nowadays they are numerous.

a. The *law of property* in the strict sense (*formueret* or *tingsret*) deals with the contents and transfer of proprietary rights. The general rule is that all proprietary rights are transferable. The legal effects of the transfer in relation to third parties cannot, however, be decided with the help of one single principle. The result depends on what kind of property is being transferred, real or personal property, *etc.*, and it also depends on the person, in relation to whom the transfer is being considered, *e.g.*, the buyer's or the seller's creditors. If the transfer is void, claims for restitution of property will normally prevail. Acquisition of titles by extinction of the title of the original owner is, nevertheless possible, *i.e.*, in some cases of fraud, provided the buyer is in good faith.

The solutions of these problems are usually found in case law, and not in statutes. An exception to this is *tinglysningsloven* (Land Registration Act) no. 111 of 31 March 1926, which solves most of the problems in regard to real estate. The statute provides that most rights to real estate (ownership, mortgages, *etc.*) have to be registered by the courts. Contracts and executions can override unregistered rights if they themselves are registered and the transferee for value is in good faith concerning the unregistered right.

A characteristic feature of the *law of mortgages* is that a major part of the mortgage debt on real property is owed to public mortgage societies. The societies, which are supervised by the government, are associations of borrowers. On the basis of individual mortgages giving security in the various properties, the societies issue debentures (bearer bonds), which are then sold by the borrowers in the open market. Movables can be pledged as well as mortgaged. Mortgages of movables can be registered and are thereby protected against transferees for value and creditors. Mortgaging of negotiable instruments and other claims is not possible. However, a kind of pledging is possible, if the pledgor is deprived of the possibility of disposing of the claim, either by handing over the negotiable instrument or by notifying the debtor of the non-negotiable claim.

Claims can normally be assigned without the consent of the debtor. The debtor may, however, disregard the assignment if it exposes him to substantial risk or inconvenience. The assignment of negotiable and non-negotiable promissory notes is governed by *lov om gældsbreve* (Promissory Notes Act) no. 146 of 13 April 1938. The assignor is always responsible for the existence of the claim, but not always for the solvency of the debtor.

b. As regards the *law of obligations* the basic principles of the formation of contracts are found in *Lov om aftaler og andre retshandler på formueretten's område* (Act on Contracts and other Transactions within the Field of Property Law) no. 242 of 8 May 1917. Although it is limited to the field of property law, many of the provisions are used by analogy outside this field.

A contract consists of an offer and an acceptance. Offers and other promises are declarations intending to bind the offeror. A promisor is bound by his promise from the moment it comes to the knowledge of the addressee. But the promise has to be accepted within a reasonable time

to remain binding. A promise can be revoked if the revocation reaches the addressee before or at the same time as the promise comes to his knowledge. Under very special circumstances the courts may accept a later revocation if the promisee has not made arrangements on the basis of the promise.

There are normally no requirements of *form* in the Danish law of contracts. A contract does not have to be in writing. The Common Law theory of consideration and the Civil Law theory of *causa* are not known. Most of the traditional *defects* (fraud, duress and undue influence) will make a contract void, but normally only if the adressee knew or ought to have known about the defect. A discrepancy between the intention and the declaration of the promisor will not make the contract invalid, if the addressee was in justifiably good faith. The law provides that a party cannot enforce a contract if in the light of circumstances which he must have known at the time the declaration came to his knowledge, it would be in variance with the traditional concept of honesty to do so.

The most important rules about discharge of contracts and *breach* of contract are found in *Købeloven* (Sale of Goods Act) no. 12 of 6 April 1906. The provisions are only applicable to the sale of movables, but by analogy of them are also applied to the sale of real estate and other sales. However, the provisions must cede to express or implied agreements of the parties, mercantile usage, and other customs. The breaches dealt with in the statute are delayed delivery, defective goods and lack of title. The most important remedies are cancellation of the contract and recovery of damages. The contract may be cancelled if the delay or defect is essential. Whether damages may be recovered, depends on the type of the contract and the circumstances which caused the breach. The general rule is that damages can be recovered when the breach is due to culpable negligence.

c. The *law of torts* is predominantly case law. Liability is usually only imposed for wrongful acts committed intentionally or negligently (the *culpa* rule). The norm for negligence is traditionally the standard of care expected of the ordinary prudent man (*bonus pater*). However, the "fault"-principle is sometimes extended to cases where, if negligence exists at all, it is very slight. It is an established principle that a master is liable for the tortious conduct of his servants (*respondeat superior*), and this principle has been given a wide application by the courts. Strict liability is usually only accepted by the courts on the basis of statutory authority. Such authority is found concerning certain damages caused by animals, railways and aircrafts. Liability is nearly always imposed for damages caused by motorcars, although there is a statutory possibility of proving no negligence (Road Traffic Act no. 153 of 24 May 1955 sect. 65).

As a general rule damages can only be recovered, if the damage is pecuniary, *i.e.*, if it can be measured in terms of money by comparatively fixed standards. A lost gain (*lucrum cessans*) is considered a pecuniary damage. Liability presupposes causation and some sort of foreseeability (*adækvans*).

The law of *insurance* exerts an important influence on the law of torts. In a number of areas, *e.g.*, motor traffic, insurance is compulsory. The very liability is affected by insurance, as it is provided in the Insurance Act no. 129 of 15 April 1930, sect. 25, that the courts are entitled to reduce or rescind the claim, if the loss is covered by insurance and the liability is founded on negligence, not amounting to gross negligence, or on the principle of vicarious liability.

V. COMMERCIAL (ECONOMIC) LAW

As mentioned above no formal distinction exists between private and commercial law. Commercial law is not considered a special branch of the law, neither in legislation nor by jurisprudence. The Sale of Goods Act deals with both civil and commercial sales, although there are some provisions concerning only commercial sales.

1. The most important statutes concerning commercial life are *lov om aktieselskaber* (Marketable Share Companies Act) no. 123 of 15 April 1930 *lov om handelsregistre, firma og prokura* (Act on Commercial Registers, Style and Procuration no. 23 of 1 March 1889, *næringsloven* (Trade Act no. 212 of 8 June 1966 and *kommissionsloven* (Commission Agent and Salesman Act) no. 24 of 8 May 1917. Marketable Share Companies have to be registered in a central register in Copenhagen (*Aktieselskabsregisteret*). Other companies conducting trade and industry have to b

registered in local registers (*handelsregistre*). In order to get a license (*næringsbrev*) to conduct trade and industry the applicant has to be a Danish citizen, 20 years of age and not bankrupt. *Vekselloven* (Bills of Exchange Act) and *chekloven* (Cheque Act) no. 68 and no. 69 of 23 March 1932 are based on the Geneva Conventions of 1930 and 1931. There is no legislation governing the relations between the participants in partnerships and other companies with unlimited liability. Legislation concerning maritime, aviation and railway transportation is to a very large extent based on the international conventions.

2. *Konkursloven* (Bankruptcy Act) no. 51 of 25 March 1872 is not limited to commercial law, but is applied to all persons, insolvent estates of deceased persons, limited liability companies, *etc.* The debtor's estate will be administered in bankruptcy, if a petition is filed by either the debtor himself or a creditor and it is shown that the debtor is insolvent. The purpose of the proceedings is to secure that the estate is distributed jointly and equally between the creditors. However, the distribution is made in accordance with a rather elaborate order of preference. The creditor council (*skiftesamlingen*) is the highest organ of the estate and elects a trustee in bankruptcy (*kurator*) to administer the estate and a creditor committee of three (*kreditorudvalget*) to supervise the trustee. The proceedings are controlled by the ordinary lower-court, in this case called *skifteretten*. Composition schemes adopted by a majority of creditors are possible and often used instead of the rather slow and costly bankruptcy proceedings.

VI. STATE DIRECTION OF TRADE

1. The *Constitution* provides that any restraint on the free and equal access to trade, which is not based on the public interest, shall be abolished by statute. Liberty of trade is thus secured, and accordingly there is no direct state regulation of trade. There is, however, much legislation which regulates the general conditions for conducting trade and industry such as the Trade Act, rules concerning working hours, *etc.* Furthermore the state influences the economy and thereby the trade to a considerable extent through its tax policy, through subsidies, *etc.*

2. The basic principles governing *foreign trade* are laid down in *lov om valutaforhold* (Foreign-Exchange Act) no. 372 of 23 Dec. 1964. This act is supplemented by import regulations, which are promulgated once or twice a year by the Ministry of Commerce. The act states that all imports shall be free, unless they are an obstacle to Danish commercial policy, *etc.* Generally no import license is required if the country from which the commodity is imported is listed in the import regulations as being within the "free list area", and provided the commodity is not specially excepted in the regulations. With the exception of the socialist countries most countries are within the "free list area".

3. The purpose of *monopolloven* (Monopolies and Restrictive Business Practices Act) no. 102 of 31 March 1955 is to secure the best possible conditions for the freedom of trade and to prevent unreasonable prices and business conditions. The act provides that agreements which exert, or may be able to exert, a substantial influence on price, production, distribution or transport conditions, have to be registered. Such agreements may be cancelled by the Monopolies Control Authority if they result in unreasonable prices or other unreasonable restraints of trade. Agreements concerning minimum-prices and -profits to be observed by subsequent retailers or vendors may not be enforced, unless specially approved. *Prisloven* (Act on Prices and Profits) no. 115 of 2, April 1971 provides that the Monopolies Control Authority may impose maximum prices and margins if unreasonable prices are found to exist within a specific area.

VII. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHT

Denmark has acceded to the Paris Convention for the Protection of Industrial Property (London-revision) to the Berne Convention for the Protection of Literary and Artistic Works (Brussels-revi-

sion) and to the Universal Copyright Convention.

1. The most important legislation within the field of industrial property is *patentloven* (Patent Act) no. 479 of 20 Dec. 1967, *varemærkeloven* (Trade Marks Act) no. 211 of 11 June 1959, *lov om mønstre* (Industrial Designs Act) no. 218 of 27 May 1970 and *lov om uretmæssig konkurrence* (Act on Unfair Competition) no. 145 of 1 May, 1959. Patents are granted after examination of the novelty of the invention. They are protected for a period of 17 years. Trade marks are protected without registration on the condition that they are used. They may, however, be registered, even without being used and most marks are registered. A registration has to be renewed every tenth year. Industrial designs have to be registered and are then protected for periods of five years, but only until 15 years have passed. VIII

2. *Lov om ophavsretten til litterære og kunstneriske værker* (Copyright Act) no. 158 of 31 May 1961 affords a very strong protection to the works of authors and artists. The author or artist has the exclusive right to produce copies of the work and to publish it. A number of exceptions are made to this right, *e.g.*, production of a few copies of a published work for private use is allowed without the consent of the author. The copyright is protected during the lifetime of the author and for 50 years after his death. *Droit moral* is protected even after the expiration of the copyright. The rights of performers are also protected to a certain extent. *Lov om retten til fotografiske billeder* (Act on Copyright to Photographs) no. 157 of 31 May 1961 gives the photographer copyright for a period of 25 years and protects his *droit moral*.

VIII. THE PRINCIPLES OF JUDICIAL PROCEDURE IN CIVIL CASES

According to *Retsplejeloven* (Administration of Justice Act) no. 90 of 11 April 1916 the place of residence is the principal venue, but there are a number of other venues, *e.g.*, of real estate, of performance, and of tort. The venue of real estate supersedes that of residence. The other special venues are only supplementary.

1. In practice the judicial procedure is not very formal. The act, however, regulates in great detail the procedure to be followed in the high courts and provides that these rules are applicable to cases before the lower courts with such modifications as circumstances may require. Cases before the lower courts are handled with even less formality than cases before the high courts. Oral and public hearings, direct production of evidence and the contradictory principle are considered to be the fundamental principles, but there are more or less important exceptions of varying importance to each of them. There is, however, no exeption to the principle of the freedom to hear evidence. A party may plead personally before any court, but if he wants to be represented, he is obliged to choose professional counsel, *i.e.*, a lawyer. The distinction between barristers and solicitors is not known. The loosing party will generally have to pay the costs of the successful party, including his lawyer's fee.

2. The remedies against the decisions of the courts are appeal and resumption. The latter, however, takes place very seldom, as strict conditions have to be fulfilled. The normal remedy is thus an appeal to a higher court, either as a regular appeal from judgments (*anke*) or as an appeal from interlocutory rulings (*kære*). The procedure in cases under regular appeal is not much different from the procedure followed in cases in the first instance. The time within which a regular appeal must be brought is four weeks, in the case of an appeal from a lower court and, in the case of an appeal from a high court, eight weeks. There is always a right to one appeal, but to only one. The Ministry of Justice can, however, under special circumstances, allow a second appeal.

3. There are no statutory rules about *res judicata*. The rules used by the courts conform, on the whole, to the theory of Roman law. However, the courts may have a tendency to limit the application of the rules, if they would lead to a result, which is considered unreasonable.

4. According to Act no. 181 of May 1972 on arbitration, the courts must normally recognize an arbitration award as binding on the parties.

IX. PRIVATE INTERNATIONAL LAW AND INTERNATIONAL LAW OF PROCEDURE

1. The law governing the choice of law is mainly case law. Because the number of cases are limited, and the decisions usually very concretely motivated, the rules are often flexible. As a general rule the courts will use the law of the country with which the case has its strongest connection. This "centre of gravity" method is especially used as the guiding principle in finding the proper law of the contract. But it is, recognized that the parties are free to choose the law which shall govern the contract. Yet, the autonomy of the parties is not unlimited, *e.g.*, no choice of law clause can lead to evasion of mandatory rules in the legal system most closely connected with the contract. The law of the contract governs most of the questions concerning the formation, validity and performance of the contract, but a person's legal capacity is governed by his personal law, and the formalities are either governed by the law of the contract or the law of the place of formation, whichever will uphold the validity.

The personal law (*personalstatuttet*) is the law of the country of domicile. According to Danish law a person's domicile is the place where he has his permanent home. Domicile is acquired when a person settles in a country with the intention of staying there permanently or at least without intending the stay to be temporary. A person may have more than one domicile or none at all.

Denmark has ratified the Hague Convention of 1951 on Sale of Goods, see *lov om retsregler om køb af international karakter* (Act on Rules concerning International Sale of Goods) no. 122 of 15 April 1964. Between the Scandinavian countries there are a number of conventions on the choice of law in the fields of family law, bankruptcy law and law of administration of estates.

2. Foreigners, *i.e.*, generally those persons not domiciled in Denmark, can be sued in Denmark, if any of the venues mentioned *supra* VIII are applicable. Otherwise they can only be sued in cases pertaining to private property and only if they are staying in Denmark or own property there at the time they are summoned. There are no restrictions in the right of foreigners to sue in Denmark except that they may have to give security for the costs of litigation. Foreign judgments are not binding and cannot be enforced in Denmark, unless there is an agreement with the foreign country to that effect. Between the Scandinavian countries there is a convention making judgments in civil cases binding and enforceable in the other countries.

X. SELECTIVE BIBLIOGRAPHY

On the law of the Scandinavian countries in general, see national report on Sweden *sub* XI.

1. Books and Articles

General: Søndergaard, Danish Legal Publication in English, French and German: Scand.Stud.L. 7 (1963) 167; *Danish Committee of Comparative Law* (ed.), A General Survey of Danish and Norwegian Law (1963); *Orfield*, Danish Law: 5 Miami L.Q.I. (1950); *Ross*, On Law and Justice (London 1963); *Lund*, Juridiske Litteraturhenvisninger (1950); *idem*, Den danske Retslitteratur (1956); *Søndergaard* (ed.), Fortegnelse over Juridisk Litteratur (1966); Judicial Systems [Denmark].

Chapter I: Olsen, The Constitution of Denmark. A Brief Review: Int.Parl.Bull.44 (1964) 98; *Miller*, The Danish Electoral System: 18 Parl.Aff. 71–81 (1964/65); *Roos*, Dansk Statsforfatningsret (2 vol.) (ed. 2, 1966); *Andersen, Poul*, Dansk Statsforfatningsret (ed. 2, 1964); *idem*, Dansk Forvaltningsret (ed. 5, 1965); *Hurwitz*, The Ombudsman, Denmark's Parliamentary Commissioner for Civil and Military Administration (1962); *Pederson*, Denmark's Ombudsman: *Rowat*, The Ombudsman (London 1965) 75–94.

Chapter II/III: Jørgensen, Stig, Les traits principaux de l'évolution des sources du droit danois: Rev.int.dr. comp. 1971, 65-75; *Dahl*, Geschichte der dänischen Rechtswissenschaft in ihren Grundzügen (Leipzig 1940); *idem*, Hovedpunkter af den Danske Retsvidenskabs Historie (1937); *Jørgensen, Poul Johs.*, Dansk Retshistorie (ed. 3, 1965). – See also *supra* text *sub* II.

Chapter IV: Munch-Petersen, Den borgerlige Ret (ed. 19, 1962); *Andersen, Ernst*, Personretten (1966); *idem*, Familieret (ed. 2, 1967); *Bangert*, Matrimonial Maintenance in Danish Law. With Notes on Norwegian Law: *Unger* (ed.), Parental Custody and Matrimonial Maintenance (London 1966) 203–213; *Pedersen*, Parental Custody in Denmark: *Unger* (ed.), Parental Custody and Matrimonial Maintenance (London 1966) 91–96; *Andersen, Ernst*, Arveret (1965); *Vinding Kruse*, The right of property (Oxford 1953); *idem*,

Ejendomsretten (3 vol.) (ed. 3, 1951); *idem*, Das Eigentumsrecht (Leipzig, Berlin 1931, 1935 and 1936); *von Eyben*, Formuerettigheder (ed. 3, 1968); *idem*, Panterettigheder (ed. 4, 1971); *Ussing*, Obligationsrettens almindelige Del (ed. 4, 1967); *idem*, Aftaler pa Formuerettens Omrade (ed. 3, 1950); *idem*, Køb (ed. 4, 1967); *Vinding Kruse*, Misligholdelse af Ejendomskøb (ed. 2, 1962); *idem*, Erstatningsret (ed. 2, 1971); *Jørgensen (Stig), Lyngsoe and Thranow*, Dansk Forsikringsret (1965/1966); *Jørgensen, Stig*, Erstatning for Personsskade og Tab af Forsrøger (ed. 2, 1963).

Chapter V: Carstensen, The Commercial Laws of Denmark: *Kohlik and Rovelstad* (ed.), Commercial Laws I [Denmark]; *Foighel and Gammeltoft-Hansen*, The Law of Automobile Dealers Contracts (1970); *Sindballe (-Klerk)*, Dansk Selskabsret (ed. 3, 1949); *Marcus*, Das dänische Gesetz über Aktiengesellschaften vom 15. April 1930 in der Fassung der Bekanntmachung vom 28. August 1952: *Gesellschaft für Rechtsvergleichung* (ed.), Ausländische Aktiengesetze VI (Frankfort 1960); *Gomard*, Aktieselskabsret (ed. 2, 1970); *The Royal Danish Ministry of Foreign Affairs* (ed.), Investment of Foreign Capital in Denmark (1956); *Philip*, Legal Aspects of Foreign Investment in Denmark: *Friedmann and Pugh* (ed.), Foreign Investment 200–208; *Philip*, The Formation and Operation of Foreign Subsidiaries and Branches: 8 IBAConf. 254 (1960) [Denmark]; *Hjejle*, Denmark: *Sanders* (ed.), Arbitration I 154–167, III 162; *Valko*, Cooperative Legislation [Denmark] 31–37; *Galenson*, Danish System of Labor Relations (Cambridge, Mass. 1952); *Arthurs*, Labour Lore and Labour Law. A North American View of the Danish Experience: 12 I.C.L.Q. 247–281 (1963); *Himmelstrup*, License Agreements in Denmark: *Pollzien and Bronfen* (ed.), International Licensing Agreements (Indianapolis 1965) 71.

Chapter VI: Gammelgaard, Survey of the Danish Anti-Trust Policy: Int. Conf. on Control of Restrictive Business Practices (Chicago 1960) 65; *Edwards*, Trade Regulations [Denmark] 225–279.

Chapter VII: Simmonot and Rinuy (ed.), Patents and Trademarks in West Europe, Mediterranean and French Speaking African Countries (looseleaf, Paris 1966) [Denmark]; Manual Industrial Property I [Denmark]; *White and Ravenscroft* (ed.), Trade Marks I [Denmark]; *Koktvedgaard*, Patentloven (1971); *Torfing*, The New Danish Trade Mark Act 1960: 52 T.M. Rep. 378 (1962); *Kobbernagel*, Konkurrencens retlige Regulering (2 vol.) (1957 and 1961); *Bogsch*, International Copyright. Description of Treatment given by Denmark Works of Danish Nationals and to Works first Published in Denmark: 4 Unesco Cop. Bull. 115 (1951); *Lund*, National Report on Copyright in Denmark: Int. Ges. Urh. Jb. 1965, 81; *idem*, Ophavsretsloven og Fotografiloven (1961); *Koktvedgaard*, Konkurrencepraegede Immaterialretspositioner (1965); *Garde*, Denmark: *Kohlik and Rovelstad* (ed.), Commercial Laws [Digest of Patent and Trade-mark Law).

Chapter VIII: Hurwitz and Gomard, Tvistemal (ed. 4, 1964); *Juul*, The Danish Supreme Court through 300 years: Scand.Stud.L. 6 (1962) 165–185; *Charlton*, Lawyers in Denmark: 113 L.J. 362 (1963); *Gomard, Hansen and Hurwitz* (ed.), Kommenteret Retsplejelov (2 vol.) (ed. 2, 1964); *Gomard*, Skifteret (1968); *idem*, Fogedret (ed. 2, 1966).

Chapter IX: Philip, Dansk international privat-og procesret (1971); *Borum (-Philip)*, Lovkonflikter (ed. 6, 1967); *Philip*, American-Danish Private International Law (New York 1957); *Lando*, Kontraktstatutet (1962); *Bülov-Arnold*, Internationaler Rechtsverkehr in Zivil- und Handelssachen (Munich, Berlin 1960) [Dänemark] 923; *Nielsen and Ginsberg*, Denmark: *Smit* (ed.), International Litigation Europe 52–65.

2. Translations of Legislative Texts

Chapter I: Constitution of the Kingdom of Denmark. Act of 5 June 1953 and the Succession to the Throne Act of 27 March 1953: *Peaslee*, Constitutions III 250–267; Citizenship Act no. 252 of 27 May 1950; An Act to Resolve Certain Questions of Danish Citizenship no. 504 of 20 Dec. 1950: Nationality Laws 121–125.

Chapter IV: Gesetz no. 276 vom 30. Juni 1922 über die Eingehung und Auflösung der Ehe in der Fassung vom 25. April 1956, Gesetz no. 56 vom 18. März 1925 über die Rechtswirkungen der Ehe in der Fassung vom 7. Mai 1937, Gesetz no. 200 vom 18. Mai 1969 über die Rechtsstellung von Kindern, Gesetz no. 277 vom 30. Juni 1922 über Unmündigkeit und Vormundschaft in der Fassung vom 6. Februar 1957, Adoptionsgesetz no. 140 vom 25. Mai 1956: *Bergmann and Ferid* (ed.), Internationales Ehe- und Kindschaftsrecht II (ed. 3 Frankfort 1965) [Dänemark]; Gesetz no. 215 vom 31 Mai 1963 (Erbgesetz): *Ferid-Firsching*, Internationales Erbrecht I (Munich, Berlin 1967) [Dänemark]; The Danish Registration (Land) Act no. 111 of 31 March 1926: *Kruse*, The Right of Property II (London 1953) 299.

Chapter V: Foreign Tax Law Association (ed.), Commercial Laws of Denmark (looseleaf, St. Petersburg, Fla. 1962 ss.); *Foreign Tax Law Association* (ed.), Danish Income Tax Service (looseleaf, St. Petersburg, Fla. 1961 ss.); Shipping Act no. 319 of 7 May 1937 and Shipping Registration Act of 1 April 1892 as amended up to 8 March 1951 (Excerpts): Nationality of Ships 39–42; Seamen's Act no. 229 of 7 June 1953: 33 ILOLeg.Ser. (Denmark 1) (1952); Act no. 156 respecting Agricultural and Domestic Workers of 31 May 1961: ILOLeg.Ser. (Denmark 2) (1961); The National Bank of Denmark Act of 7 April 1936 as amended through 31 July 1966 and other legal material on banking matters: *Aufricht*, Central Banking 105–143; *Marcus*, Das dänische Gesetz über Aktiengesellschaften vom 15. April 1930 i.d. Fassung vom 28. August 1952: Ausländische Aktiengesetze VI (Frankfort, Berlin 1960).

Chapter VI: The Monopolies and Restrictive Practices

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Control Act no. 102 of 31 March 1955 as amended up to 4 June 1965; The Price Supervision Act no. 135 of 25 May 1956, and other regulations on the matter: *Antitrust Legislation II* [Denmark]; Price Agreements Act no. 378 of 14 Nov. 1952: Restrictive Business Practices. Annex C. United Nations Official Records, Suppl. no. 11B (New York 1953) 61–64; Trusts Commission Act no. 128 of 31 March 1949; Restrictive Business Practices. Annex C. United Nations Official Records, Suppl. no. 11B (New York 1953) 66–67.

Chapter VII: Design Statute of 1 Oct. 1936, Design Registration Procedures of 26 Sept. 1936, and other regulations on the matter: *Bogsch* (ed.), Design Laws I [Denmark] Item 1–4; Patents Act 1967. Effective from 1 Jan. 1968: 66 Pat.& T.M.Rev. 183–189, 229–237, 267–269 (1968); Loi no. 18 du 27 janv. 1960 sur les brevets d'invention secrets: Prop.ind. 1961, 238; Loi no. 304 du 26 nov. 1953 portant modification de la loi sur les brevets: Prop.ind. 1956, 132; Loi no. 142 du 29 avril 1955 concernant les inventions d'employés: Prop.ind. 1956, 196; Loi no. 212 du 11 juin 1959 sur les marques collectives: Prop.ind. 1960, 67; Loi no. 211 du 21 juin 1959 sur les marques de fabrique ou de commerce: Prop.ind. 1960, 61; Law no. 158 of 31 May 1961 on Copyright in Literary and Artistic Works, and other regulations on the matter: Copyright Laws I [Denmark] Item 1–10; Loi sur les dessins et modèles industriels no. 218 du 27 mai 1970: Prop.ind. 1971, 226.

3. Periodicals

The two most important general reviews are Ugeskrift for Retsvaesen (weekly, since 1867); Juristen (approximately 20 times a year, since 1930).

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