

**DANISH LEGISLATION**

**ACT ON THE LEGAL EFFECTS OF MARRIAGE AS AT SEPTEMBER 1, 1992**

**ACT ON THE LEGAL EFFECTS OF MARRIAGE**

*PART I 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 spouse's 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 spouse's 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 spouse's 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 request 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 there 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 spouse's 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.

**§ 16 a**

Upon the administration of an estate following the death of a spouse, the surviving spouse is entitled to their own pension rights and similar rights prior to the disposition of the community property.

2. The surviving spouse is also entitled, prior to the disposition of the community property, to an amount from capital pension rights or from similar rights as well as supplementary one-off payments that have already been paid, to the extent that such rights are not regarded as having been exhausted. The same applies to income from and substitutes for such amounts. The right of priority does not apply to amounts which, upon payment, are no longer of the nature of pension savings.

**§ 16 b**

Upon the administration of an estate following judicial separation, divorce or division of property, each spouse is entitled to their own reasonable pension rights prior to the disposition of the community property.

2. Each spouse is also entitled, prior to the disposition of the community property, to an amount from capital pension rights or supplementary one-off payments that have already been paid, to the extent that such rights are not regarded as having been exhausted. The same applies to income from and substitutes for such amounts. The right of priority does not apply to amounts which, upon payment, are no longer of the nature of pension savings.

3. The value of other pension rights is included in the division of the community property.

#### **§ 16 c**

If the marriage has been of shorter duration, each spouse is entitled to all pension rights prior to the disposition of the community property.

2. Each spouse is also entitled, prior to the disposition of the community property, to an amount from capital pension rights or supplementary one-off payments that have already been paid, to the extent that such rights are not regarded as having been exhausted. The same applies to income from and substitutes for such amounts. The right of priority does not apply to amounts which, upon payment, are no longer of the nature of pension savings

#### **§ 16 d.**

When administering the community property in the event of judicial separation, divorce or division of property, the probate court can decide that one spouse shall pay an amount to the other spouse if

- 1) during the marriage the latter spouse has made smaller pension savings than would amount to a reasonable pension scheme for that spouse, and
- 2) this is because, out of regard for the family or the other spouse, the spouse in question has, in whole or in part, not been in active employment, has been on leave or has worked reduced hours.

2. The amount may be a maximum of half the difference between the values of the pension savings which each of the spouses has made during the marriage from the means of the community property.

#### **§ 16 e**

When administering the community property in the event of judicial separation, divorce or division of property, the probate court can decide that one spouse shall pay an amount to the other spouse to ensure that the latter is not unreasonably situated with regard to a pension if

- 1) the marriage has been of longer duration, and
- 2) there is a large difference in the values of the spouses' pensions rights.

2. Such a decision shall take account of the duration of the marriage, the assets of the spouses and other circumstances.

### **§ 16 f**

The amounts which one spouse shall pay to the other in accordance with §§ 16 d and 16 e shall be paid in cash.

2. If a spouse cannot pay the amount in cash without selling real property or personal property that are necessary for that spouse's employment or without being prevented from retaining or acquiring suitable accommodation, if the circumstances make it appropriate the probate court can decide

- 1) that the amount shall be paid over a short period of years, upon the provision of suitable security and payment of interest, or if this is not possible,
- 2) that the spouse shall instead give the other spouse a share of their capital or annuity pension, or if this is not possible,
- 3) an amount shall be paid over a short period of years until a pension with payments for life matures for payment.

3. If one spouse gives the other spouse a share of their capital or annuity pension, payment shall first be given from the capital pension. The share shall be given in connection with a division of pension rights.

4. An amount that is to be paid in accordance with paragraph 2(3) shall be registered with and paid by a pensions institution. The amount shall be adjusted in accordance with the percentage rate adjustment, cf. the Law on the percentage rate adjustment, until the pension policy matures for payment.

5. Paragraphs (2) and (3) can be derogated from by agreement between the spouses and the pension institution.

6. If, on the administration of the community property, the spouses agree that one of them shall give the other a share of their pension rights, the pension institution can require that the spouses shall make a declaration that the conditions for providing compensation in accordance with §§ 16 d and 16 e and for choosing the method of division in accordance with § 16 f (2) and (3) have been fulfilled.

7. The pension institution can require that the administration costs associated with one spouse giving the other spouse a share of a pension right, and with registering, calculating and paying the amount in accordance with paragraph (4) shall be paid by the spouses.

### **§ 16 g**

To the extent that pension rights may not be taken prior to the disposition of the community property in accordance with § 16 b, the spouses shall take their own pension rights, unless the rights can be terminated.

2. § 16 f (2) to (7) applies correspondingly to pensions rights under paragraph (1).

### **§ 16 h**

Spouses may agree, by a marriage settlement, that a pension right shall be separate property, cf. § 28. Such an agreement can also cover future contributions to the pension scheme.

2. Spouses may agree, by a marriage settlement, that the value of a capital pension or annuity pension scheme shall be included in the division of the community property upon administration in the event of judicial separation, divorce or separation of property.

3. § 16 g (1) and § 16 f (2) to (7) apply correspondingly.

### **§ 17**

Both spouses shall administer the spouse's 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 spouse's 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 spouse's joint dwelling or as the base for the other spouse's business activities. 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 mortgage 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 spouse's 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, pledge 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 contract 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 spouse' 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. A spouse's heirs have a right to such payment if the spouse has used means from their community property or separate property following divorce for the benefit of the property at their disposal or of their separate property.

3. If a spouse has used means from their separate property for the benefit of that part of the community property which is at their disposal, that spouse is entitled to recompense from that part of the property. A spouse's heirs have a right to such payment if the spouse has used means from their entirely separate property for the benefit of the property at their disposal or of their separate property following divorce.

4. Paragraph (2) shall not apply to the pensions rights referred to in §§ 16 a - § 16 c.

#### **§ 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 spouse's 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 spouse's 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 is 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 assur-

ance, 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 transferer'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 transferer'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 spouse's community property*

### § 38

A spouse may demand division of the spouse's 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.

### § 39

(1) An application for division of the community property shall be submitted in writing to the probate court having jurisdiction at the other spouse's place of residence, or in the absence of a permanent residence, at the place of his sojourn; in the event that he has no known place of residence or sojourn in this country, the application shall be submitted to the divorce court having jurisdiction at the applicant's place of residence or sojourn. Where neither spouse has a place of residence or sojourn in this country, the Minister of Justice may decide in special cases that an application may be submitted to a divorce court in this country.

(2) Written proof of the circumstances warranting the application for division of the community property shall be enclosed with the application, to the extent possible. In the event that further information is considered necessary, the probate court may point this out to the applicant and request that he procure such information.

(3) Where possible, the other spouse shall be given an opportunity to state his case, for which purpose the probate 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 probate court may, if considered necessary, order that a guardian 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 probate 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 probate 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)

#### **§ 49**

Each of the spouses has a right to request that the marriage settlement shall be registered in the register of marriage settlements.