

NATIONAL REPORT: DENMARK

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January 2015

A. General

1. What kinds of formal relationships between a couple (e.g. different/same-sex marriage, different/same-sex registered partnership, etc.) are regulated by legislation? Briefly indicate the current legislation.

In 1989 Denmark was the first country in the world to introduce a Registered Partnership Act for same-sex couples.¹ The effects of a registered partnership were almost the same as the effects of a marriage, apart from in relation to children. These exceptions in relation to children have since been repealed.

In June 2012, as the fourth of the Nordic countries to do so, Denmark introduced same-sex marriages and they have the same legal status as marriages between couples of the opposite sex, with a few exceptions.² Provisions in Danish legislation containing gender-specific rules for one of the parties in a marriage do not apply to a marriage between two persons of the same sex. The same applies to provisions in international treaties, unless there are special agreements on this. A previously registered partnership may be converted into a marriage. A registered partnership that is not converted still remains in force, although the Danish Registered Partnership Act of 1989 was repealed at the same time as same-sex couples were allowed to marry.

As regards the status as a co-mother to a child, in 2014 an amendment to the Danish Child Act was enacted. According to the Act it is possible to become a co-mother if a woman gives birth to a child and she is married to or in a registered partnership with another woman.³

Persons of the same sex have the right to be married in church. However, it is up to the individual minister in question to decide whether or not he or she wants to conduct or to bless a marriage between two persons of the same sex.⁴

Couples of a different sex have never had a right to register their partnerships.

¹ Act No. 372 of 7 June 1989, with effect from 1 October 1989. The Act is described by I. LUND-ANDERSEN, 'The Danish Registered Partnership Act', in K. BOELE-WOELKI & A. FUCHS, *Legal Recognition of Same-Sex Couples in Europe*, Intersentia, Antwerp, 2003, pp. 13-23; and by I. LUND-ANDERSEN, 'The Nordic Countries: Same Direction - Different Speeds', in K. BOELE-WOELKI & A. FUCHS (eds.), *Legal Recognition of Same-Sex Relationships in Europe*, Intersentia, Antwerp, 2012, pp. 3-17.

² Act No. 532 of 6 June 2012 with effect from 15 June 2012.

³ Consolidating Act No. 18 of 10 January 2014 with effect from 1 December 2013.

⁴ Act No. 531 of 6 June 2012 with effect from 15 June 2012.

- 2. To what extent, if at all, are informal relationships between a couple regulated by specific legislative provisions? Where applicable, briefly indicate the current specific legislation. Are there circumstances (e.g. the existence of a marriage or registered partnership with another person, a partner's minority) which disqualify the couple?**

In most cases if a person is in an existing marriage or registered partnership this will disqualify them from being regulated by specific provisions concerning informal relationships.

An informal relationship between a couple is regulated by several laws. The following are some of the most important rules:

- The legal relation between parents and children:
 - The Danish Childrens' Act and the Danish Parental Responsibility Act: The legal situation of children born within an informal relationship and within a formal relationship is nearly the same.
 - The Danish Adoption Act: Cohabitants can adopt subject to the same conditions as married couples.
 - Relations between partners in an informal relationship:
 - During the relationship:
 - According to the Danish Act on Names cohabitants can have the same surname;
 - Danish Social Security Acts: When a couple is presumed to be cohabitants, a number of social benefits fall by the wayside.
 - On separation:
 - According to the Danish Act on Rent a court can substitute the tenant with his or her cohabiting partner if there are special grounds for doing so.
 - On death:
 - According to the Danish Act on Rent a surviving cohabitant is entitled to extend the lease;
 - According to the Danish Inheritance Tax Act a surviving cohabitant is only required to pay a low rate of inheritance tax;
 - The Danish Inheritance Act regulates extended cohabitants' wills and extends the testamentary powers of cohabitants;
 - The Danish Administration of Estates Act has a rule on a surviving cohabitant's right to take possession of the former joint dwelling and household goods;
 - The Danish Insurance Contracts Act allows a cohabitant to be a beneficiary under the heading of 'next of kin';
 - The Danish Liability and Compensation Act states that a surviving partner will be compensated for the loss of the breadwinner.
- 3. In the absence of specific legislative provisions, are there circumstances (e.g. through the application of the law of obligations or the law of property) under which informal relationships between a couple are given legal effect (e.g.**

**through the application of the law of obligations or the law of property)?
Where applicable briefly indicate the leading cases**

In Denmark the division of the cohabitants' property is based on case law and the principles of property law.⁵ The first case came before the Supreme Court in 1980.⁶ The Court concluded that joint ownership cannot be established in cohabitation beyond the general rules on joint ownership. To protect the financially weaker party the Court ruled that the weaker party can claim compensation if the stronger party has obtained unjust enrichment. This includes both a property law assessment and a family law assessment. According to a later decision by the Supreme Court the cohabitation must have been for at least two years and nine months.⁷ In a decision in 1984 the Supreme Court ruled that if a cohabitant has exclusively worked in the home raising the children of the relationship, compensation will only be paid in extraordinary circumstances.⁸

In a 1985 decision, the Supreme Court synthesised its view on how to assess these cases in an informal rule:

'Based on Supreme Court decisions in similar cases, especially those quoted in *Ugeskrift for Retsvæsen* (Weekly Law Journal) 1980, p. 480 and 1982, p. 93, it must be considered as established law that when a long-lasting cohabitation is dissolved, a partner who, by contributing to the partners' shared expenses – or in other ways – has, to a considerable degree, made it possible for the other partner to create or maintain a not inconsiderable fortune, may be granted a certain amount, the size of which will be based on an assessment taking into consideration the length of the cohabitation, the partners' financial conditions etc.'⁹

In some cases a principle of reasonable expectations can support such an assessment.¹⁰ The case law will also be relevant for homosexual couples who have neither married nor registered their partnership.

Apart from making this special family law claim for compensation, the financially weaker party can make a claim on the basis of general property law on e.g. loans, gifts and unjust enrichment.¹¹ A claim for unjust enrichment may be possible if the

⁵ See J. ASLAND et al., *Nordisk Samboerrett*, Gyldendal Norsk Forlag, Oslo, 2014, at p. 131-135; I. LUND-ANDERSEN and I. NØRGAARD, *Familieret*, Jurist- og Økonomforbundets Forlag, Copenhagen, 2012, at p. 327-332; I. LUND-ANDERSEN, *Familieøkonomien*, Jurist- og Økonomforbundets Forlag, Copenhagen, 2011, at p. 361-425; and H.V. GODSK PEDERSEN and I. LUND-ANDERSEN, *Family Law in Denmark*, Kluwer Law International, Alphen aan den Rijn, 2011, at p. 80.

⁶ See *Ugeskrift for Retsvæsen* (Weekly Law Journal) 1980, at p. 480.

⁷ See *Ugeskrift for Retsvæsen* (Weekly Law Journal) 1982, at p. 93.

⁸ See *Ugeskrift for Retsvæsen* (Weekly Law Journal) 1984, at p. 166.

⁹ See *Ugeskrift for Retsvæsen* (Weekly Law Journal) 1985, at p. 607.

¹⁰ See *Ugeskrift for Retsvæsen* (Weekly Law Journal) 1984, at p. 166.

¹¹ See J. ASLAND et. al., *Nordisk Samboerrett*, Gyldendal Norsk Forlag, Oslo, 2014, at p. 135-136; I. LUND-ANDERSEN and I. NØRGAARD, *Familieret*, Jurist- og Økonomforbundets Forlag, Copenhagen, 2012, at p. 325-327; and I. LUND-ANDERSEN, *Familieøkonomien*, Jurist- og Økonomforbundets Forlag, Copenhagen, 2011, at p. 285-321.

claimant has made payments that are significantly different from the parties' allocation of their obligations, for example if one of them has repaid a large loan taken out by the other. The amount will be allocated by a discretionary calculation. At most it will be equal to the enrichment and it may not exceed the loss of the person making the payment.

4. How are informal relationships between a couple defined by either legislation and/or case law? Do these definitions vary according to the context?

The definitions vary according to the context, e.g.:

- Danish Social Security Acts: The couple live in a marriage-like relationship and the new partner contributes to the shared household.
- The Danish Inheritance Act, The Danish Inheritance Tax Act, The Danish Administration of Estates Act, and the Danish Insurance Contracts Act: 1) Cohabitants who have lived together in a marriage-like relationship for the last two years prior to death, or 2) cohabitants who have, have had or are expecting children together.

5. Where informal relationships between a couple have legal effect:

a. When does the relevant relationship begin?

Danish Social Security Acts: A relationship similar to marriage is deemed to exist when the parties have a joint household and live together in a relationship that may lead to marriage. They need not be registered in the population register as residing at the same address. Special weight is given to the character of the parties' relationship and their housing circumstances. Even if they have different addresses and different homes, they can be deemed to be living in a relationship similar to marriage.

The Danish Inheritance Act, the Danish Inheritance Tax Act, and the Danish Insurance Contracts Act: At the time of the first partner's death the cohabitants must have been living together in a joint dwelling in a marriage-like relationship. Special weight is given to registration in the population register and the character of the parties' relationship.

b. When does the relevant relationship end?

Danish Social Security Acts: When the parties no longer live together and no longer share a household.

The Danish Inheritance Act, the Danish Inheritance Tax Act, the Danish Insurance Contracts Act: When the parties no longer live together.

6. To what extent, if at all, has the national constitutional position been relevant to the legal position of informal relationships between a couple?

Article 75(2) of the Danish Constitution states that any person who is unable to support himself or herself or his or her dependants shall, where no other person is

responsible for his or her of their maintenance, be entitled to receive public assistance, provided that he or she shall comply with the obligations imposed by statute in this respect.

In 2002 new rules were introduced for special (low) support payments to certain groups of foreigners (called 'Start help'). These were considered to be contrary to Art. 75(2) of the Danish Constitution.¹² If a person who received Start help lived together with a person who received a cash benefit (a higher level of social support), the two forms of social support would be combined as an amount corresponding to what they would obtain if they both received the lower Start help. This resulted in the Start help being reduced or lapsing entirely. Since a cohabitant does not have a duty to care for his or her partner it was regarded as unconstitutional to reduce the Start help, since a recipient of Start help must be ensured a sufficient basis for subsistence. The law was therefore amended so that the reduction of the combined support payments was not made by adjusting the Start help but by adjusting the cash benefit.

7. To what extent, if at all, have international instruments (such as the European Convention on Human Rights) and European legislation (treaties, regulations, and directives) been relevant in your jurisdiction to the legal position of informal relationships between a couple?

The Danish reservations from 1992 mean that Denmark does not participate in the supranational EU cooperation on justice and home affairs.

8. Give a brief history of the main developments and the most recent reforms of the rules regarding informal relationships between a couple. Briefly indicate the purpose behind the law reforms and, where relevant, the main reasons for not adopting a proposal.

In 1980 the Danish Marriage Committee submitted a report on unmarried cohabitants. The committee rejected the idea of a comprehensive regulation for non-marital cohabitation, as the Committee did not want to create a 'second class marriage'. Instead the committee suggested the introduction of rules in a few areas where special protection was needed. These rules were less far-reaching than those applicable to married couples. Developments have shown that the attitude of the Marriage Committee was too conservative. Since then legislation on cohabitation has been gradually amended with consequences that the committee never imagined.

The Danish Inheritance Act Committee proposed provisions on inheritance for cohabitants in Report No. 1473/2006. The Committee proposed that cohabitants should be able to make an 'extended cohabitant's will' for each other's benefit. Such a regime would be very similar to that applicable to married spouses who have completely separate property. The Committee also proposed that relationships that could demonstrate a certain stability should qualify for a legal right of inheritance. In

¹² See I. LUND-ANDERSEN, *Familieøkonomien*, Jurist- og Økonomforbundets Forlag, Copenhagen, 2011, at p. 256-258.

addition to the requirement for the parties to have, have had, or to be expecting a child together, the Committee proposed that they must have cohabited for at least two years. It was proposed that the lawful inheritance portion should amount to one-fourth of the estate, up to DKK 500,000. The rules on a legal right of inheritance should be dispositive. Where cohabitants had no children or had not lived together for two years, the commission proposed that it should be possible in exceptional cases for the surviving party to be granted a right of inheritance.

In considering the Committee's proposals, the Danish Ministry of Justice argued that there is a difference between marriage and unmarried cohabitation. By entering into a marriage, the parties are making a choice which has a number of legal consequences, both during their lives together and after the death of a spouse, while parties establishing an unmarried cohabitation relationship are making no such choice. Furthermore, the Ministry argued that there may be couples who have chosen unmarried cohabitation in order to avoid the legal consequences of marriage and that that choice must be respected. Finally, the Ministry pointed to the need for clear rules and to the difficulty of determining whether a cohabitation relationship was similar to a marriage.¹³ For these reasons, the legal rights of inheritance for unmarried cohabitants were not incorporated in the bill that was submitted to the Danish Parliament. Thus, 'extended cohabitants' wills' were introduced.

9. Are there any recent proposals (e.g. by Parliament, law commissions or similar bodies) for reform in this area?

Denmark has rules on a public law mutual duty of care between cohabitants which is relevant to obtaining certain social benefits (educational assistance or social assistance). These rules were introduced in 2013 and came into force on 1 January 2014. Due to severe criticism the rules will be repealed as from 1 January 2016.¹⁴

B. Statistics and estimations

10. How many marriages and, if permissible, other formalised relationships (such as registered partnerships and civil unions) have been concluded per annum? How do these figures relate to the size of the population and the age profile? Where relevant and available, please provide information on the gender of the couple.

¹³ See also J. ASLAND et al., *Nordisk Samboerrett*, Gyldendal Norsk Forlag, Oslo, 2014, at p. 45-46.

¹⁴ See Act No. 1522 of 27.12.2014.

Marriages per annum:¹⁵

Concluded marriages

1990	31,513
2000	38,388
2007	36,476
2010	30,949
2013	27,503

On 1 January 2014 the population of Denmark was about 5.6 million, of whom about 1.1 million were under 18.

The average age for first-time marriages shows that the ages are increasing for both men and women:

	Men	Women
1990	30.2	27.6
2000	32.5	30.1
2013	34.9	32.2

Same-sex marriage was introduced on 15 June 2012. More women than men have entered into a marriage with a partner of the same sex:

	Same-sex marriage, both men	Same-sex marriage, both women
2012	104	164
2013	129	234

The number of registered partnerships entered into does not show a great variation:

Registered partnerships

1990	457
1995	266
2000	310
2005	390
2011	346

**11. How many couples are living in an informal relationship in your jurisdiction?
Where possible, indicate trends.**

¹⁵ Unless otherwise stated, the statistical information in replies to Questions 10-17 is taken from Danmarks Statistik, Befolkning og Valg, Statistikbanken.

	Adult unmarried cohabitants	Percent of all couples (married, cohabiting and registered partners)
1979	371,000	13%
1994	537,730	20%
2003	583,656	22%
2014	633,702	23.6%

The increase in the number of unmarried cohabitants has not been so great in recent years, though there has been a small increase every year.

The number of adults cohabiting with a child in common is high and growing:

Number of adults cohabiting with a child in common	
1990	153,284
2000	209,108
2014	230,430

The number of adults cohabiting without a child in common is the largest group of unmarried cohabitants, and the number is growing:

Number of adults cohabiting without a child in common	
1990	355,108
2000	386,056
2014	403,272

12. What percentage of the persons living in an informal relationship are:

- a. Under 25 years of age?
- b. Between 26-40 years of age?
- c. Between 41-50 years of age?
- d. Between 51-65 years of age?
- e. Older?

The following totals are as per 1 January 2009 (Danmarks Statistik, Befolkning og valg 2009:7)

Age	Cohabiting couples with a child in common		Cohabiting couples without a child in common	
	Men	Women	Men	Women
Up to 25	2,761	6,236	30,388	47,243
25-34	34,883	41,214	54,492	59,314
35-44	37,059	34,251	32,210	28,083
45-54	18,990	15,750	25,801	26,370
55-64	7,852	5,076	9,187	17,442
65-74	1,706	940	9,569	8,534
75+	345	123	4,349	3,286

In the age groups below 25 and above 45 there is a clear predominance of cohabiting couples without a child in common. Most of those who live as cohabiting couples with a child in common are between the ages of 25 and 44, totalling 147,407 (corresponding to 25% of all cohabiting couples). The number of older people who live as cohabiting couples falls significantly after they have reached the age of 65. On average women are younger than the men they cohabit with.

13. How many couples living in an informal relationship enter into a formal relationship with each other:

The great majority of weddings in both 2003 and 2013 involved couples who were already cohabiting at the time when they became married (2003: 86% and 2013: 82%).¹⁶ As for the duration of the preceding cohabitation, the figures show that in both 2003 and 2013 most of the couples who had lived together before marrying had done so for less than 2 years. In 2013 51% of these couples were living together on their wedding day.

a. Where there is a common child?

Figures from 2011 show that half of all couples who had a child in common, and whose oldest child was under two years old, were married to each other. The older the child, the higher this percentage. 75% of couples were married when their oldest child was 4 years old, and 93% were married when their oldest child was 17.¹⁷

b. Where there is no common child?

There is no information available on this.

14. How many informal relationships are terminated:

- a. Through separation of the partners?**
- b. Through the death of one of the partners?**

There is no information available on this.

15. What is the average duration of an informal relationship before its termination? How does this compare with the average duration of formalised relationships?

Danish research based on annual interviews with a representative sample of the adult population from 1985-91 showed that the average duration of unmarried cohabitation was 5-6 years, while married couples had lived together for 23-25 years on average.¹⁸

¹⁶ Commission Report No. 1552/2015, *Ægtefællers økonomiske forhold*, (Financial relations between spouses), at p. 188.

¹⁷ Nyt fra Danmarks statistik, *Børn og familier*, (Children and families), 2011, No. 232, 2 May 2012.

¹⁸ M. NYGAARD CHRISTOFFERSEN, *Familiens udvikling i det 20. århundrede*, (The development of the family in the 20th century), Socialforskningsinstituttet, Copenhagen, 2004, at p. 46.

The figures from 2013 show that most divorces occur in the first 10 years of a marriage (55%). The number divorces in the first 5 years of marriage is notable (28%).¹⁹

16. What percentage of children are born outside a formal relationship? Of these children, what percentage are born in an informal relationship? Where possible, indicate trends.

The proportion of children born outside marriage rose from 1% in 1970 to 45% in 1987. In 2007 it was 46% and this went up to 51% in 2013. A natural explanation for why the level has more or less stabilised is that many couples wait until after they have had their first child before marrying. Thus a second child will more often be born to married parents.²⁰

Few women choose to have a child without living with the child's father. Information from interviews in connection with research on midwives shows that the proportion of children born to single parents rose from about 3.4% in 1982 to 5.0% in 1990-92.²¹

17. What is the proportion of children living within an informal relationship who are not the couple's common children (excluding foster children)?

On 1 January 2009 there were 190,272 cohabiting couples without a child in common (380,544 individuals), of whom 28,423 had a child not from the relationship.²²

18. How many children are adopted within an informal relationship:

On 1 January 2015 an amendment was made to the law according to which unmarried cohabitants were permitted to adopt together on an equal footing with married couples, if the conditions for doing so are otherwise fulfilled.²³ Among other things, there is a requirement that the cohabitants should have lived together for 2½ years. This right of unmarried cohabitants to adopt together only applies to applications made after the law's entry into force. So far there has been no completed adoption where unmarried cohabitants have been granted permission to adopt together or to adopt the children of one of the cohabitants.²⁴

a. By one partner only?

¹⁹ Commission Report No. 1552/2015, *Ægtefællers økonomiske forhold*, (Financial relations between spouses), at p. 190.

²⁰ Commission Report No. 1552/2015, *Ægtefællers økonomiske forhold*, (Financial relations between spouses), at p. 52.

²¹ Commission Report No. 1552/2015, *Ægtefællers økonomiske forhold*, (Financial relations between spouses), at p. 53.

²² See I. LUND-ANDERSEN, *Familieøkonomien*, Jurist- og Økonomforbundets Forlag, Copenhagen, 2011, at p. 48

²³ Act No. 1525 of 27 December 2014.

²⁴ Information from the Social Appeals Board, 22 January 2015.

No, but see (b).

b. Jointly by the couple?

Persons who live together can only adopt together with their partner, apart from stepchild adoption, unless that person's partner cannot be found or is, by reason of insanity, a mental deficiency or any similar condition, incapable of managing his or her own affairs; see S. 5 of the Danish Adoption (Consolidating) Act.

c. Where one partner adopted the child of the other?

Persons who live together may adopt the child or adoptive child of the other partner (stepchild adoption); see S. 5a of the Danish Adoption (Consolidating) Act. Furthermore, there may be the stepchild adoption of the child or adopted child of a former partner.

19. How many partners in an informal relationship have been in a formal or an informal relationship previously?

There is no information available on this.

C. During the relationship

20. Are partners in an informal relationship under a duty to support each other, financially or otherwise:

As a general rule, cohabitants do not have a legal obligation to contribute to their mutual maintenance, either during cohabitation or after separation.

On 1 January 2014 a mutual maintenance obligation was introduced for cohabitants aged 25 and over who live in a marriage-like relationship.²⁵ If a cohabitant has the means to provide for his or her partner, the latter – as with the rule that applies to married spouses – is not entitled to receive a cash benefit or educational assistance from the public authorities. In December 2014, the Danish government abolished these rules because of protests by cohabitants and the government's public-law responsibility to support cohabitants and their families.²⁶

a. Where there are no children in the household?

According to the new rules from 2014 mentioned above, it is important whether the cohabitants are in a relationship similar to marriage.

b. Where there are common children in the household?

²⁵ See Act No. 894 of 4 July 2013.

²⁶ See Act No. 1522 of 2 December 2014 with effect from 1 January 2016.

According to the new rules from 2014 mentioned above, if a cohabiting couple have children in common they are in a relationship similar to marriage and have a statutory obligation to maintain each other.

c. Where there are other children in the household?

This is not important in relation to the new 2014 rules mentioned above.

21. Are partners in an informal relationship under a general duty to contribute to the costs and expenses of their household?

There is no general duty.

Upon the termination of cohabitation a cohabitant can make claims under property law against his or her former partner. Any such claim must be judged in the light of the couple's community of interests, so there must be a clear basis for allowing such a claim. A claim can be rejected if the transfer of money between cohabitants must be regarded as a contribution to the shared household expenses and thus part of a joint financial arrangement. It is relevant whether the cohabitation has been of longer duration with joint finances.

22. Does a partner in an informal relationship have a right to remain in the home against the will of the partner who is the owner or the tenant of the home?

Owner: The owner of property has a right to remain in his or her property and can have his or her cohabitant removed from the property with the help of a bailiff.

Tenant: A tenant can have his or her cohabitant removed from the property with the help of a bailiff, unless the cohabitant can show that it is probable that there are such special reasons that he or she should be entitled to continue the tenancy pursuant to S. 77a of the Danish Tenancy Act, i.e. that there has been at least 2 years' cohabitation and that consideration for the interests of young children favour the cohabitant continuing to live in the rented property.²⁷

**23. Are there specific rules on a partner's rights of occupancy of the home:
a. In cases of domestic violence?**

In the event of violence or a threat of violence a member of the household can have the perpetrator ejected, i.e. the perpetrator can be prohibited from staying in their own home.²⁸ The prohibition is for a specified period of up to 4 weeks. In dealing with such an ejection, the police can detain a person who can reasonably be assumed to have behaved in a threatening manner against a member of his or her household. Such detention may not be for longer than 24 hours.

²⁷ See *Ugeskrift for Retsvæsen* (Weekly Law Journal) 2001, at p. 1907.

²⁸ See S. 8-10 of Act No. 112 of 3 February 2012.

Women who are victims of violence can obtain help from one of the 40 crisis centres for women that are spread across the country. The crisis centres offer temporary accommodation for women who are unable to stay in their own homes because of violence or the threat of violence. They can also bring their children. The crisis centres do not offer treatment. The women pay a small amount to stay in a crisis centre.

A recent report by a committee has pointed out that situations can arise where it can be appropriate to give a spouse or one of an unmarried cohabiting couple a right to have a decision made giving him or her the possibility of continuing to live, for a short period, in the residence where he or she have been living following the termination of their marriage or cohabitation, regardless of whether the party in question is not the owner (joint owner) or tenant (joint tenant) of the residence.²⁹ Such an interim decision on residence can be relevant where one of the spouses or cohabitants has been ejected from the residence and where there are children in common under the age of 18.

b. In cases where the partner owning or renting the home is absent?

A tenant is entitled to sublet a flat which is let exclusively for residential purposes, for a period not exceeding 2 years, where the absence of the tenant is temporary and is due to illness, business, studies, placement, etc., see S. 70(1) of the Danish Consolidating Act on Rent.³⁰

If the tenant of a flat moves to a nursing home, sheltered housing, a care home or the like due to old age or illness, his or her partner has a right to continue the lease if the partners shared a household for at least two years immediately before the first partner moved; see S. 76 and 75(2) of the Danish Consolidating Act on Rent.

24. Are there specific rules on transactions (e.g. disposal, mortgaging, subletting) concerning the home of partners in an informal relationship:

a. Where the home is jointly owned by the partners?

There are no specific laws regulating joint ownership in Denmark.

In principle, a cohabiting couple who own an asset jointly must agree on the legal decisions taken on the joint estate, such as selling, pledging as security and subletting. However, one of the parties can make normal minor arrangements and engage professional help to prevent damage to the property or take measures required by law.³¹ If one of the parties incurs costs on behalf of the joint estate it is

²⁹ See Commission Report No. 1552/2015, *Ægtefællers økonomiske forhold*, (Financial relations between spouses), at p. 554-560.

³⁰ An Act to consolidate the Rent Act; see Danish Consolidating Act No. 920 of 10 September 2004.

³¹ See I. LUND-ANDERSEN, *Familieøkonomien*, Jurist- og Økonomforbundets Forlag, Copenhagen 2011, at p. 208.

usually possible to claim the repayment of a proportionate amount from the joint owner.

In relation to third parties, each of the parties is free to pledge his or her own share of the property as security. In the case of the sale of a jointly-owned asset, such as a holiday cottage which both parties use, the personal relations between the joint owners will be so significant that one party will generally not be entitled to sell his or her share of the property without the consent of the other; see *Ugeskrift for Retsvæsen* (Weekly Law Journal) 2008, p. 11. In this case a majority of the Supreme Court presumably interpreted this as being a shared presumption for the acquisition of the asset that there should be agreement between the joint owners as to the sale, as the other party would have a significant interest in who becomes his or her joint owner.

A joint ownership contract is often drawn up by the lawyer who helped an unmarried couple to buy a residence together.³² The contract will govern ownership relations, the right to control the property, liability and the conditions for dissolving the joint ownership etc. It is possible to include a provision on subletting.

b. Where the home is owned by one of the partners?

Each of the parties in an unmarried cohabiting relationship is entitled to dispose of his or her own assets, both legally and factually, without the consent of the other party, even though the assets are used by the other party or form a natural part of the cohabitation home. This applies to selling, pledging as security and renting out property and household goods.

c. Where the home is jointly rented by the partners?

If a cohabiting couple rent a flat together, they are joint tenants, and in this situation one partner cannot terminate the lease without the consent of the other. A dispute between the parties will be decided by the courts on the basis of the respective needs and equitable considerations, in the same way as with married couples.³³

d. Where the home is rented by one of the partners?

If only one of the cohabitants signs the tenancy agreement, he or she can dispose of the home on his or her own without the consent of the other partner. According to the Danish Tenancy Act S. 75(2), if one of the partners dies, the other has a right to continue the lease if the partners shared a household for at least two years immediately before the death of the partner, provided that the deceased does not leave a husband or wife behind.

³² I. LUND-ANDERSEN, *Familieøkonomien*, Jurist- og Økonomforbundets Forlag, Copenhagen 2011, at p. 256-257 and at p. 526-527.

³³ See I. LUND-ANDERSEN and I. NØRGAARD, *Familieret*, Jurist- og Økonomforbundets Forlag, Copenhagen, 2012, at p. 332-333.

If cohabitants stop living together for reasons other than the death of one of them, the partner who has not signed the tenancy agreement may continue the lease without the consent of the owner, provided the partner who is the tenant under the lease agrees; see the Danish Tenancy Act S. 77a. If the other tenant does not agree, it is for the courts to decide who is to continue the tenancy. A court will especially consider the welfare of children under 18, whether or not they are children in common or one of the partner's children from another relationship.³⁴

25. Under what circumstances and to what extent can one partner act as an agent for the other?

The general law of agency applies to cohabitants and, as in the case of spouses, the rules can be adjusted to take account of the special community of interests between the partners. In certain situations an agency will be established by the partners' conduct, if their conduct rightfully gives a third party a reason to believe that one partner has authority to act on the other's behalf.³⁵ For example, an agency may be established if a cohabitant, without the distinct agreement of the partner who is the owner, orders work to be carried out on the owner's property and both cohabitants were present during the initial discussions with the tradesman. If the owner does not react, his or her passivity will justify the tradesman's belief that the person ordering the work had authority to do so.

Likewise, if a couple lead a third party to believe they are married, the special rules on spousal liability will apply.³⁶ For instance, a husband is liable for his wife's medical care as a doctor is an 'ordinary legal transaction in satisfaction of the wife's special needs'; see Legal Effect of the Danish Marriage Act S. 11(1).

26. Under what circumstances can partners in an informal relationship become joint owners of assets?

In determining the ownership of an asset, what matters in the first instance is what the parties have agreed or assumed or otherwise intended. There can be evidentiary problems concerning what the parties have agreed.

When cohabiting couples enter into an ownership agreement, they can either agree on the ownership of specific assets, for example that they should both be recorded on the deed of their property, or they can agree to be the joint owners of a group of assets, or they can agree more generally on the ownership of assets which the couple bring into the relationship or later acquire. Such agreements can be included in a more comprehensive contract covering their cohabitation. The parties will typically agree to establish a joint ownership of assets to a wider extent than would apply

³⁴ I. LUND-ANDERSEN and I. NØRGAARD, *Familieret*, Jurist- og Økonomforbundets Forlag, Copenhagen, 2012, at p. 333-334.

³⁵ See in more detail I. LUND-ANDERSEN, *Familieøkonomien*, Jurist- og Økonomforbundets Forlag, Copenhagen, 2011, at p. 229-250.

³⁶ See *Ugeskrift for Retsvæsen* (Weekly Law Journal) 1930, at p. 540.

under the general rules of property law.³⁷ For example, in a cohabitation contract it is often agreed that all assets acquired during the cohabitation are jointly owned, other than assets acquired by inheritance, as a gift or objects bought for personal use, education or work tools. As for the assets which each party brings into the cohabitation when it commences, it is generally agreed that each party retains full ownership of such assets.

If the parties have not entered into any express agreement on the ownership of an asset and if one of the parties is registered as the owner, as for married couples the assumption is that the registered ownership reflects the cohabitants' attitude to the ownership.³⁸ The evidentiary value of registration is assessed differently according to the kind of ownership. If registration involves legal obligations, for example liability for loans, tax etc., it will usually be assumed that the party's choice of who is registered is not a random decision. If only the name of one of the parties is entered in a property deed, this is usually regarded as a considered decision.

27. To what extent, if at all, are there specific rules governing acquisitions and/or transactions in respect of household goods? In answering this question briefly explain what is meant by household goods.

This is not relevant. There are no specific rules governing acquisitions and/or transactions in respect of household goods.

28. Are there circumstances under which partners in an informal relationship can be regarded as joint owners, even if the title belongs to one partner only?

If one cohabitant has made a significant contribution to the acquisition of an asset of which the other cohabitant is the formal owner, it can be doubted whether the formal ownership reflects the real ownership. This applies particularly if one of the parties is the purchaser in a purchase contract or in the case of a receipt where the registration of ownership does not have legal consequences. In this case a court could find that the assets have been bought jointly and the formal ownership by one owner will be disregarded.³⁹

Formal ownership can also be disregarded if ownership is seen as being purely formal. It is usually difficult to succeed in a claim of pro forma ownership.⁴⁰

³⁷ See I. LUND-ANDERSEN, *Familieøkonomien*, Jurist- og Økonomforbundets Forlag, Copenhagen, 2011, at p. 256.

³⁸ I. LUND-ANDERSEN, *Familieøkonomien*, Jurist- og Økonomforbundets Forlag, Copenhagen, 2011, at p. 257.

³⁹ See e.g. *Tidsskrift for Familie- og arveret* (Journal of Family and Succession Law), 1999, at p. 101.

⁴⁰ However, pro forma ownership was accepted in *Tidsskrift for Familie- og arveret* (Journal of Family and Succession Law), 2009, at p. 522, where the woman in a cohabiting relationship was formally the owner of a car for insurance purposes, while the man paid all the costs of the car. Because of his previous accidents the man had difficulty in obtaining insurance. The court found that the man was the sole owner of the car.

29. How is the ownership of assets proved as between partners in an informal relationship? Are there rebuttable presumptions?

When determining ownership an attempt is made to clarify the parties' subjective views. Their views may be apparent from an ownership agreement between the parties, or their assumptions may be documented in other ways. The assessment of the evidence takes account of two elements: formal ownership which can be objectively shown, and which of the parties has paid for the asset. In principle only direct contributions count, and there is generally a requirement for a clear connection between the payment and the acquisition. However, this requirement does not apply if there is no clear evidence of ownership because of the combining of the parties' finances. In these cases, if both parties had such favourable financial circumstances that they could both have contributed substantially to the acquisition, a court could rule that there is equal joint ownership. Such a 'chance' joint ownership may be relevant to the household goods of a shared home. Indirect contributions in the form of housework and the provision of care are not relevant.

30. How is the ownership of assets proved as regards third parties? Are there rebuttable presumptions?

In principle, the formal registration of the ownership of a significant asset, such as real property or a car, must be assumed to correspond to what the cohabitants have agreed and thus it expresses their view of ownership.⁴¹ A party who claims that the registration is not in accordance with the facts must prove that the registration is not decisive.

Evidence is required of what the cohabitants have agreed or presumed about ownership, whether a conflict arises between the cohabitants or between a cohabitant and a creditor. Where there is doubt, the assessment of the evidence may vary depending on whether a creditor is a party to the conflict or the conflict is between cohabitants. Cohabitants will often have shared interests in a conflict with a creditor, and this will affect the assessment of their statements. The cohabitants will also have the possibility of securing evidence of ownership, which is not open to creditors.

31. Under what circumstances, if any, can partners in an informal relationship become jointly liable for debts?

The starting position is that unmarried cohabitants are not liable for each other's debts or for other legal obligations incurred by the other party. A debt does not become a joint debt merely because a loan contributes to the cohabitants' joint consumption or is used to buy an asset from which both parties benefit.

If both cohabitants give a commitment to a creditor, there will be a joint debt.

⁴¹ This is also the situation as regards spouses; see I. LUND-ANDERSEN and I. NØRGAARD, *Familieret*, Jurist- og Økonomforbundets Forlag, Copenhagen, 2012, at p. 116-117.

In addition, in certain situations the common interests of the cohabitants can lead to them being jointly liable to a greater extent than would apply under the general rules of property law. In this situation what is relevant is whether a cohabitant's conduct has given his or her counterparty the impression that he or she was acting with the authority of the other cohabitant. This application of the rules of agency is referred to as apparent authority by virtue of conduct (*adfærdsfuldmagt*).⁴² This could be the situation, for example, where one cohabitant seeks to avoid paying an invoice by having his or her insolvent partner order work on their joint residence to be carried out by a tradesman, and while the tradesman carries out the work the owner is present without making it clear that he or she will not pay for the work.

32. On which assets can creditors recover joint debts?

Joint debts are not linked to specific assets, but joint debts will usually be related to assets which are jointly owned by the cohabitants, for example debts relating to the costs of a jointly owned property. If the couple enter into a written contract for the joint ownership of the property, it will usually provide for liability for the costs of the property. It is usually provided in the contract that the cohabitants will be jointly liable towards third parties for the day-to-day expenses, in other words third parties can refer to either of the cohabitants for the full payment of any debts – joint and several liability. In relations between the cohabitants it is often provided that they should be liable in proportion to the share of their ownership.

33. Are there specific rules governing the administration of assets jointly owned by the partners in an informal relationship? If there are no specific rules, briefly outline the generally applicable rules.

There are no specific rules governing the administration of assets which are jointly owned by the partners. Many couples have written contracts for joint ownership, for example when they buy a house to live in. A contract for the joint ownership of real property will normally take account of the allocation of costs and the actual and legal control of the property.

If there is no agreement between the parties the costs of the property will be allocated in line with its ownership. Decisions about the property should be made together, except in the case of insignificant or necessary repairs.⁴³ As for legal control, in principle an individual cohabitant is free to act with regard to his or her legal share, including selling or pledging it as security. However, the conditions for the joint acquisition of the asset will presumably restrict the right to dispose of it.⁴⁴

D. Separation

⁴² See I. LUND-ANDERSEN, *Familieøkonomien*, Jurist- og Økonomforbundets Forlag, Copenhagen, 2011, at p. 218 and at p. 236-238.

⁴³ See U. RAMMESKOV BANG-PEDERSEN, *Sameje om fast ejendom*, GadJura, Copenhagen, 2002, at p. 74.

⁴⁴ U. RAMMESKOV BANG-PEDERSEN, *Sameje om fast ejendom*, GadJura, Copenhagen, 2002, at p. 77-79.

34. When partners in an informal relationship separate does the law grant maintenance to a former partner? If so, what are the requirements?

Danish law does not contain any specific regulation with regard to the payment of maintenance to a former partner.

35. What relevance, if any, upon the amount of maintenance is given to the following factors/circumstances:

- a. The creditor's needs and the debtor's ability to pay maintenance?
- b. The creditor's contributions during the relationship (such as the raising of children)?
- c. The standard of living during the relationship?
- d. Other factors/circumstances (such as giving up his/her career)?

Danish law does not contain any specific regulation with regard to the payment of maintenance to a former partner.

36. What modes of calculation (e.g. percentages, guidelines), if any, apply to the determination of the amount of maintenance?

Danish law does not contain any specific regulation with regard to the payment of maintenance to a former partner.

37. Where the law provides for maintenance, to what extent, if at all, is it limited to a specific period of time?

Danish law does not contain any specific regulation with regard to the payment of maintenance to a former partner.

38. What relevance, if any, do changed circumstances have on the right to continued maintenance or the amount due?

Danish law does not contain any specific regulation with regard to the payment of maintenance to a former partner.

39. Is the maintenance claim extinguished upon the claimant entering:

- a. Into a formal relationship with another person?

A maintenance claim is extinguished upon the claimant's remarriage; see Section 51 of the Danish Marriage Act. The claim will not revive.

- b. Into an informal relationship with another person?

Former spouses who have had the amount fixed by the State Administration: If the claimant enters into an informal marriage-like relationship with another person, the maintenance claim is extinguished if the debtor requests the State Administration to do so; see S. 53(2) of the Danish Marriage Act. In these cases there are special

circumstances. If the claimant enters into an informal marriage-like relationship, he or she do not necessarily have to cohabit with the other person. It is sufficient that the claimant and the other person have a financial and personal community of interests which can be equated with a relationship where the parties live together.⁴⁵ The practice is based on a consideration of fairness, namely that the former spouse should not be entitled to claim maintenance when he or she has engaged in a steady personal and financial relationship with someone else.

Former spouses who have entered into an agreement on the amount of maintenance: It depends on the content of the agreement what exactly will happen if the claimant enters into an informal long-term relationship with another person. According to S. 52 of the Danish Marriage Act the amount may be altered by a court where, on the basis of materially changed circumstances, it would be unreasonable to uphold the agreement.

40. How does the creditor's maintenance claim rank in relation to:

- a. **The debtor's current spouse, registered partner, or partner in an informal relationship?**
- b. **The debtor's previous spouse, registered partner, or partner in an informal relationship?**
- c. **The debtor's children?**
- d. **The debtor's other relatives?**

Not relevant. Danish law does not contain any specific regulation with regard to the payment of maintenance to a former partner.

41. When partners in an informal relationship separate, are specific rules applicable to the determination of the ownership of the partners' assets? If there are no specific rules, which general rules are applicable?

Danish law does not contain any specific rules which are applicable to the determination of the ownership of the partners' assets.

Just as for married couples, the property relations of unmarried cohabitants are determined according to the normal rules of property law.⁴⁶ Thus an asset can either belong to one of the cohabitants or can be jointly owned by them both. Joint ownership will usually be based on an agreement between the parties, but it can also arise from the combining of their finances. Contributions made after the acquisition of an asset do not create a right to joint ownership unless the parties agree.

42. When partners in an informal relationship separate, are specific rules applicable subjecting all or certain property (e.g. the home or household goods) to property division? If there are no specific rules, which general rules are applicable?

⁴⁵ See *Tidsskrift for Familie- og arveret* (Journal of Family and Succession Law) 2011, at p. 115.

⁴⁶ See in more detail I. LUND-ANDERSEN, *Familieøkonomien*, Jurist- og Økonomforbundets Forlag, Copenhagen, 2011, at p. 250-265.

When unmarried partners separate, Danish law does not contain any specific rules subjecting all or certain property to property division.

Each party takes his or her own assets.

If the couple own an asset jointly and there is a dispute about which of them should have full ownership of the asset upon the termination of the cohabiting relationship, the matter can be settled by drawing lots if the parties so agree. If the couple do not agree to draw lots the asset must be sold either on the open market or by a voluntary auction. Sale on the open market will usually raise a higher price than sale by auction. Both cohabitants may bid at an auction. This means that the right to continue to live in the home that has been their joint home will go to the party that makes the highest bid.

Unless a period of notice for the termination of joint ownership has been agreed, joint ownership can be terminated upon giving reasonable notice.

43. Do the partners have preferential rights regarding their home and/or the household goods? If so, what factors are taken into account when granting these rights (e.g. the formal ownership of the property, the duration of the relationship, the needs of each partner, the care of children)?

A single published judgment has given a cohabitant a right to take over a joint property on the basis of his need and on the basis of the general principles of the law of obligations. In *Tidsskrift for Familie- og arveret* (Journal of Family and Succession Law), 2001, p. 478, the High Court gave the man in a cohabiting relationship the right to the joint residence after the termination of the relationship on the ground that he lived in the property with a young child of the couple, while the woman had bought a new residence. The woman's interest in taking over the joint residence was based solely on her expectation of being able to sell it at a higher price than the valuation made by the Probate Court.⁴⁷

44. How are the joint debts of the partners settled?

Joint liability for debt can be based on an agreement between the parties or on a special ground for liability. The special ground can be that the non-contracting party has given his or her partner the authority to act on his or her behalf. A special kind of authority can be an apparent authority by virtue of conduct where, by that conduct, the non-contracting cohabitant gives the counterparty good reason to believe that he or she had given authority and that both cohabitants were bound by the debt obligation.⁴⁸

⁴⁷ For more on the case see I. LUND-ANDERSEN, *Familieøkonomien*, Jurist- og Økonomforbundets Forlag, Copenhagen, 2011, at p. 433-436.

⁴⁸ For more detail, see I. LUND-ANDERSEN, *Familieøkonomien*, Jurist- og Økonomforbundets Forlag, Copenhagen, 2011, at p. 237-250.

45. What date is decisive for the determination and the valuation of:
a. The assets?

In Denmark, when a cohabitating relationship ends the Probate Court deals with the dissolution of cohabitants' assets owned in common when there are a number of assets; see S. 1(3) of the Danish Act on the Division of Matrimonial Property (*Ægtefælleskiftelov*). The same rules apply to cohabitants as to spouses. A cohabitant may apply to the Probate Court to refer a case to an administrator who will advise and seek to get the parties to agree, as well as drawing up an account and making a valuation of the property; see S. 17-30 of the Danish Act on the Division of Matrimonial Property. The valuation is made as per the date when an asset is transferred to a cohabitant or the date of the end of the Probate Court proceedings.

b. The debts?

When a cohabitating relationship ends, the debts associated with assets owned in common are included in the valuation of the estate as per the date when assets are transferred to a cohabitant or the date of the end of the Probate Court proceedings. The calculation of liabilities is based on information given by the cohabitants.

46. On what grounds, if any, and to what extent may a partner upon separation claim compensation upon the basis of contributions made or disadvantages suffered during the relationship?

The Danish Supreme Court delivered a judgment in a case on a financial settlement upon the termination of a cohabitation relationship for the first time in 1980; see *Ugeskrift for Retsvæsen* (Weekly Law Journal) 1980, p. 480. The financially weaker party was given an amount as 'compensation'. In the following years the Supreme Court delivered judgments in several cases which defined the extent of the new claims.⁴⁹ The doctrine of unjust enrichment came to play a central role, and the doctrine of reasonable expectations has also been given some weight. Claims can also be made in the event of the death of a cohabitant.⁵⁰

The first Supreme Court case concerned whether the female cohabitant could obtain a share of the profit which her partner gained from the sale of his property after the end of their four-year cohabitation. Her principal claim was that the house was jointly owned, alternatively that she should be awarded an amount estimated by the court. She referred to the fact that each party had contributed financially to the joint household expenses, according to their means, and that the house had been bought on the basis of a joint budget drawn up on the basis of their joint incomes. In her view it would not have been possible for her partner to cover the costs of the house

⁴⁹ For more detail, see I. LUND-ANDERSEN, *Familieøkonomien*, Jurist- og Økonomforbundets Forlag, Copenhagen, 2011, at p. 361-425.

⁵⁰ See *Ugeskrift for Retsvæsen* (Weekly Law Journal) 1985, at p. 55; and *Ugeskrift for Retsvæsen* 1988, at p. 998.

without her income. The male partner argued that the claim should be dismissed, referring to the fact that it was he who had paid all the costs of the house.

In court the couple gave very different explanations of their financial arrangements. Both the High Court and a majority of the Supreme Court based their decisions on the evidence of the female cohabitant concerning shared household expenses and finances, and not on her partner's evidence of separate finances. The Supreme Court rejected the claim that there had been joint ownership. Instead the female cohabitant was awarded an assessed amount of DKK 25,000. She was thereby compensated for her financial contribution to her partner's ability to make a profit. This contribution was seen as necessary, and if she had not been paid compensation her partner would have been unjustly enriched.

In *Ugeskrift for Retsvæsen* (Weekly Law Journal) 1984, p. 166, a woman, who had been responsible for looking after the home and caring for three children, was awarded DKK 200,000 after 16 years of cohabitation. Her partner had built up considerable wealth through his commercial activities. As in the 1980 case the Supreme Court had to choose between rejecting a claim on the ground that it lacked authority, and making an award on the basis of a new interpretation of the existing concepts of property law. The majority of the Supreme Court chose the latter. The judgment was primarily based on the doctrine of unjust enrichment, as the contributions of the female as a home worker were regarded as significant and had contributed to improving her partner's financial status. This approach was also supported by the doctrine of reasonable expectations, as she was regarded as having assumed that she would not be left penniless at the end of the cohabitation, given her partner's comfortable financial situation.

However, the facts in the 1984 case were so unusual that in subsequent cases the judgment was not interpreted as meaning that housework and the provision of care can in general justify an award of compensation. Only in a few subsequent cases has there been any reference to a woman's work in the home and in these cases there has usually also been a financial contribution, whether direct or indirect.⁵¹

In *Ugeskrift for Retsvæsen* (Weekly Law Journal) 1985, p. 607, the Supreme Court laid down guidelines for the assessment of cases on claims for compensation. The Supreme Court's 'rule' contains three conditions. First, there is a requirement that the claimant should have contributed to the parties' joint expenses or by other means. Second, the contributions should have helped enable the creation or preservation of wealth by the other party. And third, there are conditions as to the nature of the cohabitation, especially its duration. On other points the rules are open and imprecise: the contribution can be made 'by other means', and the amount can be determined 'among other things' by having regard to the duration of the relationship and the financial status of the parties upon its termination.

⁵¹ See e.g. *Tidsskrift for Familie- og arveret* (Journal of Family and Succession Law) 2001, at p. 282.

In order for a claim for compensation to be considered at all, the cohabitation must have lasted around three years.⁵² The contribution to the joint expenses can be made directly or indirectly. Direct financial contributions can consist of paying expenses for the other party's residence. Indirect contributions can be provided by paying for the couple's shared expenses, for example household expenses or for their children. Contributions can also be made in the form of housework, the provision of care and performing work in person.

There have been a number of recent cases in the High Court on the amount of compensation. The cases leave the impression that there is considerable uncertainty about the extent of compensation claims and the results of proceedings can be difficult to predict. In the first case, *Ugeskrift for Retsvæsen* (Weekly Law Journal), 1980. 480 H, the Supreme Court stated that the fact that a large part of the parties' wealth was caused by inflation would not prevent compensation being awarded. However, in a couple of more recent High Court cases it was emphasised that the increase in the value of a property was primarily due to the conditions in the wider economy and thus only modest⁵³ or no compensation was awarded.⁵⁴

When the amount of compensation is calculated, in principle compensation is awarded for the assets or work provided. With direct contributions the amount can be up to half the value of the assets contributed to.⁵⁵ If there has been an indirect financial contribution the assessment will often take account of the differences in the parties' incomes during the period of cohabitation. The compensation awarded is estimated and is often between one quarter and one fifth of the increase in value, although where the other party has considerable wealth the compensation will typically be only one tenth.

During their cohabitation an unmarried couple can validly agree that a party shall not receive compensation upon termination of the cohabitation. Such an agreement can be questionable from the point of view of the weaker party, who can risk being left without any means if the couple separate.

In addition to claims for compensation, upon the termination of cohabitation a cohabitant can make ordinary property law claims against his or her former partner. These can be claims for the repayment of a loan or because the other party has obtained unjust enrichment.⁵⁶ Any such claim must be judged in the light of the couple's community of interests, so there must be a clear basis for allowing such a claim. A claim can be rejected if the transfer of money between cohabitants must be regarded as a contribution to the shared household expenses and thus part of a joint financial arrangement. It is relevant whether the cohabitation has been of longer duration with joint finances. Depending on the circumstances, even the transfer of a

⁵² See *Ugeskrift for Retsvæsen* (Weekly Law Journal) 1982, at p. 93.

⁵³ See *Tidsskrift for Familie- og arveret* (Journal of Family and Succession Law) 2010, at p. 221.

⁵⁴ See *Tidsskrift for Familie- og arveret* (Journal of Family and Succession Law) 2011, at p. 27.

⁵⁵ See *Ugeskrift for Retsvæsen* (Weekly Law Journal) 1986, at p. 765.

⁵⁶ See I. LUND-ANDERSEN, *Familieøkonomien*, Jurist- og Økonomforbundets Forlag, Copenhagen, 2011, at p. 300-332.

large one-off payment can be considered a contribution to the partnership if the other party has made other contributions to the partnership.⁵⁷

A claim for unjust enrichment will be relevant if a claim for compensation is not allowable because of the short duration of the cohabitation and if a partner has made payments that give a financial benefit to the other party. Such payment must be a significant departure from the normal allocation of their shared obligations.⁵⁸ The amount awarded will be assessed and may not exceed the enrichment of one party or the loss of the other.

E. Death

47. Does the surviving partner have rights of inheritance in the case of intestate succession? If yes, how does this right compare to that of a surviving spouse or a registered partner, in a marriage or registered partnership?

A new Danish Inheritance Act entered into force on 1 January 2008.⁵⁹ The new Act strengthens the position of the surviving spouse, but does not give the surviving cohabitant the right to inherit or to an undivided possession of the estate. According to Danish law, cohabitants cannot inherit from each other without this being specified in a will.

48. Does the surviving partner have any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of intestate succession?

According to case law and general property law, a surviving cohabitant may be awarded compensation. The conditions that have been crystallised in the case law are the following: 1) the cohabitation must have been permanent for a period of around three years; and 2) the surviving cohabitant must have contributed significantly to the deceased cohabitant creating or retaining substantial assets.⁶⁰ For example, the income of the surviving cohabitant may have been spent on living expenses, while the income of the deceased cohabitant was spent on paying off the mortgage on the real property. The deceased cohabitant will then have acquired a significant free equity in the dwelling, while the survivor will have no assets. The property law principles at the heart of the cohabitant's claim for compensation are primarily the principle of unjust enrichment and the doctrine of contractual expectations. In principle, claims for compensation are not excluded even if the surviving cohabitant is provided for in the will of the deceased cohabitant.⁶¹

⁵⁷ See *Ugeskrift for Retsvæsen* (Weekly Law Journal) 1998, at p. 252.

⁵⁸ See *Tidsskrift for Familie- og arveret* (Journal of Family and Succession Law) 1999, at p. 185.

⁵⁹ Act No. 515 of 6 June 2007.

⁶⁰ See J. ASLAND et al., *Nordisk Samboerrett*, Gyldendal Norsk Forlag, Oslo, 2014, at p. 204-205; and I. LUND-ANDERSEN, *Familieøkonomien*, Jurist- og Økonomforbundets Forlag, Copenhagen, 2011, at p. 392-406.

⁶¹ Danish Parliamentary Report No. 1473/2006, p. 147. See also *Ugeskrift for Retsvæsen* (Weekly Law Journal) 1985, at p. 55.

49. Are there specific rules dealing with the home and/or household goods?

The reform of the Danish Inheritance Act in 2007 added a new S. 111a to the Danish Administration of Estates Act regarding a 'cohabitant's right to assume possession following an assessment'. The provision gave the surviving cohabitant the right to assume possession of the previous joint dwelling and ordinary household goods against a cash payment of the assessed value of the estate. The assessed value must be equivalent to the market value.

Not all cohabitating relationships entitle the cohabitants to invoke claims under S. 111a of the Danish Administration of Estates Act. The right applies to: 1) cohabitants who have lived together in a marriage-like relationship for the last two years prior to death; or 2) cohabitants who have, have had or are expecting children together. According to subsection 2 of the provision, the cohabitation will not be considered to have ended because of a temporary stay in another dwelling or a stay in an institution. These are the same terms as must be met in order to establish an expanded cohabitant's will according to S. 88, subsections 2 and 3, of the Danish Inheritance Act. According to S. 111a, subsection 5, the right in S. 111a of the Danish Administration of Estates Act to assume possession must waive the priority of testamentary provisions by the deceased cohabitant.

50. Can a partner dispose of property by will in favour of the surviving partner:

a. In general?

If a cohabitant wishes to leave his or her estate to his or her surviving partner, he or she can do so by making a will. A testator who has children and/or a spouse has the right to dispose of over three-quarters of the estate. One quarter is divided between the spouse (one-eighth) and the child/children (one-eighth).

b. If the testator is married to or is the registered partner of another person?

One-quarter of the estate that the spouse or registered partner of the testator inherits is an indefeasible share; see the Danish Inheritance Act, S. 10. An indefeasible share cannot be denied its beneficiaries by means of a will.

According to the Danish Inheritance Act, S. 91(2), the consent of a spouse is required to make a testamentary disposition of the following assets, provided they are included in the deferred community property:

- Property that serves as the family's home or where both of the spouses' or the other spouse's business is carried out.
- Contents of the joint home and the other spouse's necessary work tools.
- A motor vehicle which has been used by the spouse.

c. If the testator has children?

The one-quarter of the estate that the child/children of the testator inherit is an indefeasible share; see the Danish Inheritance Act, S. 5. However, the testator can restrict the inheritance to each of his or her children to DKK 1,000,000; see the Danish Inheritance Act, S. 5(2). This amount is regulated in line with the price index.⁶²

51. Can partners make a joint will disposing of property in favour of the surviving partner:

a. In general?

The Inheritance Act which entered into force in Denmark on 1 January 2008 introduced new rules on extended cohabitants' wills, extending the testamentary powers of cohabitants at the expense of the indefeasible shares of lineal descendants. The legal basis for extended cohabitants' wills is provided in S. 87 of the Danish Inheritance Act. Extended cohabitants' wills allow cohabitants to inherit from each other as if they were spouses with absolute separate property. However, in a will it is possible to set some limits as there is no requirement to give a cohabiting partner all the normal benefits of a spouse. A surviving cohabitant cannot retain undivided possession of the estate.

The criteria for who may make such wills are set out in S. 88 of the Danish Inheritance Act. The conditions are that: on the date of making such a will the cohabitants must fulfil the conditions for contracting a marriage; upon the death of the first cohabitant, they must also have lived together for the previous two years; or alternatively the cohabitants must have, have had or expect a child together. Cohabitation is not considered to be terminated by a temporary stay in another residence or in an institution. In the case of staying in another residence the stay must be of a temporary nature, while a stay in an institution may be permanent.

b. If either testator is married to or is the registered partner of another person?

The couple may not be married or live in a registered partnership.

c. If either testator has children?

If the first deceased cohabitant with lineal descendants has fully exercised his or her testamentary powers, the surviving cohabitant will inherit three-quarters of the assets of the deceased cohabitant which may be freely bequeathed and one-half of the last one-quarter under the extended cohabitant's will, see S. 9, subsection 1, of the Danish Inheritance Act and S. 5, subsection 1. An extended cohabitant's will reduces the indefeasible share of the lineal descendants to one-eighth.

52. Can partners make other dispositions of property upon death (e.g. agreements as to succession or gifts upon death) in favour of the surviving partner:

a. In general?

⁶² In 2014, the amount was DKK 1,170,000, equivalent to about EUR 157,000.

If a cohabitant wishes to benefit his or her surviving partner, while keeping the estate intact until his or her death, then the cohabitant must make a will. This principle is maintained by S. 93 of the Danish Inheritance Act on donations upon death. According to the Act, the rules for wills also apply to promises of gifts that cannot be fulfilled until after death, and deathbed donations.

Sometimes, with mutually burdensome agreements one party will reap certain benefits upon the death of the other party. This is often the case with joint ownership agreements between cohabitants. A mutual option to buy at a predetermined price can be a natural part of a mutually burdensome agreement, which must be respected by beneficiaries as a valid contract. Only where the conditions are so one-sided that the burden on the parties is unequal will it be considered a gift. If it is a condition that the gift can first be realized at the time of death, it is considered to be a deathbed donation.⁶³

b. If either partner is married to or is the registered partner of another person?

A testator does not have the right to decide over the indefeasible share of his or her estate. The indefeasible share is one-quarter of the inheritance.

According to the Danish Inheritance Act, S. 91(2), the other spouse's consent is required to make a will disposing of the following assets, provided they are included in the community property:

- Property that serves as the family's home or from where both of the spouses' or the other spouse's business is carried out.
- The contents of the joint home and the other spouse's necessary work tools.
- A motor vehicle which has been used by the other spouse.

c. If either partner has children?

A testator does not have the right to decide over the indefeasible share of his or her estate. The indefeasible share is one-quarter of the inheritance. The testator can restrict the inheritance of each of his or her children to DKK 1,000,000; see the Danish Inheritance Act, S. 5(2).

53. Is the surviving partner entitled to a reserved share⁶⁴ or to any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of a disposition of property upon death (e.g. by will, joint will, or inheritance agreement) in favour of another person?

⁶³ H.V. GODSK PEDERSEN and I. LUND-ANDERSEN, *Family Law in Denmark*, Kluwer Law International, Alphen aan den Rijn, 2011, at p. 176.

⁶⁴ See Regulation no. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession [2012] OJ L 201/107.

According to case law and general property law, if the surviving cohabitant is awarded compensation this is regarded as satisfying property law claims, which must be paid with priority over disbursing any inheritance to others.

54. Are there any statistics or estimations on how often a relationship is terminated by the death of one of the partners?

No.

55. Are there any statistics or estimations on how common it is that partners in an informal relationship make a will in favour of the other partner?

The provisions on extended cohabitants' wills in Denmark can put a cohabitant wholly or partly in the same situation as a spouse with full separation of property; see S. 87 of the Danish Inheritance Act. Recent research shows that a very large number of cohabiting couples make extended cohabitants' wills, and nearly all decide that the surviving cohabitant should inherit as much as possible. This research was carried out by the lawyer U. Grønberg on the basis of about 5% of all notarised wills in 2011-2012. 14 % of these wills concerned unmarried cohabitants and the great majority of these had made extended cohabitants' wills.⁶⁵

56. Are there any statistics or estimations on how common it is that a partner in an informal relationship is the beneficiary to the other partner's life insurance?

Under Danish law a cohabitant may be provided for by a life assurance policy without express notification to the Insurance Company.

Section 105a of the Danish Insurance Contracts Act defines the 'next of kin' for the purposes of beneficiaries. Unless the circumstances indicate otherwise, S. 105a, subsection 1, provides the following order for the next of kin: the insured party's spouse, a cohabitant who fulfils the conditions in S. 2, children and heirs.⁶⁶ 'Cohabitants' are defined in subsection 2. The definition is similar to that in the rules on extended cohabitants' wills:

'Subsection 2. To be covered by subsection 1, a cohabitant must live with the insured party at the joint dwelling and

- 1) expect, have or have had a child together with the insured party or
- 2) have lived with the insured party in a marriage-like relationship at the joint dwelling for the last 2 years prior to death.'

If no beneficiary is named, the insurance payment will devolve to the insured party's next of kin; see S. 105b, subsection 1, of the Danish Insurance Contracts Act. A cohabitant will be the next of kin if no one else has higher priority. The only person who might have higher priority would be a surviving spouse.

⁶⁵ See U. GRØNBORG, 'Testamentsmønstre', *Tidsskrift for Familie- og arveret* (Journal of Family and Succession Law), 2014, pp. 168-175.

⁶⁶ New rules on cohabitants entered into force on 1 January 2008.

A 'next of kin' clause is probably used in more than 90% of all life insurance policies. As stated above, since 2008 a cohabitant has been covered under the definition of 'next of kin' in S. 105a of the Danish Insurance Contracts Act, so a cohabitant will normally receive payment under a life insurance policy. This means that since 2008 very few beneficiaries have been included by name. Prior to 2008 beneficiaries (cohabitants) were frequently included by name, though with the provision that the named person should not benefit if their cohabitation had come to an end at the time of death (though not at the initiative of the institution).⁶⁷ There are no available statistics for this.

F. Agreements

57. Are there specific rules concerning agreements between partners in an informal relationship? Where relevant, please indicate these specific rules. If not, which general rules apply?

No.

The Danish Contracts Act applies to agreements between cohabitants.⁶⁸ A contract can be set aside by a court if one of the conditions for invalidity (duress, fraud, lack of capacity etc.) is fulfilled. Fraud can be committed either by the other party or by a third party. Further, under the Danish Contracts Act if it would be unreasonable to maintain a contract, it can be set aside or modified on grounds of unfairness.

58. Are partners in an informal relationship permitted to agree on the following issues:

a. The division of tasks as between the partners?

An agreement on the division of household tasks during cohabitation will presumably be valid in principle, but it will be difficult to sanction the other party for any breach of the agreement. The possible justification for such an agreement rests primarily on the attention which the parties thereby devote to practical matters and the moral obligation to abide by the agreement.⁶⁹ If a couple have arranged matters so that one party is employed in the other's business, there can be a need to agree the terms of employment, including pay. Such an agreement will be valid between the parties and in relation to the tax authorities etc.⁷⁰

b. The contributions to the costs and expenses of the household?

⁶⁷ Information provided by the Legal Department of Danica Pension.

⁶⁸ Consolidating Act No. 781 of 26 August 1996.

⁶⁹ See V. VINDELØV, I. LUND-ANDERSEN and L. NIELSEN, *Retsstillingen for ugifte samlevende*, Gads Forlag, Copenhagen, 1988, at p. 230.

⁷⁰ V. VINDELØV, I. LUND-ANDERSEN and L. NIELSEN, *Retsstillingen for ugifte samlevende*, Gads Forlag, Copenhagen, 1988, at p. 231-232.

In a cohabitation contract the parties can give each other the authority to act on their behalf in legal relations. E.g. they can agree that, while cohabiting, either cohabitant shall be entitled to enter into such contracts with a third party for the purpose of meeting day-to-day household needs or the children's needs, with liability for both spouses.

c. Their property relationship?

Cohabitants cannot generally make a marriage-like arrangement for the ownership of their property, but they can enter into specific agreements about their property relationships. For example, they can make a joint ownership agreement concerning a specific asset, typically the ownership of a residence. Agreements on the joint ownership of several assets can be included in a more comprehensive cohabitation contract in which the parties agree on all the financial circumstances that can be expected to be relevant during their cohabitation and upon its possible termination, including sharing expenditures, liabilities, mutual claims etc.

d. Maintenance?

It is possible for a couple to make an agreement according to which the partner who is able to support him/herself after separation undertakes to pay contributions to the other partner who is unable to do so, at least for a transitional period. Such agreements are valid as long as they have the necessary clarity.⁷¹

e. The duration of the agreement?

Yes, it is possible to put a time limit on ordinary property law contracts.

59. Are partners in an informal relationship permitted to agree on the legal consequences of their separation?

Cohabitants can enter into prior agreements about how their joint assets should be divided upon the termination of cohabitation, and they can agree that one party shall have a share of the other's savings. During their cohabitation a couple can agree that the financially weaker party shall receive compensation upon the termination of their cohabitation, or that one of them will not make a claim against the other. The party surrendering his or her rights must understand the consequences of such an agreement.

There is also extensive freedom of contract in a situation in which cohabitation has already been terminated.

60. Are the agreements binding:

a. Between the partners?

⁷¹ See H.V. GODSK PEDERSEN and I. LUND-ANDERSEN, *Family Law in Denmark*, Kluwer Law International, Alphen aan den Rijn, 2011, at p. 80.

Yes, but an agreement on the division of property can still be challenged under the rules on invalidity in Danish contract law.

b. In relation to third parties?

Agreements between partners on the division of household tasks are presumably not valid against third parties.

61. If agreements are not binding, what effect, if any, do they have?

Such agreements could be regarded as being morally binding.

62. If specific legislative provisions regulate informal relationships, are the partners permitted to opt in or to opt out of this specific regulation?

The relation between the partners in an informal relationship:

- *During the relationship:*

Danish Social Security Acts: When a couple are presumed to be cohabiting, a number of social benefits fall by the wayside: It is not possible for the partners to opt out.

- *On separation:*

According to the Danish Act on Rent a court can substitute the tenant if there are special grounds: It is not possible for the partners to make prior agreements.

- *On death:*

According to the Danish Act on Rent the surviving partner is entitled to extend the lease: It is not possible for the partners to make prior agreements;

According to the Danish Inheritance Tax Act a cohabitant may pay a low level of inheritance tax: It is not possible for the partners to opt out;

The Danish Inheritance Act governs extended cohabitants' wills and extends the testamentary powers of cohabitants: The partners are permitted to opt in;

The Danish Administration of Estates Act contains a rule on a surviving cohabitant's right to assume possession of the previous joint dwelling and the household goods: It is possible for a partner to opt out in a will;

The Danish Insurance Contracts Act includes a cohabitant in the definition of 'next of kin': It is possible for a partner to opt out by notification to the Insurance Company;

The Danish Liability and Compensation Act states that a surviving partner will be granted compensation for the loss of the breadwinner: It is not possible for the partners to opt out.

63. When can the agreement be made (before, during, or after the relationship)?

Agreements can be made before, during and after a relationship.

64. What formal requirements, if any, govern the validity of agreements:

a. As between the partners?

There are no formal requirements for agreements between cohabitants on the division of their property. Oral agreements can also be valid.

b. In relation to a third party?

There are no formal requirements for agreements between cohabitants for the division of their property. Oral agreements can also be valid, but in relation to third parties there can be problems in proving that an agreement has been entered into.

65. Is independent legal advice required?

No, but it can be relevant if a party has received legal advice and that party subsequently wants an agreement set aside or amended in accordance with the rules in contract law on unreasonable agreements.⁷²

66. Are there any statistics or estimations on the frequency of agreements made between partners in an informal relationship?

No.

67. Are there any statistics or estimations regarding the content of agreements made between partners in an informal relationship?

Cohabitants have often agreed upon or have assumed joint ownership of the joint dwelling and household goods.

G. Disputes

68. Which authority is competent to decide disputes between partners in an informal relationship?

Upon the termination of cohabitation, unmarried cohabitants can have the division of their property owned in common dealt with by the Probate Court (*Skifteretten*); see S. 1(1)(3) of the Danish Act on the Division of Married Property (*Lov om ægtefælleskifte mv.*) A cohabitant may request the Probate Court to refer a case to an administrator who will have the task of advising and seeking to get the parties to agree as well as drawing up an account of the property; see further in Section 28 of the Act. Administrators in Denmark cannot decide on disputes between cohabitants. The Probate Court will only be involved to the extent that there is disagreement with the administrator's proposal for a settlement, including the valuation of the assets, the allocation of debts etc.

⁷² See I. LUND-ANDERSEN, *Familieøkonomien*, Jurist- og Økonomforbundets Forlag, Copenhagen, 2011, at pp. 548-549.

The Danish Probate Courts can deal with individual disputes that may arise between cohabitants if the parties have an estate (a number of assets) that is dealt with by the Probate Court. This might be a dispute about a claim for compensation, for example, or the allocation of liability for a joint debt. The parties will not have to refer to a different court, as the Probate Court dealing with the estate will have jurisdiction to deal with such disputes.

In Denmark there is no legislation governing ownership in common so the dissolution of joint ownership is often agreed in a joint ownership contract. If a cohabiting couple have not entered into such a contract, then the dissolution of the joint ownership of an individual asset will occur in the same way as with the dissolution of joint ownership between others (for example, siblings), in other words this will normally be by an auction in the Probate Court, unless otherwise agreed. Disputes where there is an agreement will be dealt with by the Probate Court or the ordinary civil courts.

69. Is that the same authority as for spousal disputes?

According to S. 1(3) of the Danish Act on the Division of Married Property Act, the same rules apply to cohabitants as apply to spouses.

70. Can the competent authority scrutinise an agreement made by the partners in an informal relationship? If yes, what is the scope of the scrutiny?

No.

71. Can the competent authority override or modify the agreement on account of fairness towards a partner, the rights of a third party, or on any other ground (e.g. a change of circumstances)?

Under the Danish Contracts Act an agreement can be set aside or modified on grounds of unfairness or due to a change of circumstances.

72. What alternative dispute-solving mechanisms (e.g. mediation or counselling), if any, are offered or required with regard to disputes arising out of informal relationships?

All courts, except the Supreme Court, are obliged to provide mediation services in civil actions, and judges and lawyers with special training in mediation can serve as mediators.⁷³ Mediators are appointed from the court's panel of mediators. Participation is voluntary and the parties can withdraw from the process at any time; there is no penalty for either declining mediation or not reaching a resolution in mediation. The process is confidential for all involved. Mediation is offered free of

⁷³ The description of alternative dispute resolution in Denmark is based on L. ADRIAN, 'Regulation of Dispute Resolution in Denmark: Mediation, Arbitration, Boards and Tribunals', in: F. STEFFEK and H. UNBERATH (eds.), *Dispute Resolution: ADR and Access to Justice at the Crossroads*, Hart Publishing Pty Ltd, Oxford, 2013, pp. 115-133.

charge and can take place at any time during the judicial process; in most cases mediation takes place soon after the case is filed. When mediation is accepted by the parties, the legal proceedings are suspended. Lawyers may attend mediations, but it is the parties and not their lawyers who play the principal role in the process.

As for disputes concerning custody, visitation and residence rights, reference to the State Administration is the entry point for resolving disputes between parents who no longer live together.⁷⁴ For visitation rights the State Administration makes administrative decisions if no agreement is reached by the parents. Disputes about custody and residence rights are referred to a court if the parents are unable to reach an agreement with the help of the State Administration.⁷⁵ The primary tool for resolving these matters is administrative meetings with parents conducted by a lawyer alone or a lawyer working in tandem with either a psychologist or social worker with expertise in children's matters. If these meetings do not result in an agreement, the parents are offered mediation or counselling by a child expert. Mediation in family matters was incorporated in the Danish Parental Responsibility Act in 2007.

73. What are the procedural effects of an agreement on ADR between partners in an informal relationship? Can any partner seize the competent authority in breach of the ADR clause?

If the case is resolved in court-based mediation, the parties can make their agreement enforceable by requesting that it be added to the court records. If they do so, the legal effect of the mediated agreement has equivalent legal effect to court adjudicated decisions and can be similarly enforced.⁷⁶ Otherwise, the parties' agreement is binding in the same way as any private agreement made in Denmark, but in most instances the parties have to obtain a judgment before it can be enforced.

74. Are there any statistics or estimations on how common it is that partners in an informal relationship include an ADR clause in their agreement?

No.

⁷⁴ The State Administration reports to the Minister for Economic Affairs and the Interior.

⁷⁵ See S. 14, 17 and 21 of the Parental Responsibility Act.

⁷⁶ See Administration of Justice Act, S. 270 and 478.