

DENMARK

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A. New Developments in the field of Divorce (since September 2002)

Questions 2, 3, 4 and 33:

In 2003, a new ground for divorce was introduced.² According to section 36 of the Danish Marriage Act a spouse is entitled to a divorce when the other spouse has taken the child of the former illegally out of the country or illegally keeps the child abroad. This ground for divorce was introduced because in certain countries the authorities will not cooperate in getting a child back, if the child has been brought out of the country by the father and the father and the mother are still married or legally separated. In these situations, the authorities regard abduction as a conflict between spouses and the authorities will not get involved. Section 36(2) requires that the divorce papers are submitted while the child, due to the abduction, is still abroad or no later than 1 year after the child has been brought back.

In 2013, it became possible to obtain a divorce immediately without prior legal separation, if the parties agree thereto, cf. section 29 Danish Marriage Act. In case of disagreement, any of the spouses can get a divorce after 6 months of legal separation, cf. section 30 Danish Marriage Act.³

The divorce ground in section 34 Danish Marriage Act (violence) has been extended twice. In 2014, simple violence was included,⁴ and in 2019, the provision came to include psychological violence.⁵ Section 34 states that one of the spouses has a right to a divorce, if the other spouse is guilty of deliberate violence, psychological violence or engaged in sexual assault against the spouse, against the children of the spouses, against the next of kin of the spouse or of the spouses' children whom the spouse or the children of the spouses are attached to, or against other children. Application for a divorce has to be submitted within 1 year after the spouse came to know about the violence and within 3 years after the violence was committed (section 34(2) Danish Marriage Act).

¹ The description in this report is partly based on Hans Viggo Godsk Pedersen and Ingrid Lund-Andersen's account in R. Blanpain (ed.), *International Encyclopaedia of Laws, Family and Succession Law - Denmark*, Kluwer Law International, 2020.

² Act no. 386 of 28 May 2003, which entered into force on 1 July 2003.

³ Act no. 647 of 12 June 2013, which entered into force on 1 July 2013.

⁴ Act no. 485 of 21 May 2014, which entered into force on 1 July 2014.

⁵ Act no. 329 of 30 March 2019, which entered into force on 1 July 2014.

Questions 3, 8, 9 and 28:

On April 1, 2019, an act on the Agency of Family Law entered into force introducing a new system to deal with divorce cases in Denmark.⁶ The system has two authorities: a new administrative body, the Agency of Family Law, and a new court, the Family Court (a division of the local district court). In Denmark, there are 9 regional Agencies of Family Law and 24 Family Courts.

All family law cases start in one of Agencies of Family Law. If the parties agree on the conditions, it is possible to obtain a legal separation or a divorce without meeting in person. The parties are required to use a digital solution, which ensures the screening of the inquiry for visitation. The cases divide into what is popularly called the 'green' (simple cases) track, the 'yellow' (less simple cases) track and the 'red' (complicated cases) track. Examples of 'green' cases are documents on divorce or spousal maintenance based on the agreement of the parties. The 'yellow' cases concern families who need help with counseling and mediation, in particular cases on parental authority and contact. The Agency of Family Law makes decisions in the 'yellow' cases. Complaints about a legal decision from the Agency of Family Law are to be settled in the Family Court. In the 'red' cases, parents are in high conflict due to problems under the Parental Responsibility Act, and the Agency of Family Law will send these cases to the Family Court.

Questions 22, 24, 47, 48 and 51:

In 2013, it became possible to obtain a divorce immediately without prior legal separation, if the parties agree thereto, cf. section 29 Danish Marriage Act. In case of disagreement, any of the spouses can get a divorce after 6 months of legal separation, cf. section 30.⁷

Question 23:

If spouses apply together for a divorce they can obtain a divorce by consent through an administrative procedure at the Agency of Family Law, cf. section 42 Danish Marriage Act. The spouses no longer have to agree on:

- whether the wife maintains a right to a widow's pension (section 54 Danish Marriage Act has been repealed)
- whether, in case one of the spouses have separate property, he/she shall pay the other spouse an amount of money. This problem is now decided in connection with the division of the estate.

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⁶ Act no. 1702 of 27 December 2018, which entered into force on 1 April 2019.

⁷ Act no. 647 of 12 June 2013, which entered into force on 1 July 2013.

If it is only one of the spouses who applies for a divorce, he/she can obtain the divorce through an administrative procedure at the Agency of Family Law or – if the case is complicated – through a judicial process. A spouse may apply for divorce on the ground of separation provided the spouses have been separated for at least 6 months, cf. section 30 Danish Marriage Act.

Question 26:

Since 1 February 2017, the minimum age to enter into marriage is always 18 years. It is not possible to obtain dispensation.

Question 29:

If the parties do not agree to the negotiated conditions, they can obtain the divorce through an administrative procedure at the Agency of Family Law or – if the case is complicated – go to the Family Court.

Question 30: “otherwise they must go to Court” is changed to “otherwise they must go through an administrative procedure at the Agency of Family Law or – if the case is complicated – go to the Family Court.

Question 40:

If the spouses agree on divorce due to adultery, it is sufficient that they sign a form on the website of the Agency of Family Law and submit the form digitally. The third party has no longer to sign a form. If a spouse denies adultery, it is up to the other spouse to prove it.

B. New Developments in the field of Maintenance between former spouses (since September 2002)

There have not been any changes in the provisions concerning maintenance. Since 1 April 2018, the cases start in the Agency of Family Law, see above under A *Questions 3 and 8*.

Question 61:

The Danish Marriage Act section 56 regulated the possibility for a spouse to be awarded a compensation amount from his or her former spouse. This provision has been split in two sections of the new Act on the Spouses’ Financial Matters of 2018: section 41 on compensation for helping to preserve the other’s wealth, and section 42 on compensation to ensure that a spouse is not placed in an unreasonable position.

Question 98:

Since 2011, there are stricter requirements for maintenance to be reduced to zero, if the claimant has a partner with whom he or she does not live. A maintenance will only be reduced to zero if – in the very special cases – 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.⁸ It is part of the assessment whether there has been a complete or partial mixing of their financial interests.

C. New Developments in the field of Parental Responsibilities (since December 2004)

Questions 4 and 5:

In 2007, a new Act, the Parental Responsibility Act,⁹ replaced the previous Act on Parental Authority and Contact. Since then, several additions have been made.

On 1 April 2019, a new family law system was introduced (see above under A Questions 3, 8, 9 and 28). One main purpose was to ensure the child's best interests in matters of parental authority, the child's residence and contact. As part of the Agency of Family Law, a Children's Unit was set up for children affected by family law issues. In all cases, the child's right to well-being and protection should have first priority. In the Children's Unit, staff child experts will ensure that the child is involved early in a case, and a child expert will be appointed as a contact person for a child as the child's permanent supporter.

Question 9:

Article 5 of the Parental Responsibility Act states that in all matters concerning the child, the child's own views must be taken into account, adjusted according to age and maturity.

Questions 16, 18 and 29:

Joint parental authority continues even if parents are legally or factual separated or divorced or if their marriage has been annulled, cf. Article 8 Parental Responsibility Act.

If non-cohabiting parents have joint parental authority and disagree about parental authority, a decision is taken whether joint parental authority is to continue or whether one of the parents is to have sole custody, cf. Article 11 Parental Responsibility Act. Joint parental authority can only be terminated if there is a reason

⁸ Journal of Family Law and Succession Law 2011 at p. 115.

⁹ Act no. 499 of 6 June 2007, which entered into force on 1 October 2007. The new act was based on Commission Report No. 1475/2006, Barnets perspektiv (The perspective of the child).

to assume that the parents cannot cooperate. Thus, joint parental authority may be decided against the protest of one of the parents. A decision on joint parental authority presupposes that at least one of the parents wishes for the joint parental authority to be maintained. A decision is based on the child's best interests.

If the parents have joint parental authority and disagree about which parent the child should live with the Family Court decides on the matter, cf. Article 17(1) Parental Responsibility Act. The Court may also decide that the child can reside with a parent who resides, or wishes to reside, abroad, in Greenland or in the Faroe Islands. Further, if the parents have joint parental authority and a risk exists that one of them will take the child out of the country and thus pre-empt a decision about joint parental authority, the Minister of Social Affairs or a person authorized by the Minister can temporarily grant sole parental authority to the other parent, cf. Article 27 Parental Responsibility Act. This provision applies to escape situations and includes only parents with joint parental authority.

Question 17:

If non-cohabiting parents have joint parental authority, they can agree on attributing sole parental authority to one of the parties, cf. Article 10 Parental Responsibility Act. The parents have to notify their agreement to the Agency of Family Law or the Family Court provided a case is brought before the court. The agreement is not subject to scrutiny by the competent authority.

Question 23:

Upon the ending of the unmarried parents' relationship, the Family Court may decide whether joint parental authority is to continue or whether one of the parents is to have sole parental authority, cf. Article 11 Parental Responsibility Act. Joint parental authority may only be terminated if there is a reason to assume that the parents cannot cooperate.

Question 24:

The Family Court may attribute joint parental authority to the parents against the wish of one parent, but not against the wish of both parents.

In 2019, Article § 4 a of the Parental Responsibility Act was introduced. According to Article 4 there is a clear presumption that it is not in the best interests of a child if a parent who has been convicted of certain types of criminality of serious nature, e.g. severe violence, obtains joint or sole parental authority or has contact with the child.¹⁰

¹⁰ Act no. 202 of 5 March 2019, which entered into force 1 April 2019.

Question 27 (a) (b) and (c):

The married or unmarried partner of a parent or a partner in a registered partnership can obtain parental authority by agreement with the parent. The agreement must be approved by the Agency of Family Law or by the Family Court, cf. Article 13(2) Parental Responsibility Act.

Question 28:

No, marriage for same-sex couples was introduced in Denmark in 2012.¹¹

Question 30:

Non-cohabiting spouses or former cohabitants with joint parental authority are free to continue this arrangement. They can also agree on attributing sole parental authority to one of the parties, cf. Article 10 Parental Responsibility Act (used analogously). The parents have to notify their agreement to the Agency of Family Law or the Family Court provided a case is brought before the court.

Question 31:

Transfer of parental authority to others than a parent may happen to foster parents or relatives, including grandparents, uncles and aunts, or to close friends, cf. Article 13(2) Parental Responsibility Act. The Agency of Family Law has to approve the transfer. For example, this may be a solution if the parents are not able to have the child living with them, but they do not want the child to be adopted. The parents may feel that a transfer of parental authority is less far-reaching than adoption and they hope to continue to see the child.

Question 33:

If the deceased parent had sole parental authority, the surviving parent is no longer given priority. The placement of parental authority is solely decided on what is best for the child, cf. Article 15(3) Parental Responsibility Act.

Question 37:

If parents have joint parental authority, in the event of a disagreement about the child's residence, a decision is taken in this regard instead of a decision on termination of joint parental authority, cf. Article 17 Parental Responsibility Act. The decision is made by the Family Court. However, the case starts in the Agency of Family Law.¹²

Question 40:

¹¹ Act no. 532 of 12 June 2012, which entered into force on 15 June 2012.

¹² See Stine Krone Christensen, *Forældresvarsloven med kommentarer*, Copenhagen, Karnov Group, 2020 p. 326.

If the parents have joint parental authority and disagree about the child's residence, a decision on residence can be made instead of a decision on termination of joint parental authority, cf. Article 17 Parental Responsibility Act. It can be decided that the child will reside with a parent who wishes to live abroad, in Greenland or in the Faroe Islands. The decision is made by the Family Court. However, the case starts in the Agency of Family Law.

Question 41:

Parents can make an agreement about shared residence, cf. Article 18 a. Parental Responsibility Act, but the competent authority cannot make such a decision.

Question 42:

A parent who wishes to change his or her child's residence to another place in Denmark or abroad must inform the other parent within 6 weeks before moving, cf. Article 18 Parental Responsibility Act.

Question 43(c):

Article 20(1)) of the Parental Responsibility Act allows the child to have contact with persons other than parents. If one or both parents are dead, contact rights may be granted to the nearest relatives to whom the child is closely related. If the child does not have contact with the non-resident parent or has only extremely limited contact with this parent, contact rights may be granted to the child's nearest relatives, cf. Article 20(2)) Parental Responsibility Act.

Question 46:

Parents can make an agreement about shared residence, cf. Article 18 a. Parental Responsibility Act, e.g. the child lives with each of the parents half of the time, 7 out of 14 days or 14 days out of 28 days. It could for example be relevant if the child for a number of years had lived with both parents, who now live close to each other and have a good relation. Shared residence means that there is not a division into a resident parent and a parent with contact, and that both parents must agree on both significant matters and on overriding matters concerning the child's daily life.

Question 48 (a):

The Family Court makes decisions about enforcement measures. If non-cohabiting parents with joint parental authority disagree about parental authority, the Family Court may decide whether joint parental authority is to continue or whether one of the parents is to have sole custody, cf. Article 11 Parental Responsibility Act. Joint parental authority can only be terminated if there is a reason to assume that the parents cannot cooperate. In an important judgment from September 2020, the

Supreme Court ruled that joint parental authority should cease and parental authority should be transferred to the father because of the mother's severe obstruction of contact.¹³

Question 48 (b):

Article 20 of the Parental Responsibility Act allows the child to have contact with persons other than parents. The Family Court makes decisions about enforcement measures.

Question 55:

On 1 April 2019, a new family law system was introduced (see above under A Questions 3, 8, 9 and 28). An important purpose thereof was to ensure the child's best interests in matters of parental authority, the child's residence and contact. Non-conflict cases (simple cases) and less simple cases are to be dealt with by the Agency of Family Law and its decisions can be appealed to the Family Court. Decisions in conflict cases are to be taken by the Family Court, which also decides whether measures to enforce contact should be used.

Question 56:

If non-cohabiting parents with joint parental authority disagree about parental authority, the Family Court decides whether joint parental authority is to continue or whether one of the parents is to have sole custody, cf. Article 11 Parental Responsibility Act. Joint parental authority can only terminate if the parents cannot cooperate. The Family Court has the power to make decisions on residence and to review agreements on residence.

Question 57:

The new administrative body, the Agency of Family Law, has put further focus on counselling and mediation. The Agency of Family Law may offer child expert advice to the parents and to the child when the Family Court has postponed the enforcement of parental authority, the child's residence and contact, cf. Article 32 a Parental Responsibility Act.

Question 58:

The Family Court decides which measures to enforce parental authority, the child's residence and contact should be taken. Enforcement takes place either by issuing fines or by immediate force.

Question 59:

¹³ Ugeskrift for Retsvæsen (Weekly Law Journal, Denmark) 2020.3854.

Article 5 of the Parental Responsibility Act states that in all matters concerning the child, the child's own views must be taken into account, adjusted according to age and maturity. Furthermore, it is determined in Article 35 of the Parental Responsibility Act that a child who has reached the age of 10 may request the Agency of Family Law to convene the parents for a meeting on parental authority, the child's residence or contact.

Question 60:

The child's perspective can be illuminated by conversations with the child and by using child expert studies initiated by the Children's Unit at the Agency of Family Law, cf. Article 34 Parental Responsibility Act.

Question 61 (a) (b) (c):

The Children's Unit at the Agency of Family Law appoints a child expert employee as the contact person for the child in order to support and advise the child during a case in the Agency of Family Law and during a possible processing of the case in the Family Court.

D. New Developments in the field of Property relations between spouses (since August 2008)

The matrimonial property rules have in many ways been changed by the introduction of the Act on the Spouses' Financial Matters (*Lov om ægtefællers økonomiske forhold*) in May 2017.¹⁴ This Act repeals the Act on the Legal Effects of Marriage (*Lov om ægteskabets retsvirkninger*) of 1925.

The new act maintains the main elements of the former act, including as the default statutory regime: the deferred community of property. It is up to the spouses to enter into agreements that deviate from equal sharing. The act describes several new forms of separate property.

Some provisions have *not* been included in the new act:

Questions 9, 103 and 111:

§ 11 of the Act on the Legal Effects of Marriage: According to § 11 either spouse shall be entitled to enter into such contracts with a third party, with liability for both

¹⁴ Act No. 548 of 30 May 2017, which entered into force 1 January 2018. The new act was based on Commission Report No. 1552/2015, *Ægtefællers økonomiske forhold*, (Financial relations between spouses).

spouses, as are usually made for the purpose of meeting day-to-day household needs or the children's needs. For many years § 11 had hardly been invoked.

Question 14:

§ 30 of the Act on the Legal Effects of Marriage: According to § 30 gifts 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. The reason for abolishing § 30 was that it was considered to be inappropriate that a spouse could claim back a gift which had been given many years ago without meeting the requirement of a marriage settlement. § 31 and § 33 of the Act on the Legal Effects of Marriage contain exceptions to § 30's requirement of a marriage settlement. Consequently, these provisions have been abolished.

Questions 100 and 101:

§ 22 of the Act on the Legal Effects of Marriage states that if the spouses have made a list showing which assets in the community property the individual spouse can dispose of, the list may be taken into consideration in court, based on all circumstances of the case. The provision has been abolished as these lists were very seldomly made.

Questions 112 and 115:

According to § 38 of the Act on the Legal Effects of Marriage a division of the community property may be made during the marriage, particularly as a result of the other spouse's mismanagement of the part of the community property which is at his or her disposal. The provision has been abolished as it was used only in very few cases.

The most important changes are:

According to § 2(2) of the Act on the Spouses' Financial Matters spouses cannot by agreement deviate from the rules of the act, unless it directly follows from the provisions of the act.

Question 14:

Regarding gifts or agreement in relation to third persons, the Act on the Spouses' Financial Matters establishes certain limits. If a spouse gives a gift to a third person and there is an obvious risk that the other spouse will see his/her share of the property division (upon death of either spouse or separation/divorce/annulment) reduced, the later spouse can claim that the third person returns the gift, provided the third person knew or should have known about this, cf. § 10 Act on the Spouses' Financial Matters. Furthermore, if one spouse has entrusted the use of movable goods to the other spouse's company, the spouse who owns the goods is bound by any agreements the other spouse has concluded with a third person concerning those goods, unless the

third person knew or should have known that the spouse with whom he/she entered into an agreement with was not entitled to enter into such an agreement, cf. § 11 Act on the Spouses' Financial Matters. From 1 January 2018, the Bankruptcy Act has been amended with subsection 64(4). Under this subsection gifts to the debtor's close relatives, which were manifestly disproportionate to the debtor's financial circumstances, may be demanded to be reversed. However, this does not apply if it is proven that the debtor was not insolvent or became insolvent when the gift was fulfilled and undoubtedly had sufficient funds to fulfill his or her obligations. There is no time limit.

Questions 18 a, 108, 111 and 112:

According to the new act the other spouse's consent to a transaction is only required as regards the family's year-round dwelling, cf. § 6 Act on the Spouses' Financial Matters. The household effects and trade tools are no longer included (see previous Act § 18 and § 19).

Question 18 b:

Previously, it has been discussed whether the separate property form '*anpartssæreje*' is valid. With the new act and the preparatory work for it, it has been clear that '*anpartssæreje*' is not valid. Besides separate property on divorce (*skilsmisssæreje*) and full or absolute separate property (*fuldstændigt særeje*), the spouses have pursuant to § 12(1) of the Act on the Spouses' Financial Matters (see previous Act § 28) the freedom to agree on combined separate property (*kombinationssæreje*):

- Absolute separate property only applies if one specific spouse dies first or only applies on divorce of the deceased spouse or the surviving spouse. Absolute separate property of the longer surviving spouse favours the longer surviving spouse in comparison to the children of the first deceased spouse. Absolute separate property of a specifically designated spouse favours that spouse and his/her heirs.

Pursuant § 12(2), agreements on separate property can be limited in the following ways:

- To one or various assets (separate property only in relation to certain assets, *genstandssæreje*);
- To part of the property of one spouse, depending on how and when he/she has acquired those assets (acquisition-dependent separate property, *erhvervssæreje*);
- To a percentage of the property of one of the spouses or of one or various assets (fractioned separate property, *brøkdelsæreje*);

- To a certain amount or a certain amount of the value of one or more assets (separate property only regarding certain amount, *sumsæreje*).
- To the whole property of one of the spouses with the exception of certain amount or certain amount of the value of one or various assets (the amount excluded from the separate property is named as shared amount, *sumdeling*).

Question 91, 122, 123 and 124:

§ 70 a of the Division of Family Assets Act (*Fællesboskifteloven*), which governs the right of spouses to select certain assets for personal use prior to the division of community property, has been moved to § 48 of the Act on the Spouses' Financial Matters. § 48 also includes means of transport.

Question 115:

If the Agency of Family Law grants a divorce or a legal separation, the decisive date is the end of the day on which the Agency received the request for legal separation or divorce, cf. § 27 (1) Act on the Spouses' Financial Matters.

Question 119:

§ 23 para. 2 and 3 of the Legal Effects of Marriage have been transferred to two separate provisions of the Act on the Spouses' Financial Matters: § 38 and § 39.

§ 38 contains a rule governing claims for compensation from the other spouse. Compensations may be claimed where the other spouse has used funds from the property he/she has contributed to the marriage to acquire property to be held separately or to improve such property (e.g. to pay his or her own debt). The provision makes it possible to adjust the property contributed to the marriage (and subsequently held) by a spouse when funds from the community property have been used to acquire or improve property rights that may be wholly or partially excluded from the division.

In the opposite situation, if a spouse has used funds from his or her separate property to improve (e.g. to pay his or her own debt) or conserve the property he or she has contributed to the marriage, he or she may select compensation from that property; if the property he or she has contributed to the marriage does not hold sufficient funds, the claim for compensation is lost, cf. § 39.

Question 120 and 121:

§ 66 of the Division of Family Assets Act (*Fællesboskifteloven*) has been moved to § 54(2) of the Act on the Division of Matrimonial Property (*Ægtefælleskifteloven*).¹⁵

¹⁵ Act No 594 of 14 June 2011.

Question 122:

§ 70 b of the Division of Family Assets Act has been moved to § 49 of the Act on the Spouses' Financial Matters.

Question 126:

§ 16 e para. 2 and § 16 d of the Act on the Legal Effects of Marriage has been moved to § 45 and § 44 of the Act on the Spouses' Financial Matters.

Question 127:

§ 69 (a) of the Division of Family Assets Act has been moved to § 33 of the Act on the Spouses' Financial Matters.

Question 128:

1 para. § 11 para. 2 Danish Inheritance Act: In 2021, the amount is DKK 810,000 (approximately € 108,000).

E. New Developments in the field of De Facto Partnerships (since February 2015)

Question 25:

Legal Effect of the Danish Marriage Act S. 11(1) has been abolished.

Question 72:

As for disputes concerning parental authority, contact and residence rights, administrative decisions are made by the Agency of Family Law. From 1 April 2019, the Agency of Family Law has replaced the State Administration. High conflict disputes are referred to the Family Court (see above under *A questions 3, 8, 9 and 28*).