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No. 7 AMERICAN-DANISH PRIVATE INTERNATIONAL LAW

by

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- Borum, O. A. *Lovkonflikter* (3d ed., 1948), abbr.: Borum.
- *Personalstatutet efter dansk og fremmed ret* (1927).
- , with Meyer, K. "Droit international privé du Danemark," 6 RÉPERTOIRE DE DROIT INTERNATIONAL, 212-227 (1930).
- Federspiel, H. *Den internationale privatret i Danmark. Almindelig del* (1909), abbr.: Federspiel.
- Hansen, V., with Hurwitz S., and Munch-Petersen, E. *Retsplejeloven* (1939).
- Hjejle, B. *Frivillig Voldgift* (1937), abbr.: Hjejle.
- Hurwitz, S. *Tvistemål* (1941), abbr.: Hurwitz.
- Lando, O. "Om anvendelse af fremmed ret i internationale kontraktforhold," 16 HANDELSVIDENSKABELIGT TIDSSKRIFT 180 (1952).
- Madsen-Mygdal, N. P. *Ordre Public og Territorialitet* (1946), abbr.: Madsen-Mygdal.
- Marcus, F. "Die Dänischer Rechtsprechung auf dem Gebiete des internationalen Privatrechts 1945-1954," 20 ZEITSCHRIFT FÜR AUSLÄNDISCHES UND INTERNATIONALES PRIVATRECHT 507 (1955).
- Munch-Petersen, E. *Tvangsfuldbyrdelse og foreløbige retsmidler* (1948), abbr.: E. Munch-Petersen.
- Munch-Petersen, H. *Skifteretten* (3d ed. by E. Munch-Petersen, 1949), abbr.: H. Munch-Petersen.
- Møller, A. *Erstatningsansvaret ved skibssammenstød* (vol. II, 1915).
- Philip, A. "Notes on Danish Judicial Decisions (1939-1952)," 81 JOURNAL DU DROIT INTERNATIONAL [Clunet] 480-505 (1954).
- Svenné Schmidt, T. *Kvalifikationsproblemet i den internationale privatret* (1954), abbr.: Svenné Schmidt.
- UGESKRIFT FOR RETSVAESEN [Weekly Law Review], abbr.: U.f.R.

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FOREWORD

This study of American-Danish private international law follows the same pattern as the earlier studies in this series.¹ As the American law has already been discussed in the preceding studies, only brief references to it are made here. In each chapter, however, the reader is referred to the relevant chapter of Judge Herbert F. Goodrich's *Handbook of the Conflict of Laws*.² The description of Danish law is based mainly on O. A. Borum's *Lovkonflikter*.³ I thank Professor Arthur Nussbaum for his untiring interest in my work. I am greatly indebted to Mrs. Nina Moore Galston for having revised the manuscript linguistically and for having supplemented the references with a great number not available in Denmark.

Where Danish cases are cited, the reader may ascertain the court rendering the judgment by reference to the following symbols:

H = Højesteret [Supreme Court]
 Ø = Østre Landsret [Eastern Court]
 V = Vestre Landsret [Western Court]
 SH = Søg og Handelsretten [Maritime and Commercial Court
 of Copenhagen].

1. See *infra* p. 80.
2. 3d ed., 1949, abbr.: Goodrich.
3. 3d ed., 1948, abbr.: Borum.

Chapter I

INTRODUCTION

The Danish realm is composed of Denmark proper, the Faroe Islands and Greenland. Under Act No. 137 of March 23, 1948, the *lagting* of the Faroe Islands is permitted to legislate on certain public law subjects, but in all other matters the Danish parliament makes laws for all three parts of the realm. The private law of Greenland differs to some extent from that of the rest of the country, but so far this has given rise to few problems of private interregional law.⁴ Some problems of this nature arose after the annexation of Northern Schleswig following World War I, but these are of no importance today. In other respects, private international law is the same throughout the realm.

It is important to note that the ordinary rules of private international law are, among Scandinavian countries *inter se*, replaced by conventions on a number of different subjects.⁵ These special rules of private international law take into account the close relationship between the substantive laws of these countries and, therefore, no inference can be drawn from them as to the content of the rules affecting other countries.

Danish private international law is primarily to be found in treaties. Few legislative provisions have been enacted on the subject, and the body of case law is small and has played a minor role in this field.

Treaties

American-Danish private international law relations are largely governed by municipal law. Though a number of bilateral and multilateral agreements have been entered into by both countries, their provisions are mainly those of public law. Thus, the Convention of Friendship, Commerce and Navigation of April 26, 1826⁶ contains almost no provisions applicable in the private law sphere. Its most-favored-nation clause (Art. I) is restricted to matters of commerce and navigation,⁷ and the same restriction presumably applies to the national treatment

4. Borum, 23.

5. See Munch-Petersen, H.: "Main Features of Scandinavian Law", 43 L. Q. REV. 366 (1927); Orfield, L. B.: *The Growth of Scandinavian Law* (1953).

6. T. S. 65, 8 Stat. 340, 18 Stat., pt. 2, 167; renewed April 18, 1857, T. S. 67, 11 Stat. 719, 18 Stat., pt. 2, 173; revised July 11, 1861, T. S. 68, 13 Stat. 605, 18 Stat., pt. 2, 175; revised June 2, 1916 pursuant to act of Congress approved March 4, 1915 (38 Stat. 1164, 1184), 1915 *For. Rel.* 6; 1916 *ibid.* 38; modified May 4 and September 10, 1946, T. I. A. S. 1572, 61 Stat., pt. 3, 2439.

clause contained in Article II.⁸ Article VII, however, which extends national treatment to taxation of personal property, has been enforced.⁹

Of the other treaties between the two countries, only a few have importance for private international law purposes. The Naturalization Convention of July 20, 1872¹⁰ contains certain provisions as to citizens of one of the contracting parties who, after having been naturalized by the other party, return to their country of origin. A Treaty on Extradition of fugitives from justice, excepting citizens of the receiving State (Art. V), was concluded on January 6, 1902.¹¹ And a Convention for the Avoidance of Double Taxation with respect to Income, signed on May 6, 1948,¹² is treated below.¹³

On October 1, 1951, a Treaty of Friendship, Commerce and Navigation (with protocol and minutes of interpretation) was signed in Copenhagen.¹⁴ This treaty was ratified by the United States Senate on July 21, 1953,¹⁵ but with a reservation as to Article VII,¹⁶ and it has not yet been ratified by Denmark. If it does go into effect, it will replace the greater part of the Convention of 1826, excepting only the provisions relating to consuls (Art. XXV). It contains a number of provisions pertaining to private law, those of particular importance being mentioned below under the appropriate topics.¹⁷ Here, the contents of the treaty will merely be summarized:

The first three articles are general in nature. Article I secures

7. *Petersen v. Iowa*, 245 U. S. 170 (1917). See, also, *In re Clausen's Estate*, 202 Cal. 267, 269, 259 P. 1094 (1927); in this case, the court held that the most-favored-nation clause appearing in Art. VIII, applicable to the rights and privileges of consuls, covered only those germane to commerce and navigation, and denied the right of a Danish consul to receive and receipt for the shares of Danish heirs in a decedent's estate as permitted to German consuls by a treaty with Germany. *Accord*: *Petersen v. Lyders*, 139 Cal. App. 303, 33 P. 2d 1030 (1934), *cert. denied*, 294 U. S. 716 (1935); *Lyders v. Petersen*, 88 F. 2d 9 (9th Cir. 1937).

8. *Thingvalla Line v. United States*, 24 Ct. Cl. 255 (1889), merely held that Arts. II and VIII were superseded by a later Congressional enactment (Immigration Act of 1882, 22 Stat. 214), on the authority of the *Head Money Cases*, 112 U. S. 580 (1884).

9. *Nielsen v. Johnson*, 279 U. S. 47 (1929). *Cf.* *Petersen v. Iowa*, *supra* note 7. Art. VII is quoted *infra* note 61.

10. T. S. 69, 17 Stat. 941, 18 Stat. pt. 2, 175.

11. T. S. 405, 32 Stat. 1906; revised Nov. 6, 1905, T. S. 449, 34 Stat. 2887; revised May 6, 1936, T. S. 911, 50 Stat. 1308.

12. T. I. A. S. 1854, 62 Stat., pt. 2, 1730.

13. P. 21.

14. 82nd Cong., 2d Sess., Senate Ex. I.

15. 99 CONG. REC., pt. 7, 9329 (83d Cong., 1st Sess.).

16. *Infra* p. 13.

17. Pp. 16-17 (security for costs), 19-20 (corporations), 21-22 (taxation), 31-32 (arbitration), 50 (exchange restrictions).

"equitable treatment" in each country to the nationals and companies of the other. Article II deals with the right of entry and sojourn, which are granted "subject to the laws relating to the entry and sojourn of aliens";¹⁸ it contains also what, following Professor Nussbaum,¹⁹ may be termed an "international bill of rights," granting to nationals of the two parties a right to travel, to enjoy liberty of conscience, to hold religious services, to gather and to transmit material for dissemination abroad and to communicate with other persons inside and outside the country, all this subject to the requirements of public order and safety. Article III grants to nationals of the two parties treatment in accordance with the requirements of international law, and protection, including the services of counsel, in criminal proceedings.

The remaining provisions of the treaty are more specific:

Article IV accords national treatment to nationals of the other party with regard to social security laws. Article V gives both national and most-favored-nation treatment to nationals and companies with respect to access to courts and administrative tribunals, and also deals with agreements to arbitrate controversies and enforcement of awards; its provisions will be discussed later.²⁰ Article VI guarantees national and most-favored-nation treatment with respect to property situated in one country and belonging to nationals and companies of the other, including the taking of such property for public purposes.

Article VII is of particular interest, since it is paragraph 3 of this article as to which the United States Senate has made a reservation. In general, Article VII regulates the right of nationals of either party to engage in various kinds of activities in the other country. Section 3 states:

"With respect to professional activities, nationals of either Party shall be accorded national treatment within the territories of the other Party, except as to professions which, because they involve the performance of functions in a public capacity or in the interest of public health and safety, are state-licensed and reserved by statute exclusively to citizens of the country."

18. For Denmark, Act No. 224 of June 7, 1952, and Order No. 237 of June 25, 1954, according to which Americans may enter Denmark without a visa and remain there for three months. They must obtain special permission in order to remain longer. The permission to stay or to reside in Denmark does not include the right to work; an American who wants to work in Denmark will have to obtain special permission whether he is paid for his work or not.

19. Nussbaum, 10.

20. Pp. 31-32.

21. "Art. VII, par. 3, shall not extend to professions which, because they involve the performance of functions in a public capacity or in the interest of public health and safety, are state-licensed and reserved by statute or constitution exclusively to citizens of the country, and no most-favored-nation clause in

The reservation made by the Senate denies to the professions excepted most-favored-nation treatment in addition to national treatment.²¹

Article VIII, dealing with companies, is treated below in the chapter on corporations.²² Article IX regulates the right to acquire, own and dispose of property; it provides for national treatment as to movables and as to immovables acquired by succession;²³ acquisition of immovable property by other means is granted "the treatment generally accorded to foreigners under the laws of the place where the property is situated." Article X accords both national and most-favored-nation treatment with respect to industrial property.²⁴ Article XI limits discriminatory taxation,²⁵ and Article XII deals with exchange restrictions, but only as a supplement to the International Monetary Fund Agreement, to which both the United States and Denmark are parties.²⁶

The rights of commercial travelers are covered by Article XIII, and import and export restrictions by Articles XIV²⁷ through XVI. Articles XVII and XVIII deal with public enterprises, paragraph 3 of the latter specifically denying to public corporations and agencies acting *jure gestionis* the right to claim immunity. Articles XIX and XX are concerned with freedom of navigation and transit. Finally, Articles XXI through XXVI and the protocol and minutes of interpretation contain provisions of a more formal character and rules of construction.

the said treaty shall apply to such professions." (99 CONG. REC., pt. 7, 9329.) It may be wondered why the Senate adopted a reservation which differs so little from the original provision; the explanation would appear to be that it was designed to overcome the much broader wording contained in Art. VII of the Treaty with Israel, which was being considered at the same time, as were the treaties with Germany, Greece and Japan; the fear was expressed that the provision contained in the Treaty with Israel might "have the effect of abrogating State laws or provisions of State constitutions which might make citizenship a prerequisite to the practice of certain professions." (*Ibid.*, 9313).

22. Pp. 19-20.

23. *Infra* p. 44.

24. *Infra* p. 47.

25. *Infra* p. 21.

26. Dec. 27, 1945, T. I. A. S. 1501, 60 Stat., pt. 2, 1401; *infra* p. 50.

27. Art. XIV accords most-favored-nation treatment with respect to customs duties. This, presumably, would not prevent conditional concessions by either party to another country, under the doctrine of *Bartram v. Robertson*, 122 U. S. 116 (1887), where it was held that Arts. I and IV of the Treaty of 1826 did not, by their own operation, authorize importation free of duty from the Danish dominions of articles made duty-free by the convention with the King of the Hawaiian Islands, the King of Denmark not having allowed the United States the compensation for the concession allowed by the King of the Hawaiian Islands. And see, also, the exchange of notes of May 6 and Sept. 10, 1946, T. I. A. S. 1572, 61 Stat., pt. 3, 2439; Art. I of the General Agreement on Tariffs and Trade of Oct. 30, 1947, T. I. A. S. 1700, 61 Stat., pts. 5 and 6; and Art. XXI, par. 3 of the Treaty of 1951.

Chapter II

NATIONALITY

The Danish nationality law is contained in Act No. 252 of May 27, 1950, the contents of which is common to the Scandinavian countries. The earlier acts, beginning with the Royal Ordinance of January 15, 1776 are, however, still important in determining nationality.²⁸

Danish law, unlike American law, is based primarily on the *jus sanguinis*. A legitimate child whose father is Danish acquires Danish nationality by birth wherever born. The same is true of the legitimate child of a stateless father and a Danish mother and for the illegitimate child of a Danish mother.²⁹ Conversely, no child born in Denmark of foreign parents acquires Danish nationality by birth. This fundamental difference between Danish and American law may give rise to cases of dual nationality (when a child of Danish parents is born in the United States)³⁰ and of statelessness (when a child of American parents, neither of whom has resided in the United States, is born in Denmark).³¹

Danish law knows a single limited example of application of the *jus soli*: an alien who is born in Denmark and who has resided there ever since may acquire Danish nationality if he so desires by signing a declaration after his twenty-first—but before his twenty-third—year. Similarly, there is an exception to the operation of the *jus sanguinis*: a person who was born outside Denmark and has never lived there as a general rule loses his Danish nationality upon becoming twenty-two years old.

With respect to the nationality of married women, Danish law resembles American law. A foreign woman who marries a Dane does not thereby acquire Danish nationality, nor does a Danish woman who marries an alien lose her Danish nationality. Moreover, where the husband is naturalized, the unmarried children under eighteen years of age acquire Danish nationality, but not the wife; she must be naturalized independently.

28. Cf. Anderson, P.: *Erhvervelse og Fortabelse af dansk indfødsret* (1952); Larsen, K.: *Indfødsretslovene* (1948); Marcus, F.: *Das Staatsangehörigkeitsrecht der Nordischen Staaten* (1952).

29. Illegitimate children of a Danish father and a foreign mother who are legitimated by the marriage of their parents acquire Danish nationality if under eighteen years of age and unmarried.

30. 8 U. S. C. §1401(a)(1) (1952).

31. 8 U. S. C. §1401(a)(3) (1952). Cf. *ibid.*, §1433.

According to Article 44 of the Danish Constitution of 1953, as under the prior Constitutions, naturalization may be effected solely by statute; generally, residence for ten years and certain proofs of assimilation are required.³² The Naturalization Convention of July 20, 1872 (known as the Bancroft Treaty)³³ provides for recognition of the naturalization of American citizens in Denmark and Danes in the United States, and also for renunciation of naturalization and re-acquisition of the former nationality, both voluntary and tacit.

To sum up, therefore, a person loses his Danish nationality only by voluntarily acquiring a foreign nationality—with the exception of unmarried children under eighteen years, and those who, under the Bancroft Treaty, are deemed tacitly to have renounced naturalization.

Military Service

According to Act No. 210 of June 11, 1954, only Danish nationals are subject to military service in Denmark. Since there is no treaty between the two countries regarding military service,³⁴ Danish nationals who reside in the United States are subject to service there.³⁵ Under Danish law, a Danish national who has served in the United States Army may be exempted wholly or in part from military service in Denmark.

Security for Costs

Everyone, regardless of nationality, has access to Danish courts.³⁶ Foreigners may, however, be required to provide security for costs as a condition of suit in Danish courts provided Danish nationals are not exempted from giving such security in the foreign plaintiff's home country.³⁷ Since, under American law, nonresidents, though having free access to courts, may be required to give security for costs,³⁸ American citizens may be required to give security if they wish to sue in Denmark. Under Danish law this security includes the costs of the adverse party's attorney.

The Treaty of 1951 will change this situation when it comes into

32. These rules do not apply to Scandinavians.

33. *Supra* note 10.

34. Both countries were signatories of The Hague Protocol Relating to Military Obligations in Certain Cases of Double Nationality of April 11, 1930 (T. S. 913, 50 Stat., pt. 2, 1317), which was ratified by the United States on April 26, 1937, but has not been ratified by Denmark.

35. See Nussbaum, 15-16; Delaume, 17.

36. Borum, 98.

37. Code of Procedure [Civil and Criminal] (*Retsplejeloven*), §323.

38. See Delaume, 30.

force. Under Article V, paragraph 1, nationals of one party shall be accorded national and most-favored-nation treatment with respect to access to the courts of justice and to administrative tribunals and agencies of the other. Article 1 of the protocol defines "access" as comprehending the "right to exemption from providing security for costs and judgment." This means that American citizens will no longer be required to provide security for costs when suing in Denmark. The position of Danes suing in the United States, however, is less clear. Article XXII, paragraph 1 of the Treaty defines national treatment as "treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals * * * of such Party." This may mean that a Danish citizen who sues in the State court—as opposed to federal courts³⁹—of a State of which he is not a resident may be required to give security for costs if nonresident American citizens are required to do so.⁴⁰ This result was probably not intended when the Treaty was concluded.

39. See Wilson, R. R.: "Access-to-Courts Provisions in United States Commercial Treaties", 47 AM. J. INT'L L. 20, 24-29 (1953).

40. Cf. Art. XXII, par. 4 as to the definition of national treatment in the United States of Danish companies. However, under Art. V, par. 1, there can be no requirement of registration or domestication to insure such access where the company is not engaged in business there.

Chapter III

DOMICILE

Persons⁴¹

Both Denmark and Norway, as opposed to other Continental countries, adhere as a general rule to the principle of domicile in determining the personal law of a person. On the whole, great similarity exists between the American and the Danish concepts of domicile, although Danish courts are, perhaps, more prone than American courts to find the existence of an intent to change domicile. Two differences should be noted:

(1) Under American law, no one may have more than one domicile.⁴² In Danish theory, it is generally accepted that a person may have more than one domicile where he has a residence in more than one place and has the intention of residing in both these places in the future.⁴³ It is obvious that this situation may create hardships—*e. g.*, if a person is of age under the law of one domicile but not of another. Various tests for deciding which domicile is the principal one have been suggested.⁴⁴ From a theoretical standpoint, this position may be criticized as conceptual jurisprudence. The concept of “domicile” has meaning only when used for some specific purpose, and if its use for that purpose necessitates the fulfillment of certain further conditions, then these conditions must be present before we have found the domicile of a person. In practice, therefore, the problem of ascertaining which domiciliary law should be applied to a person is similar to the problem faced by an American court in ascertaining which of several residences is the domicile. Under both systems, the *lex fori* is controlling.⁴⁵

(2) Under Danish law, in contrast to American law, no person has a domicile by operation of law.⁴⁶ The determination of the domicile of a married woman may be influenced by that of the husband, be-

41. Goodrich, 46; Delaume, 18; Borum, 90.

42. RESTATEMENT, CONFLICT OF LAWS §11 (1934).

43. Borum, 95. The Naturalization Convention of 1872 (*supra* pp. 12 and 16) contains a special provision of limited application with regard to the concept of domicile; according to Art. III, par. 3, an “intent not to return” to the country of naturalization “may be held to exist” after two years’ residence in the country of origin.

44. Federspiel, 352.

45. Goodrich, 52; Svénné Schmidt, 179 and U. f. R. 1935, 1143 (Ø).

46. Borum, 93.

cause normally man and wife live together, but no presumption of a common domicile exists. Similarly, a child usually lives with its parents and, consequently, has the same domicile that they have; but, if the child lives permanently in a different place from its parents, then the child may have a different domicile. However, domicile of the married woman by operation of law is of limited application today in American law,⁴⁷ and several exceptions also exist there to the rule of domicile by operation of law for minors;⁴⁸ thus here again, as with regard to the question of several domiciles, it may be asserted that the differences between American and Danish law, although existing in theory, are slight in practice.

Corporations⁴⁹

The Treaty of 1826 makes no mention of companies, and presumably they are not covered by its provisions.⁵⁰

Article VIII of the Treaty of 1951 grants to companies⁵¹ of the two contracting parties all the same rights and privileges which are accorded to their nationals. To the extent that the Treaty provides for national treatment, it is qualified by the provision that Danish companies shall in each of the American states or territories be treated in the same way as companies of the other American states or territories.⁵² Article XXII, paragraph 3 defines a company of either party as a company constituted under the laws of that party within its territory; this means that the nationality of a corporation is determined by the place of incorporation. The article also provides for recognition of the juridical status of companies of the other country. These provisions of the treaty are consistent with American law.⁵³

Under Danish law, the personal law of a company is supposed to be the law of the place of the central management. For limited companies, this law ordinarily coincides with the law of the place of incorporation. If, however, a company is registered in one country, but has its central management in a third country which seeks to im-

47. Delaume, 21.

48. Goodrich, 85.

49. Goodrich, 95; Nussbaum, 14; Delaume, 35; Kollewijn, 16; Borum, 108; Krenchel, H. B.: *Haandbog i dansk aktieret*, 13, 328 (2d ed., 1954); Lando, O.: "Om anvendelse af fremmed selskabsret", 18 *HANDELSVIDENSKABELIGT TIDSSKRIFT* 35 (1954).

50. See Walker, H., Jr.: "Provisions on Companies in United States Commercial Treaties", 50 *AM. J. INT'L L.* 373, 377-378 (1956).

51. Defined as "corporations, partnerships, companies and other associations". Art. XXII(3).

52. Art. XXII(4).

53. Delaume, 36.

pose its law upon the company, then Danish law will probably consider the law of the third country as the personal law of the company. Under the Treaty, on the other hand, if a company constituted under American law has its central management in a third country, Denmark is required to recognize the existence of the company and to accord it all the rights granted by the treaty to American companies.

For jurisdictional purposes, the domicile of a corporation will, as a general rule, be the country of incorporation.⁵⁴

American companies which desire to trade regularly in Denmark must register a branch office there in accordance with Danish law.⁵⁵ For this purpose, the company must declare itself subject to Danish law and jurisdiction⁵⁶ in all legal matters arising out of its activities in Denmark.⁵⁷ This provision will probably be construed to mean that the company is subject to Danish private international law as well as to Danish substantive law.⁵⁸

Article VIII, paragraph 1 of the Treaty provides that nationals and companies of either party shall have the right to constitute companies in the territories of the other party, but this must be done in accordance with the laws of the latter country.⁵⁹ Companies so constituted are to be accorded national treatment.⁶⁰

54. Limited Companies Act (*Aktieselskabsloven*), §84; Goodrich, 208. As to the residence of corporations for income tax purposes, see *infra*, chap. IV.

55. Cf. *infra*, chap. IV on Art. III of the double taxation convention. And see protocol, pars. 4 and 6, of the Treaty of 1951 as to retail trade and banking branches, respectively.

56. Goodrich, 209.

57. Limited Companies Act, §77.

58. Cf. 2 Rabel, E.: *The Conflict of Laws: A Comparative Study*, 197 (1947).

59. The minutes of interpretation state that "either Party may * * * maintain special requirements with respect to the residence or nationality of the founders, members of the boards of directors, and managing directors of companies constituted under its laws."

60. Par. 2.

Chapter IV

TAXATION

The Treaty of 1826 contains only a single provision prohibiting discriminatory taxes.⁶¹ On May 6, 1948, a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income was concluded between the United States and Denmark;⁶² it follows the general pattern of the conventions on this subject concluded since World War II by the United States with a number of countries.⁶³ An exchange of notes in 1922 providing for relief from double taxation on shipping⁶⁴ is unaffected by the 1948 Treaty;⁶⁵ this means that, even if the latter treaty should be abrogated, this exchange of notes, which accepts the same principles with regard to double taxation of shipping profits as the 1948 Treaty, will remain in force. Finally, the Treaty of 1951 contains, in Article XI, a number of provisions prohibiting or aimed at prohibiting discriminatory taxation; it does not cover Article VII of the 1826 Treaty completely, although that article will be abrogated when the new treaty comes into force.⁶⁶

1948 Treaty

Insofar as the United States is concerned, the Treaty of 1948 applies only to the federal income tax, including surtaxes; with regard to Denmark, it applies to the national income tax, the intercommunal income tax and the communal income tax, but only to such taxes as are imposed in Denmark proper, not in the Faroe Islands or Greenland.⁶⁷

61. " * * * [N]o higher or other duties, charges or taxes of any kind shall be levied in the territories or dominions of either party, upon any personal property, money or effects of their respective citizens or subjects, on the removal of the same from their territories or dominions reciprocally, either upon the inheritance of such property, money or effects, or otherwise, than are or shall be payable in each State upon the same, when removed by a citizen or subject of such State, respectively." Art. VII. For cases dealing with this provision, see *Petersen v. Iowa*, *supra* note 7 and *Nielsen v. Johnson*, *supra* note 9.

62. *Supra* note 12.

63. See Joseph, F. M.: "Income Tax Treaties — A Comparison of Basic Provisions", *Proceedings of New York University Twelfth Annual Institute on Federal Taxation*, 787 (1954).

64. Convention for the Avoidance of Double Taxation on Shipping, May 22 - Dec. 6, 1922, E. A. S. 14, 47 Stat. 2612.

65. Art. V(2).

66. Art. XXV of 1951 treaty.

67. Art. I.

By definition, it applies neither to estate nor gift taxes, nor to the Danish tax on capital.

While the Treaty of Friendship, Commerce and Navigation of 1951 applies to *nationals* of the two contracting parties, the double taxation treaty applies to *residents* of the two countries; with regard to residents of Denmark, however, only to Danish residents who are not American citizens.⁶⁸ With respect to American citizens residing in Denmark—and, to a certain extent, also, to Danish nationals residing in the United States,—the treaty must be supplemented by Sections 901 through 905 and 911 of the United States Internal Revenue Code of 1954.⁶⁹ The Treaty does not define residence, but leaves the definition to each of the two countries. In consequence, conflicts may arise, but this is unlikely since the two concepts of residence are very similar. Both under Danish and—for federal income tax purposes—American law, a person may have more than one residence.⁷⁰ Even though the principle of residence is basic, a person who is a resident of both countries⁷¹ will be taxed doubly only to a limited extent, due to the method used for the avoidance of double taxation.

Under the treaty, the residence of a corporation or other entity depends upon its creation or organization in Denmark or under Danish laws, or in the United States or under the law of the United States or of any State or Territory.⁷² This definition seems to imply that a corporation has its residence in the country where it is registered.⁷³

Under the basic principle of the treaty, a person, corporation or other entity is taxed only in the country of residence even though he or it receives income from sources in the other country. The main exceptions are cases in which a resident of one country receives income from real property in the other country,⁷⁴ and cases in which a resident of one country is engaged in trade or business in the other through a permanent establishment situated there.⁷⁵ To a certain extent, an exception exists also with regard to dividends—namely, to the extent taxes deductible at the source are concerned;⁷⁶ such taxes, however, do

68. Art. XV.

69. 26 U. S. C. §§ 901-5, 911 (Supp. III, 1952).

70. Joseph, F. M.: "Domicile and Residence of Individuals for American Tax Purposes", 29 TAXES 916, 917 and 919 (1951).

71. *Op. cit. supra* note 63, at 790.

72. Art. III(f) and (g).

73. *Supra* page 20.

74. Art. IX.

75. Art. III.

76. Art. VI.

not exist in Denmark. In these (and a few other) cases,⁷⁷ the country of origin of the income has a right to tax. Even if this right is exercised, the country of residence will include the income which has been taxed in the country of origin in the basis upon which it imposes its taxes. But the taxes paid in the country of origin of the income shall, then, be deducted from the taxes as calculated in the country of residence in the abovementioned manner. The deductible amount may, however, never exceed that proportion of the taxes of the country of residence which the income taxed in the country of origin bears to the entire income taxed in the country of residence.⁷⁸

77. Arts. IV and XI, and gains derived from the sale or exchange of capital assets, Art. XII having been deleted by the protocol.

78. Art. XV. See Internal Revenue Code of 1954, §904, 26 U. S. C. §904 (Supp. III, 1952), which has replaced §131 of the former Code mentioned in the Treaty.

Chapter V

JURISDICTION OF COURTS⁷⁰

Danish law does not know the common law distinction between jurisdiction *in personam* and jurisdiction *in rem*. Instead, the Code of Procedure (*Retsplejeloven*) contains two main rules—one governing jurisdiction in general, the other governing jurisdiction with regard to rights to or over immovable property—and a number of complementary rules.

Professor Arthur Nussbaum has explained that, while jurisdiction *in personam* at common law is generally acquired by service of process, this is not the case in civil law countries. It is true that, under the civil law, the defendant must be notified of the action, "but this is a purely technical requirement the fulfillment of which is not creative of jurisdiction. Jurisdiction in civil law is conceived as pre-existing the actual bringing of the suit."⁸⁰ Although Danish law cannot be characterized as a civil law system, this explanation also applies to Danish law,⁸¹ if we take into account the statement made below as to the significance of presence of the defendant in Denmark under the rules requiring such presence.

Basically, the rule *actor sequitur forum rei* prevails in Danish jurisdictional law. The court in the place where the defendant has his fixed residence—or, if no such place exists, where he is residing temporarily or had his last residence prior to acquiring a new one—has jurisdiction.⁸²

Under the other main jurisdictional rule, jurisdiction concerning rights to or over immovable property, in the absence of agreement to the contrary, exists only at the situs.⁸³

If Danish courts do not have jurisdiction under either of these rules, one of the complementary rules may confer jurisdiction upon them: (1) Jurisdiction in a suit involving the performance or annulment of a contract exists in the place where the contract should be performed,

79. Goodrich, 166 and 395; Nussbaum, 29; Delaume, 56; Kollewijn, 18; Hurwitz, 29; Borum, 121.

80. *Principles of Private International Law*, 193 (1943).

81. Cf. case in U. f. R. 1904, 97 (H), denying the existence of jurisdiction in Kansas based upon service by publication in a Kansas newspaper upon a defendant domiciled in Denmark.

82. Code of Procedure, §§235 and 236.

83. *Id.*, §240.

the *locus solutionis*, provided the defendant is present there when notice is served.⁸⁴ (2) If a person not otherwise subject to Danish jurisdiction has incurred an obligation in Denmark which was to be fulfilled before he left, he may be sued although he is no longer present in Denmark.⁸⁵ (3) Jurisdiction may be conferred upon (or withdrawn from) Danish courts by express agreement between the parties.⁸⁶ (4) In a suit for damages for injury, jurisdiction exists in the place where the tort was committed.⁸⁷ Finally, (5) if a person not otherwise subject to Danish jurisdiction is present in Denmark at the time of service of process, or (6) owns property situated there at the time of service, jurisdiction exists under Danish law.⁸⁸ The property, the presence of which in Denmark confers jurisdiction on the Danish courts, must, according to established practice, be property other than that which is the subject of the dispute.⁸⁹ Attachment of the property is not necessary but is often made to secure its presence at the time of service, and at the time of levy of execution in the event that the judgment is in the plaintiff's favor.

It will have been noted that two of the complementary rules of jurisdiction presuppose the presence of the defendant in Denmark at the time of service of process. This, however, does not mean that service of process is creative of jurisdiction. It means only that jurisdiction is acquired by presence at the time when notice is served. The difference seems slight, but becomes clear when these rules are seen in connection with the basic rule under which residence in Den-

84. *Id.*, §243(1).

85. *Id.*, §243(2).

86. *Id.*, §247. Cf. Munch-Petersen, H.: "Om internationalt Vaernding", U. f. R. 1926 B, 45. It is doubtful whether this holds good also with regard to cases of personal status such as divorce suits. Cf. Hurwitz, 300. Cf., however, U. f. R. 1936, 1010 (Ø).

87. Code of Procedure, §244. In contrast to this rule are various American admiralty cases involving torts occurring aboard Danish ships, where the courts have sustained jurisdiction based upon service of process upon the ship itself or upon a managing agent for the defendant, regardless of the place where the tort occurred. See, for example, *Lauritzen v. Larsen*, 345 U. S. 571 (1953); *Industria y Frutera Colombiana S. A. v. The Brisk*, 195 F. 2d 1015 (5th Cir. 1952); *Gonzales v. Dampsklsk Dania A. S. The Danvig*, 108 F. Supp. 908 (S.D.N.Y. 1952); *Pinaud v. Dampsklsk Dania A/S. The Danvig*, 122 F. Supp. 51 (S.D.N.Y. 1954). Cf. *The Paula*, 91 F. 2d 1001 (2d Cir. 1937), *cert. denied*, 302 U. S. 750 (1937), where it was held that, although Art. VIII of the Treaty of 1826 did not deprive the court of jurisdiction, it would refuse to exercise it in its discretion where compensation was obtainable in New York through the Danish consul; *accord*: *The Marchen Maersk*, 1937 A. M. C. 1531 (S.D.N.Y. 1937).

88. Code of Procedure, §248.

89. Cf. Hurwitz, 37.

mark creates jurisdiction, presence at the time of service being unnecessary. Moreover, if the defendant is not present, notice may be served upon the wife or another member of the household or at his office or place of work.⁹⁰ Thus, under these complementary rules, residence is not necessary but is replaced by presence as the jurisdictional fact; it is presence, not service, which creates jurisdiction.

In those cases in which presence at the time of notice is not required—*e. g.*, when the defendant owns property in Denmark,—notice must be served in accordance with the law of the place where the defendant resides.⁹¹

The fact that one of several defendants is subject to Danish jurisdiction is insufficient to confer jurisdiction upon Danish courts over the other defendants.⁹²

Divorce

Jurisdiction in divorce actions is regulated by Section 448(d) of the Code of Procedure. According to this provision, Danish courts have jurisdiction:

- (1) If a defendant is domiciled in Denmark;⁹³
- (2) If both spouses are of Danish nationality;
- (3) If the last common nationality of the spouses was Danish;
- (4) If the petitioner is domiciled in Denmark and is of Danish nationality when the suit is commenced;
- (5) If the petitioner was of Danish nationality at the time of the marriage and is domiciled in Denmark when the suit is commenced, the domicile of the respondent being unknown;⁹⁴
- (6) If the last common domicile of the spouses was Danish, and the respondent deserted the petitioner against the wish of the latter and without sufficient cause under the Act on marriage and divorce;
- (7) If the last common domicile of the spouses was Danish and the respondent left Denmark after the cause for divorce arose.

90. Code of Procedure, §156.

91. *Id.*, §159. New York law is *contra*. *Fass v. Pedersen*, N.Y.L.J., Nov. 21, 1956, p. 7, col. 6 (City Ct., Borough of Manhattan).

92. *Cf.* Hurwitz, 35.

93. It will be recalled that the wife, under Danish law, may have a domicile separate from that of the husband. See *supra* page 18.

94. As a result of the Nationality Act (Act. No. 252) of May 27, 1950, this provision will lose its importance and be replaced by (4), since Danish women under this Act as a general rule retain their Danish nationality even when they acquire foreign nationality by marrying foreigners, and may readily reacquire Danish nationality if it has been lost by applying for and acquiring foreign nationality.

Danish divorce decrees based upon the jurisdictional grounds (1), 4) and (5) will probably be recognized in the United States, as they correspond to similar American jurisdictional grounds. Divorce decrees based upon grounds (2) and (3) will not be recognized, and decrees based upon the remaining two grounds will probably also not be recognized.⁹⁵

95. See Chap. VI *infra*.

Chapter VI

FOREIGN JUDGMENTS⁹⁶

Since 1932, foreign judgments, as a general rule, have been neither recognized nor enforced in Denmark.⁹⁷ This rule has two exceptions:

(1) On condition of reciprocity, the Danish Government may conclude treaties specifically providing for recognition alone, or for recognition and enforcement, in Denmark of judgments originating in the country of the treaty partner.⁹⁸ Moreover, the Government, provided it is satisfied that Danish judgments will be recognized and enforced in a foreign country, is authorized by the Code to issue a statutory order that judgments originating in that country shall be recognized in Denmark.⁹⁹ Judgments recognized by virtue of such an order may be enforced when an exequatur has been obtained from the Danish courts. The courts will ordinarily grant the exequatur without going into the substance of the case; to obtain the exequatur is essentially a formality.

(2) Foreign judgments affecting status, so-called "constitutive" judgments,¹⁰⁰ will be recognized in Denmark, provided the judgment was rendered by a court having jurisdiction according not only to its own law but also to Danish law.¹⁰¹ Judgments granting a divorce may be mentioned as an example; if the judgment also grants ancillary relief—*e. g.*, maintenance to the wife or children,—recognition will not be accorded to this part of the judgment.

No treaty or order exists with regard to American judgments and, except for constitutive judgments, these are neither recognized nor enforced in Denmark. This does not mean that they are of no importance whatsoever. When enforcement of an American judgment is sought, the Danish court will reconsider the case on the merits, which it did not do under the exequatur procedure existing prior to 1932. But there is a distinct tendency in the cases to regard the existence of a foreign judgment originating in a state or country whose courts

96. Goodrich, 405 and 600; Nussbaum, 33; Delaume, 59; Kollewijn, 21; Hurwitz, 260; Borum, 123; E. Munch-Petersen, 23.

97. Code of Procedure, §§223(a) and 479.

98. Conventions exist only with the other Scandinavian countries.

99. A statutory order has been issued with respect to German judgments.

100. *Cf.* Kollewijn, 22.

101. Hurwitz, 271; JURIDISK TIDSSKRIFT 1917, 75 (φ).

enjoy the confidence of the Danish court as a convincing, though not a binding, argument.¹⁰² It has been advocated—but so far without result—that an order should be issued providing for the recognition and enforcement of American judgments.¹⁰³ This would secure the recognition and enforcement of Danish judgments in the United States under the *Hilton v. Guyot* doctrine.¹⁰⁴ Even now, however, Danish judgments are generally recognized in the United States. The *Hilton* case has, in the opinion of Professor Reese,¹⁰⁵ only a very limited scope and, since the *Erie* case,¹⁰⁶ its scope has become even narrower. Since this case,¹⁰⁷ the federal courts in diversity cases must apply the private international law of the state in which they sit, and the states do not make reciprocity a condition for recognition. I have found twenty-six cases (dating from the time of the *Erie* case up to 1953) concerning recognition of foreign judgments in state courts.¹⁰⁸ Of these, only two mention reciprocity; in one of these, this requirement is mentioned in a quotation from the *Hilton* case and it is of no importance to the result;¹⁰⁹ in the other, reciprocity is rejected as a condition for recognition.¹¹⁰

Finally, it may be mentioned that in California, where Article 1915 of the Code of Civil Procedure explicitly prescribes the effect to be accorded to judgments of tribunals of foreign countries, reciprocity is not required.

An American divorce decree will be recognized in Denmark regardless of the law applied, if it is granted in a state which is competent according to Danish rules of jurisdiction.¹¹¹ (The same is probably

102. U. f. R. 1955, 407 (SH). Cf. also U. f. R. 1940, 652 (H) and Madsen-Mygdal, 516 (1946), to the effect that a person who appears in a foreign court will to some extent be estopped from raising defences in the Danish court which he failed to raise in the foreign court. Cf. U. f. R. 1937, 449 (H).

103. Philip, A.: "Anerkendelse af fremmede domme i U. S. A.", JURISTEN, 373 (1953).

104. 159 U. S. 113 (1895); Nussbaum, *op. cit. supra* note 80, at 238.

105. "The Status in this Country of Judgments Rendered Abroad", 50 COL. L. REV. 783, 790 (1950).

106. *Erie R. Co. v. Tompkins*, 304 U. S. 64 (1938).

107. Cf. *Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U. S. 487 (1941).

108. Cf. *op. cit. supra* note 103, at 386.

109. *Clubb v. Clubb*, 402 Ill. 390, 84 N. E. 2d 366 (1949).

110. *Coulborn v. Joseph*, 195 Ga. 723, 25 S. E. 2d 576 (1943).

111. Borum, 123. U. f. R. 1904, 97 (H) recognized a Kansas divorce granted to a wife domiciled there after being deserted there by a husband who was now domiciled in Denmark. For Danish rules of jurisdiction in divorce cases, see *supra* page 26.

true of an American decree of annulment.) *Ellegaard v. Ellegaard*¹¹² involved a judgment of divorce rendered by the New York Supreme Court which provided that the husband should pay alimony and maintenance to the wife and children. The Danish Supreme Court decided that the husband, who had not attacked the judgment in New York, should pay the amount already due. The judgment expressly stated that it was not concerned with future payments. The Danish authorities would probably assume jurisdiction to vary the amount to be paid in the future.

In Denmark, a divorce may be obtained either through court proceedings or by royal decree. It is of interest to note that the New York courts have, without hesitation, in three instances recognized Danish divorces granted by royal decree.¹¹³

112. U. f. R. 1937, 449 (H).

113. *Sorensen v. Sorensen*, 219 App. Div. 344, 220 N. Y. Supp. 242 (2d Dep't, 1927); *Hansen v. Hansen*, 255 App. Div. 1016, 8 N. Y. S. 2d 655 (2d Dep't, 1938); *Weil v. Weil*, 26 N. Y. S. 2d 467 (Dom. Rel. Ct., City of N. Y., 1941).

Chapter VII

ARBITRATION¹¹⁴

An arbitral award, whether Danish or foreign, is not directly enforceable in Denmark. In ratifying the Convention on the Execution of Foreign Arbitral Awards signed at Geneva on September 26, 1927, Denmark made this express reservation.¹¹⁵ It is immaterial, therefore, that the United States has not adhered to the Geneva Convention, since Danish law is the same whether or not the country where an award was rendered is a signatory of the Convention. One who wishes to enforce an arbitral award must sue on it in the ordinary courts and obtain what amounts to an exequatur. As a rule,¹¹⁶ the court will not examine the substance of the case; it will investigate only whether the arbitration agreement was validly concluded and whether the defendant's objection to the procedure followed by the arbitrators is justified (in other words, whether the defendant has been given "due process"). It can thus be seen that in Denmark a contract containing an agreement to arbitrate abroad has an advantage over a contract conferring jurisdiction upon a foreign court, since in the latter situation the court will investigate the substance of the case before rendering judgment on the foreign judgment.¹¹⁷

The ordinary private international law rules as to contracts apply to the validity of arbitration agreements.¹¹⁸ As to arbitral awards, it may be stated as a general rule that the validity of such an award is governed by the law of the country in which it was rendered,¹¹⁹ but this rule is not without exceptions and it is, of course, subject to public policy.

Article V, paragraph 2 of the Treaty of 1951 does not change the present Danish law. It merely eliminates, as grounds for nonrecognition

114. For Denmark, see Raffenberg, M.: "Recht und Praxis der Schiedsgerichte in Dänemark", 2 *Internationales Jahrbuch für Schiedsgerichtswesen*, 3-14 (ed. by Nussbaum, A., 1928). For the U. S. A., see Lorenzen, E. G.: *Selected Articles on the Conflict of Laws*, 454 and 500 (1947); Nussbaum, 35; Kollwijn, 24.

115. E. Munch-Petersen, 34.

116. 2 Munch-Petersen, H.: *Den Danske Retspleje*, 480 (1918).

117. *Supra*, page 28.

118. *Cf.* Hjejle, 179.

119. Hjejle, 201.

tion of arbitration agreements and arbitral awards, the fact that the arbitration takes place outside the country in which the enforcement of the award is sought, or that the arbitrators are not nationals of that country. In other words, where an arbitration is concluded between Danish and American citizens or companies, the fact that an award is to be or has been rendered outside Denmark or by non-Danish citizens cannot prevent recognition of the agreement or the award if the award would be recognized if rendered in Denmark by Danish nationals.

Chapter VIII

PROOF OF FOREIGN LAW¹²⁰

In Denmark, as in the Netherlands,¹²¹ despite a Supreme Court judgment to the contrary,¹²² foreign law is generally regarded as law, of which the court must take judicial notice as it does of Danish law, and not as a fact to be proved by the party invoking it; and this is true whether foreign law applies to the case by virtue of a rule of Danish private international law or because of an agreement between the parties, recognized as valid under the private international law rule of autonomy of the parties in international contracts. In theory, this means that the court itself must find out what the foreign law is. In practice, however, the parties procure the information, but, if they should fail to do so, the court would be obliged to procure it itself. This information may be obtained in the most practical manner,¹²³ and the parties often ask for opinions from foreign experts;¹²⁴ the expert is not required to take an oath or to give an affidavit. The information may also be obtained through the intermediary of the Ministry of Foreign Affairs. What the court must do if it is unable to obtain the necessary information has been a subject of discussion. One writer is of the opinion that the case should be decided according to Danish law, and he has support in some of the cases;¹²⁵ another thinks that the case should be dismissed.¹²⁶

Foreign governments or courts can obtain information from the Danish Ministry of Justice as to simple questions arising under Danish law.

In the United States, foreign law is usually applied only if the content is proved by the parties.¹²⁷ A number of states, however, have adopted the rule formerly known in Denmark,¹²⁸ to the effect that

120. Goodrich, 232; Nussbaum, 38; Delaune, 65; Kollwijn, 46; Borum, 61; Hurwitz, 128.

121. Kollwijn, 46.

122. U. f. R. 1918, 212 (H).

123. 1 Munch-Petersen, H.: *op. cit. supra* note 116, at page 167.

124. *E.g.*, U. f. R. 1948, 1120 (H); U. f. R. 1940, 857 (Ø).

125. Hurwitz, 130.

126. Borum, 68.

127. Nussbaum, *op. cit. supra* note 80, at 248; Goodrich, 232. See, for proof of Danish law, *In re Nielsen's Estate*, 118 Mont. 304, 165 P. 2d 792 (1946); *Matter of Krabbe*, N.Y.L.J., Jan. 9, 1957, p. 13, col. 3 (Surr. Ct.).

128. 2 Munch-Petersen, H., *op. cit. supra* note 116, at 244.

courts in their discretion may take judicial notice of foreign law,¹²⁹ and Massachusetts has made it mandatory for its courts to take judicial notice of foreign law.¹³⁰

Although not strictly relevant here, it is interesting to note that American courts have several times had occasion to ascertain and apply Danish law *as domestic law*,¹³¹ as a result of the Treaty of August 4, 1916 by which Denmark ceded the Danish West Indies to the United States.¹³²

129. Nussbaum, A.: "Proving the Law of Foreign Countries", 3 AM. J. COMP. L. 60 (1954).

130. G. L., c. 233, §70. For the application of this statute, see Schlesinger, R. B.: *Comparative Law Cases and Materials*, 126 (1950); cf. Lenn v. Riché, 331 Mass. 104, 117 N. E. 2d 129 (1954).

131. See Clen v. Jorgensen, 265 Fed. 220 (3d Cir. 1920); People of Virgin Islands v. Price, 181 F. 2d 394 (3d Cir. 1950); Callwood v. Kean, 189 F. 2d 565 (3d Cir. 1951).

132. T. S. 629, 39 Stat. 1706.

Chapter IX

TAKING TESTIMONY ABROAD¹³³

According to Danish practice, a request by an American court for the taking of testimony in Denmark¹³⁴ should be sent through the Ministry of Justice. However, even if letters rogatory are sent directly to a Danish court, the depositions will ordinarily be taken by the court. Although depositions generally are not taken under oath in Denmark, since false statements under depositions in court are punishable even if an oath is not given, the Danish courts will probably require witnesses to take the oath if it is specifically requested by the American court. American consuls will be allowed to take testimony in Denmark, but they cannot compel the taking of testimony as the courts can.

If the taking of testimony in the United States is necessary in a case pending in a Danish court, the court will send a letter rogatory,¹³⁵ containing the questions which should be answered by the witness, to the Ministry of Justice, which will then request the American State Department to arrange for depositions to be taken by an American court. However, if the parties agree upon it, a Danish consul may, according to the general practice, be appointed by the court to take the testimony in this particular case.

133. Nussbaum, 37; Delaume, 64.

134. In *Wennerholm v. Thiberg*, 206 Misc. 755, 135 N. Y. S. 2d 19 (Sup. Ct., N. Y. Co., 1954), depositions by written interrogatories in Denmark were requested in accordance with C. P. A. §§288 and 290. The motion was denied, but only on the ground of undue delay on the part of the movant.

135. Code of Procedure §296. *Cf.* U. f. R. 1906, 100 (ø).

Chapter X

CAPACITY TO CONTRACT

In Danish law, the parties may agree between themselves which law shall be the proper law of the contract, provided the relationship between them contains an international element of some kind which points to that law—*e. g.*, domicile or nationality of the parties, place of contracting, place of performance, situs of goods involved, denomination of currency, agreed place of adjudication, and so forth. If the parties have not made an explicit agreement with regard to the proper law of the contract, the court must ascertain to which country or countries these and other international elements in the contract point, and it must then decide what place constitutes the “centre of gravity” of the contract. Most problems with regard to a contract are subject to its proper law. But the form is governed by the law of the place of contracting, and special rules apply to the question of capacity to contract. These rules are discussed below.

Under American law, capacity to contract is generally governed by the law of the place where the contract is made.¹³⁶ In Denmark,¹³⁷ as in France¹³⁸ and the Netherlands,¹³⁹ capacity to contract is subject to the personal law of the contracting parties. But the personal law in Denmark is not the national law, as in France and the Netherlands, but the law of the person's domicile.¹⁴⁰

The difference between American law and Danish law, however, is not so profound as might appear. Danish law, like French and Dutch law, makes an important concession to the *lex loci contractus* (although not so important a concession as the Uniform Benelux law).¹⁴¹ If a person domiciled outside Denmark and incapable of contracting under the law of his domicile makes a contract in Denmark, he is bound by that contract if the other party was at the moment of contracting of the *bona fide* opinion that he was dealing with a competent person. This exception to the domiciliary principle is applicable only to foreign domiciliaries contracting in Denmark. Thus, Danish law holds that an American domiciliary contracting in Denmark is bound even if he would be deemed incapable of contracting under

136. Goodrich, 312.

137. Borum, 101.

138. Delaume, 46.

139. Kollewijn, 26.

140. *Supra* page 18.

141. Kollewijn, 26-27.

the law of his American domicile, while a Danish domiciliary incompetent under Danish law is not bound although contracting in an American state under whose law he would be deemed capable of contracting.

Another exception to the domiciliary principle may be found in the Acts on Checks¹⁴² and Bills of Exchange,¹⁴³ which were based upon the Geneva Conventions of 1930 and 1931.¹⁴⁴ According to these provisions, a person's capacity to incur obligations under a bill of exchange or a check is governed by his national law. It was necessary in drafting the Conventions to deviate from the domiciliary principle to obtain uniformity. If, however, the private international law of the national law of a person adheres to a principle other than nationality—e. g., the *lex domicilii* or the *lex loci contractus*,—then the latter law is applied. This is the only case in which the *renvoi* principle operates in Danish private international law.¹⁴⁵ As a result of this rule, Danish law holds that the capacity of an American citizen to incur a check obligation will be governed by the law of the place where he signed the check, since his national law refers to the law of the place of contracting.¹⁴⁶

The application of the domiciliary principle to capacity to contract makes it pertinent to inquire what are the consequences of a change of domicile with regard to a person's capacity to contract. It is generally thought in Danish theory that a person who has capacity to contract under the law of the domicile does not lose that capacity by moving to and acquiring a domicile in a country under the law of which he would be incapable of contracting. If, on the other hand, a person who is a minor moves to another country and acquires a domicile there and if, under the law of his new domicile, he is of age, then the law of his new domicile applies.¹⁴⁷

142. Act No. 69 of March 23, 1932, §58.

143. Act No. 68 of March 23, 1932, §79.

144. See League of Nations: *Records of the International Conference for the Unification of Laws on Bills of Exchange, Promissory Notes and Cheques* (1930-1931).

145. Borum, 74; U. f. R. 1948, 857 (Ø).

146. The two provisions on checks and bills of exchange contain a further concession to the *lex loci contractus*. If a person who is not a Danish national is incapable under his national law of incurring obligations under a check or a bill of exchange, he is nonetheless bound by his signature if, under the law of the place of signing, he would be capable of incurring that obligation. Because of the operation of the *renvoi* principle mentioned in the text, this provision is not applicable to American citizens whose capacity to incur an obligation of this kind is always governed by the law of the place of signing.

147. U. f. R. 1871, 949 (Ø), where a person domiciled in Denmark and a minor under Danish law moved to Washington, D. C., under the law of which he was of age.

Chapter XI

FAMILY LAW

Marriage¹⁴⁸

Under Danish substantive law, a marriage is null and void only if certain requirements as to form are not complied with.¹⁴⁹ A marriage performed contrary to prohibitions is only voidable,¹⁵⁰ and restrictions on capacity to marry do not even entail voidability.

The Danish private international law on the subject is on the whole similar to American law. The form of a marriage is governed by the law of the place where the marriage is celebrated. If the marriage is validly celebrated according to the *lex loci celebrationis*, it is recognized as valid in Denmark. Marriage by proxy will, however, probably be contrary to Danish public policy. Only a very limited number of rules relating to the competence of the authorities celebrating the marriage and to the marriage ceremony itself are characterized in Danish private international law as rules concerning the form of celebration of marriage. All other rules regarding the performance of marriage are characterized as rules restricting capacity to marry, and those which, if violated, entail voidability are governed by the personal law. A Danish domiciliary, therefore, may marry in a foreign country only if no prohibition exists under Danish law against that marriage. Nevertheless, in accordance with the substantive law rule that a marriage performed in violation of prohibitory rules is never void and is voidable only in a limited number of cases, a marriage by a Danish domiciliary abroad prohibited by Danish law is valid in Denmark; but in those cases in which it would be voidable if performed in Denmark, it may be voided provided Danish courts have jurisdiction under Section 448(d) of the Code of Procedure.¹⁵¹

Whatever the nationality of the parties, a marriage may be celebrated in Denmark only if the conditions of Danish law are fulfilled. Consent of the parents, however, is not necessary if it is not required by the law of the domicile of a foreign domiciliary even if it would be required if he were domiciled in Denmark. If foreign domiciliaries

148. Goodrich, 348; Kollewijn, 28; Borum, 109.

149. Act No. 276 (on marriage and divorce) of June 30, 1922, §38.

150. *Ibid.*, chap. 5.

151. *Contra*: 1 Rabel, *op. cit. supra* note 58 at page 249; but *cf.* 256. Annulment by royal decree which is mentioned at 256 no longer exists, and the citations in note 46 are out-of-date.

wish to marry in Denmark, the Danish authorities will perform the marriage after announcement has been made of the forthcoming marriage in the most widely read newspaper at the place where the foreigners reside. A certificate from the authorities in the country of domicile stating that the conditions for marriage under the foreign law are fulfilled is not required, but if it is known to the Danish authorities that prohibitions against the marriage exist under the foreign law, they will not perform the marriage. If the marriage is performed but is then declared null and void by a foreign court which has jurisdiction according to Danish law, this decree will probably be recognized in Denmark.¹⁵²

Under Danish law, American consuls in Denmark and Danish consuls in the United States are not permitted to perform marriages.¹⁵³

Adoption¹⁵⁴

In Danish as in American law, the law of the domicile of the parties governs adoption. Under American law, however, if the domicile of the child differs from that of the adoptive parents, adoption may take place in either jurisdiction.

It is the practice of Danish adoption authorities to arrange adoption for adoptive parents if domiciled in Denmark. Only in exceptional cases have Danish nationals domiciled abroad been able to adopt in Denmark. If either the adoptive parents or the adopted child, or all of them, are of foreign nationality, the conditions of the national law must be fulfilled as well as those of Danish law.

Foreign adoptions will as a general rule be recognized as valid in Denmark only if the parties were all domiciled in the state of adoption at the time of the proceeding.

Matrimonial Property¹⁵⁵

The chief differences between Danish and American private international law with regard to matrimonial property relate to the status of property acquired subsequent to the marriage. The rules as to movable property owned by the parties at the time of marriage are practically identical.

Under Danish law, the law of the domicile of the husband at the time of the marriage determines what interest one spouse acquires in the property of the other by virtue of the marriage. In *Christoffersen*

152. Cf. Chap. VI, *supra*.

153. Cf. Kollewijn, 28.

154. Goodrich, 446; Borum, 128; 1 Rabel, *op. cit. supra* note 58, at 639.

155. Goodrich, 376; Borum, 116.

v. *Christoffersen*,¹⁵⁶ Danish citizens were married in Illinois. Later they moved to Denmark and the husband applied for division of the joint estate of the spouses. The wife objected and referred to the fact that the husband was domiciled in Illinois at the time of the celebration of the marriage and that in Illinois the matrimonial property system was one of separate property except with regard to land. The court agreed that the law of Illinois governed the matrimonial property system of the spouses.

The domicile which the spouses intend to establish after their marriage as the matrimonial domicile is of no importance in Danish law. Instead, the law of the domicile of the husband at the time of the marriage applies to all property, immovable as well as movable. Unlike the rule under American law,¹⁵⁷ the law of the situs of immovable property is disregarded in determining the interests of the spouses as between themselves, but becomes of importance only with respect to their rights as against third persons. If the spouses live under a foreign system of law which gives one of them certain rights over the land of the other, these rights must be registered in the land registry maintained by the Danish court where the land is situated in order to be protected against *bona fide* purchasers and creditors. This rule is only one aspect of a more general principle of protection of third parties; thus, if the parties move to Denmark subsequent to their marriage, the interests which one spouse has acquired in the property of the other—whether movable or immovable and whether situated in Denmark or elsewhere—are not protected in Denmark against *bona fide* third persons if these interests have not been registered with the court at the Danish domicile. The rule has its counterpart in the rule that a foreign minor is bound when contracting in Denmark with a person who does not know that he is a minor under his personal law.¹⁵⁸

While under American law the interest of one spouse in the property acquired by the other subsequent to the marriage is governed by the law of the domicile of the parties at the time of acquisition,¹⁵⁹ this is not the case in Danish law. There, the law which governs the matrimonial property interests does not change; all property belonging to the spouses is subject to the same law all through their married life.

The principal matrimonial property system in Danish law is the community property system.¹⁶⁰ Only by special agreement between

156. U. f. R. 1935, 1143 (Ø).

157. Goodrich, 378.

158. *Supra* page 36.

159. Goodrich, 385.

160. Act No. 56 (on the legal effects of marriage) of March 18, 1925.

the spouses may they live under a system of separate property, and this agreement must be registered with a court in order to be valid. Capacity to make such agreements is governed by the law of the domicile of both spouses. As to the contents of the agreement—the interests which each of the spouses acquires in the property of the other,—it is governed in the United States by the proper law of the contract.¹⁶¹ In Danish law, the law of the domicile of the husband at the time when the agreement is made controls the contents of the agreement.¹⁶² If the husband acquires a Danish domicile, the agreement is, nevertheless, valid only to the extent that it does not contain provisions contrary to Danish law, and the agreement must, furthermore, be registered with a Danish court.

The “continued community property” system¹⁶³ is a specific Danish-Norwegian legal institution. It gives to a surviving spouse the right to remain in possession until death or remarriage of all property belonging to the community without distribution to the other successors of the deceased spouse. The characterization of this continued community property is doubtful, but it is so closely related to the community property system that it seems reasonable to characterize it as forming part of the matrimonial property law¹⁶⁴ and, therefore, as being applicable only when the domicile of the husband at the time of the marriage was Danish or Norwegian.

161. Goodrich, 390.

162. Act No. 56 of March 18, 1925, §53.

163. Act No. 120 of April 20, 1926.

164. *Cf. Borum*, 77.

Chapter XII

ADMINISTRATION OF ESTATES AND LAW OF SUCCESSION¹⁶⁵

Danish law knows no uniform system for the administration of estates. While under American law legal title on death passes to the administrator and does not pass to the heirs until after distribution, under Danish law,¹⁶⁶ in about eighty per cent. of the cases, the heirs themselves administer the estate which is handed over to them by the court of distributions upon their decision to accept liability for the debts of the decedent. They pay the debts and distribute the assets among themselves. In the remaining cases, the estate is administered either by the court of distributions or by executors appointed in the will; only in these cases is there any similarity to the American system.

Under American law, administration proceedings may take place at the last domicile of the decedent and wherever he left property.¹⁶⁷ In Danish law, the general rule is that only the court of distributions at the last domicile of the decedent is competent, even with regard to land outside Denmark.¹⁶⁸ However, a Danish court of distributions may start administration proceedings in two groups of situations even though the decedent's last domicile was not in Denmark:

First, Danish courts will take possession of property left in Denmark by a decedent domiciled abroad, in so-called "subsidiary" administration proceedings. Danish creditors will be paid fully out of these assets before they are handed over to the administrator at the domicile even if the estate as a whole is insolvent. This is so at least in the absence of reciprocity with respect to the recognition of one place of administration (unity of administration), but Danish courts will probably act in this way in all cases where no treaty exists. The Treaty of 1951 contains no provisions pertaining to the administration of estates.¹⁶⁹

165. Goodrich, 500 and 535; Nussbaum, 23 and 26; Delaume, 51 and 53; Kollewijn, 34; Borum, 130; H. Munch-Petersen, 306.

166. Borum, O. A.: *Arvefaldet*, 42 (1949).

167. Goodrich, 535.

168. Cf. U. f. R. 1951, 546 (H).

169. For cases arising under the Treaty of 1826, see, as to consuls, note 7 *supra*, and, as to taxation, note 9 *supra*.

Second, the Ministry of Justice may refer to a Danish court of distributions the administration of property belonging to a Danish national domiciled abroad at the time of his death if administration has not taken place at the domicile.¹⁷⁰ This provision is applied also to cases in which administration abroad does not include property situated in Denmark.

Danish courts of distributions or executors will apply Danish law to the administration, since all rules pertaining to administration are characterized as procedural rules. Intestate succession is governed by the law of the decedent's last domicile, and that law also governs testate succession insofar as the substantive validity of a will is concerned. In one case,¹⁷¹ it was held that succession to property in Denmark belonging to a person who was domiciled in New Jersey at his death, which property was referred to a Danish court for administration, was governed by the law of New Jersey.

Unlike the American law on the subject,¹⁷² the Danish private international law of succession, with a few exceptions, makes no distinction between the descent of land and the devolution of personal property. As a general rule, the same law governs the passing of both kinds of property from the decedent to his heirs. Thus, in an opinion of the Ministry of Justice,¹⁷³ it was said that the descent of land in Denmark belonging to the estate of a person who at his death was domiciled in Iowa was governed by the law of Iowa. Although the law of the deceased's last domicile generally governs the descent of land, this rule is modified in a number of cases; the special rules concerning the descent of farms in Denmark and the rule prohibiting *fideicommissa* apply to land in Denmark even if the deceased was not domiciled there, and Danish courts will recognize the existence of similar provisions in other countries.

While in certain American states¹⁷⁴ and in the federal territories¹⁷⁵ the right of aliens to acquire land is limited, no such limitation exists in Danish law.¹⁷⁶ Where the law of a state requires reciprocity in order to permit aliens to acquire land, such reciprocity has been held

170. Act No. 155 (on distributions) of November 30, 1874.

171. U. f. R. 1922, 446 (V).

172. Goodrich, 500. See also *In re Krabbe's Estate*, 145 N. Y. S. 2d 357 (Surr. Ct. 1955).

173. March 11, 1940.

174. See Powell R. R.: *The Law of Property*, §§101-108 (1949, with supp., 1954).

175. 48 U. S. C. §§1501-08 (1952).

176. Section 44(2) of the Constitution of 1953 gives the legislature the right to restrict alien ownership of land in Denmark, but this right has not yet been exercised.

to exist in Denmark.¹⁷⁷ Under the Treaty of 1951, however, nationals and companies of either party are to be accorded national treatment within the territories of the other with respect to acquiring all kinds of movable and immovable property by testate or intestate succession,¹⁷⁸ and this provision will supersede all restrictions in state laws on the right of Danish nationals to inherit property in the United States.

In Danish and American law alike, capacity to inherit is governed by the law which governs the succession. In Danish law, an illegitimate child has the same right of succession as a legitimate child. On the other hand, if illegitimate children have no right to succession in the state where the deceased died domiciled, the Danish child will receive nothing.^{178a}

The *légitime* is known in Danish law as well as in Swiss, French and Dutch law.¹⁷⁹ It extends only to the spouse and the descendants of the deceased. If the testator has children, the *légitime* is two-thirds of his estate; if he leaves only a spouse, the *légitime* is one-third of the estate. The *légitime* is characterized as involving the substantive validity of the will and is, therefore, governed under Danish law by the law of the last domicile of the deceased, not only as to personal property but also as to land. If the decedent was domiciled in Denmark, his will is valid only to the extent that it does not encroach on the *légitime*.

177. *In re Nielsen's Estate*, 118 Mont. 304, 165 P. 2d 792 (1946). California has also recognized the existence of reciprocity in Denmark, based upon a *note verbale* from the Danish Minister in Washington to the Department of State, November 10, 1942.

178. Art. IX, par. 1.

178a. *Cf. Matter of Krabbe*, *supra* note 127, where the Surrogate held that the legitimacy of the niece of a New York intestate was to be determined in accordance with Danish law, she being a Danish national and resident, but her capacity to take as distributee was governed by New York law, which gives no such right to an illegitimate niece.

179. Nussbaum, 23; Delaume, 51; Kollewijn, 41.

Chapter XIII

COPYRIGHT¹⁸⁰

The Danish Act on the Rights of Authors and Artists¹⁸¹ is based on the Berne Convention of 1886 (with amendments), of which Denmark, but not the United States, is a member. According to Section 36, the Act applies to works by Danish nationals wherever published, and to works by foreigners if the work is first published in Denmark. (This includes the Faroe Islands, but not Greenland.) Section 36 authorizes the Government to extend the protection of the Act to works by foreign nationals published in a foreign country if it grants reciprocity to works by Danish nationals. In accordance with this provision, the operation of the Act has been extended by Royal Ordinance to works by nationals of the United States if these works have not been published or if they were first published in the United States or in a country not a member of the Berne Convention;¹⁸² a second Royal Ordinance extended its operation to works by nationals of the United States first published in a country which is a member of the Convention.¹⁸³

Similar rules apply to photographic works by nationals of the United States.¹⁸⁴

Works by Danish nationals are protected in the United States at the present time by proclamations of the President¹⁸⁵ based upon the Copyright Act of March 4, 1909,¹⁸⁶ as amended and as revised on July 30, 1947.¹⁸⁷ Although the United States has ratified the Universal

180. Cf. Lund, T.: *Loven om forfatterret og kunstnerret*, 198 (1933); Jacobsen, J. H.: *Ophavsretten*, 310 (1941).

181. Act No. 149 of April 26, 1933.

182. No. 274 of Sept. 12, 1933, effective Sept. 16, 1933. An earlier Ordinance had extended the Act of 1912, replaced by the Act of 1933, to works by nationals of the United States after March 1, 1913.

183. No. 275 of Sept. 12, 1933.

184. Act No. 131 of May 13, 1911, and Royal Ordinance No. 40 of Feb. 22, 1913.

185. April 9, 1910, 36 Stat. 2685, giving the benefits of the 1909 Act other than §1(e) to citizens of Denmark; Dec. 9, 1920, 41 Stat. 1810, giving the benefits of §1(e) to citizens of Denmark; and Feb. 4, 1952, 66 Stat. C20, extending the time for compliance with the 1947 Act by Danish citizens.

186. 35 Stat. 1075.

187. 61 Stat. 652.

Copyright Convention signed at Brussels on September 6, 1952,¹⁸⁸ and has implemented it by revising its Copyright Act,¹⁸⁹ Denmark has not yet deposited a ratification, with the result that the copyright relations between the two countries are still governed by the 1947 Act.

188. T. I. A. S. 3324; ratified June 25, 1954, 100 CONG. REC., Pt. 7, 8945-8953 (83rd Cong., 2d Sess.); proclaimed Aug. 5, 1955, 33 DEPT STATE BULL. 326 (1955); in force Sept. 16, 1955.

189. Copyright Act of Aug. 31, 1954, Public Law 743, 68 Stat. 1030, effective Sept. 16, 1955.

Chapter XIV

PROTECTION OF INDUSTRIAL PROPERTY

The protection of industrial property falls under the multilateral Paris Convention of March 20, 1883, as amended,¹⁹⁰ and also under bilateral agreements between the two countries: the Convention for the Reciprocal Protection of Trade-Marks and Trade Labels of June 15, 1892;¹⁹¹ and an exchange of notes of June 8, 22 and 26, 1906 on the protection of industrial designs or models for Danish goods imported into the United States.¹⁹² Article X of the Treaty of 1951 accords national and most-favored-nation treatment with regard to patents, trade marks, trade labels and industrial property of all kinds.

Trademarks

The Danish acts on trademarks are based on the Paris Convention of 1883 with later amendments. The right to register trademarks in Denmark was formerly reserved to those who engaged in business there,¹⁹³ and to associations taking care of the common business interests of their members.¹⁹⁴ By a recent statutory enactment,¹⁹⁵ however, the right to register trademarks has been extended to those who engage in business in the United States and to associations taking care of their common business interests there.

As for the United States, Danish nationals may register their trademarks under the Lanham Act of July 5, 1946,¹⁹⁶ and a proclamation was issued on January 30, 1948¹⁹⁷ extending the time for renewal of trademark registrations made by Danish nationals under the Act of

190. T. S. 379, 25 Stat. 1372; amended April 15, 1891, T. S. 386, 27 Stat. 958; amended Dec. 14, 1900, T. S. 411, 32 Stat. 1936; amended June 2, 1911, T. S. 579, 38 Stat. 1645; amended Nov. 6, 1925, T. S. 834, 47 Stat. 1789; amended June 2, 1934, T. S. 941, 53 Stat. 1748.

191. T. S. 72, 27 Stat. 963.

192. I Malloy, W. M.: *Treaties, Conventions, International Acts, Protocols, and Agreements Between the United States of America and Other Powers*, 296 (1910).

193. Act No. 101 of April 7, 1936, §1.

194. Act No. 102 of April 7, 1936, §1.

195. No. 260 of Sept. 17, 1953.

196. 60 Stat. 427.

197. 62 Stat., pt. 2, 1478, issued under the Act of July 17, 1946, 60 Stat. 568.

February 20, 1905,¹⁹⁸ as amended, based upon a finding that "Denmark accords substantially equal treatment to trade-mark proprietors who are citizens of the United States."

Patents¹⁹⁹

Under the Danish Patent Act of 1894, as amended,²⁰⁰ which is also based on the Paris Convention of 1883, anyone who has made an invention or who derives his right from the inventor may apply for a patent in Denmark. Priority is given from the date of the application. Furthermore, the Act and a later Royal Ordinance²⁰¹ grant priority from the date of the application for a patent in a foreign country which is a member of the Convention if the application is made in Denmark within twelve months of the date of the foreign application. Finally, presentation of an invention at an international exhibition in Denmark or in a country which is a member of the Convention does not prevent the granting of a patent if application is made within six months; priority is given from the date of presentation at the exhibition.

Protection of patents in the United States is governed by the Patent Act of July 19, 1952,²⁰² which differs from the Danish law as set forth above in the following respects:

- (1) Only the inventor may obtain a patent;²⁰³
- (2) Priority is phrased not in terms of membership in the Paris Convention, but in terms of reciprocity;²⁰⁴
- (3) The Act does not mention international exhibitions, but presentation of an invention at such an exhibition would probably not preclude patentability, at least where the exhibition takes place in a

198. 33 Stat. 724.

199. For Denmark, see Godenhielm, B.: *Utländsk och internationell patenträtt* (1953). Inventions of employees are governed by Act No. 142 of April 29, 1955.

200. Act. No. 192 of Sept. 1, 1936.

201. No. 204 of Sept. 26, 1936.

202. 66 Stat. 792.

203. 35 U. S. C. §102(f) (1952), 66 Stat. 797. But *cf.* §117, 66 Stat. 799, permitting legal representatives of deceased inventors and of those under legal incapacity to apply for patents, and §118, 66 Stat. 799, permitting application to be made "on behalf of and as agent for" the inventor if he refuses to execute an application, cannot be found or reached, or assigns or agrees to assign the invention.

204. Where an application has been filed "in a foreign country which affords similar privileges in the case of applications filed in the United States or to citizens of the United States." §119, 66 Stat. 800.

foreign country;²⁰⁵ it would not, however, establish priority.²⁰⁶

205. This would not appear to be tantamount to being "patented or described in a printed publication in * * * a foreign country" under §102(b), 66 Stat. 797, but presentation at such an exhibition in the United States might amount to being "known or used by others in this country" under §102(a), 66 Stat. 797.

206. Under §104, 66 Stat. 798, "knowledge or use * * * or other activity * * * in a foreign country" does not establish a date of invention. Priority is established only by filing an application for a patent in the foreign country. §119, 66 Stat. 800.

MONETARY MATTERS

Chapter XV

Exchange Restrictions²⁰⁷

Article XII of the Treaty of 1951 provides for national and most-favored-national treatment with respect to payments, remittances and transfers of funds or financial instruments. The article further specifies what is meant by such treatment. It does not alter the position of the two countries under the International Monetary Fund Agreement,²⁰⁸ to which both are parties.

Order 218 of July 11, 1947 contains the main rules of Danish law on international payments. It restricts the right of persons resident in Denmark to make payments to or on behalf of persons residing outside Denmark, and to receive payments from such persons. It further imposes a duty on persons resident in Denmark to repatriate amounts earned by or belonging to them in foreign countries. It forbids setoff in foreign payments and restricts the import and export and sale and purchase of bonds and shares. It restricts the right of persons resident in Denmark to lend money and to become surety for foreigners, and their right to buy or to receive as mortgages patents and copyrights.

If a person is unable to perform a contract solely because of exchange restrictions, this will not release him from his obligations thereunder.²⁰⁹

Courts may render judgments in terms of foreign currency.

207. International Monetary Fund: *Sixth Annual Report on Exchange Restrictions*, 105-112 (1955); Conférence permanente des Hautes Études internationales: *Le Contrôle des changes*, vol. 3 (1946); Madsen-Mygdal, N. P.: *Dansk Deviseret* (1941) [*Das Devisenrecht Dänemarks*, Basel (1942)]; Philip, A.: "Den internationale valutafond og dansk ret", 22 NORDISK TIDSSKRIFT FOR INTERNATIONAL RET, 12 (1953); Siesby, E.: "Lex Monetæ", 22 NORDISK TIDSSKRIFT FOR INTERNATIONAL RET, 22 (1953); Madsen-Mygdal, N. P.: "The Bretton Woods Agreement, Article VIII, Sec. 2(b)", 25 NORDISK TIDSSKRIFT FOR INTERNATIONAL RET, 63 (1955).

208. *Supra* note 26.

209. Cf. Ussing, H.: *Køb*, 88 (1946).

210. Kollwijn, 42; Nussbaum, A.: "Comparative and International Aspects of American Gold Clause Abrogation", 44 YALE L. J. 53 (1934); Borum, 163; Ussing, H.: "Guld klausuler", U. f. R. 1933 B, 264 and "Guld klausulerne i Udlandet", U. f. R. 1935 B, 23; Philip, A.: "Notes on Danish Judicial Decisions (1939-1952)", 81 JOURNAL DU DROIT INTERNATIONAL [Clunet] 480, 489 (1954).

Gold Clauses²¹⁰

The Danish Supreme Court has twice²¹¹ had an opportunity to adjudicate the question of recognition and application of the United States Joint Resolution of June 5, 1933.²¹² In both cases, the Joint Resolution was recognized as applicable and as not contrary to Danish public policy. Both involved bonds issued in the United States, by a Danish corporation and the Danish Government respectively, through the intermediary of an American bank. After deciding that the debtors' obligations under the bonds were governed by American law, the court came to the conclusion that the Joint Resolution formed part of the applicable law. The obligation of the debtors under the bonds to repay the loan in gold or gold value was, therefore, denied.

211. U. f. R. 1935, 82 (H); U. f. R. 1939, 296 (H).

212. 48 Stat. 112.

APPENDIX

GENERAL CONVENTION OF FRIENDSHIP, COMMERCE, AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND HIS MAJESTY THE KING OF DENMARK

[T.S. 65, 8 Stat. 340, 18 Stat., pt. 2, 167. Signed April 26, 1826, ratified Aug. 10, 1826, proclaimed Oct. 14, 1826. Abrogated by notice April 15, 1856, renewed by Convention of April 11, 1857, except Art. V.]

The United States of America and his Majesty the King of Denmark, being desirous to make firm and permanent the peace and friendship which happily prevail between the two nations, and to extend the commercial relations which subsist between their respective territories and People, have agreed to fix, in a manner clear and positive, the rules which shall in future be observed between the one and the other party, by means of a General Convention of Friendship, Commerce, and Navigation. With that object, the President of the United States of America has conferred full powers on Henry Clay, their Secretary of State, and his Majesty the King of Denmark has conferred like powers on Peter Pedersen, his Privy Counsellor of Legation, and Minister resident near the said States, Knight of the Dannebrog, who, after having exchanged their said full powers, found to be in due and proper form, have agreed to the following articles:

ARTICLE 1.

The contracting parties, desiring to live in peace and harmony with all the other nations of the earth, by means of a policy frank and equally friendly with all, engage, mutually, not to grant any particular favour to other nations, in respect of commerce and navigation, which shall not immediately become common to the other party, who shall enjoy the same freely, if the concession were freely made, or on allowing the same compensation, if the concession were conditional.

ARTICLE 2.

The contracting parties being likewise desirous of placing the Commerce and Navigation of their respective countries on the liberal basis of perfect equality and reciprocity, mutually agree that the citizens and subjects of each may frequent all the coasts and countries of the other, (with the exception hereafter provided for in the sixth article.)

and reside and trade there in all kinds of produce, manufactures, and merchandise; and they shall enjoy all the rights, privileges, and exemptions, in navigation and commerce, which native citizens or subjects do, or shall enjoy, submitting themselves to the laws, decrees, and usages, there established, to which native citizens or subjects are subjected. But it is understood that this article does not include the coasting trade of either country, the regulation of which is reserved by the parties, respectively, according to their own separate laws.

ARTICLE 3.

They, likewise, agree that whatever kind of produce, manufacture, or merchandise, of any foreign country, can be, from time to time, lawfully imported into the United States, in vessels belonging wholly to the citizens thereof, may be also imported in vessels wholly belonging to the subjects of Denmark; and that no higher or other duties upon the tonnage of the vessel or her cargo shall be levied and collected, whether the importation be made in vessels of the one country or of the other. And, in like manner, that whatever kind of produce, manufacture, or merchandise, of any foreign country, can be, from time to time, lawfully imported into the dominions of the King of Denmark, in the vessels thereof, (with the exception hereafter mentioned in the sixth article,) may be also imported in vessels of the United States; and that no higher or other duties upon the tonnage of the vessel or her cargo shall be levied and collected, whether the importation be made in vessels of the one country or of the other. And they further agree, that whatever may be lawfully exported or re-exported, from the one country in its own vessels, to any foreign country, may, in like manner, be exported or re-exported in the vessels of the other country. And the same bounties, duties, and drawbacks, shall be allowed and collected, whether such exportation or re-exportation be made in vessels of the United States or of Denmark. Nor shall higher or other charges of any kind be imposed, in the ports of one party, on vessels of the other, than are, or shall be, payable in the same ports by native vessels.

ARTICLE 4.

No higher or other duties shall be imposed on the importation into the United States of any article, the produce or manufacture of the dominions of his Majesty the King of Denmark; and no higher or other duties shall be imposed on the importation into the said dominions of any article, the produce or manufacture of the United States, than, are, or shall be, payable on the like articles, being the produce or manufacture of any other foreign country. Nor shall any higher or

other duties or charges be imposed in either of the two countries, on the exportation of any articles to the United States, or to the dominions of his Majesty the King of Denmark, respectively, than such as are, or may be, payable on the exportation of the like articles to any other foreign country. Nor shall any prohibition be imposed on the exportation or importation of any articles, the produce or manufacture of the United States, or of the dominions of his Majesty the King of Denmark, to, or from, the territories of the United States, or to or from the said dominions, which shall not equally extend to all other nations.

ARTICLE 5.

Neither the vessels of the United States nor their cargoes shall, when they pass the Sound or the Belts, pay higher or other duties than those which are or may be paid by the most favoured nation.

ARTICLE 6.

The present Convention shall not apply to the Northern possessions of his Majesty the King of Denmark; that is to say, Iceland, the Ferroé Islands, and Greenland, nor to places situated beyond the Cape of Good Hope, the right to regulate the direct intercourse with which possessions and places is reserved by the parties respectively. And it is further agreed that this Convention is not to extend to the direct trade between Denmark and the West India Colonies of his Danish Majesty, but in the intercourse with those Colonies, it is agreed that whatever can be lawfully imported into or exported from the said Colonies in vessels of one party from or to the ports of the United States, or from or to the ports of any other foreign country, may, in like manner, and with the same duties and charges, applicable to vessel and cargo, be imported into or exported from the said Colonies in vessels of the other party.

ARTICLE 7.

The United States and his Danish Majesty mutually agree, that no higher or other duties, charges, or taxes of any kind, shall be levied in the territories or dominions of either party, upon any personal property, money or effects, of their respective citizens or subjects, on the removal of the same from their territories or dominions reciprocally, either upon the inheritance of such property, money, or effects, or otherwise, than are or shall be payable in each State, upon the same, when removed by a citizen or subject of such State respectively.

ARTICLE 8.

To make more effectual the protection which the United States and his Danish Majesty shall afford in future, to the navigation and commerce of their respective citizens and subjects, they agree mutually to receive and admit Consuls and Vice Consuls in all the ports open to foreign commerce, who shall enjoy in them all the rights, privileges, and immunities, of the Consuls and Vice Consuls of the most favoured nation, each contracting party, however, remaining at liberty to except those ports and places in which the admission and residence of such Consuls may not seem convenient.

ARTICLE 9.

In order that the Consuls and Vice Consuls of the contracting parties may enjoy the rights, privileges, and immunities, which belong to them, by their public character, they shall, before entering on the exercise of their functions, exhibit their commission or patent in due form to the Government to which they are accredited; and having obtained their exequatur, which shall be granted gratis, they shall be held and considered as such by all the authorities, magistrates, and inhabitants, in the Consular district in which they reside.

ARTICLE 10.

It is likewise agreed, that the Consuls and persons attached to their necessary service, they not being natives of the country in which the Consul resides, shall be exempt from all public service, and also from all kinds of taxes, imposts, and contributions, except those which they shall be obliged to pay, on account of commerce, or their property, to which inhabitants, native and foreign, of the country in which such Consuls reside, are subject, being in every thing besides subject to the laws of the respective States. The archives and papers of the Consulate shall be respected inviolably, and, under no pretext whatever, shall any magistrate seize or in any way interfere with them.

ARTICLE 11.

The present Convention shall be in force for ten years from the date hereof, and further until the end of one year after either of the contracting parties shall have given notice to the other of its intention to terminate the same; each of the contracting parties reserving to itself the right of giving such notice to the other at the end of the said term of ten years; and it is hereby agreed, between them, that, on the expiration of one year after such notice shall have been received by either, from the other party, this convention, and all the provisions thereof, shall altogether cease and determine.

ARTICLE 12.

This Convention shall be approved and ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by his Majesty the King of Denmark, and the ratifications shall be exchanged in the city of Copenhagen, within eight months from the date of the signature hereof, or sooner, if possible.

In faith whereof, we, the Plenipotentiaries of the United States of America, and of his Danish Majesty, have signed and sealed these presents.

Done in triplicate, at the City of Washington, on the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and twenty-six, in the fiftiet year of the Independence of the United States of America.

H. Clay
Pr. Pedersen.

ADDENDUM.

Mr. Clay to Mr. Pedersen.

Department of State,
Washington, April 25, 1826.

The undersigned, Secretary of State of the United States, by direction of the President thereof, has the honour to state to Mr. Pedersen, Minister resident of his Majesty the King of Denmark, that it would have been satisfactory to the Government of the United States, if Mr. Pedersen had been charged with instructions in the negotiation which has just terminated, to treat of the indemnities to citizens of the United States, in consequence of the seizure, detention, and condemnation of their property, in the ports of his Danish Majesty. But as he has no instructions to that effect, the undersigned is directed, at and before proceeding to the signature of the Treaty of Friendship, Commerce, and Navigation on which they have agreed, explicitly to declare, that the omission to provide for those indemnities, is not hereafter to be interpreted as a waiver or abandonment of them by the Government of the United States, which on the contrary, is firmly resolved to persevere in the pursuit of them, until they shall be finally arranged, upon principles of equity and justice. And, to guard against any misconception of the fact of the silence of the Treaty, in the above particular, or of the views of the American Government, the undersigned requests that Mr. Pedersen will transmit this official

declaration to the Government of Denmark. And he avails himself of this occasion to tender to Mr. Pedersen assurances of his distinguished consideration.

H. Clay

The Chevalier Pedersen,
Minister Resident from Denmark.

The Chevalier Peter Pedersen to Mr. Clay.

Washington, 25th April, 1826.

The undersigned, Minister resident of his Majesty the King of Denmark, has the honour, herewith, to acknowledge having received Mr. Clay's official note of this day, declaratory of the advanced claims against Denmark, not being waived on the part of the United States, by the Convention agreed upon, and about to be signed, which note he, as requested, will transmit to his Government. And he avails himself of this occasion to renew to Mr. Clay assurances of his distinguished consideration.

P. Pedersen.

To the Hon. Henry Clay,
Secretary of State of the United States.

Additional Articles to the General Convention of Friendship, Commerce, and Navigation between the United States and Denmark, of April 26, 1826. [T.S. 68, 13 Stat. 605, 18 Stat., pt. 2, 175. Signed July 11, 1861, ratified Sept. 18, 1861, proclaimed Sept. 20, 1861.]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.
A PROCLAMATION.

Whereas additional articles to the General Convention of Friendship, Commerce, and Navigation between the United States and Denmark, of the 26th of April, 1826, were concluded and signed by the respective Plenipotentiaries of the parties, at Washington, on the eleventh day of July last, which additional articles, being in the English and French languages, are word for word as follows:—

ADDITIONAL ARTICLES

To the General Convention of Friendship, Commerce and Navigation, concluded at Washington on the twenty-sixth day of April, 1826, between the United States of America and His Majesty the King of Denmark.

The United States of America and His Majesty the King of Denmark, wishing to favor their mutual commerce by affording, in their ports, every necessary assistance to their respective vessels, the undersigned Plenipotentiaries, being duly empowered for that purpose, have agreed upon the following additional articles to the General Convention of Friendship, Commerce and Navigation, concluded at Washington on the twenty-sixth day of April, 1826, between the contracting parties.

ARTICLE I.

The respective Consuls-General, Consuls, Vice-Consuls and Commercial Agents, shall have the right as such to sit as judges and arbitrators in such differences as may arise, either at sea or in port, between the captain, officers and crew of the vessels belonging to the nation whose interests are committed to their charge, particularly in reference to the adjustment of wages and the execution of contracts, without the interference of the local authorities, unless the conduct of the crew and the officers, or of the captains should disturb the order or tranquillity of the country.

It is however understood that this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort on their return to the judicial authority of their country.

ARTICLE II.

The Consuls-General, Consuls, Vice-Consuls and Commercial Agents are authorized to require the assistance of the local authorities for the search, arrest and imprisonment of the deserters from the ships of war and merchant-vessels of their country. For this purpose they shall apply to the competent tribunals, judges and officers, and shall in writing demand said deserters, proving by the exhibition of the registers of the vessels, the rolls of the crews, or by other official documents, or, if the vessel shall have departed, by copy of said documents duly certified by them, that such individuals form part of the crew; and on this reclamation being thus substantiated, the surrender shall not be refused, unless there be sufficient proof of the said persons being citizens or subjects of the country where their surrender is demanded. Such deserters, when arrested, shall be placed at the disposal of said Consuls-General, Consuls, Vice-Consuls or Commercial Agents, and may be confined in the public prisons at the request and cost of those who shall claim them, in order to be detained until the time when they shall be restored to the vessels to which they belonged, or sent back to their own country by a vessel of the same nation, or any other vessel whatsoever. But if not sent

back within three months from the day of their arrest, they shall be set at liberty, and shall not be again arrested for the same cause.

However, if the deserter should be found to have committed any crime or offense, his surrender may be delayed until the tribunal before which his case shall be depending shall have pronounced its sentence, and such sentence shall have been carried into effect.

The present additional articles shall have the same force and value as if they were inserted, word for word, in the convention signed at Washington on the twenty-sixth day of April, one thousand eight hundred and twenty-six, and being approved and ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by His Majesty the King of Denmark, the ratifications shall be exchanged at Washington within six months from the date hereof, or sooner, if possible.

In faith whereof, we, the undersigned, in virtue of our respective full powers, have signed the present additional articles, and have thereto affixed our seals.

Done in triplicate at the city of Washington, on the eleventh day of July, in the year of our Lord one thousand eight hundred and sixty-one.

William H. Seward. [L.S.]

W. R. Raasloff. [L.S.]

And whereas the said additional articles have been duly ratified on both parts and the respective ratifications of the same were exchanged in the city of Washington, on the eighteenth instant, by William H. Seward, Secretary of State of the United States, and W. R. Raasloff, Chargé d'Affaires of His Majesty the King of Denmark in the United States, on the part of their respective governments.

Now, therefore, be it known that I, Abraham Lincoln, President of the United States of America, have caused the said additional articles to be made public, to the end that the same and every clause and article thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done in the city of Washington this twentieth day of September, in the year of our Lord one thousand eight hundred and sixty-one, and of the Independence of the United States the eighty-sixth.

Abraham Lincoln.

By the President,
William H. Seward,
Secretary of State.

TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION
BETWEEN THE UNITED STATES OF AMERICA
AND THE KINGDOM OF DENMARK

[Sen. Ex. I, 82nd Cong., 2nd Sess., signed Oct. 1, 1951]

The United States of America and the Kingdom of Denmark, desirous of strengthening the bonds of peace and friendship traditionally existing between them and of encouraging closer economic and cultural relations between their peoples, and being cognizant of the contributions which may be made toward these ends by arrangements encouraging mutually beneficial investments, promoting mutually advantageous commercial intercourse and otherwise establishing mutual rights and privileges, have resolved to conclude a Treaty of Friendship, Commerce and Navigation, based in general upon the principles of national and of most-favored-nation treatment unconditionally accorded, and for that purpose have appointed as their Plenipotentiaries,

The President of the United States of America:

His Ambassador Extraordinary and Plenipotentiary,

Mrs. Eugenie Anderson,

and

His Majesty the King of Denmark:

His Minister for Foreign Affairs, Mr. Ole Bjorn Kraft,

Who, having communicated to each other their full powers found to be in due form, have agreed upon the following Articles:

ARTICLE I.

Each Party shall at all times accord equitable treatment to the persons, property, enterprises and other interests of nationals and companies of the other Party.

ARTICLE II.

1. Nationals of either Party shall be permitted to enter the territories of the other Party and to remain therein: (a) for the purpose of carrying on trade between the territories of the two Parties and for the purpose of engaging in related commercial activities; and (b) for other purposes subject to the laws relating to the entry and sojourn of aliens.

2. Nationals of either Party, within the territories of the other Party, shall be permitted: (a) to travel therein freely, and to reside at places of their choice, (b) to enjoy liberty of conscience; (c) to hold both private and public religious services; (d) to gather and to transmit

material for dissemination to the public abroad; and (e) to communicate with other persons inside and outside such territories by mail, telegraph and other means open to general public use.

3. The provisions of the present Article shall be subject to the right of either Party to apply measures that are necessary to maintain public order and necessary to protect the public health, morals and safety.

ARTICLE III.

1. Nationals of either Party within the territories of the other Party shall be free from unlawful molestations of every kind, and shall receive the most constant protection and security, in no case less than that required by international law.

2. If, within the territories of either Party, a national of the other Party is accused of crime and taken into custody, the nearest consular representative of his country shall on the demand of such national be immediately notified. Such national shall: (a) receive reasonable and humane treatment; (b) be formally and immediately informed of the accusations against him; (c) be brought to trial as promptly as is consistent with the proper preparation of his defense; and (d) enjoy all means reasonably necessary to his defense, including the services of competent counsel.

ARTICLE IV.

1. Nationals of either Party shall be accorded national treatment in the application of laws and regulations within the territories of the other Party that establish a pecuniary compensation on account of disease, injury or death arising out of and in the course of employment or due to the nature of employment.

2. In addition to the rights and privileges provided in paragraph 1 of the present Article, nationals of either Party shall, within the territories of the other Party, be accorded national treatment in the application of laws and regulations establishing a system of compulsory insurance in the case of the United States of America and a system of voluntary insurance in the case of the Kingdom of Denmark, under which benefits are paid without an individual test of financial need against loss of wages or earnings due to unemployment.

ARTICLE V.

1. Nationals and companies of either Party shall be accorded national treatment and most-favored-nation treatment with respect to access to the courts of justice and to administrative tribunals and agencies within the territories of the other Party, in all degrees of

jurisdiction, both in pursuit and in defense of their rights. It is understood that companies of either Party not engaged in either business or nonprofit activities within the territories of the other Party shall enjoy such access therein without any requirement of registration or domestication.

2. Contracts entered into between nationals and companies of either Party and nationals and companies of the other Party, that provide for the settlement by arbitration of controversies, shall not be deemed unenforceable within the territories of such other Party merely on the grounds that the place designated for the arbitration proceedings is outside such territories or that the nationality of one or more of the arbitrators is not that of such other Party. No award duly rendered pursuant to any such contract, and final and enforceable under the laws of the place where rendered, shall be deemed invalid or denied effective means of enforcement within the territories of either Party merely on the grounds that the place where such award was rendered is outside such territories or that the nationality of one or more of the arbitrators is not that of such Party.

ARTICLE VI.

1. Property of nationals and companies of either Party shall receive the most constant protection and security within the territories of the other Party.

2. The dwellings, offices, warehouses, factories and other premises of nationals and companies of either Party located within the territories of the other Party shall not be subject to unlawful entry or molestation. Official searches and examinations of such premises and their contents, when necessary, shall be made with careful regard for the convenience of the occupants and the conduct of business.

3. Property of nationals and companies of either Party shall not be taken within the territories of the other Party except for public purposes nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for determination and payment thereof.

4. Neither Party shall take unreasonable or discriminatory measures that would impair the legally acquired rights or interests within its territories of nationals and companies of the other Party in the enterprises which they have established or in the capital, skills, arts or technology which they have supplied.

5. Nationals and companies of either Party shall in no case be accorded, within the territories of the other Party, less than national

treatment and most-favored-nation treatment with respect to the matters set forth in paragraphs 2 and 3 of the present Article. Moreover, enterprises in which nationals and companies of either Party have a substantial interest shall be accorded, within the territories of the other Party, not less than national treatment and most-favored-nation treatment in all matters relating to the taking of privately owned enterprises into public ownership and to the placing of such enterprises under public control.

ARTICLE VII.

1. Nationals and companies of either Party shall be accorded, within the territories of the other Party, national treatment with respect to engaging in commercial, manufacturing, processing, financial, construction, publishing, scientific, educational, religious, and philanthropic activities.

2. Nationals and companies of either Party shall further be accorded, within the territories of the other Party, most-favored-nation treatment with respect to:

- a) the activities listed in paragraph 1 of the present Article;
- b) exploring for and exploiting mineral deposits;
- c) engaging in fields of economic and cultural activity in addition to those listed in paragraph 1 of the present Article or in sub-paragraph b) of the present paragraph;
- d) organizing, participating in and operating companies of such other Party.

3. With respect to professional activities, nationals of either Party shall be accorded national treatment within the territories of the other Party, except as to professions which, because they involve the performance of functions in a public capacity or in the interest of public health and safety, are state-licensed and reserved by statute exclusively to citizens of the country.

4. Nationals and companies of either Party shall be permitted to engage, within the territories of the other Party, accountants and other technical experts, executive personnel, attorneys, agents and other specialized employees of their choice, regardless of nationality. Moreover, such nationals and companies shall be permitted to engage accountants and other technical experts regardless of the extent to which they may have qualified for the practice of a profession within the territories of such other Party, for the particular purpose of making examinations, audits and technical investigations for, and rendering reports to, such nationals and companies in connection with the planning and operation of their enterprises, and enterprises in which they have a financial interest, within such territories.

ARTICLE VIII.

1. Nationals and companies of either Party shall be accorded within the territories of the other Party the right to constitute companies for engaging in commercial, manufacturing, processing, financial, construction, mining, publishing, scientific, educational, religious, and philanthropic activities, and to control and manage enterprises which they have been permitted to establish or acquire within such territories for the foregoing and other purposes.

2. Companies, controlled by nationals and companies of either Party and constituted under the applicable laws and regulations within the territories of the other Party for engaging in the activities listed in paragraph 1 of the present Article, shall be accorded national treatment therein with respect to such activities.

ARTICLE IX.

1. Nationals and companies of either Party shall be accorded national treatment within the territories of the other Party with respect to acquiring all kinds of movable property by testate or intestate succession or through judicial process and all kinds of immovable property by testate or intestate succession.

2. Nationals and companies of either Party shall be accorded national treatment within the territories of the other Party with respect to acquiring, by purchase, lease or otherwise, and with respect to owning movable property of all kinds, both tangible and intangible, subject to the right of such other Party to limit or prohibit, in a manner that does not impair rights and privileges secured by Article VIII, paragraph 1, or by other provisions of the present Treaty, alien ownership of particular materials that are dangerous from the standpoint of public safety and alien ownership of interests in enterprises carrying on particular types of activities.

3. Nationals and companies of either Party shall be accorded, with respect to acquiring immovable property within the territories of the other Party, the treatment generally accorded to foreigners under the laws of the place where the property is situated; and they shall be permitted to maintain tenure of immovable property necessary and proper to the exercise of rights and privileges secured by Article VII or by other provisions of the present Treaty, in conformity with the applicable laws and regulations.

4. Nationals and companies of either Party may be required, within the territories of the other Party, to dispose of property they may have acquired:

a) in the case of movable property, if the alien ownership thereof

is limited or prohibited pursuant to paragraph 2 of the present Article;

b) in the case of immovable property, if the property is held for purposes other than those referred to in paragraph 3 of the present Article.

Conditions or requirements shall not be imposed upon such disposition that would prevent the realization of full and just value. Particularly, a term of at least five years shall be allowed in which to effect such disposition.

5. Nationals and companies of either Party shall be accorded national treatment within the territories of the other Party with respect to disposing of property of all kinds, subject to the provisions of paragraph 4 of the present Article.

ARTICLE X.

Nationals and companies of either Party shall be accorded, within the territories of the other Party, national treatment and most-favored-nation treatment with respect to obtaining and maintaining patents of invention, and with respect to rights in trade marks, trade names, trade labels and industrial property of all kinds.

ARTICLE XI.

1. Nationals of either Party residing within the territories of the other Party, and nationals and companies of either Party engaged in trade or other gainful pursuit or in scientific, educational, religious or philanthropic activities within the territories of the other Party, shall not be subject to the payment of taxes, fees or charges imposed upon or applied to income, capital, transactions, activities or any other object, or to requirements with respect to the levy and collection thereof, within the territories of such other Party, more burdensome than those borne by nationals and companies of such other Party.

2. With respect to nationals of either Party who are neither resident nor engaged in trade or other gainful pursuit within the territories of the other Party, and with respect to companies of either Party which are not engaged in trade or other gainful pursuit within the territories of the other Party, it shall be the aim of such other Party to apply in general the principle set forth in paragraph 1 of the present Article.

3. Nationals and companies of either Party shall in no case be subject, within the territories of the other Party, to the payment of taxes, fees or charges imposed upon or applied to income, capital, transactions, activities or any other object, or to requirements with respect to the levy and collection thereof, more burdensome than those

borne by nationals, residents and companies of any third country.

4. In the case of companies of either Party engaged in trade or other gainful pursuit within the territories of the other Party, and in the case of nationals of either Party engaged in trade or other gainful pursuit within the territories of the other Party but not resident therein, such other Party shall not impose or apply any tax, fee or charge upon any income, capital or other basis in excess of that reasonably allocable or apportionable to its territories, nor grant deductions and exemptions less than those reasonably allocable or apportionable to its territories. A comparable rule shall apply also in the case of companies organized and operated exclusively for scientific, educational, religious or philanthropic purposes.

5. Notwithstanding the provisions of the present Article, each Party may: (a) accord specific advantages as to taxes, fees and charges to nationals, residents and companies of third countries on the basis of reciprocity, if such advantages are similarly extended to nationals, residents and companies of the other Party; (b) accord to nationals, residents and companies of a third country special advantages by virtue of an agreement with such country for the avoidance of double taxation or the mutual protection of revenue; and (c) accord to its own nationals and to residents of contiguous countries more favorable exemptions of a personal nature with respect to income taxes and inheritance taxes than are accorded to other nonresident persons.

ARTICLE XII.

1. Nationals and companies of either Party shall be accorded by the other Party national treatment and most-favored-nation treatment with respect to payments, remittances and transfers of funds or financial instruments, between the territories of the two Parties as well as between the territories of such other Party and of any third country.

2. Neither Party shall impose exchange restrictions as defined in paragraph 5 of the present Article except to the extent necessary to assure the availability of foreign exchange for payments for goods and services essential to the health and welfare of its people and to prevent its monetary reserves from falling to a very low level or to effect a reasonable increase in very low monetary reserves. It is understood that the provisions of the present Article do not alter the obligations either Party may have to the International Monetary Fund or preclude imposition of particular restrictions whenever the Fund specifically authorizes or requests a Party to impose such particular restrictions.

3. If either Party imposes exchange restrictions in accordance with paragraph 2 above, that Party shall make provisions at the earliest possible date and to such an extent as may be practicable for the

withdrawal of: (a) the compensation referred to in Article VI, paragraph 3, of the present Treaty, (b) earnings, whether in the form of salaries, interest, dividends, commissions, royalties, payments for technical services, or otherwise, and (c) amounts for amortization of loans, amounts originating from depreciation of direct investments, and capital transfers; however, transfers dealt with under (c) shall be considered in the light of special needs for other transfers. If more than one rate of exchange is in force, the rate applicable to such withdrawals shall be a rate which is specifically approved by the International Monetary Fund for such transactions or, in the absence of a rate so approved, an effective rate which, inclusive of any taxes or surcharges on exchange transfers, is just and reasonable.

4. Exchange restrictions shall not be imposed by either Party in a manner unnecessarily detrimental or arbitrarily discriminatory to the claims, investments, transport, trade, and other interests of the nationals and companies of the other Party, nor to the competitive position thereof. Each Party shall afford the other Party adequate opportunity for exchanging views at any time regarding problems that might arise from the application of the present Article.

5. The term "exchange restrictions" as used in the present Article includes all restrictions, regulations, charges, taxes or other requirements imposed by either Party which burden or interfere with payments, remittances, or transfers of funds or of financial instruments between the territories of the two Parties.

ARTICLE XIII.

Commercial travelers representing nationals and companies of either Party engaged in business within the territories thereof shall, upon their entry into and departure from the territories of the other Party and during their sojourn therein, be accorded most-favored-nation treatment in respect of the customs and other matters, including, subject to the exceptions in Article XI, paragraph 5, taxes and charges applicable to them, their samples and the taking of orders.

ARTICLE XIV.

1. Each Party shall accord most-favored-nation treatment to products of the other Party, from whatever place and by whatever type of carrier arriving, and to articles destined for exportation to the territories of such other Party, by whatever route and by whatever type of carrier, in all matters relating to customs duties and other charges, and with respect to all other regulations, requirements and formalities imposed on or in connection with imports and exports.

2. Neither Party shall impose any prohibition or restriction on the importation of any product of the other Party, or on the exportation of any article to the territories of the other Party, that:

a) if imposed on sanitary or other customary grounds of a non-commercial nature or in the interest of preventing deceptive or unfair practices, arbitrarily discriminates in favor of the important of the like product of, or the exportation of the like article to, any third country;

b) if imposed on other grounds, does not apply equally to the importation of the like product of, or the exportation of the like article to, any third country; or,

c) if a quantitative regulation involving allotment to any third country with respect to an article in which such other Party has an important interest, fails to afford to the commerce of such other Party a share proportionate to the amount by quantity or value supplied by or to such other Party during a previous representative period, due consideration being given to any special factors affecting the trade in the article.

3. Nationals and companies of either Party shall be accorded national treatment and most-favored-nation treatment by the other Party with respect to all matters relating to importation and exportation.

4. As used in the present Treaty the term "products of" means "articles the growth, produce, or manufacture of". The provisions of the present Article shall not apply to advantages accorded by either Party:

a) to products of its national fisheries;

b) to adjacent countries in order to facilitate frontier traffic; or

c) by virtue of a customs union or free trade area of which either Party may become a member, after having informed the other Party of its plans and having afforded it opportunity to express its views thereon.

ARTICLE XV.

1. Each Party shall promptly publish laws, regulations and administrative rulings of general application pertaining to rates of duty, taxes or other charges, to the classification of articles for customs purposes, and to requirements or restrictions on imports and exports or the transfer of payments therefor, or affecting their sale, distribution or use; and shall administer such laws, regulations and rulings in a uniform, impartial and reasonable manner. As a general practice, new administrative requirements affecting imports, with the exception

of requirements imposed on sanitary grounds or for reasons of public safety, shall not go into effect before the expiration of 30 days after publication, or alternatively, shall not apply to articles en route at time of publication.

2. Each Party shall provide an appeals procedure under which nationals and companies of the other Party, and importers of products of such other Party, shall be able to obtain prompt and impartial review and correction of administrative action relating to customs matters, including the imposition of fines and penalties, confiscations, and rulings on questions of customs classification and valuation by the administrative authorities. Penalties imposed for infractions of the customs and shipping laws and regulations shall be merely nominal in cases resulting from clerical errors or when good faith can be demonstrated.

ARTICLE XVI.

1. Products of either Party shall be accorded, within the territories of the other Party, national treatment and most-favored-nation treatment in all matters affecting internal taxation, sale, distribution, storage and use.

2. Articles produced by nationals and companies of either Party within the territories of the other Party, or by companies of the latter Party controlled by such nationals and companies, shall be accorded therein treatment no less favorable than that accorded to like articles of national origin by whatever person or company produced, in all matters affecting exportation, taxation, sale, distribution, storage and use.

ARTICLE XVII.

1. Each Party undertakes (a) that enterprises owned or controlled by its Government, and that monopolies or agencies granted exclusive or special privileges within its territories, shall make their purchases and sales involving either imports or exports affecting the commerce of the other Party solely in accordance with commercial considerations including price, quality, availability, marketability, transportation and other conditions of purchase or sale; and (b) that the nationals, companies and commerce of such other Party shall be afforded adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases and sales.

2. Each Party shall accord to the nationals, companies and commerce of the other Party fair and equitable treatment, as compared with that accorded to the nationals, companies and commerce of any

third country, with respect to: (a) the governmental purchase of supplies, (b) the awarding of concessions and other government contracts, and (c) the sale of any service sold by the Government or by any monopoly or agency granted exclusive or special privileges.

ARTICLE XVIII.

1. The two Parties agree that business practices which restrain competition, limit access to markets or foster monopolistic control, and which are engaged in or made effective by one or more private or public commercial enterprises or by combination, agreement or other arrangement among such enterprises may have harmful effects upon commerce between their respective territories. Accordingly, each Party agrees upon the request of the other Party to consult with respect to any such practices and to take such measures as it deems appropriate with a view to eliminating such harmful effects.

2. The Parties recognize that conditions of competitive equality should be maintained in situations in which publicly owned or controlled trading or manufacturing enterprises of either Party engage in competition, within the territories thereof, with privately owned and controlled enterprises of nationals and companies of the other Party. Accordingly, such private enterprise shall, in such situations, be entitled to the benefit of any special advantages of an economic nature accorded such public enterprises, whether in the nature of subsidies, tax exemptions, or otherwise. The foregoing rule shall not apply, however, to special advantages given in connection with: (a) manufacturing goods for government use, or supplying goods and services to the government for government use; or (b) supplying, at prices substantially below competitive prices, the needs of particular population groups for essential goods and services not otherwise practically obtainable by such groups.

3. No enterprise of either Party, including corporations, associations, and government agencies and instrumentalities, which is publicly owned or controlled shall, if it engages in commercial, manufacturing, processing, shipping or other business activities within the territories of the other Party, claim or enjoy, either for itself or for its property, immunity therein from taxation, suit, execution of judgment or other liability to which privately owned and controlled enterprises are subject therein.

ARTICLE XIX.

1. Between the territories of the two Parties there shall be freedom of commerce and navigation.

2. Vessels under the flag of either Party, and carrying the papers required by its law in proof of nationality, shall be deemed to be vessels of that Party both on the high seas and within the ports, places and waters of the other Party.

3. Vessels of either Party shall have liberty, on equal terms with vessels of the other Party and on equal terms with vessels of any third country, to come with their cargoes to all ports, places and waters of such other Party open to foreign commerce and navigation. Such vessels and cargoes shall in all respects be accorded national treatment and most-favored-nation treatment within the ports, places and waters privileges to its own vessels with respect to the coasting trade, inland of such other Party; but each Party may reserve exclusive right and navigation and national fisheries.

4. Vessels of either Party shall be accorded national treatment and most-favored-nation treatment by the other Party with respect to the right to carry all articles that may be carried by vessel to or from the territories of such other Party; and such articles shall be accorded treatment no less favorable than that accorded like articles carried in vessels of such other Party, with respect to: (a) duties and charges of all kinds, (b) the administration of the customs, and (c) bounties, drawbacks, and other privileges of this nature.

5. Vessels of either Party that are in distress shall be permitted to take refuge in the nearest port or haven of the other Party, and shall receive friendly treatment and assistance.

6. The term "vessels", as used herein, means all types of vessels, whether privately owned or operated, or publicly owned or operated; but this term does not, except with reference to paragraph 2 and paragraph 5 of the present Article, include fishing vessels or vessels of war.

ARTICLE XX.

There shall be freedom of transit through the territories of each Party by the routes most convenient for international transit:

- a) for nationals of the other Party, together with their baggage;
 - b) for other persons, together with their baggage, en route to or from the territories of such other Party; and
 - c) for articles en route to or from the territories of such other Party.
- Such persons and articles in transit shall be exempt from customs duties, from duties imposed by reason of transit, and from unreasonable charges and requirements; and shall be free from unnecessary delays and restrictions. They shall, however, be subject to measures referred to in Article II, paragraph 3, and to nondiscriminatory regulations necessary to prevent abuse of the transit privilege.

ARTICLE XXI.

1. The present Treaty shall not preclude the application of measures:

- a) regulating the importation or exportation of gold or silver;
- b) relating to fissionable materials, to radioactive by-products of the utilization or processing thereof or to materials that are the source of fissionable materials;
- c) regulating the production of or traffic in arms, ammunition and implements of war, or traffic in other materials carried on directly or indirectly for the purpose of supplying a military establishment;
- d) necessary to fulfill the obligations of a Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests; and
- e) denying to any company in the ownership or direction of which nationals of any third country or countries have directly or indirectly a controlling interest, the advantages of the present Treaty, except with respect to recognition of juridical status and with respect to access to courts.

2. The most-favored-nation provisions of the present Treaty relating to the treatment of goods shall not apply to advantages accorded by the United States of America or its territories and possessions to one another, to the Republic of Cuba, to the Republic of the Philippines, to the Trust Territory of the Pacific Islands or to the Panama Canal Zone.

3. The provisions of the present Treaty shall not preclude action by either Party which is required or specifically permitted by the General Agreement on Tariffs and Trade during such time as such Party is a contracting Party to the General Agreement on Tariffs and Trade. In case a Party is not a contracting Party to the General Agreement on Tariffs and Trade it shall nevertheless have the right to depart from the provisions of the present treaty to the extent necessitated by its international balance of payments position, in a manner contemplated by said agreement as nearly as may be practicable and subject to the principle set forth therein that such departures shall be conformable with a policy designed to promote the maximum development of nondiscriminatory foreign trade and to expedite the attainment both of a balance of payments position and of reserves of foreign exchange which will obviate the necessity of such departures. The most-favored-nation provision of the present Treaty shall not apply to special advantages accorded by virtue of the aforesaid agreement.

4. The present Treaty does not accord any rights to engage in political activities.

5. Nationals of either Party admitted into the territories of the

other Party for limited purposes shall not enjoy rights to engage in gainful occupations in contravention of limitations expressly imposed, according to law, as a condition of their admittance.

ARTICLE XXII.

1. The term "national treatment" means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such Party.

2. The term "most-favored-nation treatment" means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of any third country.

3. As used in the present Treaty, the term "companies" means corporations, partnerships, companies and other associations, whether or not with limited liability and whether or not for pecuniary profit. Companies constituted under the applicable laws and regulations within the territories of either Party shall be deemed companies thereof and shall have their juridical status recognized within the territories of the other Party.

4. National treatment accorded under the provisions of the present Treaty to companies of the Kingdom of Denmark shall, in any State, Territory or possession of the United States of America, be the treatment accorded therein to companies created or organized in other States, Territories and possessions of the United States of America.

ARTICLE XXIII.

The territories to which the present Treaty extends shall comprise all areas of land and water under the sovereignty or authority of each of the Parties, other than Greenland, the Panama Canal Zone and the Trust Territory of the Pacific Islands.

ARTICLE XXIV.

1. Each Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as the other Party may make with respect to any matter affecting the operation of the present Treaty.

2. Any dispute between the Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the Parties agree to settlement by some other pacific means.

ARTICLE XXV.

The present Treaty shall replace the convention of friendship, commerce and navigation signed April 26, 1826, except Articles 8, 9, and 10 thereof, which shall remain in force until replaced by a consular convention between the two Parties or until one year after either Party shall have given to the other Party written notice of termination of the aforesaid Articles.

ARTICLE XXVI.

1. The present Treaty shall be ratified, and the ratifications thereof shall be exchanged at Washington as soon as possible.

2. The present Treaty shall enter into force one month after the day of exchange of ratifications. It shall remain in force for ten years and shall continue in force thereafter until terminated as provided herein.

3. Either Party may, by giving one year's written notice to the other Party, terminate the present Treaty at the end of the initial ten-year period or at any time thereafter.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the present Treaty and have affixed hereunto their seals.

DONE in duplicate, in the English and Danish languages, both equally authentic, at Copenhagen, this first day of October, one thousand nine hundred and fifty-one.

[SEAL]
[SEAL]

EUGENIE ANDERSON
OLE BJØRN KRAFT

PROTOCOL

At the time of signing the Treaty of Friendship, Commerce and Navigation between the United States of America and the Kingdom of Denmark the undersigned Plenipotentiaries, duly authorized by their respective governments, have further agreed on the following provisions, which shall be considered integral parts of the aforesaid Treaty:

1. The term "access" as used in Article V, paragraph 1, comprehends, among other things, access to free legal aid and right to exemption from providing security for costs and judgment.

2. The provisions of Article VI, paragraph 3, providing for the payment of compensation shall extend to interests held directly or indirectly by nationals and companies of either Party in property which is taken within the territories of the other Party.

3. The provisions of Article VII, paragraph 1, shall not be construed

to affect the policy of Denmark of requiring that aliens may not be employed in Denmark unless the appropriate permits have been granted. However, in keeping with the terms of that paragraph, the regulations governing employment shall be applied in a liberal fashion.

4. Notwithstanding the provisions of Article VII, paragraph 1, a Party may require companies desiring to engage in retail trade, within its territories, to be organized pursuant to Article VIII, paragraph 1.

5. The term "mineral", as used in Article VII, paragraph 2 (b), refers to petroleum as well as to other mineral substances.

6. The term "financial" in Article VII, paragraph 1, and Article VIII, paragraph 1, includes banking activity. Such activity in Denmark is the activity, and that alone, which can be conducted pursuant to and under observance of the provisions in the Danish banking legislation. Applications concerning permission to establish branches of American banks in Denmark for the conduct of banking activity as defined above will be given favorable consideration.

In the United States of America permission to initiate a banking business as defined by the applicable State and Federal laws shall be dependent on the provisions of such laws.

7. Article XII, paragraph 2, shall not be construed to prevent a Party from exercising necessary regulation over the inflow of capital pursuant to article VI, section 3, of the Articles of Agreement of the International Monetary Fund, provided that such regulation shall not as a general rule be exercised in a manner which impairs paragraphs 1 and 2 of article VII, paragraph 1 of Article VIII, or the provisions of other Articles of the Treaty.

8. The provisions of Article XVII, paragraph 2 (b) and (c), and of Article XIX, paragraph 4, shall not apply to postal services.

9. The provisions of Article XXI, paragraph 2, shall apply in the case of Puerto Rico regardless of any change that may take place in its political status.

10. Article XXIII does not apply to territories under the authority of either Party solely as a military base or by reason of temporary military occupation.

11. Notwithstanding Article XXIII, the provisions of Article XIV, paragraphs 1 and 2, and of Article XVII, shall, subject to the reservations and exceptions pertinent thereto, extend to Greenland.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed this Protocol and have affixed hereunto their seals.

DONE in duplicate, in the English and Danish languages, both equally authentic, at Copenhagen, this first day of October, one thousand nine hundred and fifty-one.

[SEAL]

[SEAL]

EUGENIE ANDERSON

OLE BJØRN KRAFT

MINUTES OF INTERPRETATION CONCERNING TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF DENMARK SIGNED AT COPENHAGEN, OCTOBER 1, 1951.

The following notes record the common understanding of the representatives of the United States of America and the Kingdom of Denmark with regard to certain questions of interpretation that arose during the course of negotiating the provisions of the Treaty of Friendship, Commerce and Navigation between the two countries signed this day:

Ad Articles VII and VIII:

The word "commercial" as used in Article VII, paragraph 1, and Article VIII, paragraph 1, and the word "professional" as used in Article VII, paragraph 1, do not extend to the fields of navigation and aviation. The word "commercial" relates primarily but not exclusively to the buying and selling of goods and activities incidental thereto.

Ad Article VII, paragraph 1:

It is understood that either Party may, consistently with the terms and intent of the Treaty, apply special requirements to alien insurance companies with a view to assuring that such companies maintain standards of accountability and solvency comparable to those required of like domestic companies, so long as such requirements do not have the effect of discrimination in substance against such alien companies.

Ad Article VIII, paragraph 1:

It is understood that either Party may consistently with the terms of this paragraph, maintain special requirements with respect to the residence or nationality of the founders, members of the boards of directors, and managing directors of companies constituted under its laws.

Ad Article XI:

Nothing in this Treaty shall be construed to supersede any provisions of the convention between the United States of America and the Kingdom of Denmark for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed May 6th, 1948.

Ad Article XIV, paragraph 4:

It shall be sufficient for the purposes of subparagraph (c) if the information and views mentioned therein are imparted in the course of appropriate multilateral discussions (as pursuant to the General Agreement on Tariffs and Trade) in which both Parties participate.

Ad Article XIX, paragraph 2:

The word "flag" in Article XIX, paragraph 2, shall also comprise a reference to the Faroese flag.

Ad paragraph 6 of the Protocol:

The provisions of paragraph 6 of the Protocol do not imply discriminatory measures against duly authorized banking enterprises.

E. A.

O. B. K.

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**BILATERAL STUDIES
IN PRIVATE INTERNATIONAL LAW**

- No. 1: American-Swiss Private International Law, New York, 1951,
by Arthur Nussbaum
- No. 2: American-French Private International Law, New York,
1953, by Georges R. Delaume
- No. 3: American-Dutch Private International Law, New York, 1955,
by R. D. Kollewijn
- No. 4: American-German Private International Law [American-
German Private Law Relations Cases 1945-1955] New
York, 1956, by Martin Domke
- No. 5: American-Colombian Private International Law, New York,
1956, by Phanor J. Eder
- No. 6: American-Greek Private International Law, New York, 1957,
by Albert A. Ehrenzweig, Charalambos Fragistas and
Anthanasios Yiannopoulos
- No. 7: American-Danish Private International Law, New York,
1957 by Allan Philip