

This is an unofficial translation of the Danish *Aftalelov* and is for general information. Only the Danish text in the Danish Law Gazette (*Lovtidende*) is valid.

Danish Contracts Act

Act on contracts and other juristic acts¹ pertaining to property
Consolidation Act No. 600 of 8 September 1986 as amended by Act No. 1098 of 21 December
1994, Act No. 389 of 14 June 1995, and Act No. 385 of 22 May 1996

Part I

Conclusion of Contracts

1. An offer and a reply to an offer shall be binding on the persons making them. Unless the offer or the reply or trade usage or other custom specifies otherwise, the provisions of sections 2-9 of this Act apply.

2.-(1) If the offeror has fixed a period for acceptance of the offer, the acceptance must reach him within this period.

(2) If the offer is made by letter, the period for acceptance begins to run as from the date of the letter, and, if made by telegram, as from the moment the telegram is handed to the telegraph office of the place of dispatch.

3.-(1) If the offer is made by letter or telegram and no period for acceptance has been fixed, the acceptance must reach the offeror within the period as could be anticipated by him to pass when making the offer. In calculating this period, unless otherwise indicated by the circumstances, it shall be presumed that the offer is received in due time and that the acceptance is sent without delay after the person to whom it is addressed has had reasonable time to consider it and that it is not delayed in transmission. If the offer is made by telegram, the acceptance shall be communicated by telegram unless it can reach the offeror in due time by another method equally fast.

(2) An oral offer with no fixed period for acceptance shall be accepted immediately.

4.-(1) A late acceptance shall be regarded as a counter-offer.

(2) This does not apply, however, if the sender of the acceptance believes that it has been received in due time and the offeror must realise this. In such a case and if he does not intend to accept the reply, the offeror must so inform the sender without undue delay. If he fails to do so, a contract shall be deemed to have been concluded.

5. If rejected, the offer lapses, even if the reply period has not yet expired.

¹ The term *juristic act* has been adopted as a translation of the Danish term *retshandel*, i.e. an act whereby a natural or artificial person creates, alters or destroys rights and obligations and which, as a consequence, affects legal relationships between natural and artificial persons.

6.-(1) A reply purporting to accept an offer but because of additions, restrictions or reservations does not correspond with the terms of the offer shall be regarded as a rejection combined with a counter-offer.

(2) This does not apply, however, when the sender of the reply believes that it is an absolute and unqualified acceptance and the offeror must realise this. In such a case and if he does not intend to accept the reply, the offeror must so inform the other party without undue delay. If he fails to do so, a contract with the terms contained in the acceptance shall be deemed to have been concluded.

7. An offer or a reply that is revoked shall lapse if the revocation reaches the other party before or at the same time as the offer or reply comes to his notice.

8. If the offeror has stated that he will regard silence on the part of the offeree as an acceptance of the offer or if it appears from the circumstances of the case that the offeror does not expect an express reply, the offeree must, if so requested, nevertheless make a statement of acceptance if he intends to accept the offer. If he fails to do so, the offer lapses.

9. If, in a statement that would otherwise be deemed to constitute an offer, a person has used the words “uden forbindtighed”, “uden obligo” (without obligation) or similar expression, the statement shall be regarded as an invitation to make offers in accordance with the terms contained in the statement. If, within a reasonable time, such an offer is made by a person to whom the statement was addressed and if the offeree must take it to have been made in response to the statement, the offeree must so inform the offeror without undue delay if he does not intend to accept the offer. If he fails to do so, the offer shall be deemed to have been accepted.

Part II

Authority of Agents

10.-(1) Any person who has authorised another person to make a juristic act shall directly incur rights and obligations under a contract with a third party concluded by the agent in the name of the principal and within the scope of his authority.

(2) Any person who, under a contract with another person, occupies a position that by law or custom authorises him to act within certain limits on behalf of that other person shall be regarded as authorised to make juristic acts coming within the scope of his authority.

11.-(1) If, when making the juristic act, a person acting as an agent acts contrary to the instructions of his principal, the act shall not bind the principal if the third party realised or ought to have realised that, in making the juristic act, the agent acted outside his authority.

(2) If the authority is governed by the provisions of section 18 of this Act and if the agent acted outside his authority when making the juristic act, the act shall not bind the principal even if the third party acted in good faith.

12.-(1) A principal who intends to revoke an authority governed by sections 13-16 of this Act shall, even if he has informed the agent that the authority has been brought to an end, take the steps for each particular case as provided in the sections referred to above. If several provisions apply to an authority, all shall be complied with.

(2) The third party in relation to whom the authority has been revoked as provided in section 13 of this Act may not rely on the fact that the authority was not revoked in another manner.

13. An authority that has been brought to the notice of a third party by a separate statement addressed to him by the principal is revoked when a separate statement specifying that the agent's authority has been brought to an end has reached the third party.

14.-(1) An authority that has been publicly communicated in news papers or in any other way by the principal shall be revoked by a statement to that effect published in the same manner.

(2) If this is not possible, the revocation shall be communicated in a manner equally effective. The principal may require the court specified in section 17 of this Act to determine which steps to take in that respect.

(3) Registration of the authority does not amount to public communication.

15. An authority governed by the provisions of section 10(2) of this Act is revoked when the agent is removed from his position.

16.-(1) A document granting agency authority that has been handed to the agent and which must be deemed to be intended to be in his possession and to be shown to a third party shall be revoked by the principal demanding the return or destruction of the document.

(2) If so requested, the agent shall return the document to the principal.

17.-(1) If the principal shows that it must be deemed probable that a document granting agency authority governed by section 16 of this Act has been lost or for any other reason cannot be recovered within a reasonable time, it may judicially be declared ineffective.

(2) A petition for a declaration shall be filed with the ordinary court of first instance at the principal's place of residence or his last known residence. If the court finds that a petition should be granted, the court shall prepare a declaration stating that the authority will become ineffective once the declaration has been published in "Statstidende" (the Danish Official Gazette) and after publication a fixed period of no longer than 14 days has passed. In its declaration, the court may specify that the declaration shall also be published in another manner prior to its publication in "Statstidende". When publication has been effected as provided and the period fixed by the court has passed, the authority will become ineffective in relation to the principal. If the principal so requests, the court shall issue a certificate to that effect.

(3) No appeal lies against a decision of the court under this section. If the court sits with more than one judge, the presiding judge shall make the decision.

18. An authority that is based solely on a statement from the principal to the agent is revoked when the declaration making the authority ineffective has reached the agent.

19. If, despite the revocation of the authority or declaration making the authority ineffective, the principal has special grounds to believe that the agent intends to make a juristic act on his behalf with a specific third party and if he thinks it is unlikely that the third party knows that the authority is no longer effective, the principal shall, as far as possible, so inform the third party. If he fails to do so, the juristic act becomes binding on the principal if the third party acted in good faith.

20. If the authority has not been revoked or declared ineffective, but the principal has instructed the agent not to act under the authority or in any other way indicated that the authority is ineffective,

any juristic act made under the authority shall not be binding on the principal if the third party knew or ought to have known about the termination of the agency.

21.-(1) An authority is still effective if the principal dies provided that special circumstances do not cause the authority to be terminated. However, even if such circumstances exist, a juristic act based on the authority is binding on the principal's estate if the third party neither knew nor ought to have known about the death and its effects on the agent's authority to make the act. If the authority is governed by the provisions of section 18 of this Act, the juristic act shall only be valid if, in addition to the third party, the agent neither knew nor ought to have known about the death and its effects at the time he made the juristic act.

(2) An authority terminates at the end of the day of advertisement for creditors in "Statstidende". If, after the death of the principal, the agent pays any debt and if the estate is insolvent, this may also cause the sum paid to be refunded.

22. If the principal becomes incapacitated and is divested of his legal capacity, see section 6 of the Danish Guardianship Act ("Værgemålsloven"), a third party incurs no rights or obligations vis-à-vis the incapacitated person under a juristic act with the agent other than those the third party would have incurred if the juristic act had been made directly with the incapacitated person. In those cases where the third party would have been prevented from relying on the juristic act against the incapacitated person if the third party had known or ought to have known about the incapacity, the third party may not rely on the juristic act if the act was made under an authority governed by section 18 of this Act if the agent knew or ought to have known about the incapacity at the time the juristic act was made.

23. If the principal becomes bankrupt, the third party incurs no rights or obligations vis-à-vis the bankrupt's estate under the juristic act with the agent other than those the third party would have incurred if the juristic act had been made by the principal. If the juristic act is made under an authority governed by section 18 of this Act, the third party may not rely on the juristic act against the bankrupt's estate if the agent knew or ought to have known about the bankruptcy at the time the juristic act was made.

24. If the principal dies, becomes incapacitated and divested of his legal capacity, see section 6 of the Danish Guardianship Act, or becomes bankrupt, the agent may by virtue of the authority make the juristic acts required to protect the estate or the incapacitated person from loss or damage until the necessary steps can be taken by the estate or a guardian.

25.-(1) Any person who acts as an agent on behalf of another person warrants that he has the necessary authority. If he gives no notice of such authority or that his juristic act has been ratified by the named principal or is, for some other reason, binding on the principal, the agent shall pay compensation for the loss or damage suffered by a third party as a result of the fact that the juristic act cannot be relied on against the named principal.

(2) This provision does not apply if the third party knew or ought to have known that the person who made the juristic act did not have the necessary authority. Nor does this provision apply if the person who made the juristic act acted under an authority that was invalid or ineffective for reasons he was unaware of and which the third party could not expect the agent to be aware of.

26. The above provisions of this Part concerning authority to make juristic acts apply correspondingly to an authority to act on behalf of the principal in respect of juristic acts relating directly to the principal.

27.-(1) Nothing in this Act affects any special provisions in the existing legislation concerning specific types of agency.

(2) The provisions of sections 7 and 32 of Act No. 23 of 1 March 1889 on commercial registers, business names and powers of procuration² continue to apply to the revocation of a power of procuration that has been entered in the commercial register. Once the power has been entered in the commercial register and duly advertised, the person granting the power of procuration is not required to revoke the power in any other way.

Part III

Invalid Declarations of Intention

28.-(1) A declaration of intention that has been wrongfully obtained by actual or threatened imminent violence is not binding on the person coerced.

(2) If the duress is exercised by a third party and if the person to whom the declaration was made acted in good faith, the person coerced shall, if he intends to rely on the duress, so inform the receiver of the declaration without undue delay after the duress has ceased to operate. If he fails to do so, the person coerced is bound by his declaration.

29. A declaration of intention that has been wrongfully obtained by coercion other than that specified in section 28 of this Act is not binding on the person coerced if he was induced to make the declaration by the person to whom the declaration was made or if the latter realised or ought to have realised that the declaration was wrongfully obtained as a result of coercion by a third party.

30.-(1) A declaration of intention is not binding on the person making it if he was induced to make the declaration by the person to whom it was made by fraud or the latter realised or ought to have realised that it was induced by fraud on the part of a third party.

(2) If the person to whom the declaration was made fraudulently misrepresented circumstances that may be deemed to affect the declaration or fraudulently failed to disclose such circumstances, the person making the declaration shall be regarded as having been induced to make the declaration by the fraudulent conduct unless it is shown that the fraudulent conduct was unlikely to have affected the declaration.

31.-(1) If a person has exploited another person's financial or personal distress, lack of knowledge, thoughtlessness or an existing dependency relationship to obtain or contract for a benefit that is substantially disproportionate to the consideration or for which no consideration is to be given, the person so exploited is not bound by his declaration of intention.

(2) The same applies if the exploitation governed by subsection (1) hereof is a result of the acts of a third party and the person to whom the declaration of intention was made realised or ought to have realised this.

² The term *power of procuration* has been adopted as a translation of the Danish term *prokura*, i.e. a registered grant of authority to act on behalf of a business in every way concerning the running of the business.

32.-(1) Any person who has made a declaration of intention whose terms do not express his intentions as a result of a clerical error or other mistake on his part is not bound by the terms of his declaration if the person to whom the declaration was made realised or ought to have realised that an error or mistake had been made.

(2) If a declaration transmitted by telegraph or made orally by an agent is inaccurate as a result of an error on the part of the telegraph service or inaccurate expression by the agent, the person making the declaration is not bound by the declaration as made even if the person to whom it was made acted in good faith. If the person making the declaration intends to claim that the declaration is not binding, he shall give notice to this effect without undue delay after he has notice of the inaccuracy. If he fails to do so, he shall be bound by the declaration according to its terms as received if the person to whom the declaration was made acted in good faith.

33. Even if a declaration of intention shall otherwise be regarded as valid, the person to whom the declaration was made may not, however, rely on the declaration if, as a result of circumstances existing at the time when he had notice of the declaration and of which he must be deemed to have known, it would be against the principles of good faith to enforce the declaration.

34. If a written declaration of intention is a sham and the declaration has caused the person to whom it was made to assign a right under the declaration to an innocent third party, the sham may not be relied on against the innocent third party.

35. If a creditor has unintentionally lost a receipt for the payment of a sum of money, the debtor is nevertheless discharged of his obligation if, after the due date, he makes a payment against the receipt in good faith.

36.-(1) A contract may be modified or set aside, in whole or in part, if it would be unreasonable or at variance with the principles of good faith to enforce it. The same applies to other juristic acts.

(2) In making a decision under subsection (1) hereof, regard shall be had to the circumstances existing at the time the contract was concluded, the terms of the contract and subsequent circumstances.

37. (Repealed)

38.-(1) If, by reason of competition, a person has agreed not to carry on a specified form of activity or business or not to enter into employment in such a business, the agreement is not binding on him if the terms relating to time, place or other circumstances go beyond what is necessary to avoid competition or unreasonably restrict the person's access to employment. In the last case, regard shall be had to the interested party's interest in the agreement being complied with.

(2) If a person employed in a shop or other business has agreed with its owner to undertake an obligation containing the terms specified in subsection (1) above with effect after the termination of his employment, the undertaking becomes ineffective if the employee is dismissed without having given reasonable cause to be dismissed, or if he leaves his employment and the employer's failure to meet his obligations provides a valid reason for leaving.

Part IV

Special Provisions on Consumer Contracts

38A-(1) The provisions of this Part of this Act apply to consumer contracts, including terms contained in consumer contracts.

(2) For the purposes of this Act, a “consumer contract” means a contract that a seller or supplier concludes for purposes relating to his trade, business or profession when the other party to the contract (the consumer) mainly acts for purposes outside his trade, business or profession. The burden of proof is on the seller or supplier to show that a contract is not a consumer contract.

(3) A contract concluded or negotiated by a seller or supplier on behalf of one of the parties shall also be regarded as a consumer contract under the provisions of subsection (2) above.

38B-(1) If there is doubt as to the meaning of a contract and the contractual term concerned has not been individually negotiated, the term shall be interpreted in the way that is most favourable to the consumer. The burden of proof is on the seller or supplier to show that a contractual term has been individually negotiated.

(2) A written contract offered to the consumer shall be drafted by the seller or supplier in plain, intelligible language.

38C-(1) The provisions of section 36(1) of this Act apply to consumer contracts. If it is contrary to the requirement of good faith and fair dealing and causes a significant imbalance in the parties’ rights and obligations arising under the contract to the detriment of the consumer to rely on a contractual term, the legal effects specified in section 36(1) of this Act also apply. In such a case, the consumer may demand that the other provisions of the contract shall, if possible, continue to bind the parties.

(2) The provisions of section 36(2) of this Act apply to consumer contracts with the modification that, in the assessment of the circumstances specified in section 36(2) of this Act, including the terms of the contracts on which a particular contract is dependent, regard shall not be had to subsequent circumstances to the detriment of the consumer with the result that the contract may not be modified or set aside.

38D. If a clause in a contract specifies the law of a country that is not a member of the European Economic Area as the law applicable to the contract, such a clause does not apply to matters relating to the rules on unfair contract terms. However, this only applies if, without the clause, the law regulating such terms in a country that is a member of the European Economic Area would apply to the contract and if that law grants the consumer a better protection against unfair contract terms.

Part V

General Provisions

39. When, under the provisions of this Act, the binding effect of a declaration of intention depends on the fact that the person to whom it was made did not know or ought not to have known a certain matter or otherwise acted in good faith, regard shall be had to what he realised or ought to have realised at the time he had notice of the declaration. If special circumstances so warrant, regard shall also be had to the knowledge he has acquired or ought to have acquired after the time specified above, but before the declaration of intention has a decisive effect on his conduct.

40. If a person who is required to “give meddelelse” (give notice) under the provisions of this Act has handed his notice for transmission by telegraph or post or if another proper mode of transmission is used, has submitted it for such transmission, any delay or non-delivery of the notice shall not be prejudicial to him.

41. This Act repeals the Danish Code of King Christian V, and as for the Faroe Islands 5-1-4 and 5-1-5 of the Norwegian Code of King Christian V.

© 2005 Sandro Nielsen