

Holst, Newsletter



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International marriages

The number of international marriages is growing. This may give rise to issues in relation to which laws shall apply to the marriage, particularly in the event of division of property at separation, divorce or death.

Applicable law may have deep impact because legislation on marriage and on inheritance can vary significantly from country to country. In Denmark, for example, we apply a principle of community property, which means that a married couple's property is divided equally in the event of divorce, separation or death, unless otherwise agreed. In Germany, on the other hand, a principle of separate property applies, unless otherwise agreed. Therefore, if matrimony is entered into between a German and a Danish national, it could be of great importance whether the couple is comprised by Danish law on property regimes or by German law on property regimes.

The EU regulation on property regimes for international married couples

18 EU Member States have joined the cooperation on applicable law pertaining to property regimes between international married couples. In consequence of Denmark's opt-out, the EU regulation does not apply to Denmark, but Denmark has the option of joining and adopting the regulation later.

Applicable law in Denmark

The Danish Act on the Formation and Dissolution of Marriage (the Danish Marriage Act) sets out which country's rules shall apply to a married couple's financial affairs.

In general, the rules of the country in which both spouses lived at the time for entering into matrimony, or where both

spouses first lived together after entering into matrimony shall govern the married couple's financial affairs.

If the couple did not live together at the time of entering into matrimony, nor subsequently established joint residence, the rules of the country in which both spouses were citizens at the time of entering into matrimony shall govern their mutual financial affairs.

If the couple never have had a mutual residence nor had mutual citizenship when entering into matrimony, the rules of the country to which the couple had the closest relationship when entering into matrimony shall govern the couple's financial affairs.

When both spouses have lived in Denmark for 5 years, the Danish Marriage Act will govern the couple's financial affairs, although some of the above points may previously have been fulfilled. This could entail substantial changes to the couple's mutual financial affairs, and in consequence of such this rule only applies, once the couple has lived in Denmark for 5 years following the effect of the Danish Marriage Act, i.e. not earlier than 1 January 2023. This means that although the couple may both be British citizens and matrimony was entered into in the UK, the Danish Marriage Act will still apply in the event of a division of matrimonial property once the couple has lived in Denmark for 5 years.

The spouses' agreement on applicable law

To a certain extent, the Danish Marriage Act provides for the couple to agree themselves on which country's rules shall govern their financial affairs. It may be a good idea to clarify which rules shall apply. The couple may agree on 1) the rules of the country where one of the spouses is a citizen, or 2) the

rules of the country where one of the spouses is resident at the time for concluding the agreement.

Such an agreement is subject to certain requirements, and it may therefore be a good idea to approach a lawyer to draw up such document.

Nordic citizens

If the couple is comprised by the Nordic Convention on Marriage, concluded between Denmark, Finland, Iceland, Norway and Sweden, the above shall not apply.

If both spouses are Nordic citizens and also were Nordic citizens when entering into matrimony, the rules of the Nordic country in which the couple settled when entering into matrimony shall apply.

If both spouses at a later time settle in one of the other Nordic countries and live there for at least 2 years, the rules of that country shall apply. If both spouses previously during the marriage have settled there, or if both spouses are citizens of that country, the rules of that country shall however apply as soon as the couple settles in that country.

Couples comprised by the Convention may agree that the rules of a contracting state in which one of them resides or is a citizen at the time of concluding the agreement shall govern their financial affairs. If one of the spouses or both of them during the marriage settle(s) in another contracting state, the couple may also agree that the rules of the state in which they both most recently were settled at the same time, shall apply.

Marital agreement

If the spouses have drawn up a marital agreement, such will only apply, if it fulfils the requirements set out in the legislation governing the marriage. A marital agreement may also apply if it fulfils the requirements of the legislation which the couple has agreed shall apply, however always providing that the couple is entitled by means of a marital agreement to agree that the rules of another country shall govern their marriage.

If the couple has not considered which country's rules shall apply when drawing up a marital agreement, such agreement may end up being unenforceable. Hence, it is important to determine which legislation shall apply before drawing up a marital agreement, and in that case, how a marital agreement shall be drawn up according to such country's legislation.

Death and wills

Generally, the legislation of the country in which the deceased was resident at the time of death shall govern the administration of the estate. Most people believe that they as a Danish citizen holding a Danish 'CPR' registration number can draw up a will in Denmark. This is of course an option, however, the question is, whether the contents of a will are enforceable if one is settled abroad when dying.

When driving a car in the UK, the traffic direction is opposite to Denmark. Complying with Danish traffic rules would quickly end up in a collision. Quite naturally, you therefore comply with British traffic rules. The same applies when drawing up a will. If a will is drawn up in Denmark for a person residing in another country, it could be uncertain whether the will can be enforced in the country of residence.

If residing abroad it is necessary to determine how to draw up a will in that particular country, or whether such country accepts wills drawn up in Denmark. In general, a will drawn up in one of the Nordic countries is enforceable in another Nordic country.

If a will cannot be enforced in the deceased's country of residence, the property left by the deceased will be distributed according to the rules of inheritance applicable in the deceased's country of residence.

Questions

Please do not hesitate to contact us, if you have any questions to the above. Please also feel free to follow our newsletters on private law; these can be accessed through Camilla Kirk's profile under www.holst-law.com.



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