

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

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DENMARK

Responses submitted by:

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1. Would your jurisdiction be described as a common law or civil code jurisdiction?

Civil code.

2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?

Adversarial.

3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?

Judges are appointed by the Majesty upon nomination given to the Minister of Justice by the Judicial Appointments Council.

The Judicial Appointments Council submits recommendations to the Minister of Justice for all judicial appointments except the post of President of the Supreme Court.

The Council may only recommend one applicant for an opening. Recommendations must be reasoned and include any differences of opinion. In practice, the Minister of Justice always follows the Council's recommendations.

The Council is composed of a Supreme Court judge (chairman), a High Court judge (vice-chairman), a district court judge, a lawyer and two representatives of the public.

In criminal cases the judge(s) is/are assisted by lay judges or jurors. Jurors participate in cases where the defendant potentially faces more than 4 years of imprisonment. Lay judges and jurors are members of the public and it is a citizen's duty to act as a lay judge if called to do so.

Potential jurors and lay judges are listed in each High Court district for a period of 4 years.

Jurors and lay judges can be any person of unblemished reputation who could be elected to the Danish parliament unless the person turns 70 before the expiry of the 4 year period, or his/her mental state, health conditions or inadequate knowledge of the Danish language, will make the person unable to fulfill the duty.

Furthermore the following individuals are prevented from serving as jurors or lay judges:

- Lawyers and assistant lawyers
- Ministers of government
- Public servants and other personnel of the Central Administration, The Courts, The Public Prosecutor, the

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police and the Prison System

- Ministers, Priests etc. of the Evangelical Lutheran Church in Denmark and other recognized religious communities.

The appointment of the jurors is made by the presiding judge of the according Court. The Public Prosecutor, the defendant and the defence council shall be notified of the elected jurors at least two weeks before the hearing.

In criminal cases before the District Court, the defendant and the Prosecutor have the right to defer one juror without providing any explanation for this. If the case concerns a political offence two jurors can be deferred. Correspondingly, in cases before the High Court the numbers of jurors that can be deferred is two (three if political).

4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?

The Maritime- and Commercial Court

The court belongs to the “ordinary” courts, and is as such governed by the same procedural rules in the Danish Civil Code as the District, High and Supreme Courts.

Housing Court

The Housing Court is a specialized court that deals with disputes relating to renting of accommodation areas. Although it is a specialized court it follows the procedural rules of the Danish Civil Code with any deviances necessary as to the nature of the court.

Labour Court

The Danish Labour Court is a special court of law. The Court is seated in Copenhagen, but the jurisdiction includes the whole country.

Cases involving the following must be referred to the Labour Court and cannot be dealt with by the ordinary courts of law:

- Breaches and interpretations of a general agreement between the Employers' Confederation and the Federation of Trade Unions, and/or corresponding general agreements and settlements.
- Breaches of collective agreements on wages and working conditions.
- The lawfulness of a warned collective industrial action or the notices issued in this connection.
- Whether a collective agreement exists.
- Whether an agreement on industrial arbitration has been concluded and regarding the interpretation of such agreements.
- Refusal of having a case considered by industrial arbitration.
- Disputes over the competence of the official conciliators.

The Danish Labour Court uses the procedural Rules set out in the Danish Civil Code, with the deviations necessary due to the special nature of the court.

The National Tax Tribunal

The National Tax Tribunal is the highest administrative board of appeal in cases relating to tax, VAT, customs etc. and hears appeals of decisions from a wide range of administrative bodies.

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The tribunal consists of a leading president judge, a number of other president judges, 30 other members (appointed partly by the Parliament and partly by the Minister for Taxation) and 4 members with a specialized knowledge of motorized vehicles.

In order for the Tribunal to make a decision on a matter brought before it, a minimum of three members must take part in the decision. Of those three at least one must be a president judge and at least two be appointed by parliament or the minister.

The Special Court of Indictment and Revision

The Special Court of Indictment and Revision processes complaints against judges and deputy judges, applications for resumption of criminal cases, appeals regarding refusal of resumption of a judgement given in default and complaints about the courts exclusion of an appointed defense lawyer in criminal cases. The Special Court of Indictment and Revision also acts as a disciplinary court in cases of suspension or removal of a judge from office.

The Court consists of 5 members - one Supreme Court judge, one High Court judge, one county court judge, one professor of law and one lawyer. The Supreme Court judge functions as chairman. The members are recommended by the Minister of Justice and appointed by the Queen for a term of 10 years, whereupon they cannot be reappointed.

The Special Court of Indictment and Revision cannot review a judge's judicial decisions. In cases of complaints against judges The Special Court of Indictment and Revision can state criticism or issue a fine, if it is found that the judge has behaved improperly or unseemly in his acts in office. A complaint regarding improper or unseemly behavior of a judge or deputy judge has to be filed within 4 weeks after the incident has occurred or has been known to the complainant. A judgment in these cases can be appealed to the Supreme Court.

An application for resumption of a criminal case can be filed to The Special Court of Indictment and Revision when there is no possibility of appeal left. The decision of The Special Court of Indictment and Revision cannot be appealed.

An appeal regarding exclusion of an appointed defense lawyer from a criminal case has to be filed within one week from the exclusion to the court where the decision of exclusion has been made. The decision of The Special Court of Indictment and Revision cannot be appealed.

5. Is arbitration an option and when? If so, what rules are typically used?

Yes, upon agreement by the parties.

Most commonly arbitration is conducted at The Danish Institute of Arbitration (Voldgiftsinstituttet), under the procedural rules of the institute. The Institute also has a specific procedure for simplified arbitration.

Arbitration, including international arbitration, conducted in Denmark is subject to the Danish law of Arbitration. The law sets out general rules for the conduction of the arbitration.

6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?

Yes, if the agreement is valid and does not regard a matter that cannot be subject to arbitration, such as custody disputes.

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7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?

No, although court based mediation is encouraged and facilitated by section Chapter 27 of the Danish civil code, this is not a legal requirement.

8. What is the process for pre-hearing fact discovery (if any)?

(a) *Are there provisions for mandatory document disclosures?*

It is up to the parties themselves to decide what documents they provide to the court.

Any documents the parties intend to provide as evidence during the hearing should be sent to the court one week before the prehearing meeting described in the answer to question 11 below.

A party may request that the court orders the other party to provide documents that are at his disposal relating to the case or that the party intends to bring as evidence under the hearing. If the party does not comply with such an order, the documents will be assumed to contain information of material detriment to the party, and the court will consider this going forward.

(b) *Is there provision for oral examinations of the parties or others?*

There's no such provision under Danish law

(c) *Are there limits on the length of oral examinations?*

N/A

(d) *Are witness statements or summaries to be provided before the hearing?*

Generally witness statements/examinations are conducted during the hearing. If a witness has provided written declarations, these will usually be included in the writ/statement of defence and will as such be provided before the hearing.

9. What is the process for pre-hearing expert disclosure (if any)?

Either party can request an expert opinion provided by a surveyor. If the court approves this request one or more independent surveyors are appointed.

The parties may suggest appropriate surveyors to the court, but the Court is not bound by these suggestions. However the Court should notify the parties of the persons who it intends to appoint as surveyors before the appointment is made, giving the parties an opportunity to provide any comments they might have in relation to the intended choices.

In civil cases the surveyors have to notify the parties of when the survey will be conducted.

The surveyors provide their statement to the Court in writing. However in criminal cases the Court may decide that the discussion need not be provided in writing, but only orally during the hearing.

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All parties have the right to be acquainted with the contents of the surveyors' statement.

(a) *Are expert reports or written summaries required to be exchanged?*

Individual expert reports can be obtained and according to the circumstances be admissible in court.

Such individual reports should be obtained after negotiation with the opponent. If the report is not made in accordance with an agreement with the opponent, the Court may dismiss it as evidence.

Unilaterally obtained reports obtained before the filing of the writ, may be admissible as evidence, whereas unilaterally obtained reports obtained after this time, are generally not.

(b) *Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?*

No

(c) *Are there provisions requiring experts to meet and narrow issues before the hearing?*

In civil cases the specific areas to be investigated by the independent surveyors are set out in connection with the appointment of the surveyors. There are no further requirements.

10. Are there other notable discovery rules?

Nothing further to report.

11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?

Unless the court finds it unnecessary, it will call for a prehearing conference in order to pinpoint the exact issues before the court.

The conference is held shortly after the filing of the writ (within 3 weeks thereafter)

The court can allow that the conference is attended by phone.

12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?

No. No such procedure is available under Danish law.

13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?

No such process is available. The Court determines if it will accept the evidence presented and to what extent.

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14. What is the standard for admissibility of expert evidence?

Expert evidence is admissible under the procedure set out in the answer to question 9. (see also the answer to question 13.)

15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?

In the Maritime and Commercial Court two experts assist the Judge from the time of the hearing.

In civil cases before the District Courts or the High Courts, the Court may appoint two experts to assist the judge from the time of the hearing. The Court will do so if it is deemed that the experts' professional knowledge is of significance to the case.

In criminal cases before the District Court, where professional knowledge of the sea is of significance, the court will appoint two experts with such knowledge, to assist the judge from the time of the hearing.

16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?

Settlement discussions are protected from disclosure (a party can bring his own settlement offer to the attention of the court, but not the offer of the other party)

The following professionals cannot against the will of the defendant be forced to give testimony concerning knowledge they have obtained in course of their profession.

- Defence council
- Lawyers
- Court mediators
- Ministers, Priests etc. of the Evangelical Lutheran Church in Denmark and other recognized religious communities.
- Doctors

Not including the defendants defence council and priests etc., the above mentioned persons may be required to provide testimony if the Court finds that the testimony is of decisive importance for the outcome of the case and the circumstances dictates that the privilege should give way.

Public servants may not give statements as a witness in matters where they are under service confidentiality unless the relevant authority permits this. If the authority declines and the Court determine that the witness statement is of critical significance to the outcome of the case, the Court may order the authority to explain the reasons for declining.

If the Court hereafter finds that the privilege must give way for the enlightenment of the case, the court can decide that the person shall testify unless this compromises the safety of the state, the relation to other states or the safety of the lives of others.

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The defendant's family and close relations do not have a duty to provide testimony.

A potential witness is also exempt from giving testimony if that would incriminate himself, expose him or his close relations to criminal proceedings, loss of welfare or other significant damage.

17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?

The right of public access to documents can be limited if:

- it is deemed to be of material significance to the security of the state.
- non-disclosure follows from European Union law or other international obligations.
- it is necessary in order to protect relations to other sovereign states or international institutions.
- for very special reasons it is necessary in order prevent, solve or pursuit of criminal actions.
- the order or judgement contains information about private persons strictly private matters or a company's business secrets, and it is determined that the public interest in the documents should give way for the regard of the party.

The right of public access to court documents does not extend to criminal cases where judgement was made more than one year ago.

18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?

The court/judge(s).

19. Briefly describe the trial process?

In civil cases the process is initiated by the filing of the writ. Hereafter will set a deadline for the defendant to provide the statement of defence. Hereafter the preparation process starts as the Court calls for a pre hearing meeting if such a meeting is not deemed to be unnecessary. The purpose of the meeting is to figure out what actual and legal circumstances the disputes relate to, in order to conduct a briefer and more effective trial. During this preparation procedure it is also decided if surveyors statements will be needed, if more meetings or pleadings are needed (often a replication and a rejoinder as well as a summary of claims) and the scheduling of the hearing.

The hearing begins with the parties giving their respective statements. Hereafter the court will normally ask the parties to provide a brief summary of the facts of the case circumstances as well as the dispute. Following this the argumentation will commence. At this stage the parties call their witnesses. When the argumentation is over the parties will give their closing procedures. Following this the Court will usually try to encourage a settlement, either by providing a settlement proposal or a signal of the possible outcome of the case. If no settlement is reached the Court will provide a judgement as soon as possible.

In criminal cases the procedure is initiated by the Police commencing an investigation of the suspected criminal activity. When the police investigation is completed the Public Prosecutor will send the case to the Court.

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The suspect will then be called to a hearing where he will be given the indictment, which will contain information on the alleged crime. At this point he will be officially charged with the crime.

In cases where the defendant has confessed without prejudice, where the potential punishment is only a fine or where the case relates to traffic violations, the Court will consist of only one judge. In more serious cases and cases where the defendant has not confessed, the Judge(s) will be assisted by lay judges or jurors as described above.

During the trial the Prosecutor will start by reading the indictment. Hereafter the prosecutor will present the evidence and question the defendant (the defendant is not obligated to comment or answer questions) and witnesses.

The prosecutor and the defence council then give their final procedure, before the defendant is given the last word. After this the Court gives the judgement.

(a) Are there opening submissions, in what form and of what length?

In civil cases the parties give their opening statements (plaintiff first) at the commencement of the hearing. The statements are given orally and there are no limits to the length of the opening statements although they should be brief.

In criminal cases the opening statements are given by the Prosecutor and then the defence council. The procedure does not vary significantly from civil cases in this particular area.

(b) What is the order of presentation of witnesses?

Questioning of witnesses is conducted separately. Witnesses may not be present during questioning of other witnesses, surveyors or the parties.

(c) Who conducts examination and in what order?

The witnesses are questioned by the lawyers. The lawyer, who first admitted the witness for questioning, has the right to question the witness first. Afterwards opposing council will have the opportunity to cross-examine the witness.

(d) What is the process for closing submissions?

Closing submissions are conducted orally and should serve to summarize the important facts and points of the party.

20. Please identify any other notable trial procedures.

There is a special procedure available for small claims (under DKK 50.000). This procedure is intended to speed up the procedure and keep down the costs in cases relating to claims of minor monetary value. The process also intends to make the court system more directly accessible for people not usually affiliated herewith.

In practice the procedure consists of less meetings and the court assists the parties with thorough guidance and assistance in order for a speedy and cost efficient trial.

It is an option for the parties in a case of a higher value than DKK 50.000 to opt-in to this procedure.

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21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?

As a strong general rule the plaintiff bears the burden of proof for liability, causation and damages. However in very special situations the burden of proof can be overturned.

Generally the court is free to assess the evidence in whatever way it finds suitable provided this is done in an objective manner and can be communicated and explained to the outside world.

Whereas in criminal cases the burden of proof is on the prosecutor and the punishable action must be proved beyond all reasonable doubt, the threshold in civil cases is somewhat less strict. It is probably not sufficient that there is a mere “more than average” possibility, but the standard of proof does rest on a balance of probability.

22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?

Compensatory and interests only. Punitive damages are not available under Danish law.

A plaintiff must prove a loss in order to gain damages. A plaintiff can only be awarded compensatory damages (for the proven loss) and interests thereof. From the time when a suit is filed the interest will be calculated according to the Danish law of interests (Renteloven) which states that the procedural interest is the rate set out by the Danish National Bank plus 8% (Currently 8,05 % p.a.)

23. If punitive damages are available, what is the threshold for recovery, and range of awards?

N/A

24. Are there time limits for bringing claims? Responding to claims? Please describe.

Under The Danish Limitation Act (Forældelsesloven) Claims will generally be time barred three (3) years after the earliest point in time, where the claimant could have rightfully claimed the payment/performance.

Longer periods apply in cases relating to work performed under an employment contract (5 years), when the existence of the claim is confirmed in writing, by a court order or in a settlement (10 years), money loans (10 years) and bank deposits (20 years).

There is a cut-off date as the latest date where the claim will be time barred, regardless of whether the claim would not under the normal circumstances be time barred (due to the damage not having shown yet etc.) .This cut-off date is 30 years after the ceasing of the event causing the damage in relation to personal injuries and environmental damage, 10 years after the ceasing of the event causing the damage in relation to other claims for torts outside of a contract, and 10 years for other claims.

The barring will be suspended when legal action is commenced.

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When a writ is filed the court serves the defendant and sets out deadline for the defendant to submit his statement of defense to the court. If the defendant does not do so within the deadline, the court will usually provide a judgment by default. This does not mean that the court unconditionally adheres to the claims and conditions in the writ, but the court will do so, if the content of the writ is not contradicted by the circumstances known to the court, provided that it also satisfies the formal requirements.

25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?

By parallel agreement of 1 July 2007 Denmark “Opted in” to the Bruxelles I-Regulation. This means that in matters between two persons residing in (different countries within) the European Union, the choice of forum rules laid down by the jurisdiction applies. However the regulation specifically exempts matters relating to tax, vat, administrative matters, the legal status of persons, bankruptcy, social security and arbitration.

Under the Bruxelles I- Regulation a Danish court will have jurisdiction if:

- The parties have agreed that The Danish courts shall have jurisdiction
- The Defendant is domiciled in Denmark. (The competent court will be the one in the district where the defendant is domiciled. If the defendant is a company or organization the domicile will be the place of the head office.)
- Denmark is the place of performance for the obligation in question, if the dispute relates to a contract.
- Denmark is the place where the harmful event occurred, in matters relating to tort, delict or quasi-delict.
- In matters relating to real property, if the property is situated in Denmark.

Other more specific grounds for jurisdiction are set in the Regulations, as those stated here are the commonest grounds for establishing jurisdiction.

In disputes outside the scope of the regulation, but where the defendant is domiciled within the European Free Trade Association (EFTA) (Except Lichtenstein, Switzerland, Norway and Iceland) the Lugano Convention applies. The Lugano Convention provides rules materially identical to the ones of the Bruxelles I-Regulation.

If a dispute falls outside the scope of the Lugano convention as well as the Bruxelles I-Regulation, and the matter is brought before a Danish court, the court will apply the rules on jurisdiction contained in the Danish Civil Code.

Under the jurisdiction rules of the Danish Civil Code, a Danish court will have jurisdiction in the same situations as described above under the Bruxelles I- regulation, but in addition to this the court will have jurisdiction if:

- The defendant is in Denmark at the time he is served
- The defendant has goods situated in Denmark at the time the suit is filed.

Danish courts may not decline jurisdiction they have under the above mentioned rules on the basis of “Forum non conveniens”.

The Court decides “ex officio” if it has jurisdiction in the case before it.

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In criminal cases the court where the crime occurred or where the defendant is domiciled will have jurisdiction. Failing this, the court where the defendant was apprehended will have jurisdiction.

26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.

Yes, under section 250(2) of the Danish Civil Code, another party may be summoned if the court has jurisdiction in relation to the claim against the responsible third-party, the claim can be dealt with under the same procedural rules as the original claim(s) and neither the other parties nor the responsible third party objects. Even if a party objects, the court can decide that the claim is so closely connected to the original claim(s) that they should be dealt with jointly and may thus allow the summoning.

27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).

The general rule under Danish law, is that the costs follow the event i.e the loser pays costs. However certain events may preclude this, and the decision on costs is made at the discretion of the courts. In general court fees are fully recoverable, while The Presidents of the High Courts have issued a brief that sets out the intervals of costs recoverable for legal fees in relation to the amount in question. The amount must be set within the interval set out in the brief, taking into consideration the extent and complexity of the case.

However, the amounts ultimately recovered will rarely constitute a full recovery of all costs for lawyers etc.

28. Are contingency fees allowed?

Fees calculated on a basis that provide the counsel with a certain percentage of the amount acquired in court/by judgement is not allowed. However, the result of the case may be taken into account in determining the fee, just not a “fixed” (percentage) basis. “No cure – no pay” terms are allowed.

29. Is third party funding of claims permitted? Under what circumstances?

There are no procedural rules limiting third party funding of claims, and as such this is permitted.

Third party funding of claims is most commonly seen in class action suits.

30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?

Since 1 January 2008 class actions have been an option under Danish law. Class actions are regulated under section 254a-k of the Danish Civil Code.

A class action suit can be filed when:

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- The claims are similar and belonging to different persons.
- The Danish courts have jurisdiction in relation to all the claims.
- The specific court has (regional) jurisdiction for at least one of the claims.
- The specific court has material jurisdiction for at least one of the claims.
- A class action suit appears to be the best and most effective way to deal with the claims.
- The Claimants can be identified and notified about the proceedings in a reasonable way.
- A representative for the claimants can be appointed (by the court).

If the above mentioned conditions are satisfied there are no restrictions of the type of claims that can be brought under a class action suit.

31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?

The Danish Consumer Ombudsman can commence proceedings ex officio or after request by a consumer.

Furthermore the Danish Consumer Ombudsman is the only public entity that can be appointed as a representative for the claimants under a class action suit.

It is not uncommon for organizations like labor unions etc. to commence and lead proceedings on behalf of a member. In order to do so, the representative must have a Danish legal bachelor and master degree.

32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?

The following average estimates are given by the courts of Denmark (2013 numbers), however they are subject to some uncertainty, and variations from case to case.

In the District Courts the time frame is app. 440 days for civil cases and 120 days for criminal cases on average.

For civil cases subject to the simplified procedure, the average is app. 210 days, and for cases before the Housing Court app. 390 days.

In the Maritime and Commercial Court the average time is app. 17 months.

In the High Courts the average is app. 20 months for civil cases in the first instance and 10 months for appeals, and app. 12 months for criminal cases in the first instance and 6 months for appeals.

In the Supreme Court the average is app. 17 months for civil appeals and 5 months for criminal appeals.

The complexity of the case as well as the extent of the material (writ, statement of defence, exhibits etc.) and possible use of surveyors, may affect the timeframe of the case.

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In order to speed up the proceedings, the parties may assist to pinpoint the exact dispute in question and observe the relevant deadlines set out by the court.

33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?

Yes, as a general rule every case can be appealed once.

This does not apply to cases where the amount in question is less than a certain threshold (DKK 10.000 a bill is expected to pass shortly raising the threshold to DKK 20.000) without the approval of The Appeals Permission Board.

Generally a judgment can be appealed only once, usually from the district court to the high court. However, a high court decision may be appealed to the supreme court if the high court was the first instance, or if permission is given by the Appeals Permission Board.

The Appeals Permission Board considers petitions for leave to appeal to the Supreme Court although the cases in questions have already been tried and reviewed (third tier grant). Such cases are test cases, e.g. cases that may have implications for rulings in other cases, or cases of special interest to the public.

The appeal is heard by the judges of the court to which the case is appealed.

In general, and unless otherwise stated, interlocutory/procedural orders can also be appealed to the higher instance. The procedure for this is less strict than for the appeal of a judgment and the decision will usually be made in writing. Appeals from the district courts are decided by the high courts.

34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?

Pre-hearing meetings can be held by video or phone. This does not extend to the hearing itself. The Danish civil code does not allow for electronic trials or appeals.

35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?

For appeals before the Supreme Court none of the above mentioned will be allowed, as the supreme court does not review evidence. In the High Courts and the Maritime and Commercial Courts, and most cases in the District Courts, use of graphics and animation (in way of video) will be accepted. Power point shows and the like will not be accepted.

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36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?

Not necessarily, but it is often the case.

While there is not a solicitor/barrister distinction there is a specific system that determines what courts a lawyer can appear in. Every lawyer can appear in the district courts but in order to obtain a right to appear in the High Court or Supreme Court, the lawyer must fulfill certain requirements set out in the Civil Code.

37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?

If the plaintiff by way of his own negligence contributes to the accident that gives rise to a liability claim, he may be fully or partially denied compensation/damages. Usually the plaintiff will not be denied the claim fully unless he wilfully contributed to the harmful event.

If there is a significant difference in the danger level of two actions causing the harmful event, and one of those actions is committed by the plaintiff, this will be taken into account when determining the level of contributory negligence. If there is no such difference the determination of the level of contributory negligence is somewhat simpler, and the practice of the Courts have shown that the calculation is divided into thirds. Meaning that if the contributory negligence accounted for less than 1/3 of the fault, the plaintiff will recover the full amount and if more than 2/3 he will not recover anything. Hence the levels of recovery usually applied are 0/3, 1/3, 1/2, 2/3 or 3/3.

Under Danish law the general rule is that in a situation where there is more than one tortfeasor, these tortfeasors are jointly liable for damages (the full amount).

There are few exceptions to this general rule, the most important ones being where the actions of one of the tortfeasors are deemed to be indifferent in relation to the damage occurred, or where one tortfeasors liability is mitigated under the mitigation rules of the Danish Liability for Damages Act.

If not all of the tortfeasors are ultimately held liable by the plaintiff, those tortfeasors will normally have a right of recourse against the other tortfeasors. The compensation burden shall be divided between the tortfeasors on the basis of what may be considered reasonable taking account of the nature of the liability and circumstances in general. If one or more of the persons liable in damages are covered by liability insurance, the person that is not covered by the liability insurance shall not be liable, unless he caused the loss wilfully or through gross negligence, or the loss was caused in the performance of public or commercial enterprise or enterprise that can be equated therewith.

38. Is service of a complaint issued outside your country permitted in your country by "informal" means, or must the Hague Convention be followed?

If a service of complaint is issued outside Denmark the Hague Convention should be followed.

It is the courts of the country where the service of complaint is issued that determines if it has been issued according to relevant procedural rules of that country. The relevant issue arises when the plaintiff attempts to enforce a judgment. If the

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service of complaint has not been served according to the Hague convention, the Danish courts will not enforce the judgment.

That means that unless the plaintiff accepts the service of complaint without a translation, the service must contain such a translation.

39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)

There are no rules for such exclusion to other jurisdictions due to the purpose of litigation abroad. However Danish data protection rules may apply to passing of information on individuals.

40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.

Nothing further to report.

41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?

It is a common impression that insured parties stand better chances in litigation with their insurers.

There is also a general understanding that consumers and private persons enjoy a more favorable status throughout proceedings. (compared to corporations, institutions etc.)

42. Are there legislative efforts under way that address any of the litigation practices in your country?

A new bill amending the civil procedure rules (L178) is expected to pass sometime this year.

If passed in its current state, the bill will provide for relatively thorough amendments in the civil procedure rules with the intent to provide for a quicker and more effective procedure in all phases of the handling of disputes before the court, hereunder but not limited to the filing and preparation of the case, the presentation of evidence, the hearing and appeals. Further the bill will provide a quicker and simpler procedure for applying court surveyors with the intent of shortening the court process altogether. Probably most notably the bill, if passed without amendments, will increase the minimum monetary value a case must have in order to be directly appealable, and will give the High Courts the discretion to reject an appeal from a lower court, if the Court finds it unlikely that the appeal will provide a different outcome and that the appeal should not be allowed on other significant grounds.

The bill has recently been submitted for review and we expect that it passes with some minor amendments, most likely regarding the appeals process.

Update:: The bill mentioned above was adopted on the 11 June 2014.