# SALE OF GOODS ON CONSIGNMENT UNDER DANISH LAW—LIFTING THE CONCEPTUAL VEIL

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The granting of credit in connection with payment for e.g. commercial goods supplied to a retailer or raw materials supplied to a manufacturer may be secured by supplying the goods on consignment with reservation of ownership for the supplier.

Most continental legal systems recognize that a seller of commercial goods which the buyer is entitled to resell may reserve ownership, and that such reservation of ownerhsip will be valid towards the creditors of the buyer. As opposed to this, Swedish, Norwegian and Finnish law in principle hold the view that the combination of the seller's reservation of ownership and the buyer's right to resell cannot be accepted. Danish law takes an intermediate view, according to which such reservation of ownership is valid in principle, but only if certain conditions as regards the settlement of the account are complied with.

Furthermore, it is generally recognized on the Continent that a supplier of materials which are consumed or processed by the buyer may reserve ownership and such reservation will be protected in relation to the creditors of the buyer. Some countries are more positively disposed towards reservation of ownership in this type of transactions than in the case of reservation of ownership in matters strictly related to resale. This is the case in Norwegian law, where reservation of ownership is expressly recognized in processing cases, whereas Norwegian law does not—as mentioned above—recognize reservation of ownership in cases strictly relating to resale (subsec. 2 of sec. 3–15 of the Norwegian *Pantelov*—the Scandinavian word *pant* covers all forms of charges of the nature of both *mortgage* and *pledge* for securing payment of the debt). Under Danish law, reservation of ownership in processing cases is regarded in the same way as for strict resale cases. In principle, the reservation of ownership is valid, however, only if certain conditions regarding settlement of the account are complied with.

The rules governing reservation of ownership in both the mentioned types of sale of goods on account are developed by judicial decisions. There is no Danish legislation on the subject.

In the formulation of the special conditions under Danish law for recognizing reservation of ownership in cases of sale of goods on account an attempt is made to ensure that the reservation of ownerhsip between the seller and buyer (consignor/consignee) reflects reality, and is not just intended to serve as a preferential claim in bankruptcy—which cannot validly be agreed. Further-

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more, in the evaluation of the concrete cases guidelines are followed according to which reservation of ownership which secures finance of the transaction to which the reservation of ownership is related is normally recognized, whereas it is overridden if it can be proved that the purpose of granting credit was to strengthen the general business liquidity of the buyer.

As it appears, the rules are an expression of a compromise. On the one hand, the need to create security for the financing by means of reserving ownership is recognized. On the other hand, it is maintained that the mere use of the concept of "reservation of ownership" in the agreement between the parties is not sufficient to give the consignor a title to the goods which is protected against any third party. The expression is to cover a reality which entails a limitation of the consignee's right to dispose freely of the goods. As the purpose of the arrangement is that the goods are to be resold or be used in the production, the limitation in the right to dispose thereof cannot, as in the case of reservation of ownership in general, affect the right to dispose of the goods. The limitation in the right to dispose of the goods is therefore formulated as a requirement that the account be settled as the resale (or consumption/processing) of the goods takes place and as a requirement for control of the presence of the stock and compliance with the duty to pay the amount.

The way in which this compromise is implemented by the courts shows some typical examples of the difference between formalism and realism in the use of legal terms and in the judicial assessment of the agreements between the parties.

Below an account is given of some characteristic features of the way Danish law deals with the supplier's "ownership" in cases where goods are supplied on consignment and related matters. At the same time an attempt is made to illustrate the difference between the above-mentioned realism and formalism by means of these and other cases not relating to the field of sale of goods on consignment.

Even though legal terms do not in themselves express any kind of legal effects words do have a certain suggestive power. Therefore, it was previously not unusual that the term reservation of ownership was stated as a reason for the fact that an article sold with reservation of *ownership* (apart from artificial limbs and the like) could always be repossessed when the buyer grossly failed to keep his duty to pay. This type of "conceptual logic" is without any value, and it is a fact that it would lead to incorrect results since the passing of the *Kreditkøbsloven* of 1982 (the 1982 Danish Sale of Goods on Credit Act). According to sec. 24 of the said Act the provision of sec. 509 of the *Retsplejeloven* (the Danish Code of Civil Procedure) prohibiting the execution of objects which are necessary for the maintenance of a "modest home" will also prevent the seller from repossessing such objects. In practice, this means that "ownership"

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cannot be reserved on ordinary household effects and white goods sold under an agreement covered by the Sale of Goods on Credit Act. However, the sale of goods on consignment is not covered by the Sale of Goods on Credit Act, cf. sec. 5, subsec. 2, of the said Act, but is merely governed by the rules developed by the courts.

In relationships involving goods supplied on consignment the reservation of ownership of the consignor naturally ceases when the consignee sells the goods to a third party, which is just what the consignee is entitled to do as opposed to what applies to the conditional buyer in general. The ownership reservation also ceases when the goods are processed by the buyer in accordance with the agreement, cf. the following decisions of the *Højesteret* (the Danish Supreme Court).

> *1939 UfR 285.* A fruit growers' association had an agreement with a cider mill according to which the mill was to purchase apples from the members of the association for the purpose of making concentrated apple juice. According to the agreement the association was to have (joint) ownership of 40 % of the concentrate produced from the apples. However, the ownership by the association of 40 % was found invalid in relation to the estate in bankruptcy of the cider mill.
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> *1961 UfR 148.* An Austrian manufacturer of engines for mopeds had contracted with a Danish manufacturer to manufacture engines in Denmark. The Austrian firm was to supply the engine houses and reserved ownership in these. It was expressly agreed in the contract that in case of processing of the goods supplied the Austrian firm was to have (joint) ownership of the products resulting from the processing, the ration of the ownership to be determined by the value of the articles at the time of delivery hereof. The Danish Supreme Court held that this reservation of ownership could not be maintained towards the estate in bankruptcy of the Danish manufacturer. In this connection the Court said that if the reservation of ownership had been valid it would have ceased as the engine houses had been used for the manufacturing of engines. Thus, this decision clearly establishes that an agreement of *verlängerte Eigentumsvorbehalt* through a *Verarbeitungsklausel* (prolonged reservation of property via processing clause) is not recognized under Danish law. (The decision goes even further than this by establishing that the reservation of ownership was not valid during the period from delivery until the processing took place, cf. further about this below.)

It is this nature of a ceasing security which has caused doubts about accepting without question the reservation of ownership in matters relating to goods supplied on consignment. When it is in fact part of the purpose of the legal relations that the security is to cease without simultaneous payment of the amount due to the consignor on the part of the consignee the relationship between the parties resembles that of an agreement to create a preferential claim in bankruptcy, which agreement cannot legally be made as noted before. The reality of this characteristic feature is stressed by the fact that the consignee is free to dispose of the money he receives from a third party to whom the goods are sold. The special requirements that previous decisions of

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the courts have made as a condition for accepting reservation of ownership in consignment matters aims therefore at restricting the consignee's right to dispose freely of such money. This is an endeavour to ensure that in the case of goods supplied on consignment the relationship is only that of securing credit for the goods supplied to the consignee and that it does not at the same time function as a strengthening of his general business liquidity.

The special requirement is that the consignee is to pay the purchase sum owing to the consignor for the goods as these are sold. How soon and how often settlement is to take place is determined by the type of goods in question and (especially) by any established usage within the line of business in question. Generally, this requirement is formulated as a requirement that *settlement* be made at a certain "rate" corresponding to the sales rate. Also, the consignor is to *control* the presence of the stock and compliance with the duty to pay the amount. How often such control is to be exercised also depends on the nature of the goods and usage within the various lines of business. For the purpose of exercising this control the goods supplied on consignment must be *identifiable* among any other goods of the consignee, and it will in most cases be necessary for *separate accounts* to be kept for the sale of goods supplied on consignment. The questions discussed above are not affected by whether or not the consignee has a right to return any goods unsold, cf. 1967 UfR 200 (a decision by the *Østre Landsret* (Eastern High Court)).

If the above-mentioned conditions are not fulfilled, the reservation of ownership in the goods not yet resold, consumed or processed will not be valid in relation to the estate in bankruptcy of the consignee (or any singular creditor). The ownership reservation is thus not valid during the period until the goods are disposed of. With regard to matters involving strict resale this appears from a number of decisions of the courts. As regards matters of processing the position is most clearly expressed in the decision of the Danish Supreme Court mentioned above (1961 UfR 148) in which it says:

> It appears from the information in the matter that the goods in question were sold on firm order on credit, that the goods were determined to be used by (the Danish manufacturer) in the manufacture of engines, that the purchase sums did not fall due for payment when the goods were used, and not even when the finished engines were sold, however, after the expiration of the agreed credit period of 90 days, and that [the Austrian manufacturer] exercised no control whatsoever when the goods were used for the manufacture of engines.—In these circumstances the reservations of ownership taken by [the supplier] are found not to be valid to the detriment of [the manufacturer's] creditors, neither with regard to the 2,000 engine houses which had been used for the manufacture of engines (whereby the reservation of ownership would have ceased, had it been valid) nor with regard to the engine houses which had not been used in the manufacture and which might have been taken over by the estate in bankruptcy.

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As it appears, the decision is formulated in general terms, and its value as a precedent is hardly weakened by Mr Justice Trolle's comment in *TfR* 1961, p. 552, in which it was said, among other things, that "to the court there was no doubt that the reservation of ownership of the consignment which the sellers knew was to be used in a manufacturing process for which a few hundred other parts were to be used and for which the value of the finished products by far exceeded that of the engine houses would not be valid".

In the case of goods supplied on commission rules have been stipulated in the *Kommissionsloven* (the Danish Act on the Sale of Goods on Commission) which establishes, among other things, that the property of the principal in unsold articles is protected in relation to the creditors of the commission agent. The law does not require special conditions to be fulfilled for this protection to exist.

In sec. 4 of the Sale of Goods on Commission Act there is a definition of the concept of commission. The definition establishes that for the purpose of the Act the expression *kommissionær* (commission agent) is used to describe a person who sells or buys goods for another person's (the principal's) account, though in his own name. As opposed to this, the characteristic thing about consignment matters is that a sale of goods from the consignor to the consignee has been completed, and that the latter's resale takes place both in his own name and on his own account.

However, the definitions mentioned are not sufficient to be able to carry through the distinction in practice. When realities are considered, it has to be admitted that it is not possible to make a sharp distinction between goods sold on consignment and those sold on commission on an abstract basis. There are several slight differences in the types of intermediary used, and the decision about which group to refer legal relations to should be made on the basis of a concrete examination of what was the intention of the parties and, in particular, how they have hitherto settled their mutual business. Whether the agreement expressly uses the term "consignment" or "commission" is irrelevant.

This has been shown very clearly by a decision of the *Sø- og Handelsretten* (the Danish Maritime and Commercial Court), cf. 1967 UfR 363. In the matter in question there was an express agreement between a Swedish manufacturer and a Danish merchant. In the agreement the relationship between the parties was consistently referred to as commission (possibly because the sale of goods supplied on consignment is not recognized under Swedish law). With respect to the real nature of the agreement between the parties—including the fact that the Danish merchant resold the goods on his own account—it could not, however, be recognized as a typical commission arrangement, and the case was decided according to the rules applying to the sale of goods on consignment. The Maritime and Commercial Court said as follows:

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> It serves no purpose to decide whether the linguistic aspects of a commercial relationship are such as to term it 'commission' or 'consignment', which might also be impossible when taking into consideration that in practice there are all sorts of variations of legal transactions ranging from sales strictly on commission via sales on consignment to sales strictly on credit. However, notwithstanding the wording of the agreements, the present matter is not a strict commission relationship, cf. sec. 4 of the Sale of Goods on Commission Act, in that [the Danish merchant] has distributed the goods on his own account and at his own expense and at the prices fixed by himself. Whether the Sale of Goods on Commission Act could nevertheless be found to apply analogously to the goods unsold (sec. 53 of the said Act) and with regard to the outstanding accounts (subsec. 2 of sec. 57 of the said Act) will depend on a closer assessment of the details mentioned in the matter.

The dispute arose between the Swedish manufacturer and the estate in bankruptcy of the Danish merchant and was about property in the unsold goods as well as the right to receive the accounts outstanding with third parties who had bought goods from the Danish merchant, but who had not yet paid for them. The rules of the Sale of Goods on Commission Act—which for the purpose of both relationships grant the principal a protected right (sec. 53 and subsec. 2 of sec. 57 of the said Act)—could not be used, as already mentioned. The court found that settlement to the Swedish manufacturer had taken place at a sufficient rate in relation to the sale of the goods, and that an adequate control had been maintained, for which reason the Swedish manufacturer's property in the unsold goods was maintained.

Several decisions assume that the consignor has a protected right to the outstanding accounts in relation to the creditors of the consignee. In the premises of several of these decisions it is stressed that this solution is in agreement with the "nature" of the relationship between the parties in the case of goods supplied on consignment. In all cases where the consignor's right to the outstanding accounts has been recognized, however, the agreement contained a stipulation that the consignor had this right in relation to the creditors of the consignee. As payment made by a third party for goods bought from the consignee should naturally be made to the consignee when the account is settled in a normal way, it is likely that in relation to the creditors of the consignee no right to outstanding accounts can be recognized unless agreement to this effect has been made. The agreement may have the form of an advance assignment, about which it is not necessary to advise the debtors (i.e. the persons buying the goods from the consignee)—as opposed to what generally applies to assignment of non-negotiable claims. Furthermore, whether or not advice has been given to the individual buyers it is the consignee who receives payment from the buyers. There is therefore a requirement, in the same way as with the reservation of ownership in the goods, that

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even in the case of a normal settlement of the account there is a certain reality in an agreement between the parties regarding the consignor's right to outstanding accounts. It appears from the case just mentioned—in which the contract contained a stipulation that the outstanding accounts should be regarded as the property of the so-called "principal"—that the requirements to be made in the latter case may very well be of a somewhat stricter nature than the ones made for a recognition of the right of ownership of the goods. The Maritime and Commercial Court said on this point:

> As regards the right to the outstanding accounts it must follow from the general principle in bankruptcy about an even distribution that outstanding accounts are part of the estate unless there is express reason to decide to the contrary. On this very point the relationship between the parties differed widely from a strict commission relationship. As mentioned in subsec. 2 of sec. 57 of the Sale of Goods on Commission Act, a recognition of a special privilege would presume that it had been agreed that settlement was to take place when money was received from the buyers, and that such agreement had actually been complied with, and that this had been controlled. By granting a more widespread credit [to the Danish merchant] the connection between the right to the individual article and to the outstanding account was so unclear that it would be based on mere coincidence whether the special privileges [of the Swedish manufacturer] were still in existence. Often, it will be difficult to prove which part of an outstanding account the individual suppliers were entitled to, and which part the bankrupt person was entitled to for profits, and it would also be unclear how instalments from the customers were to be written off.

It was then held that the Swedish manufacturer did not have a protected right to the outstanding accounts.

The decision of the Maritime and Commercial Court in the case mentioned may be seen as an example of the fact that the agreement between the parties and the use of legal concepts and terms in the agreement—i.e. the formal wording of the agreement—do not decide the legal effects of the agreement. In the case in question the real circumstances differed from the formal description, among other things because the Danish merchant did business on his own account. Therefore, it might be said that the decision merely corrects the agreement between the parties, after which the relationship between the parties is held to be outside the formal definition of the concept of commission contained in sec. 4 of the Sale of Goods on Commission Act (business on another persons's account), as far as the real contents of the agreement were concerned.

The possibility of correcting the legal effects of the agreement in relation to a third party with respect to the real contents between the parties is, however, hardly limited to this. If the parties have termed the relationship between them as one of doing business on commission, and if it cannot be disputed that

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business takes place on the principal's account it may even be possible to refuse protection of the principal's ownership in relation to the creditors of the commission agent, if the relationship actually assumes the character of an ordinary strengthening of the business liquidity of the commission agent. In certain cases it will probably be possible to justify an overriding of the ownership in the goods with the fact that business is not done on the principal's account, if the commission agent may dispose of money received in connection with his sales of goods on commission for a long period. In other cases, this view—according to which the relationship is held outside the definition of the concept of commission contained in sec. 4 of the Sale of Goods on Commission Act—may seem somewhat strange. It might then be possible to stress that with regard to the mutual relationship between the principal and the commission agent the Act imposes certain duties on the commission agent, including the duty to pay amounts received for goods sold to the principal (see sec. 7 of the said Act). If it appears from the agreement, or the way in which it has been implemented, that these duties have not (in reality) been imposed on the intermediary, it should be possible to establish that the ownership in the goods is not protected towards his creditors. Whether this result is to be explained by the non-existence of a real commission relationship between the parties, or whether it is to be argued that to protect the principal's ownership in relation to the creditors of the commission agent it is implied in the unconditional rule of the Sale of Goods on Commission Act regarding protection of the right (sec. 53) that regular settlement (and control and accounting) is to take place in the same way as in cases of goods supplied on consignment, is strictly a question of terminology. There are no dogma or principles of interpretation of the law forcing Danish courts to prefer one construction to the other.

On the whole, the courts are relatively unbound by principles for interpretation of laws and will typically attach greater importance to the realities in the legal relations than to abstract logic. As an example—taken from the rules about assignment of outstanding accounts—could be mentioned the decision of the Danish Supreme Court in 1979 UfR 357, from which it appears that the courts may even modify the strictly formal requirements of a provision of an Act about the performance of a specific "act of security", i.e. the requirement that a specific act be performed as a condition for the assignment to be valid in relation to the creditors of the assignor.

In the case of pledging and other assignment of non-negotiable claims the act of security prescribed in sec. 31 of the *Gældsbrevsloven* (the Danish Act on Debts and Assignment of Accounts) is advice to the debtor of the claim. If the creditor of the claim pledges the claim to both a primary and a secondary pledgee, advice of both of these pledges is to be given to the same person,

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namely the debtor (the issuer of the claim). Particularly in contracting relations it is common that "sub-assignments" are made. The (future) claim of the contractor on the builder is assigned to a bank in its entirety, but the contractor grants his suppliers or sub-contractors a sub-assignment to the part of the claim left after the requirements of the bank have been met. Also in such case it applies that the sub-assignment has no validity in relation to the creditors of the contractor unless advice has been given according to sec. 31 of the Act on Debts and Assignment of Accounts. According to the wording of sec. 31 of the said Act this advice is to be given to the debtor, as already mentioned, and in accordance with formal logic it cannot be denied that the "debtor" is still the builder. In accordance with this it was previously consistently assumed by the courts (including the Supreme Court) that the advice was to be given to the builder. Many receivers of sub-assignments have lost their legal protection in relation to the estates in bankruptcy of the contractors over the years because they advised the bank instead. Persons who are not lawyers have found it most natural to advise the bank, partly because they have seen the bank as "debtor" as regards the remaining amount to be paid out after the bank has been covered, partly because the bank is in the best position to keep a close watch on and control over the movements on the building account. By the decision in 1979 UfR 357 the Supreme Court accepted that advice of such assignment could be given to the bank instead of the "debtor" as prescribed by sec. 31 of the Danish Act on Debts and Assignment of Accounts. The purpose of the general requirement of advice of the debtor is that the assignor of the claim should be effectively precluded from disposing of the claim or receive payment for it. In the decision the Court stresses that after advice had been given to the bank about the assignment the contractor was precluded from disposing of the amount assigned. The Court then said:

> It is therefore accepted that the advice given to the bank fulfils the requirements made by subsec. 1 of sec. 31 of the Danish Act on Debts and Assignment of Accounts for the assignment to [the receiver of the sub-assignment] to be valid in relation to [the contractor's] other creditors.

The requirements listed by the courts with regard to settlement, control and accounting in consignment matters are not of the same nature as formal "acts of security" such as the one just mentioned. They take the form of balanced elements which are to offset the doubts about recognizing the consignor's reservation of ownership in assets of which the consignee may dispose. These requirements are extremely different in nature and, as already mentioned, they vary according to the nature of the article and usage within the particular line of business. Also, it seems to be important for the weight of the requirements to

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ascertain whether there is a great risk of the consignment arrangement in question being abused. There is nothing strange in this, but it must be said to be a rare occurrence that the last-mentioned circumstance is directly stressed in the premises for a decision. However, this was the case in the following decision by the Danish Supreme Court (*1985 UfR 933*).

> Various Danish publishers—including Gyldendal, who was a party to the matter—have since the 19th century been supplying books to the booksellers on special terms and conditions. In the agreements the terms of delivery are termed "commission", "a condition" or "on loan". The fact of the matter is that (one copy of each title) books are supplied to the bookseller in question. No debiting takes place at the time of delivery (whereby e.g. no value-added tax falls due for payment). When the bookseller sells the book he is obliged to order a new copy. No settlement takes place at the time of the sale, and the bookseller's running account with the publisher is debited with the new book. The publisher may recall the books, but this is not normally done until the publisher's stock of books is nearly sold out. Books that have been recalled, but which are not returned, are not to be paid for in cash, but are debited to the bookseller's account. The publisher does not keep any check of the titles sold until these are listed on the recall list. Outside this arrangement the booksellers usually buy several copies of each individual title, and the only possibility of identifying an "a condition"-book is that the bookseller normally places a loose note in it. In the case in question, however, there was only one copy of each of the books the dispute was about.
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> As it will appear, the requirements as to settlement as the articles were sold and the checks which have to be made as a matter of principle whether the relationship is formally termed commission or consignment—or something completely different—are only fulfilled to an extremely limited extent. With reference to this—and to the absence of the possibility of identification—the Maritime and Commercial Court held that the publisher did not have a title in books placed in the bookshop which was protected in relation to the estate in bankruptcy of the bookseller. However, the Supreme Court came to the opposite result on the following grounds: "The established arrangement within the book trade, which is well known to persons granting credit to the trade, cannot be said to hold any particular danger of considerable abuse to the detriment of the creditors. With a view to the subject-matter and purpose of the arrangement and its historical background it is found that it should not be overridden."

Even though it is a dominant feature, particularly in more recent legal decisions, that "principles" which legal theory has tried to deduce from previous judicial usage are not applied slavishly, but are adapted to suit realities, this way of thinking has not succeeded generally—neither with the courts nor with lawyers. Thus, it is possible to have a fascinating spectacle of the contrast between formalism and realism, the outcome of which may be difficult to predict. As an example the following case might be mentioned. It was brought before a court last year, but was later abandoned by the plaintiff when he heard the court's draft for a decision:

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According to a long tradition a considerable part of the Danish pig production is financed by the slaughterhouses. They purchase 8–10 week old pigs from farms specializing in pig breeding, and sell them with reservation of ownership to other farmers who take care of the fattening, and who are obliged to supply them to the slaughterhouse when they have achieved the correct slaughter weight. Conceptually, the relationship between the parties might be seen as a special type of business on consignment. When pigs are supplied for slaughtering, settlement with the farmer takes place, and the amount he owes for the corresponding number of piglets is deducted. It is quite common that the farmer buys new piglets every week or every other week through the slaughterhouse with reservation of ownership. These purchases may cover, e.g., 20–40 pigs per contract. The weight of the piglets may vary from 20 to 29 kilos, and how soon they will gain weight during the fattening is an extremely individual matter. (The ideal slaughter weight is about 92 kilos, and on average it takes 90–100 days to reach this weight.) When the pigs are supplied for slaughtering there is no check made as to which of the contracts between the slaughterhouse and the farmer in question each individual pig is from. With the present technology it would be quite costly to make such a check, nor would it even seem to serve any purpose. However, the contracts contain a clause saying that the piglets must be paid for not later than a specific date, e.g. three months after the execution of the contract. Such a clause does not in itself affect the validity of the reservation of ownership. It does not cause any extension of the credit beyond the time the pigs are delivered by the farmer. On the contrary it limits the total credit period. When this clause is applied, however, it may cause complications as will appear from the following: If it appears from the books of the slaughterhouse that one or more contracts are overdue, the full amount outstanding on these contracts is deducted from any settlements made with the farmer. In accordance with general accounting practice the oldest contracts are written off first. In the matter in question the farmer had gone bankrupt. At the farm there was a considerable number of pigs all bought through the slaughterhouse who had validly reserved ownership. However, the remaining amount owing to the slaughterhouse was a little smaller than what would correspond to the value of the pigs at the farm. The reason was that some contracts were overdue and had therefore been covered fully in connection with settlement made with the farmer. The slaughterhouse had the following view: We have an outstanding amount covering a number of X piglets supplied. In security of this we have reserved ownership in the pigs found on the farm alternatively in a number equal to X of these. The estate in bankruptcy of the farmer, however, had the hard, formal construction according to which the small number of excess pigs—which were termed "bought free" by the farmer—could not be identified. As it was not possible either to

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prove which pigs had not been "bought free" the logical consequence was that the slaughterhouse was not able to maintain its reservation of ownership in any of the pigs—such was the claim of the estate in bankruptcy. The court expressed acceptance of this view, but might as well—or perhaps even better?—have held that in a relationship of the type mentioned there was no realistic reason for a rigorous enforcement of the principle that the subject-matter of a reservation of ownership should be identifiable, since this principle was designed for situations that were typically altogether different from the present situation. The structure of Danish property law is not so detailed as, e.g., the German Law of Property and *Kontokorrent-vorbehalt* (running account reservation) has not been developed as an individual concept in Danish law.

However, certain contracts for goods supplied on consignment contain clauses aiming at something similar. Furthermore, such agreement seems to have been valid according to the provision in sec. 8 of the *Afbetalingsloven* 1917 (the first Danish Hire-Purchase Act 1917)—and thus according to ordinary rules of reservation of ownership not laid down by the law; and in this connection it has no importance that such agreement cannot validly be made for sales covered by the present legislation (the Sale of Goods on Credit Act) since this Act does not apply to transactions on consignment. The way in which the finance contracts for piglets had been settled for almost half a century leaves no reasonable doubt that "in the nature of the case" they were considered to be and have apparently been recognized by the estates in bankruptcy of farmers as a running account reservation in the course of time. A reference to these circumstances would also seem an acceptable justification for supporting the claim of the slaughterhouse.

As it will have appeared from the above, the Danish rules on reservation of ownership make it impossible to use the very common condition applied in Germany, Austria and Italy, according to which the article sold under reservation of ownership is to be sold outright or be paid for at a definite date, e.g. 90 days after receipt, irrespective of whether it might have been resold, consumed or processed prior to that date. Foreign suppliers of Danish firms should pay attention to this and to the Danish international private law rules according to which the validity of a reservation of ownership in relation to a third party in relationships of this type will normally be decided according to Danish law.

According to more recent legal usage the validity of the reservation of ownership is decided according to Danish law in a dispute between the seller and the estate in bankruptcy of the buyer if the dispute is about articles located in Denmark at the time of bankruptcy, and which the buyer is entitled to resell in or from this country before the purchase sum has been paid, cf., e.g., the decision of the Supreme Court 1983 UfR 311. The parties cannot validly agree that disputes of this type are to be subject to the laws of another country.

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