used. The Supreme Court presumably based its decision on the nature of the matter.

The importance of the principle depends on whether other legal sources exist in a specific area that might be used as basis when assessing a dispute. If so, the nature of the matter will probably not be significant whereas, in the opposite situation, the term will typically be the Court's only reference point.

The term is applicable in practice as a submission when no other legal sources seem to be applicable in the area, including in the form of Acts and other case law.

3.11 Fairness and reasonableness ("billighed og rimelighed")

Fairness and reasonableness ("billighed" and "rimelighed") are not clearly defined principles but describe the form of determination of law that makes special allowance for the circumstances of a dispute for the purpose of reaching a reasonable result in practice.

The equivalents of "billighed" and "rimelighed" under English law are "fairness" and "reasonableness" and the German and Swedish equivalents are "billigkeit" and "rimlighet" respectively. In Latin terms one would speak of “aequitas” or “ex aequo et bono”.

In Danish "billighed" (fairness) indicates a form of correctness or fairness, whereas "rimelighed" (reasonableness) rather indicates the reasonableness, suitability and legitimacy in a specific situation.

When referring to general fairness and reasonableness the courts base a decision on a loose estimate of the facts of the specific case in order to reach an objectively just result.

Under Danish law "fairness and reasonableness" is used in disputes between two parties that have concluded an agreement or contract, but without the specific framework for the concrete dispute having been determined. The principle will also be particularly relevant in disputes where an uneven balance of power exists between the parties which can accordingly be determined on the basis of considerations of fairness and reasonableness in relation to the specific dispute.

"Fairness and reasonableness" relate to the idea of reciprocity, meaning an expectation of mutual consideration between the parties in a contractual relation-

ship. If such reciprocity is not expressed in a contractual relationship, there is a presumption that the agreement or contract has been concluded contrary to principles of fairness and reasonableness. Related terms are also the nature of the matter, the doctrine of implied conditions and the contra proferentem rule.

The judgment reported as UfR 2011.2654 H in the weekly law reports is an example of use of the terms in case law. This case was about the question of whether an employee (as a consequence of an agreement to that effect) was obliged to sell back his shares to the company when he resigned from his position. The Supreme Court found that it was unfair to claim the sell-back obligation in the specific situation where the employee had been dismissed and such dismissal was not due to any failure on his part. UfR 2009.2800 SH which was also reported in the weekly law reports was about the extent of a non-compete clause between a business operator and some haulage contractors. The Court found that it would be unfair and contrary to honest conduct to rely on the non-compete clause. Accordingly, it was assumed that the non-compete clause did not prohibit any kind of collaboration with competitors, but merely prohibited such acts if they involved unfair competition.

The contents of "fairness and reasonableness" are laid down in a number of statutory provisions, the texts of which refer to fairness, unfairness and unreasonableness. Section 36 of the Contract Act is an example of this; it is stated that an agreement or contract may be modified or set aside in whole or in part if enforcement of it would be unreasonable or in conflict with the principles of good faith. Also, it is stipulated in section 5 of the Sale of Goods Act that if an agreement or contract has been concluded without making provisions for the price, the purchaser shall pay the price charged by the seller, provided that such price is not unfair. It is stated in section 3a of the Interest Act that the term of payment cannot exceed 30 days, unless the creditor has expressly approved a longer term of payment and such a term of payment is not unfair to the creditor. Accordingly, decisions made on the basis of these provisions imply a reasonableness test on the basis of the specific contents of the matter.

The opposite of the principles is a number of situations where it is determined by law that no consideration is to be made to various objections to a claim, in-

cluding fairness and reasonableness, for example to the holder of a cheque or a bill of exchange (section 22 of the Cheques Act) or against statutory compensation for damage, including section 175 of the Maritime Act.

The principles are particularly applicable in particular as submissions in practice when it is for the court to make a reasonableness test, for example in long-term contractual relationships when a course of events develops to the effect that otherwise reasonable and balanced contractual clauses lead to adverse results over time.

3.12 Burden of proof ("bevisbyrde")

Burden of proof ("bevisbyrde") refers to the fact that it will be detrimental to a party in a dispute if insufficient information and documentation supporting that party's claim is procured.

The equivalent of "bevisbyrde" under English law is "burden of proof". The Latin, German and Swedish equivalents are "onus probandi", "beweislast" and "bevisbörda".

"Bevisbyrde" is composed of the elements "bevis" (proof) and "byrde" (burden). "Proof" refers to the actual rendering probable of the matter. Proof may both be in writing in the form of documentary evidence and it may consist of oral witness statements. New proof may also be procured after the dispute has arisen, for example in the form of an expert survey and appraisal. The term "burden" refers to the obligation to produce the proof lying with the party that wishes his claim to be successful.

The definition of "burden of proof" is that a party is to discharge the burden of proof when the fact that it is not possible to procure any proof of a certain matter means that the party will be successful in terms of the facts on which the decision is to be based. However, the term does not indicate how difficult it will be to discharge the burden of proof. The basic idea is that a party making a claim must be able to prove the existence of such a claim. More specifically, it means that the burden of proof for the creation of a right lies with the party relying on the right, whereas the burden of proof for a change and termination of the right lie with the party claiming the change or the termination.