[A] Contractual arrangements

1. Does your system of law allow (i) heterosexual couples and (ii) same sex couples who are living together to enter into a contract governing their cohabitation, particularly as respects:-
   - obligations of support or maintenance
   - ownership of property during cohabitation
   - financial claims on the cessation of the cohabitation?

   We do not have any statutory rules on this issue. Some scholars consider that such a contract on cohabitation may be concluded based on an individual agreement between the two parties concerned.

2. If such contractual arrangements are permitted, is it common for cohabiting couples to conclude a cohabitation contract?

   We are unable to answer this question since we have never investigated this issue.
3. Are there any formal requirements (eg signature before witnesses, involvement of a notary) which require to be satisfied before a cohabitation contract is valid?

Not in particular.

[B] Heterosexual couples: non contractual rules

This section of the questionnaire is concerned with the rules governing or affecting the relationship between a man and woman who are living together, unmarried, without having concluded any cohabitation contract as in [A].

1. Where a couple are co-habiting does your legal system recognise any mutual duty of aliment or maintenance during the period of co-habitation?

We do not have any statutory rules that recognize such a mutual duty of aliment or maintenance as mentioned above. However, according to judicial precedents, it is construed that where a couple are regarded as being in a common-law marriage rather than merely co-habiting, they have the same duty of aliment or maintenance to each other pursuant to a married couple.

Regarding how to define a couple in a common-law marriage, the Supreme Court has not given any clear answer on this issue, and academic theories on the definition of this relationship also differ. It may at least mean a de facto married couple who are regarded as a married couple in society but are not legally recognized as a married couple because they have not filed for marriage.

2. Are there any particular rules regarding ownership of moveable property such as, for example, household furniture acquired during the time in which the couple are co-habiting?

We do not have any particular statutory rules as mentioned above.
However, where a couple are regarded as being in a common-law marriage rather than merely co-habiting, there is room to apply the provision under Article 762(2) of the Civil Code that “Any property, in regard to which it is uncertain whether it belongs to the husband or the wife, is presumed to be their jointly-owned property” to any property acquired during the duration of the common-law marriage, in regard to which it is uncertain whether it belongs to the common-law husband or the common-law wife.

3. If the relationship breaks down and the parties separate, does your legal system enable one of the co-habitants to claim from the other (a) payment of maintenance or (b) payment of a capital sum? If so, are such claims determined on the same principles as would apply were the couple married or do different rules apply?

We do not have any statutory rules as mentioned above. However, based on judicial precedents, it is construed that where co-habitants are regarded as a couple in a common-law marriage, each party may claim from the other (a) payment of maintenance (partial charge of expenses of married life) and (b) payment of a capital sum (distribution of property). In this case, such claims are determined along the same principles as would apply to a married couple.

4. Where the house in which the parties live together is either owned or tenanted by one of the parties, does your legal system give the other party any right to continue to occupy the house when the relationship breaks down?

We do not have any statutory rules that give such a right as mentioned above.

5. Where the cohabitation comes to an end by reason of the death of one of the co-habitants, what rights, if any, in the estate of the deceased cohabitant does your legal system give to the surviving co-habitant?
The Civil Code of Japan provides that where there is no legal heir of a deceased person, “the family court may, if it finds appropriate, give the whole or part of the inherited property that should remain after liquidation to the person who had been co-habitating with the decedent in one household, the person who had been engaged in curing or nursing the decedent, or another person who had had a special relationship with the decedent, at their request.” In accordance with this provision, the surviving co-habitant may obtain the whole or part of the deceased co-habitant’s property if the family court considers he/she satisfies the requirements under this provision.

6. Does a co-habitant have any title to sue for damages in the event that his or her partner is killed through the fault or negligence of a third party?

Regarding this issue, the Supreme Court determined as follows: “Where either common-law husband or common-law wife is supported by the other, if the supporting party is hit and killed by a car, the surviving party is allowed to claim damages from the owner of the car for lost interest in support that could have been received from the deceased party in the future” (Judgment of the Third Petty Bench of the Supreme Court, April 6, 1993). According to this precedent, it is construed that the surviving party of a couple in a common-law marriage may claim damages from the perpetrator.

7. In so far as your legal system does give rights to a co-habitant, does it also define what is necessary for the relationship to be treated as a "co-habitation"? Are different definitions of "cohabitation" used, depending on the right which is claimed? What factors are taken into account in the definition(s)?

Our legal system does not give rights to a couple who are merely co-habitating.
As we answered above, although a co-habiting couple may be given some rights if they are recognized as being in a common-law marriage, we do not have any statutory rules on this issue, nor is there any legal requirement for determining whether a couple is in a common-law marriage.

[C] Homosexual couples: non contractual rules

This section of the questionnaire is concerned with the rules governing or affecting the relationship between two people of the same sex who are co-habiting without having concluded a cohabitation contract as in [A].

1. In your country are couples of the same sex able to enter into a relationship which, following registration or some other public ceremony, will be legally recognised by the State?

In Japan, couples of the same sex are unable to enter into a relationship as a married couple that will be legally recognized by the State.

2. If so, what are the principal ways in which the rules governing the patrimonial aspects of that relationship differ from those applying in (heterosexual) marriage?

We cannot answer this question because couples of the same sex are not legally recognized in Japan.

3. In the event that a same sex couple either cannot enter into a legally recognised relationship or have chosen not to do so, does their cohabitation give rise to the same rights and obligations which would result from cohabitation of a man and a woman? If not, what are the principal differences?
Mere cohabitation of a couple, homosexual or heterosexual, does not give rise to any rights or obligations. However, where a heterosexual couple are recognized as being in a common-law marriage, their cohabitation may give rise to rights, which never occurs in the case of a homosexual couple. This difference seems to be due to the idea that a “married couple” is a pair consisting of a man and a woman, which is generally accepted in Japan. Based on this idea, a homosexual couple cannot be regarded as a married couple in society and therefore shall not be recognized as a couple in a common-law marriage.

[D] Miscellaneous

1. Are there any proposals for reform of the law relating to cohabiting couples (homosexual and heterosexual)?

At present, there are no proposals for reform of the law relating to cohabiting couples (homosexual and heterosexual).

2. What points would you wish to discuss in greater detail?

There are no particular points that we wish to discuss in greater detail regarding the legal issues of cohabiting couples (homosexual and heterosexual).

3. What subject do you suggest for the next meeting?

No topic in particular.

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