

労働省資料
健康資料 NO. 12

財産権 および 家族法 における
婦人の地位

労働省婦人少年局

は し が き

婦人少年局では、先般国際連合経済社会理事会の機能委員会である「婦人の地位委員会」よりの問合わけに応じ、日本婦人の法制上の地位について回答を提出しました。

これは、民法、特に財産権および家族法における婦人の権利義務に関する項目を網羅しており、この種の問題を研究される方の参考になると思われますので、ここに翻訳、編集してお目にかけることとしました。

調査票の項目は非常に細かく、各国に共通に配られたもので、わが国には該当しない項目もありますが、質問だけはそのまま掲載しました。調査票と回答の原文も付してあります。

なお、この回答作成にあたっては最高裁判所家庭局の御協力を戴きました。同局の御厚意に感謝致します。

一九五九年三月

目次

はし	一頁
I 財産権および家族法における婦人の地位	
第一部 婦人の財産権について	
一 成年	二頁
二 訴訟能力	三頁
三 契約その他の財産処分	四頁
四 職	五頁
五 夫婦の財産関係	六頁
六 後見	七頁
七 相続法	八頁
付録 年金	九頁
第二部 家族法について	
一 婚姻	一〇頁
二 婚姻の解消	一一頁
三 再婚	一二頁
四 夫婦の身分関係	一三頁
五 親子関係	一四頁
六 親と非嫡出子の関係	一五頁
七 養子	一六頁
II 解説	一七頁
国連婦人の地位委員会の質問書と回答(原文)	一八頁

I 財産権および家族法における婦人の地位

質問	回答	参考文献
第一部 婦人の財産権について 一 成年 1 成年は何歳であるか。 a 男子 b 女子 2 未成年者は婚姻によつて成年となるか。 それは男女に等しく適用されるか。 3 未成年なるが故の無能力は解放(manipulation)によつて解除されるか。 4 成年に達し、婚姻し又は解放による効果は、男子と女子に対して同一であるか。 二 訴訟能力 1 独身の女子は、他人の共同又は承諾なしに訴訟当事者となることができるか。 2 結婚している女子は夫の a 共同又は承諾なしに b 共同は不要だが承諾があれば c 夫の名前によつてのみ d 共同又は承諾があれば	満二〇歳 満二〇歳 なる される 該当せず。日本には婚姻による以外かかる制度はない。 同一である できる 然	民法第三條 満二十歳以上成年トス 民法第七五三條 未成年者が婚姻をしたときはこれによつて成年に達したものとみなす。 民法第四條 未成年者が法律行為ヲ為スニハ其法定代理人ノ同意ヲ得ルコトヲ要ス但單ニ權利ヲ得又ハ義務ヲ免ルヘキ行為ハ此限ニ在ラス 前項ノ規定ニ反スル行為ハ之ヲ取消スコトヲ得 特に規定なし 特に規定なし 特に規定なし

<p>訴訟当事者となる。</p> <p>3 職業に就事している妻にも右と同様の原則が適用されるか。</p> <p>三 契約その他の財産処分</p> <p>1 成年の独身女子は成年の独身男子と同し能力を有するか。</p> <p>2 婚姻によつて契約能力が影響されるか。</p> <p>a 妻</p> <p>b 夫</p> <p>3 妻の契約能力が制限されている場合、妻は夫又は裁判所から一般的又は特定の許可を受けることができるか。</p> <p>4 夫との死別、婚姻の無効又は離婚などにより婚姻が解消した際の、妻の契約能力は如何。</p> <p>5 妻は夫の許可なしに、家事の経費や日常必需品について、どの程度まで債務を負担し又は契約をすることができるか。</p> <p>a 妻の債務</p> <p>b 夫の債務</p> <p>c 妻と取引する第三者の権利</p> <p>6 成年の独身女子は、成年の独身男子と同じように保証人となる能力を有するか。</p>	<p>される</p> <p>有する</p> <p>影響されない</p> <p>影響されない</p> <p>該当せず。妻の契約能力は制限されていない。</p> <p>該当せず。妻の契約能力は変化しない。</p> <p>条文を参照せよ。</p> <p>有する</p>	<p>特に規定なし</p> <p>特に規定なし</p>
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民法第七六一條

夫婦の一方が日常の家事に関して第三者と法律行為をしたときは、他の一方はこれによつて生じた債務について連帯してその責に任ずる。但し、第三者に対し責に任じない旨を予告した場合は、この限りでない。

民法第四五〇條

債務者カ保証人ヲ立ツル義務ヲ負フ場合ニ於テハ其保証人ハ左ノ条件ヲ具備スル者タルコトヲ要ス

一 能力者タルコト

二 弁済ノ實力ヲ有スルコト

<p>7 夫婦は互いに他の一方の保証人となることができるか。</p> <p>8 婚姻によつて第三者の保証人となる能力が影響されるか。</p> <p>a 妻</p> <p>b 夫</p> <p>9 成年の独身女子は成年の独身男子と同じように、自分の財産の将来の収入を期待して、それに対する債務を負うことができるか。又はかかる事前行為は何らかの制約を受けるか。</p>	<p>できる</p> <p>影響されない</p> <p>影響されない</p> <p>独身女子と独身男子の差別はない。</p>	<p>特に規定なし</p> <p>特に規定なし</p> <p>特に規定なし</p>
<p>10 婚姻によつて自分の財産の将来の収入を期待して、それに対する債務を生ずる能力が影響されるか。</p> <p>a 妻</p> <p>b 夫</p> <p>11 成年の独身女子は成年の独身男子と同じように、次のような能力を有するか。</p> <p>a 信託を設定する。</p> <p>b 信託受益者となる。</p> <p>c 受託者となる。</p> <p>信託関係の法律において男子には適用されず女子にのみ適用される権利の制限又は義務があるか。</p> <p>12 婚姻によつて、信託を設定し受託者となり、又は信託の受益者となる能力が影響されるか。</p> <p>a 妻</p> <p>b 夫</p>	<p>影響されない</p> <p>影響されない</p> <p>有する</p> <p>有する</p> <p>有する</p> <p>ない</p> <p>影響されない</p> <p>影響されない</p>	<p>特に規定なし</p> <p>特に規定なし</p> <p>特に規定なし</p>
<p>11 成年の独身女子は成年の独身男子と同じように、次のような能力を有するか。</p> <p>a 信託を設定する。</p> <p>b 信託受益者となる。</p> <p>c 受託者となる。</p> <p>信託関係の法律において男子には適用されず女子にのみ適用される権利の制限又は義務があるか。</p> <p>12 婚姻によつて、信託を設定し受託者となり、又は信託の受益者となる能力が影響されるか。</p> <p>a 妻</p> <p>b 夫</p>	<p>有する</p> <p>有する</p> <p>有する</p> <p>ない</p> <p>影響されない</p> <p>影響されない</p>	<p>特に規定なし</p> <p>特に規定なし</p> <p>特に規定なし</p>

四 職業	<p>1 成年の独身女子は、成年の独身男子と同じように、職業に従事する能力を有するか。</p> <p>2 婚姻によつて職業に従事する能力が影響されるか。</p> <p>a 妻 b 夫</p> <p>3 妻が職業に従事するのに夫の許可が必要とすれば、夫はその後の許可を撤回することができるか。又それは如何なる場合か。</p> <p>4 その撤回は第三者との関係において如何なる効果があるか。</p> <p>5 妻が職業に従事する能力を一旦取得した際は、独身の女子と同じ範囲に及ぶか。</p> <p>6 職業に従事する妻の次に関する権利義務を説明せよ。</p> <p>a 職業上の資産の処分 b 所得や利益の処分 c 職業上の債務の負担</p> <p>7 破産法は成年の独身男子と女子に平等に適用されるか。</p> <p>8 結婚している人の場合は破産法は平等に適用されるか。</p> <p>a 妻 b 夫</p>	<p>有する</p> <p>影響されない</p> <p>影響されない</p> <p>該当せず。夫の許可は必要としない。</p> <p>該当せず。夫の許可は不要だからその撤回もあり得ない。</p> <p>職業に従事する権利およびその範囲については、性別、未婚婚姻による差別はない。</p> <p>平等に適用される</p> <p>平等に適用される</p> <p>平等に適用される</p>	<p>憲法第十四条 すべて国民は、法の下に平等であつて、人種、信条、性別、社会的身分又は門地により、政治的、経済的又は社会的関係において差別されない。</p> <p>特に規定なし</p> <p>特に規定なし</p> <p>特に規定なし</p> <p>特に規定なし</p>
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五 夫婦の財産関係
(一) 総論

b 夫	<p>1 夫婦の財産関係は法律によつて規制されているか。又は当事者間の契約によつて定められるものか。</p>	<p>夫婦が婚姻の届出前にその財産について別段の契約をしなければ、その財産関係は法律によつて規制される。</p> <p>平等に適用される。</p>	<p>民法第七十五条 夫婦が、婚姻の届出前に、その財産について別段の契約をしなければ、その財産関係は、次の款に定めるところによる。</p> <p>同 第七十六条 夫婦が法定財産制と異なる契約をしたときは、婚姻の届出までにその登記をしなければならない。これを夫婦の承継人及び第三者に対抗することができない。</p> <p>同 第七十七条 外国人が、夫の本国の法定財産制と異なる契約をした場合において、婚姻の後日本の国籍を取消し、又は日本に住所を定めたときは、一年以内にその契約を登記しなければ、日本においては、これを夫婦の承継人及び第三者に対抗することができない。</p> <p>同 第七十八条 夫婦の財産関係は、婚姻届出の後、これを変更することができない。</p> <p>夫婦の一方が、他の一方の財産を管理する場合において、管理が失当であつたことによつて、その財産を危くしたときは、他の一方は自らその管理をすることを家事裁判所に請求することができる。</p> <p>同 第七十九条 共有財産については、前項の請求とともにその分割を請求することができる。</p> <p>同 第八十条 前条の規定又は契約の結果によつて、管理者を変更し、又は共有財産の分割をしたときは、その登記をしなければ、これを夫婦の承継人及び第三者に対抗することができない。</p> <p>同 第八十一条 夫婦は、その贅産、収入その他一切の事情を考慮して、婚姻から生ずる費用を分担する。</p> <p>同 第八十二条 夫婦の一方が婚姻前から有する財産及び婚姻中自己の名で得た財産は、その特有財産とする。</p> <p>夫婦のいづれに属するが明かでない財産はその共有に属するものと推定する。</p>
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<p>2 夫婦間における次の権利には制限があるか。</p> <p>a 互いに他の一方と契約すること</p> <p>b 無償又は有償で他の一方に財産を譲渡すること</p> <p>3 夫婦は、次のことについて責任を負うか。</p> <p>a 相互間の契約不履行</p> <p>b 相手に対する不法行為</p> <p>c もし責任を負うなら、その責任に関する規則は夫と妻に同じように適用されるか。</p> <p>4 a 夫は妻が第三者に対して行った不法行為について責任があるか。</p> <p>b 妻は夫が第三者に対して行った不法行為について責任があるか。</p> <p>5 a 夫は妻の負担した債務について責任があるか。</p> <p>b 妻は夫の負担した債務について責任があるか。</p> <p>c これらの債務が婚姻前に生じたか、又は婚姻解消後に生じたかによつて責任に影響があるか。</p> <p>4 夫婦財産制</p> <p>1 契約が存在しない際に適用される法定夫婦財産制はいかなるものか。</p>	<p>制限はない。但し、夫婦間の契約は、婚姻中、何時でも夫婦の一方からこれを取消することができる。</p> <p>責任を負う。但し前記の如くその契約は取消し得る。責任を負う</p> <p>同じに適用される</p> <p>ない</p> <p>ない</p> <p>ない。但し、日常の家事に關して生じた債務については連帯責任を負う。</p> <p>ない。但し、日常の家事に關して生じた債務については連帯責任を負う。</p> <p>影響ない</p> <p>条文を参照せよ。</p>	<p>民法第七五四条</p> <p>夫婦間で契約をしたときは、その契約は、婚姻中、何時でも、夫婦の一方からこれを取消することができる。但し、第三者の権利を害することができない。</p> <p>民法第七〇九条</p> <p>故意又は過失ニ因リテ他人ノ權利ヲ侵害シタル者ハ之ニ因リテ生シタル損害ヲ賠償スル責ニ任ス</p> <p>同 第七五四条 (前出)</p> <p>特に規定なし</p> <p>民法第七六一條 (前出)</p> <p>同 第七六一條 (前出)</p>
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<p>2 夫婦が契約によつて採用し得る法定財産制はいかなるものか。</p> <p>最も多く行われている夫婦財産制について、特に次の点に關して述べよ。</p> <p>a 共有財産</p> <p>b 別有財産</p> <p>c 持参金財産</p> <p>d その他の特に指定された財産</p> <p>3 夫婦財産制は婚姻中に夫婦間の契約によつて、始めたり修正したりできるか。</p> <p>A 共有財産制</p> <p>1 夫婦財産制に共有財産が含まれるとすれば、如何なるものがこれに關するか。</p> <p>特に、次のものは如何。</p> <p>a 動産</p> <p>b 不動産</p> <p>c 婚姻中に取得した財産</p> <p>i 無償のもの</p> <p>ii 所得や収入</p> <p>2 共有財産に關して、夫婦の権利義務を説明せよ。</p> <p>特に、次の点は如何。</p> <p>a 名義は誰になるか。</p> <p>b 誰が共有財産の管理権を有するか。</p> <p>c 誰が利益の処分権を有するか。</p>	<p>日本においては契約によつて夫婦財産制を定めることは稀である。(一九五五年六件、一九五六年二件、一九五七年二件)</p> <p>できない</p> <p>法定財産制では、すべて含まれる。契約の場合は契約内容による。</p> <p>法定財産制では、</p> <p>両者の共同</p> <p>同者の共同</p> <p>夫又は妻が他の一方の同意を得て行ふ。</p>	<p>同 第七六二条 (前出)</p> <p>民法第七五六条 (前出)</p> <p>同 第七五八条 (前出)</p> <p>民法第七六二条 (前出)</p> <p>同 第七五五条 (前出)</p> <p>同 第七五六条 (前出)</p> <p>民法第七四九条</p> <p>各共有者ハ共有物ノ全部ニ付キ其持分ニ応シタル使用ヲ為スコトヲ得</p> <p>同 第二五一条</p> <p>各共有者ハ他ノ共有者ノ同意アルニ非サレハ共有物ニ変更ヲ加フルコトヲ得ス</p> <p>同 第二五二条</p> <p>共有物ノ管理ニ關スル事項ハ前条ノ場合ヲ除ク外各共有者ノ持分ノ価格ニ從ヒ其過半</p>
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d 誰が共有財産の処分権を有するか。他の一方の同意が必要か。不要か。	夫又は妻が他の一方の同意を得て行ふ。	數ノ以テ之ヲ決ス但保存行為ハ各共有者之ヲ為スコトヲ得 契約の場合は、 同 第七五六条（前出）
3 もし夫が共有財産の管理権を有するとすれば、この管理権に關する夫の権利、義務は如何。	法定財産制については該當せず。契約の場合は契約内容による。	特に規定なし
4 共有財産について夫が行う管理処分又は濫用に対して妻にはいかなる救済方法があるか。	法定財産制については該當せず。契約の場合は契約内容による。	法定財産制では 民法第二〇六条 所有者ハ法令ノ制限内ニ於テ自由ニ其所有物ノ使用収益及ヒ処分ヲ為ス權利ヲ有ス
5 共有財産に含まれない財産に關する夫婦各々の権利義務は如何。	法定財産制については夫婦は各々その別有財産に對シ完全な所有権を有する。契約の場合は契約内容による。	民法第二五五条 共有者ノ一人ハ其持分ヲ拋棄シタルキ又ハ相續人ナクシテ死亡シタルキハ其持分ハ他ノ共有者ニ歸屬ス
6 共有財産解消の理由をあげよ。特にいかなる理由があれば夫又は妻は共有財産の解消を裁判所に對して請求できるか。	(1) 両者が解消を希望した時 (2) 一方が解消を希望し、裁判所の許可があつた時 契約の場合は (1) 契約で別段のとりきめのない場合は、両者が解消を希望した時	同 第二五六条 各共有者ハ何時ニテモ共有物ノ分割ヲ請求スルコトヲ得但五年ヲ超エサル期間内分割ヲ為ササル契約ヲ為スコトヲ妨ケス 此契約ハ之ヲ更新スルコトヲ得但更新ノ時ヨリ五年ヲ超ユルコトヲ得ズ 同 第二五七条 前条ノ規定ハ第二八八条及ヒ第二八九条ニ掲ケタル共有物ニハ之ヲ適用セス

7 共有財産は、婚姻解消後誰に渡されるか。	法定財産制については共有財産は平等に分割される。契約の場合は契約内容による。	民法第二五〇条 各共有者ノ持分ハ相均シキモノト推定ス 同 第七六二条（前出）
8 夫又は妻が遺言なしに死亡した時は、共有財産はどうなるか。	法定財産制では共有財産中死亡した夫、又は妻の持分は生存配偶者およびその他の相続人が法の規定に従い相続する。契約の場合は、契約内容による。	民法第八九〇条 被相続人の配偶者は、常に相続人となる。この場合において、前三条の規定によつて相続人となるべき者があるときは、その者と同順位とする。 同 第九〇〇条 同順位の相続人が数人あるときは、その相続分は、左の規定に従ふ。
9 共有財産を含む夫婦財産制が夫婦の一方の遺言能力に影響するか。	影響しない	民法第七六二条（前出） 同 第七五五条（前出） 同 第七五六条（前出） 民法第九六一条 満十五歳に達した者は遺言をすることが出来る。
B 別産制 1 夫婦財産制に別有財産が含まれるとすれば、如何なるものが、これに		民法第七六二条（前出） 同 第七五五条（前出）

<p>属するか。 特に次のものは如何。</p> <p>a 動産 b 不動産 c 婚姻中に取得した財産</p>	<p>法定財産制ではすべて含まれる。契約の場合は契約内容による。</p>	<p>同 第七五六条（前出）</p>
<p>2 別有財産に関して夫婦の権利義務を説明せよ。 特に次の点如何。</p> <p>a 誰が別有財産の管理権を有するか。 b 誰が利益の処分権を有するか。 c 誰が別有財産の処分権を有するか。他の一方の同意が必要か、不要か。</p>	<p>法定財産制では、 夫又は妻の別有財産の所有権について婚姻による影響はない。 契約の場合は、 契約内容による。</p>	<p>法定財産制では特に規定なし 契約の場合は 民法第七五五条（前出） 同 第七五六条（前出）</p>
<p>3 別有でない財産について夫婦の権利義務を説明せよ。</p>	<p>法定財産制には該当せず。 契約の場合は契約内容による。</p>	<p>法定財産制では特に規定なし 契約の場合は、 民法第七五五条（前出） 同 第七五六条（前出）</p>
<p>4 別有財産制が解消された場合、財産に対する夫婦各々の権利は如何。</p>	<p>法定財産制には該当せず。 契約の場合は契約内容による。</p>	<p>民法第七五五条（前出） 同 第七五六条（前出）</p>
<p>5 夫又は妻が遺言なしに死亡した時は、別有財産はどうなるか。</p>	<p>財産は、生存配偶者およびその他の相続人が法の規定に従い相続する。</p>	<p>民法第八九〇条（前出） 同 第九〇〇条（前出）</p>
<p>6 別有財産を含む夫婦財産制が夫婦の一方の遺言能力に影響するか。 C 持参金制</p>	<p>該当せず。わが国には制度としてかかるとはならない。</p>	<p>民法第九六一条（前出）</p>

<p>D その他の夫婦財産制</p>	<p>該当せず。わが国にはその他の財産制として定められていない。</p>	
<p>六 後 見</p> <p>1 成年の独身女子は成年の独身男子と同じ条件で、後見人となることができるか。</p> <p>a 後見人が法律によつて指定される場合 b 後見人が任命される場合</p>	<p>できる できる</p>	<p>民法第八四六条 左に掲げる者は後見人となることができない。 一 未成年者 二 禁治産者及び準禁治産者 三 家事審判所で免ぜられた法定代理人又は保佐人 四 破産者 五 被後見人に対して訴訟をし、又はした者及びその配偶者並びに直系血族 六 行方の知れない者 民法第八四四号 後見人は、正当な事由があるときは、家事審判所の許可を得てその任務を辞すること ができる。</p>
<p>2 成年の独身女子は成年の独身男子と同じ条件で a 後見人としての任命を辞退できるか。 b 後見人としての任命を受諾した後辞任を要求できるか。</p>	<p>できる できる</p>	
<p>3 結婚している女子は結婚している男子と同じ条件で、後見人となることができるか。 a 自分の子供の b 第三者の i 後見人が法律によつて指定される場合 ii 後見人が任命される場合</p>	<p>原則として自分の子供に対しては親権を有する。 できる できる できる</p>	<p>民法第八三八条 後見は、左の場合に開始する。 一 未成年者に対して親権を行う者がいないとき、又は親権を行う者が管理権を有しないとき 二 禁治産の宣告があつたとき 同 第八四六条（前出）</p>
<p>4 結婚している女子は後見人に指定又は任命するには夫の許可が必要か。 もし必要なら</p>	<p>必要ない</p>	<p>特に規定なし</p>

- 2 婚姻によつて遺言のない相続の場合における権利義務が影響されるか。
- a 妻
b 夫
- 3 遺言のない相続の場合に、適用される条文は各々比較して相違があるか。
- a 娘と息子
b 母と父
c 妻の親族と夫の親族
- 4 遺言のない相続の場合に適用される条文は各々如何なるものか。
- a 妻
b 夫
- 5 寡婦は、寡婦座権を有するか。
- 6 寡夫は、寡夫座権を有するか。
- 7 成年の独身女子は成年の独身男子と同じように、遺言のない相続を承認し又は放棄することができるか。

影響されない

平等である
平等である
平等である

平等である

該当せず。わが国には寡婦座権の制度はない。
該当せず。わが国には寡夫座権の制度はない。

できる

世、又は至らせようとしたために、刑に処せられた者。
二 被相続人の殺害されたことを知つて、これを告発せず、又は告訴しなかつた者。但し、その者に是非の弁別がないとき、又は殺害者が自己の配偶者若しくは直系血族であつたときは、この限りでない。
三 詐欺又は強迫によつて、被相続人が相続に関する遺言をし、これを取り消し、又はこれを変更することを妨げた者
四 詐欺又は強迫によつて、被相続人に相続に関する遺言をさせ、これを取り消させ、又はこれを変更させた者
五 相続に関する被相続人の遺言書を偽造し、変造し、破棄し、又は隠匿した者

民法第八七条(前出)

同 第八八条(前出)

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(白) 遺言のある相続

- 8 婚姻によつて遺言のない相続の場合にこれを承認し又は放棄する能力が影響されるか。
- a 妻
b 夫
- 1 成年の独身女子は成年の独身男子と同じように、遺言能力を有するか。
- 2 婚姻によつて遺言能力が影響されるか。
- a 妻
b 夫
- 3 死亡又は離婚による婚姻の解消、法定別居又は婚姻の取消の後、遺言能力は如何。
- a 妻
b 夫
- 4 夫婦は、別々に遺言をすることができるか。
- a 共同で遺言をすることができるか。
- 5 成年の独身女子は成年の独身男子と同じように、遺言を行う能力があるか。
- 6 婚姻によつて遺言の能力が影響されるか。
- a 妻
b 夫

影響されない

影響されない

有する

影響されない

変化しない
変化しない

できる
できない

ある

影響されない
影響されない

は検査官の請求によつて、家事審判所においてこれを仲立てることができる。

相続人は、承認し又は放棄をする前に、相続財産の調査をすることができる。

民法第九一五条(前出)

民法第九一五条(前出)

民法第九一五条(前出)

民法第九一五条(前出)

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民法第九一五条(前出)

<p>7 遺言のない場合に適用される法規によつて定められている相続分の、全部又は一部を遺言によつて奪われ得るか。</p> <p>a 娘と息子</p> <p>b 母と父</p> <p>c この点について、もし遺言による処理の自由に制限があるとすればそれは</p>	<p>然 然</p>	<p>民法第九六四条 遺言者は包括又は特定の名称で、その財産の全部又は一部を処分することができる。但し、遺留分に關する規定に違反することができない。</p> <p>同 第二〇二八条 兄弟姉妹以外の相続人は、遺留分として左の額を受ける。</p> <p>一 直系卑属のみが相続人であるとき、又は直系卑属及び配偶者が相続人であるときは、被相続人の財産の二分の一</p> <p>二 その他の場合には、被相続人の財産の三分の一</p> <p>同 第二〇三一条 遺留分権利者及びその承継人は、遺留分を保全するに必要な限度で、遺贈及び前条に掲げる贈与の減殺を請求することができる。</p>
<p>8 遺言のない場合に適用される法規によつて定められている相続分の、全部又は一部を遺言によつて奪われ得るか。</p> <p>a 妻</p> <p>b 夫</p> <p>c この点について、もし遺言による処理の自由に制限があるとすればそれは同じか。</p>	<p>然 然</p>	<p>民法第九六四条(前出)</p> <p>同 第二〇二八条(前出)</p> <p>同 第二〇三一条(前出)</p>
<p>9 成年の單身女子は成年の單身男子と同じように遺言による相続や遺贈を承認し又は放棄することができるか。</p> <p>a 妻</p> <p>b 夫</p>	<p>同じである</p>	<p>民法第九一五条(前出)</p> <p>同 第九八六条 受遺者は、遺言者の死亡後、何時でも遺贈の放棄をすることができる。遺贈の放棄は遺言者の死亡の時にさかのぼつてその効力を生ずる。</p> <p>民法第九一五条(前出)</p> <p>同 第九八六条(前出)</p> <p>民法第九一八条</p>
<p>10 婚姻によつて遺贈による相続や遺贈を承認し又は放棄する能力が影響されるか。</p> <p>11 遺言執行者、財産の管理人又は受</p>	<p>影響されない</p>	

<p>附録 年金</p> <p>1 次のものが死亡した場合、その寡婦又は寡夫が年金その他の手当を受けられるようになつてゐる法律があるか。</p> <p>a 公務員</p> <p>b 老令又は廢疾の際に老令又は廢疾年金を受ける権利を有する者</p> <p>c 老令又は廢疾年金を受けつつある者</p> <p>d その他の者</p> <p>もしあるとすれば、それは拠出制か無拠出制か。</p>	<p>託者の任命、その権利、義務などを規定している法律は男子と女子に平等に適用されるか。</p> <p>平等に適用される</p>	<p>恩給法第七三條第一項 公務員左ノ各号ノ一ニ該当スルトキハ其ノ遺族ニハ、妻、未成年ノ子、夫、父母、成年ノ子、祖父母ノ順位ニ依リ之ニ扶助料ヲ給ス</p> <p>一 在職中死亡シ其ノ死亡ヲ退職ト看做ストキハ之ニ普通恩給ヲ給スヘキトキ</p> <p>二 普通恩給ヲ給セラルル者死亡シタルトキ</p> <p>國家公務員共済組合法第二條第一項 この法律において、次の各号に掲げる用語の意義は、それぞれ当該各号に定めるところによる。</p> <p>三 遺族 組合員又は組合員であつた者の配偶者、子、父母、孫及び祖父母で、組合員又は組合員であつた者の死亡の当時主として組合員の収入により生計を維持していたものをいう。</p> <p>同 第八八条 次の各号の一に該当するときは、当該各号に規定する者の遺族に、当該各号に掲げる額の遺族年金を支給する。</p> <p>一 組合員が公務員により、組合員である間に、又は退職後に死亡した場合、俸給額の百分の四十に相当する金額(組合員期間が二十年をこえるときは、そのこえる年数一年につき俸給年額の百分の一・五に相当する金額を加えた金額)</p> <p>二 組合員期間が、二十年以上である者が、公務員により死亡した場合、その者が受ける権利を有していた退職年金(退職年金を受ける権利を有していなかった者については、減額退職年金若しくは廢疾年金を支給しなかつたものとした場合において支給すべきであつた退職年金又はその死亡を退職とみなした場合において支給すべきこととなる退職年金)の額の百分の五十に相当する金額</p> <p>三 組合員期間が十年以上二十年未満である者が公務員により死亡した場合、その者が受ける権利を有していた退職年金(組合員期間が十年以上二十年未満である者が公務員により死亡した場合又は組合員期間が十年以上二十年未満である者が廢疾年金を受ける権利を有していた場合又は組合員期間が十年以上二十年未満である者が廢疾年金を受ける権利を有していた場合)</p>
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利を有するものが公務員に死した場合は、遺族年金の百分の十に相当する金額（組合員期間が十年をこえるときは、そのこえる年数に比例する金額の百分の十に相当する金額を加えた金額）
 四 組合員期間十年未満の者が公務員に死した場合は、遺族年金の百分の十に相当する金額（組合員期間十年未満の者が公務員に死した場合は、遺族年金の百分の十に相当する金額を加えた金額）
 五 遺族年金の額が二万一千円に満たないときは、これを二万一千円とする。

国家公務員災害補償法第一五條

職員が公務上死亡した場合においては、国は、遺族補償として、職員の遺族に対して、平均給与額の千日分に相当する金額を支給する。

同 第一六條

前条に規定する職員の遺族は、左の各号に掲げる者とする。

一 配偶者（婚姻の届出をしないが、職員の死亡当時事実上婚姻関係と同様の事情にあった者を含む）
 二 子、父母、孫及び祖父母で職員の死亡当時主としてその収入によつて生計を維持していたもの。
 三 前二号に掲げる者の外職員の死亡当時主としてその収入により生計を維持していた者。

四 子、父母、孫、祖父母及び兄弟姉妹で前二号に該当しないもの

厚生年金保険法第五八條

遺族年金は、被保険者又は被保険者であつた者が左の各号の一に該当する場合に、その者の遺族に支給する。

一 第四十二條第一項各号のいずれかに規定する被保険者期間を満たしている者が死亡したとき。

二 被保険者期間が六箇月以上である被保険者（第四種被保険者を除く。）が死亡したとき。

三 被保険者期間が六箇月以上である者が、第四種被保険者以外の被保険者であつた間に発した疾病又は負傷及びこれらに起因する疾病につきはじめて医師又は歯科医師の診察を受けた日から起算して三年を経過する日（その期間内に健康保険の療養の給付を受けた場合においては、はじめてその療養の給付を受けた日から起算して三年を経過する日）前に、その傷病により死亡したとき。

四 別表第一に定める一級又は二級の廃疾の状態にある障害年金の受給権者が死亡したとき。

同 第五九條第一項

遺族年金を受けることができる遺族は、被保険者又は被保険者であつた者の配偶者、子、父母、孫又は祖父母（以下単に「配偶者」、「子」、「父母」、「孫」又は「祖父母」という。）であつて、被保険者又は被保険者であつた者の死亡の当時その者によつて生計を維持し、且つ、左の要件に該当したものであること。

一 妻については、左のいずれかに該当すること。

イ 四十歳以上であること。

ロ 被保険者又は被保険者であつた者の死亡の当時その者によつて生計を維持し、且つ、第三号の要件に該当した子と生計を同じくすること。

ハ 別表第一に定める一級又は二級の廃疾の状態にあること。

二 夫、父母又は祖父母については六十歳以上であるが、又は別表第一に定める一級若しくは二級の廃疾の状態にあること。

三 子又は孫については、十八歳未満であるが、又は別表第一に定める一級若しくは二級の廃疾の状態にあること。

船員保険法第二三條第一項

遺族年金は、被保険者又は被保険者であつた者の死亡の当時その者によつて生計を維持し、且つ、第三号の要件に該当した子と生計を同じくすること。

同 第二三條ノ六第一項

遺族年金は、被保険者又は被保険者であつた者の死亡の当時その者によつて生計を維持し、且つ、第三号の要件に該当した子と生計を同じくすること。

一 被保険者又は被保険者であつた者の死亡の当時その者によつて生計を維持し、且つ、第三号の要件に該当した子と生計を同じくすること。

ニ因リ労働能力ナキ子ノアルモノ
三 被保険者若ハ被保険者タリシ者又ハ障害年金ノ支給ヲ受クル者ノ死亡當時四十歳以上ニシテ其ノ後五十五歳ニ達シタル寡婦（五十五歳ニ達スル迄ノ間ニ第五十條ノ四第一号ニ該当スルニ至リタル者ヲ除ク）
四 第二号ニ該当スル寡婦ニシテ同号ニ定ムル子ガ第五十條ノ四各号ノ一（遺族年金受給権ノ喪失事由）ニ該当スルニ至リタルコトニ因リ第四十九條ノ五（寡婦年金、寡夫年金、遺児年金ノ受給権ノ喪失）ノ規定ニ依リ寡婦年金ヲ受クル權利ヲ失ヒタル當時四十歳以上ニシテ其ノ後五十五歳ニ達シタルモノ（五十五歳ニ達スル迄ノ間ニ第五十條ノ四第二号ニ該当スルニ至リタル者ヲ除ク）
五 被保険者若ハ被保険者タリシ者又ハ障害年金ノ支給ヲ受クル者ノ死亡當時六十歳以上ノ寡夫
六 被保険者若ハ被保険者タリシ者又ハ障害年金ノ支給ヲ受クル者ノ死亡當時十八歳未満ノ子
七 前各号ニ掲グルモノノ外被保険者若ハ被保険者タリシ者又ハ障害年金ノ支給ヲ受クル者ノ死亡當時ヨリ引續キ不具障害ニ因リ労働能力ナキ者
同 第四九條ノ二
被保険者タリシ期間六年以上五十年未満ナル被保険者（第三十條第一項第二号又ハ第三号ニ該当スル者ヲ除ク）ガ職務外ノ事由ニ因リ死亡シタルトキ若ハ被保険者ノ資格喪失前ニ発シタル疾病若ハ負傷及之ニ因リ発シタル疾病ニ付療養ノ給付ヲ受ケタル日ヨリ起算シ三年以内ニ其ノ疾病又ハ負傷及之ニ因リテ発シタル疾病ニ因リ死亡シタルトキ又ハ職務外ノ事由ニ因リ障害ニ付シタルモノニ因リ障害年金ノ支給ヲ受クル者ニシテ其ノ障害ノ状態ガ別表第四下欄ニ定ムル第一号乃至第六号ニ該当シタルモノガ死亡シタルトキハ其ノ者ノ寡婦若ハ寡夫又ハ子ニ対シ寡婦年金若ハ寡夫年金又ハ遺児年金ヲ支給ス但シ遺児年金ハ同一ノ事由ニ因リ寡婦年金又ハ寡夫年金ヲ支給スベキ期間ハ之ヲ支給セズ
同 第五〇條
左ノ各号ノ一ニ該当スル場合ニ於テハ被保険者又ハ被保険者タリシ者ノ遺族ニ対シ遺族年金ヲ支給ス
一 第三十四條第一項各号ノ一ニ該当スル被保険者又ハ被保険者タリシ者ガ職務外ノ事由ニ因リ死亡シタルトキ
二 職務上ノ事由ニ因リ障害ニ付シタルモノニ因リ障害年金ノ支給ヲ受クル者ガ職務外ノ事由ニ因リ死亡シタルトキ

2 そのような規定があるとすれば年金に対する権利は、
a 寡婦
b 寡夫
によつて異なるか。

異なる。一般に生計の維持が困難な寡婦をかん夫よりも厚く保護するための差異である。内容については条文を参照せよ。

三 被保険者又ハ被保険者タリシ者ガ職務上ノ事由ニ因リ第四十二條ノ五第一項（職務上の傷病につき療養の給付を受けた日より起算し二年以内に死亡した被保険者等の遺族への一時金支給）ノ規定ニ依リ期間内ニ死亡シタルトキ
労働基準法第七九條
労働者が業務上死亡した場合においては、使用者は、遺族又は労働者の死亡当時その収入によつて生計を維持した者に対して、平均賃金の千日分の遺族補償を行わなければならない。
労働基準法施行規則第四二條第一項
遺族補償を受けるべき者は、労働者の配偶者（婚姻の届出をなくとも事実上婚姻と同様の関係にある者を含む。以下同じ。）とする。
右の外、公共企業体職員等共済組合法、市町村職員共済組合法及び私立学校職員共済組合法等があるが、皆類似しているので省略した。
厚生年金保険法第六三條第二項
妻の有する遺族年金の受給権は、左の各号の一に該当するに至つたときは、消滅する。
一 第五十九條第一項第一号ロに規定する子であつて、引き継ぎ妻と生計を同じくし、且つ、遺族年金の受給権を有するものがなくなつたとき。但し、妻が四十歳以上であるとき及び妻が受給権を取得した時から引き継ぎ別表第一に定める一級又は二級の障害の状態にあるときを除く。
二、別表第一に定める一級又は二級の障害の状態にある妻について、その事情がやんだとき。但し妻が受給権を取得した当時又は前号本文の規定に該当した当時四十歳以上であつたとき、及び第五十九條第一項第一号ロに規定する子であつて、引き継ぎ生計を同じくし、且つ、遺族年金の受給権を有するものがあるときを除く。
同 第六三條第四項
夫、父母又は祖父母の有する遺族年金の受給権は、別表第一に定める一級又は二級の障害の状態にある夫、父母又は祖父母について、その事情がやんだときは、消滅する。但し、夫、父母又は祖父母が受給権を取得した当時六十歳以上であつたときを除く。
同 第六五條
妻に対する遺族年金は、妻が五十五歳に達するまでの期間、その支給を停止する。但し、第五十九條第一項第一号ロに規定する子であつて、引き継ぎ妻と生計を同じくし、且つ、遺族年金の受給権を有するものがある間及び妻が受給権を取得した時から引き継ぎ別表第一に定める一級又は二級の障害の状態にある間は、この限りでない。

3 年金を受ける権利は、婚姻の取消又は解消又は法定別居によつて影響されるか。

- a 寡婦
- b 寡夫

影響される
恩給法においては内縁関係は認めない。

4 a 寡婦又は寡夫が年金を受ける権利が婚姻の取消、又は解消又は法定別居によつて影響されるとすれば、死亡した夫又は妻の配偶者遺 (successive spouses) 先夫先妻遺を含むもの(の権利は如何なるものか。

被保険者の死亡当時婚姻関係にあつた配偶者のみに権利がある。条文を参照せよ。

b その婚姻の解消又は別居によつて、夫婦のどちらが責任があるかというところが生存配偶者の年金受給権に影響するか。

影響しない

c 金又は手当は死亡者の配偶者遺 (successive spouses) 先夫、先妻遺を含むもの(の間で分配されるか。年金を受ける権利は受給権者の再婚によつて影響されるか。

分配されない

- a 寡婦
- b 寡夫

影響される
影響される

恩給法第七三條 (前出)

同 第七四條

夫又は成年ノ子ハ不具廢疾ニシテ生活資料ヲ得ルノ途ナキトキニ限り之ニ扶助料ヲ給ス

厚生年金保険法第三三條第二項

この法律において、「配偶者」「夫」及び「妻」には、婚姻の届出をしていないが、事実上婚姻関係と同様の事情にある者を含むものとする。

同 第五九條第一項 (前出)

恩給法第七二條第一項

本法ニ於テ遺族トハ公務員ノ祖父母、父母、配偶者、子及兄弟姉妹ニシテ公務員ノ死亡ノ当時之ニ依リ生計ヲ維持シ又ハ之ト生計ヲ共ニシタルモノヲ謂フ

厚生年金保険法第三三條第二項 (前出)

同 第五九條第一項 (前出)

恩給法第七二條第一項 (前出)

厚生年金保険法第六三條第一項

遺族年金の受給権は、受給権者が左の各号の一に該当するに至つたときは、消滅する。

- 一 死亡したとき。
- 二 婚姻(届出をしていないが、事実上婚姻関係と同様の事情にある場合を含む。)をし

たとき。

三 直系姻族以外の者の養子(届出をしていないが、事実上養子縁組関係と同様の事情にある者を含む。)となつたとき。

四 離縁によつて、死亡した被保険者又は被保険者であつた者との親族関係が終了したとき。

恩給法第八〇條第一項

遺族左ノ各号ノ一ニ該当シタルトキハ扶助料ヲ受ケルノ權利ヲ失フ

一 配偶者婚姻シタルトキ又ハ遺族以外ノ者ノ養子ト為リタルトキ

厚生年金保険法第四三條第一項

同 第四四條第一項

前条第一項の加給年金額は、受給権者がその権利を取得した当時その者によつて生計を維持していたその者の配偶者、十八歳未満の子又は別表第一に定める一級若しくは二級の障害の状態にある子について計算する。

同 第五一條第二項

第四十四條の規定は、前条第一項第一号又は第二号の加給年金額について準用する。

恩給法第七五條

扶助料ノ年額ハ之ヲ受ケル者ノ人員ニ拘ラス左ノ各号ニ依ル

一 第一号及第三号ニ時ニ規定スル場合ノ外ハ公務員ニ給セラルル普通恩給年額ノ十分ノ五ニ相当スル金額

二 公務員公務ニ因ル傷病疾病ノ為死亡シタルトキハ前号ノ規定ニ依ル金額ニ退職當時ノ俸給年額ニ依リ定メタル別表第四号表ノ率ヲ乗ジタル金額

三 勲加恩給ヲ併給セラルル者公務ニ起因スル傷病疾病ニ因ラズシテ死亡シタルトキハ第一号ノ規定ニ依ル金額ニ退職當時ノ俸給年額ニ依リ定メタル別表第五号表ノ率ヲ乗ジタル金額

前項第二号及第三号ニ規定スル場合ニ於テ扶助料ヲ受ケル者ニ扶養家族アルトキハ其ノ員數ヲ四千八百円ニ乗ジタル金額ヲ扶助料ノ年額ニ加給ス
前項ノ扶養遺族トハ扶助料ヲ受ケル者ニ依リ生計ヲ維持シ又ハ之ト生計ヲ共ニスル遺族ニシテ扶助料ヲ受ケルべき要件ヲ具フルモノヲ謂フ
特に規定なし

7 寡婦又は寡夫が被保険者と結婚した当時、被保険者がすでに老令又は廢疾

6 老令、廢疾年金に関する権利義務を規定している現行法中

- a 独身女子
 - b 結婚している女子
 - c 独身男子
 - d 結婚している男子
- i 年金額の率
ii 提出額の率(提出制の場合)
iii その他の条件

恩給法においては原則として差別なし。但し公務による疾病や傷害の場合は、独身者と結婚している者の間には差がある。
厚生年金保険法では提出金の率について、独身者と結婚している者との間に差がある。

年金を受けていた場合、被保険者の死亡後、寡婦又は寡夫は寡婦又は寡夫年金を受ける権利があるか。

ある。
老令又は遺族年金の遺族年金受給権は、老令又は遺族年金受給者に依つて生計を維持しており且つ厚生年金保険法第五八及び五九条又は恩給法第七二及び七三条の規定にあてはまることによつて生ずるのであるから、結婚当時、死亡者が老令又は遺族年金を受けていたか否かとは関係ない。

第二部 家族法について

一 婚姻

(一) 婚姻

- 1 婚姻は
a 夫婦たるべきものの間
b 夫婦たるべき者の両親の間で行われるか

将来夫たるべきものと妻たるべきものには同じ規則が適用されるか

- 2 自由意志に基づく承諾は婚姻に不可欠であるか。
a 妻たるべきものについて
b 夫たるべきものについて

- 3 婚姻は撤回できるか。
a 妻たるべき者
b 夫たるべき者

- c 夫婦たるべき者の両親

- 4 婚姻の不履行に対してはいかなる場合に訴を提起することができるか。
a 妻たるべき者によつて
b 夫たるべき者によつて
c 第三者によつて

- e 結婚する場合かどうか。
i 結婚する事を約束して同棲している場合
ii 結婚予告の公表等のある種の儀式が行われている場合
iii 婚姻が文書になつている場合

質問

問題

回答

客

参

照

条

文

憲法第二四條

婚姻は同性の合意のみに基いて成立し、夫婦が同等の権利を有することを基本として、相互の協力により維持されなければならない。

民法第七四二條

婚姻は左の場合に限り無効とする。

- 一 入道その他の事由によつて当事者間に婚姻をする意思がないとき。
- 二 当事者が婚姻の届出をしないとき、但しその届出が第七三九条第二項に掲げる条件を欠くだけであるときは、婚姻はこれがためにその効力を妨げられることがない。

憲法第二四條(前出)

民法第七四二條(前出)

憲法第二四條(前出)

民法第七四二條(前出)

特に規定なし

- 5 婚約の不履行について訴を提起できるときは、損害賠償の訴を提起することができるか。
- a 妻たるべき者
b 夫たるべき者
c 第三者が
それは誰に対してであるか。
- 6 婚約の取消の要件
- 1 婚約をなしたる年齢は何歳であるか。
- a 女子
b 男子
- 2 a 妻たるべき者の
b 夫たるべき者の
c 夫婦たるべき双方の
自由意志に基き承諾が婚姻の合法性に必要であるか。
- 3 婚約の承諾年齢は男女同じであるか。
- 4 親の同意は必要であるか。

特に条件がなされていない。判例によれば、どのような形式の婚約でも訴を提起することができる。

できる
できる
できない
婚約の相手方に対して

民法第七〇九条

故意又は過失に因りて他人ノ権利ヲ侵害シタル者ハ之ニ因リテ生シタル損害ヲ賠償スル責ニ任ス

同 第七一〇条

他人ノ身体、自由又ハ名誉ヲ害シタル場合ト財産権ヲ害シタル場合トヲ問ハズ前条ノ規定ニ依リテ損害賠償ノ責ニ任スル者ハ財産以外ノ損害ニ対シテモ其賠償ヲ為スコトヲ要ス

民法第七三一条

男は満十八歳に、女は満十六歳にならなければ婚姻をすることができない。

憲法第二四一条(前出)

民法第七四二条(前出)

民法第三三條

満二十歳ヲ以テ成年トス

同 第七三七条

未成年の子が婚姻をするには、父母の同意を得なければならない。
父母の一方が同意しないときは、他の一方の同意だけで足りる。父母の一方が知れないとき、死亡したとき、又はその意思を表示することができないときも同様である。

二 婚姻の解消

(一) 婚姻の取消

- 1 婚姻の取消に因して訴訟を提起することができるか。

- a 妻
b 夫
c 公共の機関(職權上)

5

- a 女子が未成年である場合
b 男子が未成年である場合
c 女子が成年に達した場合
d 男子が成年に達した場合
親の同意が要するかどうか。
それは次の中何れのものか。
- i 母の
ii 父の
iii 両親の
- b 親の同意がない場合裁判所の許可をもつてこれに代えられるか。
それはいかなる場合か。

(二) 婚姻の形式

- 1 婚姻の形式および宣誓は

- a 妻たるべき者
b 夫たるべき者
にとり

- i 民事上の儀式
ii 宗教的儀式
において同じであるか。
一夫多妻制

必要である
必要である
必要ない
必要ない
然
代えられない

該当せず。婚姻の届出が必要だけで、法律に定められた儀式はない。
該当せず。一夫多妻制はない。

民法第七四三条

婚姻は、第七百四十四条乃至第七百四十七条の規定によらなければ、これを取り消すことができない。

同 第七四四條

第七百三十一條乃至第七百三十六條の規定に違反した婚姻は、各当事者、その親族又は檢察官からその取消を裁判所に請求することができる。但し檢察官は、当事者の一方が死亡した後はこれを請求することができない。

第七百三十二条又は第七百三十三条の規定に違反した婚姻については、当事者の配偶者又は前配偶者もその取消を請求することができる。

同 第七百三十一条の規定に違反した婚姻は、不適齢者が適齢に達したときは、その取消を請求することができる。

同 不適齢者は、適齢に達した後、なお三箇月間は、その婚姻の取消を請求することができる。但し適齢に達した後を追認をしたときはこの限りでない。

同 第七百三十三条の規定に違反した婚姻は、前婚の解消若しくは取消の日から六箇月を経過し、又は女が再婚後に懐胎したときは、その取消を請求することができる。

同 詐欺又は強迫によつて婚姻をした者は、その婚姻の取消を裁判所に請求することができる。

前項の取消権は、当事者が詐欺を発見し、若しくは強迫を免かれた後三箇月を経過し、又は追認をしたときは消滅する。

(参考)

民法第七三一条(前出)

同 第七三二条 配偶者のあるものは、重ねて婚姻をすることができない。

同 第七三三条 女は、前婚の解消又は取消の日から六箇月を経過した後でなければ、再婚をすることができない。

女が前婚の解消又は取消の前から懐胎していた場合には、その出産の日から、前項の規定を適用しない。

同 第七三四条 直系血族又は三親等内の傍系血族の間では、婚姻をすることができない。但し、養子と養方の傍系血族との間では、この限りでない。

同 第七三五条 直系姻族の間では婚姻をすることができない。第七百二十八条の規定によつて姻族関係が終了した後も同様である。

同 第七三六条

2 婚姻取消のための法律的事由は同一か。

a 女子

b 男子

もし宗教法があるとすれば、その場合も同様か。

3 婚姻取消の手續きは同一であるか。

a 妻

b 夫

4 婚姻取消は、妻にとつて次の点に關しかなる効果があるか。

a 氏について

b 本籍について

c 法律上の能力について

d 財産処分について

婚姻によつて氏を改めたものはもとの本籍へ戻る。

婚姻によつて氏を改めたものはもとの本籍へ戻る。

婚姻によつて氏を改めた者は、協議上の離婚によつて婚姻前の氏に復する。

民法第七四九条 第七百六十六條乃至第七百六十九條の規定は、婚姻の取消につきこれを準用する。

同 第七七七条 婚姻によつて氏を改めた夫又は妻は、協議上の離婚によつて婚姻前の氏に復する。

民法第七四九条(前出)

同 第七六七条 戸籍法第一九条 婚姻又は養子縁組によつて氏を改めた者が、離婚、離縁又は婚姻若しくは縁組の取消によつて、婚姻又は縁組前の氏に復するときは、婚姻又は縁組前の戸籍に入る。但し、その戸籍が既に除かれていたり、又はその者が新戸籍編製の申出をしたときは、新戸籍を編製する。

前項の規定は、民法第七五十一條第一項の規定によつて婚姻前の氏に復する場合及び同法第七百九十一條第三項の規定によつて従前の氏に復する場合にこれに準用する。

民法第七六八条 協議上の離婚をした者の一方は、相手方に対して財産の分与を請求することができる。

民法第七四三条(前出)

同 第七四四條(前出)

同 第七四五條(前出)

同 第七四六條(前出)

同 第七四七條(前出)

民法第七四三条(前出)

同 第七四四條(前出)

同 第七四五條(前出)

同 第七四六條(前出)

同 第七四七條(前出)

養子、その配偶者、直系尊属又はその配偶者と養親又はその直系尊属との間では、第七百二十九条の規定によつて親族関係が終了した後でも婚姻をすることができない。

5 婚姻取消は夫の法律的地位に如何なる効果を与えるか。

妻の場合と同じである。

6 婚姻取消の場合

a その婚姻による子は何れの氏を名乗るか。
i 母
ii 父

婚姻中の両親の氏を名乗る。

前項の規定による財産の分与について、当事者間に協議が調わないとき、又は協議をすることができないときは、当事者は、家庭裁判所に対して協議に代わる処分を請求することができる。但し、離婚の時から一年を経過したときは、この限りでない。
前項の場合には、家庭裁判所は、当事者双方がその協力によって得た財産の額その他一切の事情を考慮して、分与をさせるべきかどうか並びに分与の額及び方法を定める。
同 第七四九条（前出）

（参考）

民法第八九七条

承継、祭具及び墳墓の所有権は、前条の規定にかかわらず、慣習に従つて祖先の祭祀を主宰すべき者がこれを承継する。但し、被相続人の指定に従つて祖先の祭祀を主宰すべき者があるときは、その者が、これを承継する。

前項本文の場合において慣習が明かでないときは、前項の権利を承継すべき者は、家庭裁判所がこれを定める。

同 第七五一第一項

夫婦の一方が死亡したときは、生存配偶者は、婚姻前の氏に復することができる。

同 第七九一第三項

前二項の規定によつて氏を改めた未成年の子は、成年に達した時から一年以内に従前の氏に復することができる。

民法第七四九条（前出）

同 第七六六条（前出）

同 第七六七条（前出）

同 第七六八条（前出）

同 第七六九条（前出）

戸籍法第一九条（前出）

a 民法第七九〇条

前出である子は、父母の氏を称する。但し、子の出生前に父母が離婚したときは、離婚の際における父母の氏を称する。

前出でない子は、母の氏を称する。

同 第七九一条

b その婚姻による子は、誰が扶養せねばならないか。
i 母
ii 父
iii 両親

然

b 民法第八七七条

直系血族及び兄弟姉妹は、互に扶養する義務がある。

家庭裁判所は、特別の事情があるときは、前項に規定する場合の外三親等内の親族間においても扶養の義務を負わせることができる。

前項の規定による審判があつた後事情に変更を生じたときは、家庭裁判所は、その審判を取り消すことができる。

同 第八七八条

扶養をする義務のある者が数人ある場合において、扶養をすべき者の順序について、当事者間に協議が調わないとき、又は協議をすることができないときは、家庭裁判所がこれを定める。扶養を受ける権利のある者が数人ある場合において、扶養義務者の資力がその全員を扶養するに足りないとき、扶養を受けるべき者の順序についても同様である。

c 子の監護権は誰が有するか。

通常どちらか一方の親が有する。

c 民法第七六六条（前出）

同 第七四九条（前出）

d 民法第七四八条第一項

婚姻の取消はその効力を既住に及ぼさない。

同 第七七二条

妻が婚姻中に懐胎した子は、夫の子と推定する。

婚姻成立の日から二百日後又は婚姻の解消若しくは取消の日から三百日以内に生まれたい子は、婚姻中に懐胎したものと推定する。

7 不合法婚姻（putative marriage）の場合

a 妻が善意であればその地位は如何なるか。

条文を参照せよ

民法第七四八条

婚姻の取消は、その効力を既住に及ぼさない。

婚姻の当時その取消の原因があることを知らなかつた当事者が、婚姻によつて財産を

何 b 夫が善意であればその地位は如何。 c その婚姻による子の地位は如何。	条文を参照せよ 条文を参照せよ	を得たときは、現に利益を受ける限度において、その返還をしなければならない。 婚姻の当時その取消の原因があることを知っていた当事者は、婚姻によつて得た利益の全部を返還しなければならない。なお、相手方が善意であつたときは、これに対して損害を賠償する責に任ずる。 同 第七四九条(前出)
法定別居	該当せず。日本には事実上の別居はあつても法律的に定められた別居という制度はない。	
離婚 1 離婚の訴を a 妻 b 夫 が起すことができるか。	できる できる	民法第七六三条 夫婦は、その協議で離婚をすることができる。 同 第七七〇条 夫婦の一方は、左の場合に限り、離婚の訴を提起することができる。 一 配偶者に不貞な行為があつたとき 二 配偶者から悪意で遺棄されたとき 三 配偶者の生死が三年以上明かでないとき 四 配偶者が強度の精神病にかかり、回復の見込がないとき

2 離婚には同一の法律的事由を用いることができるか。 a 妻 b 夫 もし宗教法があるとすればその場合も同様か。	できる できる 該当せず。日本には宗教法がない	五 その他婚姻を継続し難い重大な事由があるとき 裁判所は、前項第一号乃至第四号の事由があるときでも、一切の事情を考慮して婚姻の継続を相当と認めるときは、離婚の請求を棄却することができる。 民法第七六三条(前出) 同 第七七〇条(前出)
3 離婚の手續きは同一であるか。 a 妻 b 夫	同一である 同一である	民法第七六三条(前出) 同 第七七〇条(前出)
4 離婚は妻にとつて次の点に關しどの様な効果があるか a 氏について b 本籍について c 法律上の能力について d 財産処分について	条文を参照せよ。 条文を参照せよ。 変化はない 代理権はない	a 民法第七六七条及び戸籍法第一九条(前出) b 戸籍法第一九条(前出) c 特に規定なし 民法第七六八条(前出) 同 第七七一条(前出)
i もし夫が妻の代理権を有すれば ii もし妻が夫の代理権を有すれば iii 妻と子の扶養	代理権はない 代理権はない 該当せず。日本には事実上の別居はあつても法律的に定められた別居という制度はない。	
(1) 離婚手續中の別居手当	条文を参照せよ。	民法第七六七条(前出) 同 第七六八条(前出) 戸籍法第一九条(前出)
5 (2) 最終的な財産分与 離婚は夫の法律的地位に如何なる効果を与えるか。	条文を参照せよ。 妻の場合と同じである。	

三 再 婚		
1 離婚又は婚姻取消後の再婚に関する制限は同じであるか。 a 妻 b 夫	何れにも制限はない	特に規定なし
2 離婚事由の責任ある当事者が念通の相手方と婚姻する場合、離婚又は婚姻取消後の再婚についての制限が同様に適用されるか。 a 責任ある妻 b 責任ある夫	何れにも制限はない	特に規定なし
3 女子の再婚に関して、前の婚姻の解消後、経過しなければならない期間につき特別の制限があるか。	ある。六ヵ月。	民法第七三三條(前出) 同 第七四六條(前出)
4 a 女子の再婚 b 男子の再婚 i 別居手当 ii 子の扶養	該当せず。日本には事実上の別居はあつても、法律的に定められた別居という制度はない。 条文を参照せよ。	民法第七三五條(前出) (参 考) 民法第七二八條 姻族関係は、離婚によつて終了する。 夫婦の一方が死亡した場合において、生存配偶者が姻族関係を終了させる意思を表示したときも、前項と同様である。
5 寡婦又は寡夫の場合、再婚の相手の選択につき何らかの規定があるか。 a 寡婦 b 寡夫	ある ある	憲法第二四條(前出)
四 夫婦の身分関係		
1 a 夫 b 妻		憲法第二四條(前出)

2 a 妻は夫に b 夫は妻に 服従する義務があるか。	何れも家族の長ではない。	憲法第二四條(前出) 民法第七五二條 夫婦は同居し、互に協力し扶助しなければならない。
3 a 夫は妻を b 妻は夫を 保護する義務があるか。	ない ない	憲法第二四條(前出) 民法第七五二條(前出)
4 a 妻 b 夫 i 自立的に ii 選択によつて	否 氏を取得する。	民法第七五〇條 夫婦は婚姻の際に定めるところに従い、夫又は妻の氏を称する。
5 a 妻 b 夫 i 婚姻の解消の場合 ii 選択によつて	取得した氏を失う。 持ち得ない。	民法第七四九條(前出) 同 第七五一條(前出) 同 第七六七條(前出) 同 第七七一條(前出)
6 妻は夫と別の住所又は居所を持ち得るか。 a 夫婦の住所又は居所に關係なく b 夫婦の住所又は居所に加えて更に	取得した氏を失う。 持ち得ない。	憲法第二四條第二項(前出) 民法第七五二條(前出)
7 夫は妻と別の住所又は居所を持ち得るか。	居所と住所は、夫婦の同意によつて定められなければならない。	憲法第二四條第二項(前出) 民法第七五二條(前出)

<p>a 夫婦の住所と居所とは関係なく b 夫婦の住所を居所に加えて更に もし持ち得ないとすれば夫はその妻の 居所と住所を自分のものとし、妻が住所 又は居所を定める場所ならば何処へでも 従わねばならないか。</p>	<p>居所と住所は夫婦の同意に よつて定められねばならな い。</p>	<p>憲法第三二条 何人も、公共の福祉に反しない限り、居住、移転及び職業選択の自由を有する。 何人も、外国に移住し、又は国籍を離脱する自由を侵されない。 同 第二四条第二項（前出）</p>
<p>8 もし a 妻 b 夫 が夫婦関係という立場では別々の居所お よび住所を持ち得ないとすれば a 夫 b 妻 は次の目的のためには如何。</p>	<p>持ち得る 持ち得る 該当せず。陪審院制度が日 本には存在しない。 持ち得る 持ち得る 持ち得る</p>	
<p>i 投票 ii 事務所の設立 iii 陪審員の義務行使 iv 訴訟の提起 v 納税 vi その他の目的</p>		
<p>9 もし a 夫が妻の住所に従わねばならない b 妻が夫の住所に従わねばならない とすれば 婚姻の解消の場合はどうなるか。</p>	<p>該当せず。夫婦は互に他の 一方の配偶者に従わねばな</p>	

<p>10 a 妻 b 夫 は単独の旅券を取得し國を離れること ができるか。</p>	<p>らないということはない。</p>	<p>旅券法にはかかる同意、条件又は制限を必要としない。</p>
<p>i 配偶者の同意なしに ii 配偶者の同意を得て iii 特別な条件又は制限があれば それを述べよ。</p>	<p>できる</p>	
<p>11 a 夫は妻を扶養し、妻の生計を維持 する義務があるか。 b 妻は夫を扶養し、夫の生計を維持 する義務があるか。 それはどの程度までであるか。</p>	<p>ある ある 条文を参照せよ</p>	<p>民法第七五二条（前出） 同第七六〇条 夫婦は、その資産、収入その他一切の事情を考慮して、婚姻から生ずる費用を分担す る。</p>
<p>12 a 妻を扶養する夫の義務は b 夫を扶養する妻の義務は 配偶者が夫婦の住所を遺棄すればなく なるか。</p>	<p>なくならない。但し、遺棄 は離婚の訴を提起する事由 となり得る。</p>	
<p>13 配偶者と同居する義務を a 夫は妻に対して有するか。 b 妻は夫に対して有するか。 もしそうならば</p>	<p>有する 有する</p>	<p>民法第七五二条（前出）</p>
<p>a 夫は妻に同居を強要するために訴 訟を起す権利があるか。 b 妻は夫に同居を強要するために訴 訟を起す権利があるか。 もし</p>	<p>ある ある ある</p>	<p>民法第七五二条（前出）</p>
<p>14 a 夫が夫婦の住所に住むことを望む ならば、妻はそれを受け入れねばなら</p>		

<p>4 a 母 b 父 c 第三者又は公共の機関 が他の一方の親の親権を喪失せしめる よう裁判所に要求することができ る。</p>	<p>できる</p>	<p>民法第八三六条 前二条に定める原因が止んだときは、家事審判所は、本人又はその親族の請求によつて、失権の宣告を取り消すことができる。 同 第八三七条（前出）</p>
<p>(2) 監護と後見 1 親権は、次の場合に継続するか、 後見に代るか。 a 婚姻の取消 b 法定別居</p>	<p>条文を参照せよ</p>	<p>民法第八三六条 前二条に定める原因が止んだときは、家事審判所は、本人又はその親族の請求によつて、失権の宣告を取り消すことができる。 同 第八三七条（前出）</p>
<p>c 離婚 d 死亡 i 父 ii 母 2 もし親権が a 母 b 父 によつて行使されているとすれば 親権者が死亡した時は i 自動的に ii 裁判所の認可又はその他の形 式を経て 他の一方の親に移るか。</p>	<p>どちらか一方が継続する。 該当せず。日本には事実上の別居があつても、法律的に定められた別居という制度はない。 どちらか一方が継続する。 生存している親が継続する。 両親共ない場合に後見が開始する。 移る</p>	<p>民法第七四九条（前出） 同 第八一九条（前出） 同 第八三八条 後見は、左の場合に開始する。 一 未成年者に対して親権を行う者がいないとき、又は親権を行う者が管理権を有しないとき。 二 禁治産の宣告があつたとき。 特に規定なし</p>

<p>3 法定別居又は離婚の場合、その未 婚の子供が a 母 b 父 c その他の者 の中何れの監護又は後見に服するかを 決定するのは如何なる要素か。</p>	<p>子供の利益が唯一の要素である。</p>	<p>民法第七六六条（前出） 同 第七七一条（前出） 同 第八一九条（前出）</p>
<p>4 もし監護又は後見が a 母 b 父 に与えられれば、その者が死亡したり その権利を喪失した時は i 自動的に ii 裁判所の認可又はその他の形 式を経て 他の一方の親に移るか。 5 監護権又は後見権を有した。 a 母 b 父</p>	<p>移る</p>	<p>民法第七六六条（前出） 同 第七七一条（前出） 特に規定なし</p>
<p>の再婚はその権限に影響を与えるか。 又、その新しい配偶者は前の婚姻の子 供に対して何らかの権限を取得するか。 (2) 扶養 1 両親が同居している場合 a 母 b 父 c 両親 は子供を扶養する義務があるか。そし てそれはどの程度までか。 2 両親が法定別居又は離婚した場合</p>	<p>再婚は何の影響もない。新しい配偶者は何の権限も取得しない。</p>	<p>民法第八二〇条（前出） 同 第八七七条 直系血族及び兄弟姉妹は、互に扶養をする義務がある。 家事審判所は、特別の事情があるときは、前項に規定する場合の外、三親等内の親族間においても扶養の義務を負わせることができる。 前項の規定による審判があつた後事情に変更を生じたときは、家事審判所はその審判を取り消すことができる。 民法第八二〇条（前出）</p>

<p>a 母 b 父 c 同居親</p> <p>i 子は扶養する義務があるか。そしてそれはどの程度までか。 ii 母が監護又は後見している場合 iii 父が監護又は後見している場合</p> <p>合 財産権</p> <p>i a 母 b 父 c 同居親</p> <p>ii 未成年の子の財産の管理収益権を有するか。 iii 両親が同居している場合 iv 両親が法定別居又は離婚をした場合</p> <p>2 a 母 b 父 c 同居親</p> <p>i 子の労力と所得に対する権利を有するか。 ii 両親が同居している場合 iii 両親が法定別居又は離婚をした場合 iv 父が死亡して母が生残った場合 v 母が死亡して父が生残った場合</p>	<p>ある</p> <p>何れが監護しているかに関係はない。 その程度については条文を参照せよ</p> <p>有する</p> <p>両親</p> <p>有する</p> <p>親権を有する親</p> <p>有する。しかしその子の行為を目的とする債務を生ずべき場合には、本人の同意を必要とする。 同居親 親権を有する親 生残った親で親権を有する者又は後見人</p>	<p>同 第八七七条(前出)</p> <p>民法第八一八条(前出) 同 第八一九条(前出) 同 第八二四条</p> <p>親権を行う者は、子の財産を管理し、又、その財産に関する法律行為についてその子を代表する。但しその子の行為を目的とする債務を生ずべき場合には、本人の同意を得なければならない。</p> <p>民法第六六条 一種又は数種ノ營業ヲ許サレタル未成年者ハ其營業ニ関シテハ成年者ト同一ノ能力ヲ有ス 前項ノ場合ニ於テ未成年者カ未タ其營業ニ堪ヘサル事跡アルトキハ其法定代理人ハ親族編ノ規定ニ從ヒ其許可ヲ取消シ又ハ之ヲ制限スルコトヲ得 同 第八一八条(前出) 同 第八一九条(前出) 同 第八二三条</p> <p>子は親権を行う者の許可を得なければ職業を営むことができない。 親権を行う者は、第六條第二項の場合には、前項の許可を取り消し、又はこれを制限することができる。</p> <p>同 第八二四条(前出) 同 第八三八条(前出)</p>
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<p>3 a 母 b 父 c 同居親</p> <p>は、遺言のない場合、子の財産を相続する権利を有するか。 i 子の親が子を監護している場合 ii 他一方の親が子を監護している場合</p> <p>六 親と非嫡出子の関係 1 非嫡出子の母は次に開しいかなる権利を有するか。 a 子の父との結婚を強制せしめる措置 b 自分自身の扶養 c その他の保護 2 非嫡出子の a 母子関係</p>	<p>有する</p> <p>何れが監護しているかに関係はない。 条文を参照せよ</p> <p>ない ない ない</p>	<p>労働基準法第五八条 親権者又は後見人は、未成年者に代つて労働契約を締結してはならない。 親権者若しくは後見人又は行政官庁は、労働契約が未成年者に不利であると認める場合には、将来に因つてこれを解除することができる。 民法第八八九条 左に掲げる者は、前二条の規定によつて相続人となるべき者がいない場合には左の順位に従つて相続人となる。 第一 直系尊属 第二 兄弟姉妹 第八八七条の規定は、前項第一号の場合に同条第二号及び前条の規定は、前項第二号の場合に、これを準用する。 参考 民法第八七条 被相続人の直系尊属は、左の親等に従つて相続人となる。 一 親等の異なる者の間では、その近い者を先にする。 二 親等の同じである者は、同順位で相続人となる。 同 第八八八条 前条の規定によつて相続人となるべき者が相続の開始前に、死亡し、又はその相続権を失つた場合において、その者に直系尊属があるときは、その直系尊属は、前条の規定に従つて、この者と同順位で相続人となる。 前項の規定の適用については、胎児は、既に生まれたものとみなす。但し、死体で生まれたときは、この限りでない。 特に規定なし</p> <p>民法第七七九条 嫡出でない子は、その父又は母がこれを認知することができる。</p>
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<p>b 父から c 両親の親族の誰かから 相続する権利を有するか。(贈出子の 権利と比較して)</p>	<p>有する 有する 非贈出子たる直系卑属の相 続分は贈出のもの半分で ある。</p>	<p>直系卑属、直系尊属又は兄弟姉妹が数人あるときは、各自の相続分は相等しいものと する。但し、贈出でない直系卑属の相続分は贈出である直系卑属の相続分の二分の一と し、父母の一方のみを同じくする兄弟姉妹の相続分は、父母の双方を同じくする兄弟姉 妹の相続分の二分の一とする。</p>
<p>12 非贈出子が遺言によつて行ふ相続に 何らかの制限があるか。</p>	<p>制限はない</p>	<p>特に規定なし</p>
<p>a 母 b 父 c 両親の親族の誰か。</p>		
<p>七 養子 1 a 独身女子 b 独身男子 は養子縁組をするに平等の権利を有する か。</p>	<p>有する</p>	<p>民法第七九二条 成年に達した者は、養子をすることができる。</p>
<p>2 a 妻 b 夫 は養子縁組をするのに配偶者の承諾を要 するか。</p>	<p>夫婦は共同で養子縁組をし なければならぬ。</p>	<p>民法第七九五条 配偶者のある者は、その配偶者とともにしなければ縁組をすることができない。但し 夫婦の一方が他の一方の子を養子とする場合は、この限りでない。</p>
<p>3 a 養子となつた女子 b 養子となつた男子 は i 養父 ii 養母 の何れの氏を称するか。</p>	<p>養親又は養父母の氏を称す る。</p>	<p>民法第八一〇条 養子は養親の氏を称する。</p>
<p>4 a 母 b 父 c 両親 は、第三者が、その未成年の子と養子縁</p>		<p>民法第七九七条(贈出) 同 第七九八条(贈出)</p>

<p>組するに際して承諾を与えねばならぬ か。</p>	<p>与えねばならぬ</p>	
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II 解 説

婦人の財産権

一 成 年

男女とも満二十歳に達すれば成年となり財産に関する法律行為を単独でなし得る能力を取得する。未成年者でも婚姻をすれば成年に達したものとみなされる。

二 訴 訟 能 力

訴訟の当事者となる能力には男女別、未既婚別による差別はなく、従つて、妻が訴訟当事者となる場合、妻が自分の職業をもつていてもいなくても夫の承諾は全く不要である。

三 契約その他の財産処分

契約についても、又、保証、信託等についてもその当事者となる能力は、男女別、未既婚別によつて差別はない。但し、夫婦の一方が日常の家事に關して生じた債務は、原則として夫婦の連帯債務となる。

四 職 業

職業に従事する権利も、男女別、未既婚別による差別はない。その結果生じた権利義務についても平等である。

五 夫と妻の財産關係

わが国においても婚姻前に契約をし登記して夫婦の財産關係をきめることができるが、現実には稀で、殆ど全部が法定夫婦財産制を適用される。法定夫婦財産制においては、夫と妻の権利義務に差別はない。

六 後 見

後見人となる条件についても男女別、未既婚別による差別はない。しかし、原則として、親は子供に対しては親権を有するので、普通自分の子供の後見人となることはない。

七 相 続 法

遺言のある場合も、ない場合も、相続に關して男女別、未既婚別による差別はない。

八 年 金

寡婦と寡夫については年金受給年齢等につき差別のあるものがあるが、これは、一般にその生計を被保険者に依存している程度の強い寡婦をより有利にしているものである。

家 族 法

一 婚 姻

婚姻については、両性の合意がすべての根本であり、法律上男女は全く平等で形式的要件も届出のみである。

婚姻は法律上規定されている制度ではないが、判例で認められている。

二 婚姻の解消

婚姻の解消の原因、その手続、効果などについて夫婦の間に差別はない。なおわが国では別居は制度として法律にきめられてはいない。

三 再 婚

女子が前の婚姻の解消後六ヵ月経たねば再婚のできないことを除いて男女の差別はない。

四 夫婦の身分關係

夫婦の間に身分的差別はない。

五 親子関係

子に対する親権について父母の間に差別はなく両者の共同行使を原則としている。

六 親と非嫡出子の関係

非嫡出子については母との関係が優先するが父が認知すれば、殆ど平等である。

七 養子

養子縁組についても男女別による差別はない。

ANSWERS TO UN QUESTIONNAIRE ON THE LEGAL STATUS AND TREATMENT OF WOMEN

PART II—PROPERTY RIGHTS OF WOMEN

Chapter I. Full legal age (Majority)

1. What is the full legal age (age of majority) for

- (a) men 20
- (b) women 20

The relevant provisions are embodied in: Civil Code Article 3

The text of these provisions is as follows:

Article 3. Majority is attained on the completion of full twenty years of age.

2. Is the disability arising from minority terminated by marriage? Yes

If so, do the same rules apply to men and women? Yes

The relevant provisions are embodied in: Civil Code Article 753

The text of these provisions is as follows:

Article 753. If a minor effects a marriage, he or she shall be deemed, by reason thereof, to have attained majority.

3. Is the disability arising from minority terminated by emancipation?

Not applicable. There is no institution of emancipation in Japan except that by marriage.

4. Are the consequences of attainment of full legal age (age of majority), of marriage or of emancipation identical for men and women? Yes

The relevant provisions are embodied in: Civil Code Article 4

The text of these provisions is as follows:

Article 4. A minor shall obtain the consent of his legal representative for doing any juristic act, unless it is an act merely to acquire a right or to be relieved from a duty.
An act done in contravention of the preceding paragraph is voidable.

Chapter II. Rights of action

1. Can an unmarried woman of majority age sue, be sued or defend in her own name without joinder or consent of anyone? Yes

The relevant provisions: None

2. Can a married woman sue, be sued or defend

- (a) without her husband's joinder or consent Yes
- (b) without her husband's joinder, but only if he consents
- (c) only in her husband's name
- (d) only with her husband's joinder and consent?

The relevant provisions: None

3. Do the same rules apply to married women engaged in business, trade, industry or profession? Yes

The relevant provisions: None

Chapter III. Contracts and other property transactions

1. Has an unmarried woman of majority age the same capacity to contract as a single man

of majority age? Yes

The relevant provisions: None

2. What is the effect of marriage upon the capacity to contract

(a) of the wife None

(b) of the husband? None

The relevant provisions: None

3. Where the contractual capacity of a married woman is limited, may she receive general or special authorization to contract from her husband or from the court?

Not applicable

4. What is the contractual capacity of a woman after dissolution of her marriage by death, annulment, or divorce, or after separation from her husband?

Not applicable

5. To what extent can a married woman incur expenditure or make contracts regarding household expenditure and necessities of life without authorization of her husband, as regards

(a) the liability of the wife

(b) the liability of her husband

(c) the rights of third parties dealing with the woman? -

See the relevant provisions.

The relevant provisions are embodied in: Civil Code Article 761

The text of these provisions is as follows:

Article 761. If, with respect to daily household matters, one spouse effects a juristic act with a third person, the other spouse shall be jointly and severally liable for the obligations arising therefrom. However, this shall not apply in cases where a previous notice to the effect that the other spouse will not assume the liability has been given to the third person.

6. Has an unmarried woman of majority age the same capacity to act as guarantor as a single man of majority age? Yes

The relevant provisions are embodied in: Civil Code Article 450

The text of these provisions is as follows:

Article 450. Where an obligor is bound to furnish a surety, such surety shall be a person who fulfils the following conditions:

(1) That he is a person of full capacity:

(2) That he has sufficient means to effect performance.

7. Can spouses act as guarantors for one another? Yes

The relevant provisions: None

8. What is the effect of marriage on the capacity

(a) of the wife

(b) of the husband

to act as a guarantor on behalf of third parties? None

The relevant provisions: None

9. Has an unmarried woman of majority age the same capacity as a single man of majority

age to bind the future income of her property or can such an anticipation of income be restrained in any way?

She has the same capacity as a single man.

The relevant provisions: None

10. What is the effect of marriage on the capacity of

(a) the wife

(b) the husband

to bind the future income of her (his) property? None

The relevant provisions: None

11. Does an unmarried woman of majority age have the same capacity as a single man of majority age

(a) to establish a trust Yes

(b) to be a beneficiary under a trust Yes

(c) to act as a trustee? Yes

Are there any limitations in a woman's rights and duties under the law of trusts which do not apply also to men? No

The relevant provisions: None

12. What is the effect of marriage on the capacity of

(a) the wife

(b) the husband

to establish a trust, act as a trustee, or be a beneficiary under a trust? None

The relevant provisions: None

Chapter IV. Business, trade, industry or profession

1. Has an unmarried woman of majority age the same capacity as a single man of majority age to carry on a business, trade, industry or profession? Yes

The relevant provisions are embodied in: Constitution of Japan Article 14

The text of these provisions is as follows:

Constitution Article 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.

2. What is the effect of marriage on the capacity to carry on a business, trade, industry or profession

(a) of the wife None

(b) of the husband? None

The relevant provisions: None

3. If the husband's consent is necessary for a married woman to carry on a business, trade, industry or profession, may he later revoke his consent and on what grounds?

Not applicable

4. What is the effect of revocation as regards third parties?

Not applicable

5. Is the capacity to carry on a business, trade, industry or profession when once acquired by a married woman as extensive as that possessed by a single woman? Yes

Describe the rights and liabilities of the married woman carrying on a business, trade, industry or profession, concerning

- (a) the disposition of business assets
- (b) the disposition of earning or profits
- (c) the liability for business debts.

It does not matter whether the woman is married or not or the person is male or female.

The relevant provisions: None

6. Is the law of bankruptcy equally applicable to unmarried men and women of majority age? Yes

The relevant provisions: None

7. In the case of married persons, is the law of bankruptcy equally applicable

- (a) to the wife Yes
- (b) to the husband? Yes

The relevant provisions: None

Chapter V. Property relations of husband and wife

Section I. General

1. Are the property relations between spouses regulated by law or can they be the subject of contractual agreement of the parties?

Property relations are regulated by law unless husband and wife have not, prior to the notification of marriage, entered into a contract which provides otherwise with respect to their property.

The relevant provisions are embodied in: Civil Code Article 755~762

The text of these provisions is as follows:

Article 755. If husband and wife have not, prior to the notification of marriage, entered into a contract which provides otherwise with respect to their property, their property relations shall be governed by the provisions of the next sub-section.

Article 756. If husband and wife have entered into a contract which differs in its terms from the statutory property system, such contract cannot be set up against their successors in title or third persons unless it is registered prior to the notification of marriage.

Article 757. If, in cases where aliens have entered into a contract which differs in its terms from the statutory property system of the husband's country, they have, subsequent to their marriage, acquired Japanese nationality or established their permanent residence in Japan, the contract cannot be set up in Japan against their successors in title or third persons unless it has been registered within one year.

Article 758. Property relations between husband and wife cannot be changed after the notification of marriage.

If, in cases where one spouse manages the property of the other, such property is imperilled by mismanagement the other may apply to the Family Court to be allowed to undertake the management thereof for himself or herself.

As respects property in co-ownership an application may be made for a partition thereof in addition to the application mentioned in the preceding

paragraph.

Article 759. In cases the manager has been changed or a partition of property in co-ownership has been effected, in accordance with the provisions of the preceding Article or as the result of a contract, such change or partition cannot be set up against the successors in title of the husband or of the wife or against third persons, unless it has been registered.

Sub-section 2. Statutory Property System

Article 760. Husband and wife shall share the expenses of the married life with each other, taking into account their property, income and all other circumstances.

Article 761. Previously mentioned (See Chapter III. Question 5)

Article 762. Property belonging to either a husband or wife from a time prior to the marriage and property acquired during the subsistence of the marriage in his or her own name constitutes his or her separate property.

Any property, in regard to which it is uncertain whether it belongs to the husband or the wife, is presumed to be the property in their co-ownership.

2. Are there any restrictions to the right of the spouses

- (a) to contract with each other
- (b) to convey property to each other, either gratuitously or for value?

No, but such contract may be cancelled by either of them at any time during the subsistence of marriage.

The relevant provisions: As to the restrictions: None

As to the annulment: Civil Code Article 754

The text of these provisions is as follows:

Article 754. In cases a contract is entered into between husband and wife, it may be avoided by either of them at any time during the subsistence of marriage; however, the rights of third persons may not be prejudiced thereby.

3. Are the spouses liable for

- (a) breach of contract between them Yes, but the contract can be annulled as stated above.
- (b) torts against each other? Yes

If so, do the same rules apply as regards the liability

- (a) of the wife
- (b) of the husband? Yes

The relevant provisions are embodied in: Civil Code Article 709 and 754

The text of these provisions is as follows:

Article 709. A person who violates intentionally or negligently the right of another is bound to make compensation for damage arising therefrom.

Article 754. Previously mentioned (See the Question above).

- 4. (a) Is the husband liable for his wife's torts to third parties? No
- (b) Is the wife liable for her husband's torts to third parties? No

The relevant provisions: None

5. (a) Is the husband liable for the debts incurred by his wife?

No, except for daily household matters.

- (b) Is the wife liable for the debts incurred by her husband?

No, except for daily household matters.

- (c) Does the fact that these debts were incurred before the marriage or after its dissolution affect such liability? No

The relevant provisions are embodied in: Civil Code Article 761.

The text of these provisions is as follows:

Article 761. Previously mentioned (See Chapter III. Question 5).

Section II. Matrimonial regimes

1. What is the matrimonial regime provided for by the law in the absence of any contractual agreement? See the relevant provisions

The relevant provisions are embodied in: Civil Code Article 760, 761, and 762.

The text of these provisions is as follows:

Article 760 and 762. Previously mentioned (See Chapter V. Section I. Question 1).

Article 761. Previously mentioned (See Chapter III. Question 5).

2. What are the matrimonial regimes recognized by law which the spouses can establish by contractual agreement?

Indicate matrimonial regimes most frequently followed, particularly with respect to

- (a) community property
- (b) separate property
- (c) dowry property
- (d) any other kind of specially designated property.

In Japan there are very few cases of matrimonial regimes established by contractual agreement. (6 in 1955, 2 in 1956 and 2 in 1957)

3. Can any matrimonial regime be entered into or modified by agreement between spouses during marriage? No

The relevant provisions are embodied in: Civil Code Article 755, 756 and 758.

The text of these provisions is as follows: Previously mentioned (See Chapter V. Section I. Question 1)

A. The regime of community property

1. If any matrimonial regime includes community property, indicate what property forms part of the community.

In particular, does the community include
as to the statutory regime,

- (a) movables Yes
- (b) immovables Yes
- (c) property acquired during marriage?
 - (i) by gratuitous title Yes
 - (ii) earning and income? Yes

as to the contractual regime,

- (a) }
- (b) } depends on the agreements of the contract.
- (c) }

The relevant provisions are embodied in: Civil Code Article 762, 755 and 756

The text of these provisions is as follows: Previously mentioned (See Chapter V. Section I. Question 1)

2. Describe the respective rights and liabilities of the spouses in regard to the community property, indicating in particular
as to the statutory regime,

- (a) in whom the title vests Both spouses
- (b) who has the administration of the community property Both spouses
- (c) who can dispose of the profits Each spouse but with consent of the other.
- (d) who can dispose of the community property, with or without the consent of the other spouse? Each spouse with consent of the other.

as to the contractual regime,

- (a) }
- (b) } depends on the agreements of the contract.
- (c) }
- (d) }

The relevant provisions are embodied in:

As to the statutory regime, Civil Code Article 249, 251 and 252

As to the contractual regime, Civil Code Article 756

The text of these provisions is as follows:

Article 249. Each co-owner is entitled in proportion to his own share to make use of the whole of the thing owned jointly.

Article 251. No co-owner may make any alternation in the thing jointly owned without the consent of the other co-owners.

Article 252. Except in the case mentioned in the preceding Article, all matters relating to the administration of thing jointly owned shall be determined by a majority in value of the co-owners; however, each co-owner is entitled to do any act of preservation.

Article 756. Previously mentioned (See Chapter V. Section I. Question 1)

3. If the husband has the administration of the community property, what are his rights and duties as regards such administration?

Not applicable for the statutory regime. As to the contractual regime, depends on the agreements of the contract.

The relevant provisions: None

4. What redress is given to the wife in regard to administration, disposition or misuse of the community property by the husband?

Not applicable for the statutory regime. As to the contractual regime, see the relevant provisions.

The relevant provisions are embodied in: Civil Code Article 758

The text of these provisions is as follows: Previously mentioned (See Chapter V. Section I. Question 1)

5. Describe the respective rights and liabilities of the spouses in regard to the property not included in the community.

As to the statutory regime, each spouse has his or her ownership fully over his or her separate property.

As to the contractual regime, depends on the agreements of the contract.

The relevant provisions are embodied in: As to the statutory regime, Civil Code Article 206.

The text of these provisions is as follows:

Article 206. An owner has the right, subject to limitations by laws and ordinances, freely to use, take the profits of, and dispose of the thing owned.

6. List the causes for the dissolution of the community.

Indicate in particular on what grounds, if any either spouse may ask for a judicial dissolution of the community.

As to the statutory regime, (1) when both parties so want

(2) when either party so want, with the permission of the Court.

As to the contractual regime, (1) when both parties so want, if the agreements of the contract had not provided otherwise.

(2) when either party so want with the permission of the Family Court.

The relevant provisions are embodied in: Civil Code Article 255, 256, 257, 258 and 758 para. 3. The text of these provisions is as follows:

Article 255. If one of the co-owners renounces his share, or dies without a successor, his share devolves on the other co-owners.

Article 256. Each co-owner may demand at any time a partition of the thing jointly owned; however, the co-owners may agree not to partition it for a period not exceeding five years.

Such agreement may be renewed; however, its duration cannot exceed five years from the time of renewal.

Article 257. The provisions of the preceding Article shall not apply to the joint property mentioned in Articles 208 and 229.

Article 258. If no agreement can be reached among the co-owners, an application for partition may be made to the Court.

In the case mentioned in the preceding paragraph, if partition of the property itself cannot be effected, or if there is an apprehension that the property may considerably depreciate in value as a result of partition, the Court may order a sale thereof by official auction.

Article 758, para. 3. Previously mentioned (See Chapter V. Section I. Question 1).

7. To whom does the community property devolve after dissolution of community?

As to the contractual regime, depends on the agreements of the contract.

As to the statutory regime, the property will be equally divided.

The relevant provisions are embodied in: Civil Code Article 762 para. 2 and Article 250.

The text of these provisions is as follows:

Article 250. The shares of the co-owners are presumed to be equal.

Article 762, para. 2. Previously mentioned (See Chapter V. Section I. Question 1).

8. What is the effect of the death intestate of the husband or of the wife on the community property?

As to the statutory regime, his or her share of the property is to be succeeded by the surviving spouse and other successors with respective shares in accordance with the provisions of the law.

As to the contractual regime, depends on the agreements of the contract.

The relevant provisions are embodied in: As to the statutory regime; Civil Code Article 890 and 900.

As to the contractual regime; Civil Code Article 755 and 756.

The text of these provisions is as follows:

Article 890. The spouse of a person succeeded to, become, in every case, a successor. In this case, if there is any person who is to become a successor in accordance with the provisions of the preceding three Articles, the order of succession of the spouse shall be in the same rank with such person.

Article 900. If there exist two or more successors in the same rank, their shares in the succession shall be determined in accordance with the following provisions:

(1) Where lineal descendants and the spouse are successors, the shares in the succession of the lineal descendants shall, in all, be two-thirds, and that of the spouse shall be one-third:

(2) Where the spouse and lineal ascendants are successors, the share in the succession of the spouse and of the lineal ascendants shall respectively be one half:

(3) Where the spouse and brothers and sisters are successors, the share in the succession of the spouse shall be two-thirds and those of the brothers and sisters shall be one-third:

(4) Where there exist two or more lineal descendants, or lineal ascendants, or brothers and sisters, their respective shares in the succession shall be equal. However, the share in the succession of lineal descendant who is not legitimate shall be one half of that of a legitimate lineal descendant, and the share in the succession of any of the brothers and sisters whose father or mother alone is the same with that of person succeeded to, shall be one half of the share of any of the brothers and sisters whose father and mother both are the same with those of the person succeeded to.

Article 755 and 756. Previously mentioned (See Chapter V. Section I. Question 1).

9. Does any matrimonial regime including community property affect the testamentary capacity of either spouse? No

The relevant provisions are embodied in: Civil Code Article 961.

The text of these provision is as follows:

Article 961. Any person who has attained full fifteen years may make a will.

B. The regime of separate property

1. If any matrimonial regime includes separate property, indicate what property forms part of the separate property.

In particular, does the separate property include

(a) movables Yes

(b) immovables Yes

(c) property acquired during marriage? Yes

As to the contractual regime,

(a) }
(b) } depends on the agreements of the contract.
(c) }

The relevant provisions are embodied in:

As to the statutory regime: Civil Code Article 762.

As to the contractual regime: Civil Code Article 755 and 756.

The text of these provisions is as follows: Previously mentioned (See Chapter V, Section I, Question 1).

2. Describe the respective rights and liabilities of the spouses in regard to the separate property, indicating in particular
- (a) who has the administration of the separate property
 - (b) who can dispose of the profits
 - (c) who can dispose of the separate property, with or without the consent of the other spouse
 - (d) what redress is given to each spouse in regard to administration, disposition or misuse of his or her property by the other spouse?

As to the statutory regime: marriage has no effect on ownership of separate property of the husband or the wife.

As to the contractual regime: depends on the agreements of the contract.

The relevant provisions are embodied in: As to the statutory regime: None

As to the contractual regime: Civil Code Article 755 and 756.

The text of these provisions is as follows: Previously mentioned (See Chapter V, Section I, Question 1).

3. Describe the respective rights and liabilities of the spouses in regard to non-separate property, if any.

As to the statutory regime: not applicable.

As to the contractual regime: depends on the agreements of the contract.

The relevant provisions are embodied in: As to the statutory regime: None

As to the contractual regime: Civil Code Article 755 and 756.

The text of these provisions is as follows: Previously mentioned (See Chapter V, Section I, Question 1).

4. When the regime of separate property is dissolved, what are the respective rights of the spouses over the property?

As to the statutory regime: not applicable.

As to the contractual regime: depends on the agreements of the contract.

The relevant provisions are embodied in: As to the statutory regime: None

As to the contractual regime: Civil Code Article 755 and 756.

The text of these provisions is as follows: Previously mentioned (See Chapter V, Section I, Question 1).

5. What is the effect of the death intestate of the husband or the wife in separate property?

The property is to be succeeded by the surviving spouse and other successors with respective shares in accordance with the provisions of the law.

The relevant provisions are embodied in: Civil Code Article 890 and 900.

The text of these provisions is as follows: Previously mentioned (See Chapter V, Section II, A, Question 8).

6. Does any matrimonial regime including separate property affect the testamentary capacity of either spouse? No

The relevant provisions are embodied in: Civil Code Article 961

The text of these provisions is as follows: Previously mentioned (See Chapter V, Section II, A, Question 9).

- C. The regime of dowry

Not applicable.

- D. Other matrimonial regimes

Not applicable.

Chapter VI. Guardianship

1. Can an unmarried woman of majority age be entrusted with guardianship under the same conditions as a single man of majority age

(a) where the guardian is designated under a statutory provision Yes

(b) where the guardian is an appointed guardian? Yes

The relevant provisions are embodied in: Civil Code Article 846

The text of these provisions is as follows:

Article 846. None of the persons mentioned below can become a guardian:

(1) A minor

(2) A person adjudged incompetent or quasi-incompetent;

(3) A legal representative or curator who has been removed by the Family Court;

(4) A bankrupt;

(5) A person who brings or has brought an action against the ward, or the spouse or any of the lineal relatives by blood of such person;

(6) A person whose whereabouts is unknown.

2. Can an unmarried woman

(a) excuse herself from accepting guardianship Yes

(b) ask to be relieved from it after having accepted under the same conditions as a single man? Yes

The relevant provisions are embodied in: Civil Code Article 844

The text of these provisions is as follows:

Article 844. A guardian may, where any reasonable ground exists, resign his office with the leave of the Family Court.

3. Can a married woman be entrusted with guardianship

(a) over her own children Not applicable. She has parental power.

(b) over third parties Yes

under the same conditions as a married man

(i) where the guardian is designated under a statutory provision Yes

(ii) where the guardian is an appointed guardian? Yes

The relevant provisions are embodied in: Civil Code Article 838 and 846

The text of these provisions is as follows:

Article 838. Guardianship commences in any of the following cases:

- (1) If there is no one to exercise parental power over a minor, or if the person who exercises parental power has no right of management;

(2) If an adjudication of incompetency has been made.

Article 846. Previously mentioned. (See Chapter VI. Question 1)

4. Is the husband's consent required for the designation or appointment of a married woman as a guardian? No

If so, (a) in what cases is it required

(b) can it be withdrawn

(c) can it be replaced by the authorization of the Court? Not applicable.

The relevant provisions: None

5. Can a married woman

(a) excuse herself from accepting guardianship Yes

(b) ask to be relieved from it after having accepted under the same conditions as a married man? Yes

The relevant provisions are embodied in: Civil Code Article 844

The text of these provisions is as follows: Previously mentioned (See Chapter VI. Question 2).

6. (a) Does the marriage of a single woman or the remarriage of a widowed or divorced woman affect any guardianship held by her

(i) over her children Not applicable. She has parental right.

(ii) over third parties No

(b) Do the same rules apply to men? Yes

The relevant provisions are embodied in: Civil Code Article 846

The text of these provisions is as follows: Previously mentioned (See Chapter VI. Question 1).

7. Do the ground on which the Courts may take away guardianship from any person differ as regards

(a) unmarried women

(b) married women

(c) single men

(d) married men? No

The relevant provisions are embodied in: Civil Code Article 845.

The text of these provisions is as follows:

Article 845. If any unjust act or gross misconduct has been done by a guardian, or there is any other ground for which a guardian is unfit to perform the duties, the Family Court may remove such guardian from the office on the application of a supervisor of the guardian or of any of the ward's relatives.

8. Are any preferences embodied in the applicable statutory provisions as to the choice of a man or a woman as guardian, when both are available and eligible? No

The relevant provisions are embodied in: Civil Code Article 839, 840, 841, 842 and 846.

Article 839. The person who last exercises parental power over a minor can designate a guardian by will; however, this shall not apply when such person has no right of management.

If either father or mother who exercises parental power has no right of management, the other parent may designate a guardian in accordance with the provisions of the preceding paragraph.

Article 840. If either husband or wife has been adjudged incompetent, the other spouse

become his or her guardian.

Article 841. If there is no person to become guardian in accordance with the provisions of the preceding two Articles, the Family Court shall appoint a guardian on the application of any of the ward's relatives or of any other persons interested. The same shall also apply in cases where the position of guardian turned out vacant.

Article 842. In cases it has become necessary to appoint a guardian for the reason that father or mother has declined to exercise his or her parental power or to manage the property, or that a guardian has resigned his office or that father or mother has forfeited his or her parental power, such father, mother or guardian shall, without delay, apply to the Family Court for the appointment of a guardian.

Article 846. Previously mentioned. (See Chapter VI. Question 1).

Chapter VII. Law of succession

Section I. Intestate succession

1. Has an unmarried woman the same rights and liabilities as a single man with regard to intestate succession? Yes

The relevant provisions are embodied in: Civil Code Article 887, 888, 889 and 891.

The text of these provisions is as follows:

Article 887. The lineal descendants of a person to be succeeded to become successors in accordance with the following provisions:

(1) As between persons standing in different degrees of relationship, those nearer in degree are preferred;

(2) Persons standing in the same degree of relationship become successors in the same rank.

Article 888. If, in cases where a person who would become successor in accordance with the provisions of the preceding Article dies or loses the right of succession previous to the opening of the succession, there exist lineal descendants of such person, those lineal descendants become successors in the same rank as that person, in accordance with the provisions of the preceding Article.

For the application of the provisions of the preceding paragraph, a child en ventre sa mere shall be deemed to have been already born; excepting, however, cases where it is born dead.

Article 889. In cases where there exists no person who is to become successor in accordance with the provisions of the preceding two Articles, the persons mentioned below become successors in the order as follows:

(I) Lineal ascendants.

(II) Brothers and sisters.

In the case mentioned in item (I) of the preceding paragraph, the provisions of Article 887, and in the case mentioned in item (II) thereof, those of Article 887 item (2) and of the preceding Article shall respectively apply mutatis mutandis.

Article 891. None of the persons mentioned below can become a successor:

(1) Any person who has been sentenced to punishment for having intentionally caused or attempted to cause the death of the person to be succeeded to,

or of any person who has a prior or the same rank with respect to the succession;

- (2) Any person who, knowing that the person to be succeeded to has been killed by homicide, has omitted to give information or to bring a formal charge: excepting, however, cases where such person has no capacity to discern right and wrong, or when the guilty party is the spouse or a lineal relative by blood of such person;
- (3) Any person who has, by fraud or duress, prevented the person to be succeeded to from making, revolving or altering a will relating to the succession;
- (4) Any person who has, by fraud or duress, induced the person to be succeeded to make, revoke or alter a will relating to the succession;
- (5) Any person who has forged, altered, destroyed or concealed a will of the person to be succeeded to relating to the succession.

2. What is the effect of marriage on the rights and liabilities of

- (a) the wife
- (b) the husband

with regard to the law of intestate succession? None

The relevant provisions are embodied in: Civil Code Article 887, 888, 889 and 891

The text of these provisions: Previously mentioned (See the question above).

3. In the laws of intestate succession, what are the comparable provisions made for

- (a) daughter and son
- (b) mother and father
- (c) wife's relatives and husband's relatives? Equal

The relevant provisions are embodied in: Civil Code Article 887, 888, and 889.

The text of these provisions is as follows: Previously mentioned (See the question above).

4. In the law of intestate succession, what are the comparable provisions made for

- (a) the wife
- (b) the husband? Equal

The relevant provisions are embodied in: Civil Code Article 890.

The text of these provisions is as follows:

Article 890. Previously mentioned (See Chapter V, Section II, A, Question 8).

5. Does the surviving wife have any dower rights?

Not applicable. There is no institution of dower rights in Japan.

6. Does the surviving husband have any courtesy rights?

Not applicable. There is no institution of courtesy rights in Japan.

7. Has an unmarried woman of majority age the same capacity as a single man of majority age to accept or to refuse an intestate succession? Yes

The relevant provisions are embodied in: Civil Code Article 915

The text of these provisions is as follows:

Article 915. A successor shall, within three months from the time of becoming aware that the succession had been opened in favour thereof, effect an acceptance, either absolute or qualified, or a renunciation; however, such period may be extended by the Family Court on the application of any person interested or of a public

procurator.

A successor may make a survey of the property to be succeeded to before effecting acceptance or renunciation.

8. What is the effect of marriage on the capacity of

- (a) the wife
- (b) the husband

to accept or to refuse any intestate succession? None

The relevant provisions are embodied in: Civil Code Article 915

The text of these provisions is as follows: Previously mentioned (See the question above).

Section II: Testamentary Succession

1. Has an unmarried woman of majority age the same testamentary capacity as a single man of majority age? Yes

The relevant provisions are embodied in: Civil Code Article 961.

The text of these provisions is as follows:

Article 961. Any person who has attained full fifteen years may make a will.

2. What is the effect of marriage on the testamentary capacity of

- (a) the wife
- (b) the husband? None

The relevant provisions are embodied in: Civil Code Article 961.

The text of these provisions is as follows: Previously mentioned (See the question above).

3. What is the testamentary capacity

- (a) of the wife
- (b) of the husband

after dissolution of marriage by death or divorce, after separation or after annulment of the marriage?

Same as before.

The relevant provisions are embodied in: Civil Code Article 961.

The text of these provisions is as follows: Previously mentioned (See the question above).

4. Can spouses

- (a) make separate wills Yes
- (b) make a joint will? No

The relevant provisions are embodied in: Civil Code Article 975

The text of these provisions is as follows:

Article 975. No will can be made by two or more persons by one and the same document.

5. Has an unmarried woman of majority age the same capacity as a single man of majority age to make donation mortis causa? Yes

The relevant provisions are embodied in: Civil Code Article 554 and 961

The text of these provisions is as follows:

Article 554. A contract of gift which is to become effective upon the death of the donor shall be governed by the provisions relating to testamentary gifts.

Article 961. Previously mentioned (See Chapter VII, Section II, Question 1).

6. What is the effect of marriage on the capacity to make a donation mortis causa

- (a) of the wife
- (b) of the husband? None

The relevant provisions are embodied in: Civil Code Article 554 and 961

The text of these provisions is as follows:

Article 554. Previously mentioned (See the question above).

Article 461. Previously mentioned (See Chapter VII, Section II, Question 1).

7. Can

- (a) daughters and sons
- (b) mothers and fathers

be deprived by testamentary disposition, in whole or in part, of benefits to which they are entitled under the legal provisions governing intestate succession? Yes

If there are restrictions on the freedom of testamentary disposition in this regard, are they the same in respect of

- (a) daughters and sons Yes
- (b) mothers and fathers? Yes

The relevant provisions are embodied in: Civil Code Article 964, 1028 and 1031

The text of these provisions is as follows:

Article 964. A testator may make a disposition of the whole or a part of the property under either a universal or special title; however, provisions relating to legally secured portions shall not be contravened.

Article 1028. Any successors shall, with the exception of brothers and sisters of the person succeeded to, receive, as their legally secured portion, the following sum:

- (1) In cases where all of the successors are lineal descendants, or all of them are lineal descendants and the spouse, one half of the property of the person succeeded to;
- (2) In all other cases, one-third of the property of the person succeeded to.

Article 1031. A person entitled to legally secured portion or the successors thereof may demand an abatement of testamentary gifts and of gifts inter vivos as mentioned in the preceding Article to the extent necessary for the protection of the legally secured portion.

8. Can

- (a) the wife
- (b) the husband

be deprived by testamentary disposition, in whole or in part, of benefits to which they are entitled under the legal provisions governing intestate succession? Yes

If there are restrictions on the freedom of testamentary disposition in this regard, are they the same in respect of

- (a) wives
- (b) husbands? Yes

The relevant provisions are embodied in: Civil Code Article 964, 1028 and 1031

The text of these provisions is as follows: Previously mentioned (See the question above).

9. Has an unmarried woman of majority age the same capacity as a single man of majority age to accept or refuse a testamentary succession or a legacy? Yes

The relevant provisions are embodied in: Civil Code Article 915 and 986.

The text of these provisions is as follows:

Article 915. Previously mentioned (See Chapter VII, Section I, Question 7).

Article 986. A testamentary donee may effect a renunciation of the testamentary gift at any time subsequent to the death of the testator.

A renunciation of a testamentary gift shall be effective retroactively as from the time of the death of the testator.

10. What is the effect of marriage on the capacity of

- (a) the wife
- (b) the husband

to accept or to refuse a testamentary succession or a legacy? None

The relevant provisions are embodied in: Civil Code Article 915 and 986

The text of these provisions is as follows:

Article 915. Previously mentioned (See Chapter VII, Section I, Question 7).

Article 986. Previously mentioned (See the question above).

11. Does the law governing the appointment, rights and duties of executors, administrators or trustees of estates apply equally to men and women? Yes

The relevant provisions are embodied in: Civil Code Article 918

The text of these provisions is as follows:

Article 918. A successor shall manage the property succeeded to with the same care as used in respect of the individual property; excepting, however, when either acceptance or renunciation has been effected thereby.

The Family Court may, on the application of any person interested or of a public procurator, order at any time the adoption of such measures as may be necessary for the management of the property succeeded to.

In cases where the Family Court appoints an administrator, the provisions of Article 27 to 29 inclusive shall apply mutatis mutandis.

Supplementary section—Pensions

1. Are there any legal provisions whereby a surviving spouse

- (a) of a public servant Yes
- (b) of a person who is entitled to an old age or invalidity pension in case he becomes aged or an invalid Yes
- (c) of a person receiving an old age or invalidity pension Yes
- (d) of any other person Yes

is entitled to receive a pension (widow's or widower's pension) or any other emolument after the death of the other spouse? Yes

If so, is the pension provided without previous contributions or is it a benefit resulting from a contributory insurance or other contributory system? They are all provided with previous contribution.

The relevant provisions are embodied in:

(a) Pension Law Article 73 para. 1

National Public Service Mutual Aid Association Law Article 2 para 1, and 83

Law of the Mutual Aid Association of Public Corporation Employees Article 25 and 58

Local Public Service Mutual Aid Association Law Article 19 and 48

Government Employees' Accident Compensation Law Article 15 and 16

- (b) Welfare Pension Insurance Law Article 58 and 59 para. 1
Seamen's Insurance Law Article 23 para. 1, 23-6, 49-2 and 50
Law of the Mutual Aid Association of Employees of Private School Article 20 and 25-2
- (c) The same as those of (b)
- (d) Welfare Pension Insurance Law Article 58 and 59
Labour Standards Law Article 79 and Enforcement Ordinance of the Labour Standards Law Article 42

The text of these provisions is as follows:

Pension Law Article 73 para. 1. If a public official falls under one of the following items, his surviving dependents shall be granted a dependency pension in the following order: widow, son or daughter under age, husband, parent, son or daughter of full age, grandparent.

- (1) If, when the person dies during his service and the death is regarded as retirement from office, an ordinary pension is to be granted.
- (2) In case a recipient of an ordinary pension dies.

National Public Service Mutual Aid Association Law Article 2, para. 1. The meanings of terms in this Law shall be as provided in the following items:

- (3) "Survivors"
Spouse, child, parent, grandchild and grandparent of a member or a person who was a member of the association, who were supported mainly by the latter at the time of his death.

Article 88. If a member of the association falls under one of the following items, his survivors shall be granted a survivors' pension in the following amounts:

- (1) When a member has died of a disease or injury attributable to a public service, while being a member or after retirement, the amount shall be 40% of his annual wage. (When the membership is twenty years or more, 1.5% of the annual wage shall be added for every one year exceeding twenty years.)
- (2) When a member holding membership twenty years or more has died from a cause other than a disease or injury attributable to a public service, the amount shall be 50% of retirement pension to which he was entitled to receive. (In case the member was not entitled to retirement pension, the retirement pension is the amount which was to be provided if the reduced retirement pension or invalidity pension had not been paid, or the retirement pension to be paid when the death is regarded to be the retirement.)
- (3) When a member holding membership of ten years or more but less than twenty years has died from a cause other than a disease or injury attributable to a public service while being a member or a member with membership of ten years or more but less than twenty years and entitled to invalidity pension has died from a cause other than a disease or injury attributable to a public service, the amount shall be 10% of annual wage. (When the membership is more than ten years 1% of the amount of annual wage shall be added for every one year exceeding ten years.)
- (4) When a member with membership of less than ten years who is entitled

to a pension of invalidity caused by public service has died from a cause other than a disease or injury attributable to a public service, the amount shall be 10% of the annual wage.

- (5) In case, the amount of the pension for the surviving dependents in the preceding item is less than 21,000 yen, the amount shall be 21,000 yen.

Government Employees' Accident Compensation Law Article 15. In case an employee dies in line of duty, the State shall pay, as compensation for bereaved family, the amount equivalent to 1,000 days' amount of average pay to his bereaved family.

Article 16. The bereaved family prescribed in the preceding Article shall be those mentioned in the following items:

- (1) The spouse of the employee (including those who were actually in the same status as that of marriage at the time of the employees' death, though not formally reported).
- (2) The employee's children, parents, grandchildren and grandparents, who were sustained chiefly by the employee's income at the time of his death.
- (3) Those persons who were sustained chiefly by the employee's income at the time of his death, besides those prescribed in the preceding two items.
- (4) The employee's children, parents, grandchildren, grandparents, and brothers and sisters who do not come under the preceding two items.

Welfare Pension Insurance Law Article 58. The survivor's pension shall be granted to the survivor or survivors of an insured person or a person formerly insured in case the insured person or the person formerly insured comes to be subject to any of the following items:

- (1) When a person who had completed an insured term of coverage provided for in any of items of Article 42 paragraph 1 has died;
- (2) When an insured person (a fourth class insured person shall be excluded) with an insured term of coverage of six months or more has died;
- (3) When a person with an insured term of coverage of six months or more has died from a sickness or injury which started while the person was an insured person other than a fourth class insured person, before the day three years after the day the person first consulted a doctor or a dentist with regard to the sickness or injury (before the day three years after the day, in case he received the medical care benefit under Health Insurance in the course of the period concerned, he first received the medical care benefit);
- (4) When a person entitled to the invalidity pension who is in a state of invalidity of the first or second degree specified in Separate Table I has died.

Article 59 para. 1. The survivor eligible to the survivor's pension shall be the spouse, child, parent, grandchild or grandparent of an insured person or a person formerly insured (hereinafter merely referred to as the "spouse", "child", "parent", "grandchild" or "grandparent") who had been supported by the insured person or the person formerly insured and satisfied the following requirements when the person died:

- (1) In respect of a wife, the wife shall satisfy any of the following subitems;

- (a) She shall be forty years or more of age;
 - (b) She shall have been supported by the insured person or the person formerly insured and shall have shared the living with the child who has satisfied the requirements of item (3), when the person died;
 - (c) She shall be in a state of invalidity of the first or second degree specified in Separate Table I.
- (2) In respect of a husband, parent or grandparent, the husband, parent or grandparent shall be sixty years or more of age or shall be in a state of invalidity of the first or second degree specified in Separate Table I.
- (3) In respect of a child or grandchild, the child or grandchild shall be under eighteen years of age or shall be in a state of invalidity of the first or second degree specified in Separate Table I.

Seamen's Insurance Law Article 23 para. 1. The survivors eligible for a survivor's pension shall be the spouse, child, parents, grandchild and grandparents of an insured person or a person formerly insured who were supported by such person at the time of such person's death.

Article 23-6. The spouse or child eligible for a widow's, widower's or surviving child's pension shall be the spouse or child of an insured person a person formerly insured or a person qualified for an invalidity pension (limited to only such spouse or child as was supported by such person at the time of his death), who comes within any of the following items:

1. A widow, of the age of 55 years or above at the time of such person's death;
2. A widow under the age of 55 years at the time of such person's death who has such person's child, who is under the age of 18 years at the time of such person's death, or has such person's child who has been incapacitated for work continuously since such time owing to his disability;
3. A widow under the age of 55 years at the time of such person's death who reached to the age of 55 years afterwards (except those who fall under item 2 of Article 50-4 before reaching the age of 55 years).
4. A widow under item 2 of this Article who was above the age of 40 years when she lost the right to widow's pension as the child comes to fall under item 1 of Article 50-4, and reached the age of 55 years afterwards (except those who fall under item 2 of Article 50-4 before reaching the age of 55 years.);
5. A widower of the age of 60 years or above at the time of such person's death;
6. A child under the age of 18 years at the time of such person's death;
7. Besides persons prescribed in the above items, a spouse or child who has been incapacitated for work, owing to his disability, since the time of such person's death.

Article 49-2. If an insured person (except a person who comes within Article 34, item 2), whose insured terms of coverage is six months or more but less than fifteen years, dies from a non-occupational cause or dies from a sickness or injury originating before he was disqualified as insured, or from a sickness attri-

butable thereto, within three years of the date on which he was disqualified as insured, or if a person qualified for an invalidity pension for a disability resulting from a non-occupational cause coming within the first six classes of disability stipulated in Separate Table No. 4 dies, a widow's, widower's or surviving Child's pension shall be granted to such person's widow, widower or children as appropriate; provided, however, that when a widow's or widower's pension is granted, a surviving child's pension shall not be granted for the same cause during the term for which the widow's or widower's pension is granted.

Article 50. When an insured person or a person formerly insured comes within any of the following items, a survivor's pension shall be granted to his survivor;

1. An insured person or a person formerly insured who comes within either item of Article 34 dies owing to a non-occupational cause;
2. A recipient of an invalidity pension who is disabled from an occupational cause dies from a non-occupational cause.
3. An insured person or a person formerly insured dies from an occupational cause within the term prescribed in Article 42-3 paragraph 1.

Labour Standards Law Article 79. When a worker dies because of duty, the employer shall pay compensation equivalent to 1,000 days' average wages of the worker to the bereaved families or persons who were dependent on the worker's income at the time of the worker's death.

Enforcement Ordinance of Labour Standards Law Article 42. The recipient of the compensation for the bereaved family shall be the worker's spouse (including the person in the same relation as matrimony in fact without reporting marriage. This is the same hereafter.)

The rest of the text of relevant provisions are omitted, as the provisions of the Law of the Mutual Aid Association of Public Cooperation Employees, Local Public Service Mutual Aid Association Law and Law of the Mutual Aid Association of Employees of Private School are very similar to those of the above.

Observations: Institution of pension in Japan is very complicated as stated above. According to a survey by the Ministry of Welfare, the majority (73%) of the people covered by the institutions are of Welfare Pension Insurance Law and 12% of Pension Law. Therefore, the following answers in this section are mainly concerned with these two laws. In addition to these, National Pension Institution, an overall program for the nation, is under consideration.

2. If such provisions exist, are there any differences between the right to a pension
 - (a) of the surviving wife
 - (b) of the surviving husband? Yes
- The relevant provisions are embodied in:
- (a) Welfare Pension Insurance Law Article 65, 59 para. 1 (1), 63 para. 2, and Pension Law Article 73 para. 1.
 - (b) Welfare Pension Insurance Law Article 59 para. 1 (2), 63 para. 4, and Pension Law Article 74.

The text of these provisions is as follows:

Welfare Pension Insurance Law Article 59 para. 1. Previously mentioned (See the question above.)

Article 63. para. 2.

The wife's right to the survivor's pension shall be terminated in case the wife comes to be subject to any of the following items:

- (1) In case there is not a child provided for in Article 59 paragraph 1 item (1) subitem (b) any more who has shared the living with the wife continuously and is entitled to the survivor's pension; provided that this shall not apply to a wife who is then forty years or more of age and to a wife who is in a state of invalidity of the first or second degree specified in Separate Table I continuously since the wife came to be entitled to the right;
- (2) In case, with regard to a wife in a state of invalidity of the first or second degree specified in Separate Table I, the situation is terminated, provided that this shall not apply to a wife who was forty years or more of age when the wife came to be subject to the provisions of the preceding item (the proviso thereof being excluded) and to a wife who has a child provided for in Article 59 paragraph 1 item (1) subitem (b) who has shared the living with the wife continuously and is entitled to the survivor's pension.

Article 63. para. 4.

The husband's, parent's or grandparent's right to the survivor's pension shall be terminated in case, with regard to a husband, parent or grandparent who is in a state of the first or second degree specified in Separate Table I, the situation is terminated; provided that this shall not apply to a husband, parent or grandparent who is sixty years or more of age.

Article 65. The grant of the survivor's pension to the wife shall be suspended until the wife attains the age of fifty-five; provided that this shall not apply to a period during which the wife has a child provided for in Article 59 paragraph 1, item (1) subitem (b) who has shared the living with the wife continuously and is entitled to the survivor's pension and a period during which the wife is continuously in a state of invalidity of the first or second degree specified in Separate Table I since the wife came to be entitled to the right.

Pension Law Article 73. para. 1. Previously mentioned (See the Question above).

Article 74. A husband or a child of full age shall be granted a dependency pension only in case he is disable and has no way of earning his livelihood.

3. Is the right to a pension

- (a) of the surviving wife Yes
- (b) of the surviving husband Yes

affected by the annulment or dissolution of the marriage or by the judicial separation of the spouses? Yes

The relevant provisions are embodied in: Welfare Pension Insurance Law Article 3 para. 2, 59 para. 1 and Pension Law article 72 para. 1.

The text of these provisions is as follows:

Welfare Pension Insurance Law Article 3 para. 2.

In this Law, terms "spouse", "husband" and "wife" include those who are actually in married relations although their marriages have not been formally registered.

Article 59. para. 1. Previously mentioned (See Supplementary Section, Question 1).

Pension Law Article 72. para. 1.

Surviving dependents shall mean in this Law the grandparent, parent, spouse, child, and brother or sister of a public official, who were supported by, or kept house with, the latter at the time of his death.

Observations: Spouses of marriage which is not formally registered are excluded under the Pension Law.

4. (a) If the right to a pension of the surviving wife or husband is affected by the annulment or dissolution of the marriage or by the judicial separation of the spouse, what are the rights of successive spouses of the deceased husband or wife? See the relevant provisions.
- (b) Has the guilt of either spouse in the dissolution or separation of the marriage any affect on the rights of the surviving spouse to a pension or other emolument? No
- (c) Are the pension or other emoluments divided among successive spouses of the deceased? No

The relevant provisions are embodied in:

- (a) Welfare Pension Insurance Law Article 3 para. 2, 59 para. 1, Pension Law Article 72 para. 1.
- (b) None
- (c) None

The text of these provisions is as follows:

Welfare Pension Insurance Law Article 3 para. 2 and Pension Law Article 72 para. 1. Previously mentioned (See Supplementary Section, Question 3).

Welfare Pension Insurance Law Article 59 para. 1. Previously mentioned (See Supplementary Section, Question 1).

5. Is the right to a pension

- (a) of the surviving wife Yes
 - (b) of the surviving husband Yes
- affected by her/his remarriage?

The relevant provisions are embodied in:

Welfare Pension Insurance Law Article 63 para. 1, and Pension Law Article 80 para. 1.

The text of these provisions is as follows:

Welfare Pension Insurance Law Article 63 para. 1.

The right to the survivor's pensions shall be terminated in case the person entitled to benefit comes to be subject to any of the following items:

- (1) When the person has died;
- (2) When the person comes to be married (the case the person is actually in married relations although his or her marriage is not legally registered shall be included);
- (3) When the person is legally adopted by a person other than a lineal relative in marriage (the case the person is actually in adopted relations although the adoption is not legally registered shall be included);
- (4) When the legal relation as a relative with the deceased insured person or person formerly insured is legally dissolved.

Pension Law Article 80 para. 1

A surviving dependent who falls under one of the following items shall lose the right to a dependency pension.

- (1) In case the spouse gets married or becomes adopted by another person than the surviving dependants.

6. Are there any differences in existing provisions concerning old age or disability pensions between the pension rights and liabilities
 - (a) of single women
 - (b) of married women
 - (c) of single men
 - (d) of married menas regards
 - (i) rates of benefit
 - (ii) rates of contributions (where the system is contributory)
 - (iii) any other conditions?

No difference in Pension Law, though in case of disease or injury attributable to a public service, there is a difference between married and single persons.

In Welfare Pension Insurance Law, there is a difference between married and single persons as regards rates of benefit.

The relevant provisions are embodied in: Welfare Pension Insurance Law Article 43 para. 1, 44 para. 1 and 51 para. 2 and Pension Law Article 75.

The text of these provisions is as follows:

Welfare Pension Insurance Law Article 43 para. 1

The amount of old age pension shall be an amount equal to the basic amount of pension plus the additional amount of pension.

Article 44 para. 1. The additional amount of pension referred to in the first paragraph of the preceding Article shall be calculated with regard to the spouse, children under eighteen years of age or children in a state of invalidity of the first or second degree specified in Separate Table I, of the person entitled to benefit, who had been supported by the person when the person came to be entitled to the right.

Article 51 para. 2. The provisions of Article 44 shall apply to the additional amount of pension referred to in the first item or the second item of the first paragraph of the preceding Article.

Pension Law Article 75. The annual amount of a dependency pension shall, irrespective of the number of persons who receive it, be calculated as follows:

- (1) Except the cases specially provided in items (2) and (3) inclusive, the amount shall be 5/10 of the ordinary pension granted to a public official.
- (2) When a public official has died of a disease or injury attributable to a public service, the amount shall be calculated by multiplying the amount as provided in the preceding item by from 1.7 to 2.7 according to the Separate Table 4.
- (3) When a person entitled to an ordinary pension and an additional pension has died from a cause other than a disease or injury attributable to a public service, the amount shall be calculated by multiplying the amount as provided in item 1 by from 1.28 to 2.03 according to the Separate Table 5.

Regarding the application of the provisions of item (2) and (3) inclusive of the preceding paragraph, in case a person entitled to dependency pension has surviving dependents to support, an amount calculated by multiplying 4800 yen by the number of his surviving dependents to support shall be added to the annual amount of the above dependency pension.

'Surviving dependents to support' under the preceding paragraph shall mean persons who are supported by, or live with the recipient of a dependency pension and who are qualified for a dependency pension.

7. Is the surviving spouse entitled to a widow or widower's pension if she or he married the deceased spouse when he or she was receiving an old age or invalidity pension? Yes

The relevant provisions: None

Observation: As the eligibility of the wife (or the husband) for the survivor's pension of the old age or invalidity pension is the fact that she or he had been supported by the annuitant of the old age or invalidity pension when the annuitant died and that she or he satisfies the provisions of Article 58 and 59 of Welfare Pension Insurance Law or Article 72 and 73 of Pension Law, it does not matter if the husband (or the wife) was already receiving the pension at the time of marriage.

PART III—FAMILY LAW

Chapter I Marriage

I. Betrothal

1. Does the betrothal take place

- (a) between the prospective spouses Yes
- (b) between the parents of the prospective spouses? No

Do the same rules apply to the prospective wife and to the prospective husband? Yes

The relevant provisions are embodied in: Constitution of Japan Article 24 and Civil Code Article 742.

The text of these provisions is as follows:

Constitution Article 24. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.

Civil Code Article 742. A marriage is void only in the following cases:

- (1) Where there is no intention to marry common to the parties owing to a mistake as to the identity of the person or through any other cause;
- (2) Where the parties do not make notification of the marriage; however, if the notification only fails to fulfil the conditions prescribed in Article 739 paragraph 2, the validity of the marriage shall not be affected thereby.

2. Is free consent a prerequisite of a promise of marriage on the part of

- (a) the prospective wife Yes
- (b) the prospective husband? Yes

The relevant provisions are embodied in: Constitution Article 24 and Civil Code Article 742.

The text of these provisions is as follows: Previously mentioned (See the Question above).

3. May

- (a) the prospective wife Yes
 - (b) the prospective husband Yes
 - (c) the parents of the prospective spouses No
- withdraw from a promise of marriage?

The relevant provisions are embodied in: Constitution Article 24 and Civil Code Article 742.

The text of these provisions is as follows: Previously mentioned (See the question above)

4. On what conditions is the breach of a promise of marriage actionable

- (a) by the prospective wife Yes
- (b) by the prospective husband Yes
- (c) by any other person? No

In particular

- (i) where there has been co-habitation on the strength of the promise of marriage Yes
- (ii) where certain formalities have been fulfilled, such as the publication of bans Yes
- (iii) where the promise has been recorded in writing? Yes

No specific condition. According to judicial precedents, promise of marriage in any form

is actionable.

The relevant provisions: None

5. If a breach of promise of marriage is actionable, may

- (a) the prospective wife Yes
- (b) the prospective husband Yes
- (c) any other person No

bring suit for damages, and against whom?

Against the other party of the promise.

The relevant provisions are embodied in: Civil Code Article 709 and 710

The text of these provisions is as follows:

Article 709. A person who violates intentionally or negligently the right of another is bound to make compensation for damage arising therefrom.

Article 710. A person who is liable in compensation for damages in accordance with the provisions of the preceding Article shall make compensation therefor even in respect of a non-pecuniary damage, irrespective of whether such injury was to the person, liberty or reputation of another or to his property rights.

II. Substantive marriage requirements

1. What is the marriageable age for

- (a) women 16
- (b) man? 18

The relevant provisions are embodied in: Civil Code Article 731

The text of these provisions is as follows:

Article 731. A man may not marry until the completion of his full eighteen years of age, nor a woman until the completion of her full sixteen years of age.

2. Is the free consent of

- (a) the prospective wife
- (b) the prospective husband
- (c) both prospective spouses Yes

necessary for the validity of the marriage?

The relevant provisions are embodied in: Constitution Article 24 and Civil Code Article 742.

The text of these provisions is as follows: Previously mentioned (See Chapter I, I. Question 1)

3. Is the age of consent the same for women and for men? Yes

The relevant provisions are embodied in: Civil Code Article 3 and 737

The text of these provisions is as follows:

Article 3. Majority is attained on the completion of full twenty years of age.

Article 737. A minor child shall obtain the consent both of his or her father or mother in order to marry.

If either the father or mother does not give the consent, the consent of the other parent only shall be sufficient. The same shall also apply, if either the father or mother is unknown, or is dead or is unable to declare his or her intention.

4. Is the consent of parents necessary if

- (a) the woman is a minor Yes
- (b) the man is a minor Yes

- (c) the woman has reached the age of majority No
 (d) the man has reached the age of majority? No

The relevant provisions are embodied in: Civil Code Article 737

The text of these provisions is as follows: Previously mentioned (See the question above)

5. If parental consent is necessary,

- (a) is the consent required
 (i) of the mother.
 (ii) of the father
 (iii) of both parent? Yes
 (b) Can parental consent be replaced by Court Authorization, and under what circumstances? No

The relevant provisions are embodied in: Civil Code Article 737

The text of these provisions is as follows: Previously mentioned (See the question above)

III. Marriage formalities

1. Are the marriage formalities and vows the same for

- (a) the prospective wife
 (b) the prospective husband

in

- (i) civil ceremonies Not applicable
 (ii) religious ceremonies Not applicable

The relevant provisions: None

IV. Polygamy

Not applicable

Chapter II Dissolution of marriage

I. Annulment of marriage

1. May proceedings for annulment be instituted

- (a) by the wife Yes
 (b) by the husband Yes
 (c) by a public authority (ex officio)? Yes

The relevant provisions are embodied in: Civil Code Article 743, 744, 745, 746 and 747.

The text of these provisions is as follows:

Article 743. A marriage cannot be annulled except in accordance with the provisions of Article 744 to 747 inclusive.

Article 744. In cases of a marriage effected in contravention of the provisions of Article 731 to 736 inclusive, an application may be made to the Court for its annulment by either party thereto, any of each party's relatives or a public procurator; however, a public procurator may not make such an application after the death of either of the parties.

In cases of a marriage effected in contravention of the provisions of Article 732 or Article 733, the spouse or the former spouse of the party may also apply for its annulment.

Article 745. No application may be made for the annulment of a marriage effected in contravention of the provisions of Article 731, if the person who was not of mar-

riageable age has attained the requisite age.

A person married under the marriageable age may still apply for the annulment of the marriage during a period of three months from his or her attainment of the requisite age; however, this shall not apply when he or she has ratified it after having attained the requisite age.

Article 746. No application may be made for the annulment of a marriage effected in contravention of the provisions of Article 733 after the lapse of six months from the day of the dissolution or annulment of the previous marriage nor in cases where the woman has become pregnant after her remarriage.

Article 747. A person who has been induced by fraud or duress to effect a marriage may apply to the Court for the annulment of such marriage.

The right of annulment mentioned in the preceding paragraph shall be extinguished if three months have elapsed since the party discovered the fraud, or became free from the duress, or if he or she has effected a ratification.

Ref.

Article 731. Previously mentioned (See Chapter I, II. Question 1)

Article 732. A person who has a spouse may not effect an additional marriage.

Article 733. A woman may not re-marry unless six months have elapsed from the day of the dissolution or annulment of her previous marriage.

In case a woman is pregnant from before the dissolution or annulment of her previous marriage, the preceding paragraph shall cease to apply as from the day of her delivery.

Article 734. No marriage may be effected between lineal relatives by blood, nor between collateral relatives by blood up to the third degree of relationship; however, this shall not apply between an adopted child and any of the collateral relatives by blood on the side of the adoptive relatives.

Article 735. No marriage may be effected between lineal relatives by affinity. The same shall apply after the relationship by affinity has ceased in accordance with the provisions of Article 728.

Article 736. No marriage may be effected between an adopted child, his or her spouse, his or her lineal descendants or their spouses on the one hand, and the parent by adoption or his or her lineal ascendants on the other, even after the relationship has ceased in accordance with the provisions of Article 729.

2. Are the same legal grounds for annulment available to

- (a) women Yes
 (b) men Yes

Also in the religious laws, if any? Not applicable

The relevant provisions are embodied in: Civil Code Article 743, 744, 745, 746 and 747.

The text of these provisions is as follows: Previously mentioned (See the question above)

3. Is the procedure of annulment the same for

- (a) the wife Yes
 (b) the husband? Yes

The relevant provisions are embodied in: Civil Code Article 743, 744, 745, 746 and 747.

The text of these provisions is as follows: Previously mentioned (See the question above)

4. What is the effect of the annulment on the wife

- (a) as to name If changed by marriage, resumes previous name.
- (b) as to domicile If changed by marriage, resumes previous domicile.
- (c) as to capacity No effect.
- (d) as to financial settlement? May demand the distribution of property from the other spouse.

The relevant provisions are embodied in:

- (a) Civil Code Article 749 and 767.
- (b) Civil Code Article 749, 767 and Family Registration Law Article 19.
- (c) None
- (d) Civil Code Article 768 and 749.

The text of these provisions is as follows:

Civil Code Article 749. The provisions of Articles 766 to 769 inclusive shall apply mutatis mutandis to the annulment of a marriage.

Article 766. In cases father and mother effect a divorce by agreement, the person who is to take the custody of their children and other matters necessary for the custody shall be determined by their agreement, and if no agreement is reached or possible, such matters shall be determined by the Family Court.

The Family Court may, if it deems necessary for the benefit of the children, change the person to take the custody of them or order such other dispositions as may be appropriate for the custody.

The provisions of the preceding two paragraphs shall not cause any change in the rights and duties of father and mother outside the scope of the custody.

Article 767. Husband or wife, who has changed his or her surname by reason of marriage, resumes, by reason of divorce by agreement, the surname assumed thereby before the marriage.

Article 768. Husband or wife who has effected divorce by agreement may demand the distribution of property from the other spouse.

If no agreement is reached or possible between the parties with respect to the distribution of property in accordance with the provisions of the preceding paragraph, any of the parties may apply to the Family Court for measures to take the place of such agreement, however, this shall not apply after the lapse of two years from the time of the divorce.

In the case mentioned in the preceding paragraph, the Family Court shall determine whether any such distribution is to be made or not, and if it is to be made, the sum as well as the mode of the distribution, taking into account the sum of such property as is acquired by cooperation of the parties and all other circumstances.

Article 769. If husband or wife, who had changed his or her surname by reason of the marriage, has effected divorce by agreement after his or her succession to the right stated in Article 897 paragraph 1, the person who is to succeed to the right shall be determined by an agreement between the parties and other persons concerned.

If no agreement mentioned in the preceding paragraph is reached or

possible, the person who is to succeed to the right mentioned in the preceding paragraph shall be determined by the Family Court.

Ref.

Article 897. para. 1. Notwithstanding the provisions of the preceding Article, the ownership of genealogical records, of utensils of religious rites and of tombs and burial grounds is succeeded to the person who is, according to custom, to hold as a president the worship to the memory of the ancestors. If, however, the person succeeded to has designated the person who is to hold as a president the worship to the memory of the ancestors, such person shall succeed to that ownership.

Family Registration Law Article 19. If a person, who has altered his or her surname as a result of marriage or adoption, resumes the surname assumed by such person prior to the marriage or adoption, by reason of divorce or dissolution of the adoptive relation or by reason of annulment of the marriage or of the adoption, such person may be entered into the family-register wherein such person had been registered prior to the marriage or adoption: provided, however, that is the said family-register has already been removed or if such person declares his or her intention to have a new family-register made up, a new family-register shall be made up.

The provision of the preceding paragraph shall apply mutatis mutandis in cases where the surname assumed prior to marriage is resumed in accordance with the provisions of Article 751 paragraph 1 of the Civil Code and where the former surname is resumed in accordance with the provisions of Article 791 paragraph 3 of the Civil Code.

Ref.

Civil Code Article 751 para. 1. If either husband or wife has died, the surviving spouse may resume the surname assumed by her or him before the marriage.

Article 791. para. 3. The minor child, who has changed its surname in accordance with the provisions of the preceding two paragraphs, may resume its prior surname within one year as from the day on which he or she attained majority.

5. What is the effect of the annulment on the legal status of the husband?

The same as those of wife.

The relevant provisions are embodied in: Civil Code Article 749, 766, 767, 768, 769.

Family Registration Law Article 19.

The text of these provisions is as follows: Previously mentioned (See the Question above).

6. In the event of an annulment of marriage,

- (a) Does a child of the marriage receive the name of

(i) the mother

(ii) the father?

The name of the parents during marriage.

- (b) Must

(i) the mother

(ii) the father

(iii) both parents Yes

support any children of the marriage? Yes

- (c) Has
- (i) the mother
 - (ii) the father
 - (iii) both parents

custody of the children? Either parent.

- (d) Are the children considered as the legitimate children of
- (i) the mother
 - (ii) the father
 - (iii) both parents Yes
 - (iv) neither parent?

The relevant provisions are embodied in:

- (a) Civil Code Article 790 and 791
- (b) Civil Code Article 877 and 878
- (c) Civil Code Article 766 and 749
- (d) Civil Code Article 748 para. 1 and Article 772

The text of these provisions is as follows:

Article 748. para. 1. The annulment of a marriage shall have no retroactive effect.

Article 749 and 766. Previously mentioned (See Chapter II. I. Question 4).

Article 772. A child conceived by a wife during marriage shall be presumed to be the child of the husband.

A child, born two hundred days or more after the day on which the marriage was formed or born within three hundred days from the day on which the marriage was dissolved or annulled, shall be presumed to have been conceived during marriage.

Article 790. A legitimate child assumes the surname of the father and mother. If, however before the birth of the child its father and mother have divorced, the child assumes the surname of its father and mother at the time of the divorce.

An illegitimate child assumes the surname of its mother.

Article 791. In cases where the surname of a child differs from that of its father or mother, the child may, with the leave of the Family Court, assume the surname of its father or mother.

In cases where a child is under fifteen years, the legal representative thereof may effect the act mentioned in the preceding paragraph in behalf of the child.

The minor child, who has changed its surname in accordance with the provisions of the preceding two paragraphs, may resume its prior surname within one year as from the day on which he or she attained majority.

Article 877. The lineal relatives by blood and brothers and sisters shall be under duty to furnish support each other.

If there are special circumstances, the Family Court may impose a duty to furnish support as between the relatives within the third degree other than those mentioned in the preceding paragraph.

If after the decision pursuant to the provisions of the preceding paragraph had been tendered, any change has taken place in the circumstances, the

Family Court may revoke the decision.

Article 878. If, in cases where there exist two or more persons under a duty to furnish support, no agreement is reached or possible between the parties concerned with respect to the order in which they are to furnish support, such order shall be determined by the Family Court. If in cases where there exist two or more persons entitled to support, the financial capacity of the person who is under duty to furnish support is insufficient to support all of them, the same as provided for above shall also apply with respect to the order in which they receive support.

7. In the case of a putative marriage

- (a) what is the status of the wife if she was the party acting in good faith
See the relevant provisions
- (b) what is the status of the husband if he was the party acting in good faith
See the relevant provisions
- (c) what is the status of the children of the marriage?
See the relevant provisions

The relevant provisions are embodied in: Civil Code Article 743, 744, 745, 746, 747, 748 and 749.

The text of these provisions is as follows:

Article 743, 744, 745, 746, 747. Previously mentioned (See Chapter II. I. Question 1.)

Article 748. The annulment of a marriage shall have no retroactive effect.

In cases any party, who was unaware at the time of the marriage that a ground for its annulment existed, has acquired property by reason of the marriage, such party shall return the property to the extent that he or she is still enriched thereby.

Any party who was aware at the time of the marriage that a ground for its annulment existed, shall return the whole benefit which he or she has acquired by reason of the marriage, and further if the other party acted bona fide, he or she shall be liable in compensation for damages thereto.

Article 749. Previously mentioned (See Chapter II. I. Question 4.)

Ref.

Article 731, 732, 733, 734, 735, 736. Previously mentioned (See Chapter II. I. Question 1)

Article 768, 767, 768, 769. Previously mentioned (See Chapter II. I. Question 4)

II. Separation

Not applicable

III. Divorce

1. May divorce proceedings be instituted by

- (a) the wife Yes
- (b) the husband? Yes

The relevant provisions are embodied in: Civil Code Article 763 and 770.

The text of these provisions is as follows:

Article 763. Husband and wife may effect divorce by agreement.

Article 770. Husband or wife can bring an action for divorce only in the following cases:

- (1) If the other spouse has committed an act of unchastity;

- (2) If he or she has been deserted maliciously by the other spouse;
- (3) If it is unknown for three years or more whether the other spouse is alive or dead;
- (4) If the other party is attached with severe mental disease and recovery therefrom is hopeless;
- (5) If there exists any other grave reason for which it is difficult for him or her to continue the marriage.

Even in cases where any or all of the grounds mentioned in items (1) to (4) inclusive of the preceding paragraph exist, the Court may dismiss the action for divorce, if it deems the continuance of the marriage proper in view of all the circumstances.

2. Are the same legal grounds for divorce available to

- (a) the wife Yes
- (b) the husband? Yes

Also in the religious laws, if any? Not applicable

The relevant provisions are embodied in: Civil Code Article 763 and 770

The text of these provisions is as follows: Previously mentioned (See the question above)

3. Is the procedure for divorce the same for

- (a) the wife
- (b) the husband? Yes

The relevant provisions are embodied in: Civil Code Article 763 and 770.

The text of these provisions is as follows: Previously mentioned (See the question above)

4. What is the effect of divorce on the wife

- (a) as to name See the relevant provisions.
- (b) as to domicile She resumes her previous domicile.
- (c) as to capacity None
- (d) as to financial settlement
 - (i) agency of husband in wife's affairs, if any None
 - (ii) agency of wife in household affairs, if any None
 - (iii) support of the wife and children
 - (1) temporary alimony during the proceedings Not applicable
 - (2) final alimony settlement? See the relevant provisions.

The relevant provisions are embodied in:

- (a) Civil Code Article 767 and Family Registration Law Article 19.
- (b) Family Registration Law Article 19
- (c) None
- (d) (iii) (2) Civil Code Article 768 and 771

The text of these provisions is as follows:

Civil Code Article 767, 768 and Family Registration Law Article 19. Previously mentioned (See Chapter II. I. Question 4)

Article 771. The provisions of Article 766 to 769 inclusive shall apply mutatis mutandis to judicial divorce.

5. What is the effect of divorce on the husband's legal status? The same as those of wife.

The relevant provisions are embodied in: Civil Code Article 767, 768 and Family Registration

tion Law Article 19.

The text of these provisions is as follows: Previously mentioned (See Chapter II. I. Question 4)

Chapter III. Remarriage

1. Are the restrictions on remarriage after divorce or annulment the same for

- (a) the wife
- (b) the husband? There is no restrictions for either of them.

The relevant provisions: None

2. Are the restrictions on remarriage after divorce or annulment the same in regard to marriage of the guilty party with the accomplice of adultery in the case of

- (a) the guilty wife
- (b) the guilty husband? There is no restrictions for either of them.

The relevant provisions: None

3. Are there any special restrictions on the remarriage of a woman as to the time that must have elapsed since the dissolution of her former marriage? Yes, six months.

The relevant provisions are embodied in: Civil Code Article 733 and 746.

The text of these provisions is as follows: Previously mentioned (See Chapter II. I. Question 1)

4. What is the effect of

- (a) the woman's remarriage
- (b) the man's remarriage

upon:

- (i) alimony Not applicable
- (ii) custody of children? See the relevant provisions

The relevant provisions are embodied in: Civil Code Article 766 para. 2

The text of these provisions is as follows: Previously mentioned (See Chapter II. I. Question 4)

5. In case of widowhood, are there any rules concerning the remarriage of

- (a) the widow
- (b) the widower

as to the choice of the future spouse? Yes

The relevant provisions are embodied in: Civil Code Article 735

The text of these provisions is as follows: Previously mentioned (See Chapter II. I. Question 1) Ref.

Article 728. The matrimonial relationship is terminated by divorce.

The same shall apply also if after the death of either husband or wife, the surviving spouse declares his or her intention to terminate the matrimonial relationship.

Chapter IV. Personal relations of spouses

1. Is

- (a) the husband
- (b) the wife

The head of the family? Neither of them.

The relevant provisions are embodied in: Constitution Article 24

The text of these provisions is as follows: Previously mentioned (See Chapter I. I. Question 1)

2. Is obedience owed

- (a) by the wife to the husband No
- (b) by the husband to the wife? No

The relevant provisions are embodied in: Constitution Article 24 and Civil Code Article 752

The text of these provisions is as follows:

Constitution Article 24. Previously mentioned (See Chapter I. I. Question 1)

Civil Code Article 752. Husband and wife shall live together, and shall cooperate and aid each other.

3. Is protection owed

- (a) by the husband to the wife No
- (b) by the wife to the husband? No

The relevant provisions are embodied in: Constitution Article 24 and Civil Code Article 752.

The text of these provisions is as follows:

Constitution Article 24. Previously mentioned (See Chapter I. I. Question 1)

Civil Code Article 752. Previously mentioned (See the question above)

4. Does

- (a) a wife
- (b) a husband

assume her/his spouse's name and rank

- (i) automatically
- (ii) by election Yes

The relevant provisions are embodied in: Civil Code Article 750

The text of these provisions is as follows:

Article 750. Husband and wife assume the surname of the husband or wife in accordance with the agreement made at the time of the marriage.

5. In case of dissolution of the marriage, does

- (a) the wife
- (b) the husband

lose her/his spouse's name and rank acquired through marriage? Yes

The relevant provisions are embodied in: Civil Code Article 749, 751 para. 1, 767 and 771.

The text of these provisions is as follows:

Article 749, 751 and 767. Previously mentioned (See Chapter II. I. Question 4)

Article 771. Previously mentioned (See Chapter II. III. Question 4)

6. May the wife maintain a separate domicile or residence

- (a) independently of the marital domicile or residence
- (b) in addition to the marital domicile or residence? No

If not, is the wife bound to take her husband's residence and domicile and follow him wherever he chooses to establish his domicile or residence?

Residence and domicile shall be determined by agreement of both spouses.

The relevant provisions are embodied in: Civil Code Article 752 and Constitution Article 24 para. 2

The text of these provisions is as follows:

Civil Code Article 752. Previously mentioned (See Chapter IV. Question 2)

Constitution Article 24. Previously mentioned (See Chapter I. I. Question 1)

7. May the husband maintain a separate domicile or residence

- (a) independently of the marital domicile or residence
- (b) in addition to the marital domicile or residence No

If not, is the husband bound to take his wife's residence and domicile and follow her wherever she chooses to establish her domicile or residence?

Residence and domicile shall be determined by agreement of both spouses.

The relevant provisions are embodied in: Civil Code Article 752 and Constitution Article 24 para. 2

The text of these provisions is as follows:

Civil Code Article 752. Previously mentioned (See Chapter VI. Question 2)

Constitution Article 24. Previously mentioned (See Chapter I. I. Question 1)

8. If

- (a) the wife
 - (b) the husband
- may not maintain a separate residence and domicile from the viewpoint of the marital relationship, may
- (a) the husband
 - (b) the wife

do so for the following purposes:

- (i) voting Yes
- (ii) holding office Yes
- (iii) jury duty Not applicable
- (iv) litigating a suit Yes
- (v) taxation Yes
- (vi) any other purpose? Yes

The relevant provisions are embodied in: Constitution Article 22 and 24 para. 2.

The text of these provisions is as follows:

Constitution Article 22. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

Freedom of all person to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Constitution Article 24 para. 2. Previously mentioned (See Chapter I. I. Question 1)

9. If

- (a) the husband must take the wife's domicile
 - (b) the wife must take the husband's domicile
- what happens in the event of dissolution of the marriage? Not applicable.

10. May

- (a) the wife
- (b) the husband

obtain a separate passport and leave the country

- (i) without the other spouse's consent Yes
- (ii) with the other spouse's consent No
- (iii) under special conditions or restrictions? No

If so, state these.

The relevant provisions are embodied in: The Passport Law which sets no requirement of such consent, conditions or restrictions.

11. Is

- (a) the husband under obligation to support his wife and provide for her maintenance Yes
- (b) the wife under obligation to support her husband and provide for his maintenance Yes

and to what extent? See the relevant provisions.

The relevant provisions are embodied in: Civil Code Article 752 and 760.

The text of these provisions is as follows:

Article 752. Previously mentioned (See Chapter IV. Question 2)

Article 760. Husband and wife shall share the expenses of the married life with each other, taking into account their property, income and all other circumstances.

12. Does the liability

- (a) of the husband to maintain the wife
 - (b) of the wife to maintain the husband
- come to an end if the other spouse deserts the matrimonial domicile?
No, however, desertion is actionable for divorce.

The relevant provisions are embodied in: Civil Code Article 770 para. 1

The text of these provisions is as follows: Previously mentioned (See Chapter II. III. Question 1)

13. Is a duty to live in common with one's spouse owed

- (a) by the husband toward the wife Yes
- (b) by the wife toward the husband? Yes

If so, has

- (a) the husband a right of action to compel his wife to dwell with him Yes
- (b) the wife a right of action to compel her husband to dwell with her? Yes

The relevant provisions are embodied in: Civil Code Article 752.

The text of these provisions is as follows: Previously mentioned (See Chapter IV. Question 2)

14. If

- (a) the husband wishes to dwell in the marital domicile, is the wife bound to receive him Yes
- (b) the wife wishes to dwell in the marital domicile, is the husband bound to receive her? Yes

The relevant provisions are embodied in: Civil Code Article 752

The text of these provisions is as follows: Previously mentioned (See Chapter IV. Question 2)

15. Is fidelity owed

- (a) by the husband to the wife Yes
- (b) by the wife to the husband? Yes

The relevant provisions are embodied in: Civil Code Article 770

The text of these provisions is as follows:

Article 770. Previously mentioned (See Chapter II. III. Question 1)

16. Does

- (a) the husband
 - (b) the wife
- have the right to sue for adultery
- (i) the other spouse
 - (ii) a third party?

No, they can only bring an action for divorce and compensation for damage.

The relevant provisions are embodied in: Civil Code Article 709, 710 and 770.

The text of these provisions is as follows:

Article 709. A person who violates intentionally or negligently the right of another is bound to make compensation for damage arising therefrom.

Article 710. A person who is liable in compensation for damages in accordance with the provisions of the preceding Article shall make compensation therefor even in respect of a non-pecuniary damage, irrespective of whether such injury was to the person, liberty or reputation of another or to his property rights.

Article 770. Previously mentioned (See Chapter II. III. Question 1)

17. Does

- (a) the husband
- (b) the wife

have the right to sue and claim damages from anyone who deprived him/her of his/her spouse's affection? Yes, he/she can sue and claim damages.

The relevant provisions are embodied in: Civil Code Article 709 and 710.

The text of these provisions is as follows: Previously mentioned (See the Question above)

18. If

- (a) the husband
 - (b) the wife
- violated his/her conjugal obligations, does
- (a) the husband
 - (b) the wife

have the same means of recourse against the other spouse? Yes

The relevant provisions are embodied in: Civil Code Article 709, 710 and 770.

The text of these provisions is as follows:

Article 709, 710. Previously mentioned (See the Question above)

Article 770. Previously mentioned (See Chapter II. III. Question 1)

Chapter V. Relations between Parents and Children

I. Authority over children

1. What is the relative authority of

- (a) the mother
 - (b) the father
 - (c) both parents Yes
- as to

- (i) care and custody
- (ii) education
- (iii) religious education
- (iv) power to retraction and correct?

Father and mother exercise the authority jointly. See the relevant provisions.

The relevant provisions are embodied in: Civil Code Article 818, 819 and 820.

The text of these provisions is as follows:

Article 818. A child who had not yet attained majority is subject to the parental power of its father and mother.

If such child is an adopted one, it is subject to the parental power of its parent by adoption.

While father and mother are in matrimonial relation, they jointly exercise the parental power. However, if either the father or the mother is unable to exercise the parental power, the other parent exercises it.

Article 819. If father and mother have effected divorce by agreement they shall determine one of them to have the parental power by agreement.

In cases of judicial divorce the Court shall determine father or mother to have the parental power.

If father and mother have effected divorce before the birth of child, the parental power is exercised by the mother. However, the father and mother may determine the father to have the parental power by agreement after the birth of child.

The parental power over a child recognized by its father shall be exercised by its father, if and only if the father and mother determine the father to have the parental power by their agreement.

If no agreement mentioned in any of paragraph 1, 3 or the preceding paragraph is reached or possible, the Family Court may render judgement in place of agreement on application of the father or mother.

The Family Court may, if it deems necessary for the benefit of a child, transfer the parental power from one of parents to other on application of any relative of the child.

Article 820. A person who exercises parental power has the right and incurs the duty of providing for the custody and of educating the child.

2. What are the grounds on which

- (a) the mother
- (b) the father

may seek relief from any parental duties and what is the effect of such relief on parental power of the other parent? See the relevant provisions.

The relevant provisions are embodied in: Civil Code Article 818 and 837.

The text of these provisions is as follows:

Article 818. Previously mentioned (See the Question above).

Article 837. Father or mother who exercises parental power may, where circumstance make it imperative, decline the parental power or the right of management with the leave of the Family Court.

If the circumstances mentioned in the preceding paragraph cease to exist,

father or mother may recover the parental power or the right of management with the leave of the Family Court.

3. What are the grounds on which

- (a) the mother
- (b) the father

may forfeit their parental power and what is the effect of such forfeiture on the parental power of the other parent? See the relevant provisions.

The relevant provisions are embodied in: Civil Code Article 834, 835 and 818.

The text of these provisions is as follows:

Article 818. Previously mentioned (See Chapter V. I. Question 1)

Article 834. If father or mother abuses parental power or is guilty of gross misconduct, the Family Court may, on the application of any of the child's relatives or of a public procurator, adjudge the forfeiture of the parental power.

Article 835. If father or mother who exercises parental power endangers by mismanagement the property of his or her child, the Family Court may, on the application of any of the child's relatives or of a public procurator, adjudge the forfeiture of the right of management.

4. May

- (a) the mother
- (b) the father
- (c) a third party or public authority

request the court to declare the other parent discharged from parental power? Yes.

The relevant provisions are embodied in: Civil Code Article 834

The text of these provisions is as follows:

Article 834. Previously mentioned (See the question above)

5. What are the conditions for reinstatement into parental power

- (a) for the mother
- (b) for the father? See the relevant provisions.

The relevant provisions are embodied in: Civil Code Article 836 and 837.

The text of these provisions is as follows:

Article 836. If the causes mentioned in the preceding two Articles have ceased to exist, the Family Court may, on the application of the party concerned or of any of his relatives, revoke the adjudication of the forfeiture of the power or right.

Article 837. Previously mentioned (See Chapter V. I. Question 2)

II. Custody and Guardianship

1. Is parental power continued or replaced by guardianship in the event of

- (a) annulment Continued by either parent.
- (b) separation Not applicable.
- (c) divorce Continued by either parent.
- (d) death of Continued by surviving parent. If on parent, guardianship commences.
 - (i) the father
 - (ii) the mother?

The relevant provisions are embodied in: Civil Code Article 819, 838 and 749.

The text of these provisions is as follows:

Article 749. Previously mentioned (See Chapter II. I. Question 4)

Article 819. Previously mentioned (See Chapter V. I. Question 1)

Article 838. Guardianship commences in any of the following cases;

- (1) If there is no one to exercise parental power over a minor, or if the person who exercises parental power has no right of management;
- (2) If an adjudication of incompetency has been made.

2. If the parental power is exercised

- (a) by the mother
- (b) by the father

does it pass to the other parent on her/his death

- (i) automatically
- (ii) subject to confirmation by the court or subject to any other formality? Yes

The relevant provisions: None

3. In case of separation or divorce, what factors determine whether the children of the marriage shall be given into the custody or guardianship of

- (a) the mother
- (b) the father
- (c) any other person? The only factor is interests of children.

The relevant provisions are embodied in: Civil Code Article 766, 771 and 819.

The text of these provisions is as follows:

Article 766. Previously mentioned (See Chapter II. I. Question 4)

Article 771. Previously mentioned (See Chapter II. III. Question 4)

Article 819. Previously mentioned (See Chapter V. I. Question 1)

4. If custody or guardianship has been given to

- (a) the mother
- (b) the father

does it pass to the other parent on her/his death or her/his being relieved or discharged from it

- (i) automatically
- (ii) subject to confirmation by the court or subject to any other formality? Yes

The relevant provisions are embodied in: Civil Code Article 766 and 771.

The text of these provisions is as follows:

Article 766. Previously mentioned (See Chapter II. I. Question 4)

Article 771. Previously mentioned (See Chapter II. III. Question 4)

5. Does the remarriage of

- (a) the mother
- (b) the father

who had been given custody or guardianship affect her/his rights, and does her/his new spouse acquire any rights over the children of the former marriage?

Remarriage has no effect on custody or guardianship. The new spouse acquire no rights.

The relevant provisions: None

III. Maintenance and support

1. When the parents live together, is

- (a) the mother

(b) the father

(c) both parents Yes

under the duty to support the children, and to what extent? See the relevant provisions.

The relevant provisions are embodied in: Civil Code Article 820 and 877.

The text of these provisions is as follows:

Article 820. Previously mentioned (See Chapter V. I. Question 1)

Article 877. The lineal relatives by blood and brothers and sisters shall be under duty to furnish support each other.

If there are special circumstances, the Family Court may impose a duty to furnish support as between the relatives within the third degree other than those mentioned in the preceding paragraph.

If, after the decision pursuant to the provisions of the preceding paragraph had been rendered, any change has taken place in the circumstances, the Family Court may revoke the decision.

2. When the father and mother have been separated or divorced, is

- (a) the mother
- (b) the father
- (c) both parents Yes

under duty to support the children, and to what extent

- (i) when the mother has the custody or guardianship.
- (ii) when the father has the custody or guardianship?

Which parent has the custody does not matter. See the relevant provisions.

The relevant provisions are embodied in: Civil Code Article 820 and 877.

The text of these provisions is as follows:

Article 820. Previously mentioned (See Chapter V. I. Question 1)

Article 877. Previously mentioned (See the question above)

IV. Property rights

1. Has

- (a) the mother
- (b) the father

or have

- (c) both parents

a right to the administration and profits of property of a minor child

- (i) when the parents live together Both parents
- (ii) when the parents are separated or divorced? The one with parental power.

The relevant provisions are embodied in: Civil Code Article 818, 819 and 824.

The text of these provisions is as follows:

Article 818 and 819. Previously mentioned (See Chapter V. I. Question 1)

Article 824. A person who exercises parental power manages the property of a child and represents the child on juristic acts concerning its property; in cases, however, where an obligation is to be created having for its subject any act of the child, the consent of the child itself shall be obtained.

2. Does

- (a) the mother
- (b) the father

or do

(c) both parents

have the right to services and earning of a child

Both parents have it, but in cases where an obligation is to be created having for its subject any act of the child, the consent of the child itself shall be obtained.

have the right to make contracts for a child's services No
and sue for loss of services No

(i) when the parents live together

Both parents

(ii) if the parents are separated or divorced

The one with parental power.

(iii) if the father is dead and the mother surviving

The surviving parent with the

(iv) if the mother is dead and the father surviving

parental power or the guardian.

The relevant provisions are embodied in: Civil Code Article 818, 819, 823, 824, 838 and 6.

Labour Standards Law Article 58.

The text of these provisions is as follows:

Civil Code Article 6. A minor who has been permitted to carry on one or more kind of business has in relation to such business the same capacity as a person of full age.

If there are, in the case of the preceding paragraph, facts showing representative that the minor is not yet capable of carrying on the business, his legal may, in accordance with the provisions of the Law on Relatives, revoke or restrict the permission.

Article 818 and 819. Previously mentioned (See Chapter V. I. Question 1)

Article 823. A child may not carry on an occupation unless with the permission of the person who exercises parental power.

In case of Article 6 paragraph 2 the person who exercises parental power may revoke or restrict the permission mentioned in the preceding paragraph.

Article 824. Previously mentioned (See Chapter V. IV. Question 1)

Article 838. Previously mentioned (See Chapter V. II. Question 1)

Labour Standards Law Article 58. The parent of the guardian shall not make a labour contract in place of the minor.

The parent or the guardian and the administrative office are authorised to cancel the contract for the future if they consider it unfair to the minor.

3. Does

(a) the mother

(b) the father

or do

(c) both parents Yes

have a right of inheritance from the child in case of intestacy

(i) when this parent has the custody of the child

(ii) when the other parent has the custody of the child?

Which parent has the custody does not matter. See the relevant provisions.

The relevant provisions are embodied in: Civil Code Article 869.

The text of these provisions is as follows:

Article 869. In cases where there exists no person who is to become successor in accordance with the provisions of the preceding two Articles, the persons mentioned below become successors in the order as follows:

(I) Lineal ascendants

(II) Brothers and sisters.

In case mentioned in item (I) of the preceding paragraph, the provisions of Article 887, and in the case mentioned in item (II) thereof, these of Article 887 item (2) and of the preceding Article shall respectively apply mutatis mutandis.

Ref.

Article 887. The lineal descendants of a person to be succeeded to become successors in accordance with the following provisions:

(1) As between person standing in different degrees of relationship, those nearer in degree are preferred;

(2) Persons standing in the same degree of relationship become successors in the same rank.

Article 888. If, in cases where a person who would become successor in accordance with the provisions of the preceding Article dies or loses the right of succession previous to the opening of the succession, there exist lineal descendants of such person, those lineal descendants become successors in the same rank as that person, in accordance with the provisions of the preceding Article.

For the application of the provisions of the preceding paragraph, a child on ventre sa mere shall be deemed to have been already born, excepting, however, cases where it is born dead.

Chapter VI. Relations between parents and children born out of wedlock

1. What are the rights of the mother of a child born out of wedlock

(a) as to sanctions to compel marriage by the father None

(b) as to support of herself None

(c) as to any other protection? None

The relevant provisions: None

2. What procedure is provided for ascertaining

(a) the maternity

(b) the paternity

of a child born out of wedlock? Recognition.

Describe briefly the procedure. Recognition of a child may be effected by notification and will. Otherwise, when an action for recognition is brought the Court shall examine the relationship and, if parenthood found, set up the relationship of parenthood by judicial decision.

The relevant provisions are embodied in: Civil Code Article 779, 781, 784 and 787.

The text of these provisions is as follows:

Article 779. A child who is not legitimate may be recognized by its father or mother.

Article 781. The recognition of a child is effected by giving notification thereof in accordance with the provisions of Family Registration Law.

Recognition may also be effected by means of will.

Article 784. Recognition shall be effective retroactively as from the time of birth; however, the rights acquired by third persons prior thereto shall not be prejudiced thereby.

Article 787. A child, any of its lineal descendants or the legal representative of any of them can bring an action for recognition; however, this shall not apply after the lapse of three years from the time when the father or mother died.

3. Is any formality required by law in order to establish legal relations between children born out of wedlock and

- (a) their mother Yes
- (b) their father? Yes

The relevant provisions are embodied in: Civil Code Article 779 and 781.

The text of these provisions is as follows: Previously mentioned (See the question above)

4. Are there any prohibitions in the law regarding the acknowledging of certain categories of children born out of wedlock in respect of

- (a) the mother
- (b) the father No

The relevant provisions: None

5. Does a child born out of wedlock bear the name of

- (a) his mother Yes
- (b) his father? It may, by the leave of the Family Court.

The relevant provisions are embodied in: Civil Code Article 790 and 791.

The text of these provisions is as follows: Previously mentioned (See Chapter II. I. Question 6)

6. Does

- (a) the mother
- (b) the father

have the custody of the child born out of wedlock when

- (i) both parents request the custody
- (ii) the mother does not request the custody
- (iii) the father does not request the custody
- (iv) neither parent requests the custody?

The mother has it irrespective of the request, but the father may have by agreement of parents. See the relevant provisions.

The relevant provisions are embodied in: Civil Code Article 766 and 788.

The text of these provisions is as follows:

Article 766. Previously mentioned (See Chapter II. I. Question 4)

Article 788. The provisions of Article 766 shall apply mutatis mutandis in cases where a father effects recognition.

7. Does

- (a) the mother Yes, where there is no recognition
- (b) the father

or, do

- (c) both parents Yes, provided the father has recognized the child, have the obligation of support of a child born out of wedlock?

The relevant provisions are embodied in: Civil Code Article 820 and 877.

The text of these provisions is as follows:

Article 820. Previously mentioned (See Chapter V. I. Question 1)

Article 877. Previously mentioned (See Chapter V. III. Question 1)

8. Is there a legal sanction for failure to support the child born out of wedlock against

- (a) the mother Yes
- (b) the father Yes
 - (i) if she/he has the custody Yes
 - (ii) if the other parent has the custody Yes
 - (iii) if a third party has the custody Yes

The relevant provisions are embodied in: Civil Code Article 877.

The text of these provisions is as follows:

Article 877. Previously mentioned (See Chapter V. III. Question 1)

Observation: The Penal Code has the provisions governing the crimes of desertion.

Ref.

Penal Code Article 217. A person, who deserts another who is in need of assistance by reason of old age, juvenility, deformity, or illness, shall be punished with penal servitude for not more than one year.

Article 218. A person, who deserts an aged person, juvenile, or deformed or sick person whom he is obliged to protect, or who fails to give to such person necessary protection for existence, shall be punished with penal servitude for not less than three months nor more than five years.

When the crime has been committed against a lineal ascendant of the offender, or of the spouse thereof, the offender shall be punished with penal servitude for not less than six months nor more than seven years.

9. Does

- (a) the mother
- (b) the father

have authority over a child born out of wedlock as to

- (i) education
- (ii) religious education Not applicable.
- (iii) power to restrain and correct
- (iv) right to give her/his consent for the adoption of the child born out of wedlock
- (v) right to give her/his consent to the marriage of the child born out of wedlock?

The mother has the authority, but the father may have it by agreement of parents.

See the relevant provisions.

The relevant provisions are embodied in: Civil Code Article 818, 819 para. 1, 820, 737, 797 and 798.

The text to these provisions is as follows:

Article 737. Previously mentioned (See Chapter I. II. Question 3)

Article 797. If the person to be adopted is under fifteen years of age, his legal representative can assent to the adoption in his place.

Article 798. In order to adopt a minor child, the leave of the Family Court shall be obtained; however, this shall not apply when a person adopts any of the lineal descendants of his own or of the other spouse.

Article 818, 819 and 820. Previously mentioned (See Chapter V. I. Question 1)

10. May

- (a) the mother Yes

(b) the father Yes, provided the father has recognized the child.
inherit from a child born out of wedlock in case of intestacy?

The relevant provisions are embodied in: Civil Code Article 889.

The text of these provisions is as follows: Previously mentioned (See Chapter V. IV.
Question 3)

11. May a child born out of wedlock inherit in case of intestacy

- (a) from his mother Yes
- (b) from his father Yes
- (c) from any relations of his parents, Yes

and to what extent (as compared to the rights of legitimate children)?

The share of lineal descendant who is not legitimate is one half of that of legitimate children.

The relevant provisions are embodied in: Civil Code Article 887 and 900 item (4)

The text of these provisions is as follows:

Article 887. Previously mentioned (See Chapter V. IV. Question 3)

Article 900 item (4). Where there exist two or more lineal descendants, or lineal ascendants, or brothers and sisters, their respective shares in the succession shall be equal. However, the share in the succession of lineal descendant who is not legitimate shall be one half of that of a legitimate lineal descendant, and the share in the succession of any of the brothers and sisters whose father or mother alone is the same with that of person succeeded to, shall be one half of the share of any of the brothers and sisters whose father and mother both are the same with those of the person succeeded to.

12. Are there any limits as to the rights of a child born out of wedlock to inherit under a will made by

- (a) his mother
- (b) his father
- (c) any relations of his parents? No

The relevant provisions: None

Chapter VII. Adoption

1. Do

- (a) unmarried women
- (b) unmarried men

have an equal right to adopt a child? Yes

The relevant provisions are embodied in: Civil Code Article 792.

The text of these provisions is as follows:

Article 792. Any person who has attained majority may adopt another.

2. Does

- (a) the wife.
- (b) the husband

need the consent of her/his spouse to adopt a child? They must adopt a child jointly.

The relevant provisions are embodied in: Civil Code Article 795.

The text of these provisions is as follows:

Article 795. A person who has a spouse may not effect adoption except jointly with the spouse. However, this shall not apply in cases where husband or wife adopts any of the children of the other spouse.

3. Does

- (a) the adopted daughter
 - (b) the adopted son
- bear the name of
- (i) the adoptive mother
 - (ii) the adoptive father?

He/she bears the name of the adoptive parent or parents.

The relevant provisions are embodied in: Civil Code Article 810.

The text of these provisions is as follows:

Article 810. An adopted child assumes the surname of the parent by adoption.

4. Must

- (a) the mother
- (b) the father
- (c) both parents

give consent to the adoption by a third party of her/his their minor child? Yes. See the relevant provisions.

The relevant provisions are embodied in: Civil Code Article 797 and 798.

The text of these provisions is as follows: Previously mentioned (See Chapter VI. Question 10)

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