

Contents

Part I Adoption, Society and the Law: The Common Law Context

1	Adoption: Concept, Principles and Social Construct	3
1.1	Introduction	3
1.2	Definitional Matters and Related Concepts.....	3
1.2.1	Legal Definition	4
1.2.2	Concepts.....	4
1.3	Social Construct	6
1.3.1	Adoption and the Inheritance Motive	6
1.3.2	Adoption and the Kinship Motive.....	7
1.3.3	Adoption and the Allegiance Motive	7
1.3.4	Adoption and the 'Extra Pair of Hands' Motive	8
1.3.5	Adoption and the Welfare Motive.....	8
1.3.6	Adoption and the Childless Couple Motive.....	9
1.4	Adoption in England: Historical Context.....	10
1.4.1	The Common Law: Parental Rights and Duties.....	10
1.4.2	The Poor Laws	13
1.4.3	Pressures for Change; End of the Nineteenth Century	15
1.5	Adoption Legislation: Evolving Principles and Policy	17
1.5.1	The Adoption Act 1926.....	17
1.5.2	The Adoption of Children (Regulation) Act 1939.....	18
1.5.3	The Adoption Act 1949.....	19
1.5.4	The Children Act 1975.....	19
1.5.5	The Adoption Act 1976.....	20
1.5.6	The Children Act 1989.....	20
1.5.7	Adoption (Intercountry Aspects) Act 1999.....	21
1.5.8	The Adoption and Children Act 2002	21

1.6	Legal Context: Evolution of a Modern Statutory Process.....	23
1.6.1	The ‘Contract’	24
1.6.2	The Parties	25
1.6.3	The Principles	29
1.6.4	Contract or Gift Relationship.....	34
1.7	Conclusion.....	35
2	The Changing Face of Adoption in the United Kingdom.....	39
2.1	Introduction	39
2.2	Modern Adoption Trends in the United Kingdom	40
2.2.1	From Traditional Model to Modern Variants	40
2.2.2	Causes of Change.....	47
2.2.3	Consequences for the Adoption Process	51
2.3	Family Adoption.....	56
2.3.1	Trends in Annual Orders	57
2.3.2	Adoption by Birth Parent and Spouse.....	58
2.3.3	Adoption by Grandparent	58
2.3.4	Other Relative Adoptions.....	59
2.3.5	The Welfare Principle, the Blood Link and Family Adoptions	59
2.4	Agency Adoption.....	61
2.4.1	Trends in Annual Orders	61
2.4.2	Voluntary Society Adoptions	62
2.4.3	Child Care Adoptions.....	62
2.4.4	The Welfare Principle and Agency Adoptions	70
2.5	Intercountry Adoptions.....	70
2.5.1	Trends in Annual Orders	70
2.5.2	Transracial Adoptions	71
2.5.3	The Welfare Principle and Intercountry Adoptions.....	71
2.6	A Coherent Legal Model for Adoption Practice	73
2.6.1	Classification of Adoption by Type.....	73
2.6.2	Social Role.....	74
2.6.3	Legal Functions.....	75
2.7	Conclusion.....	75
 Part II Developing International Benchmarks for Modern Adoption Law		
3	The Legal Functions of Adoption	79
3.1	Introduction	79
3.2	Regulating the Adoption Process	80
3.2.1	The Adoption Process	80
3.2.2	Role of the Judiciary or Other Determining Body.....	81
3.2.3	Role of Administrative Agencies	82

3.3	Thresholds for Entering the Adoption Process:	
	Eligibility and Suitability Criteria	83
3.3.1	The Child	84
3.3.2	The Birth Parent(s).....	85
3.3.3	The Adopters	86
3.4	Pre-placement Counselling.....	88
3.4.1	The Birth Parent(s).....	88
3.4.2	The Child	89
3.4.3	The Adopters	89
3.5	Placement Rights and Responsibilities	90
3.5.1	Placement Decision.....	90
3.5.2	Placement Supervision.....	91
3.6	The Hearing and Issue of Order(s).....	91
3.6.1	Where Consent Is Available.....	91
3.6.2	Where Consent Is Not Available.....	91
3.6.3	The Orders Available.....	92
3.7	Thresholds for Exiting the Adoption Process.....	93
3.7.1	The Welfare Interests of the Child	93
3.8	The Outcome of the Adoption Process.....	94
3.8.1	Adoption Orders and Third Party Applicants	94
3.8.2	Adoption Orders and First Party Applicants.....	95
3.8.3	Adoption Orders and Relatives	95
3.8.4	Other Orders.....	95
3.9	The Effect of an Adoption Order.....	96
3.9.1	Effect on the Child.....	96
3.9.2	Effect on the Birth Parent(s)	96
3.9.3	Effect on the Adopters.....	97
3.10	Post-adoption Support Services	97
3.10.1	Child Care Adoptions.....	98
3.11	Information Disclosure, Tracing and Re-unification Services	98
3.11.1	Information Rights	99
3.11.2	Information Disclosure Duties.....	99
3.11.3	Tracing and Re-unification Services	100
3.12	Adoption Within Family Law.....	100
3.12.1	Adoption in Its Traditional Family Law Context.....	101
3.12.2	Adoption in the Context of Modern Public Law Proceedings	102
3.12.3	Adoption in the Context of Modern Private Law Proceedings	102
3.12.4	Adoption and Contemporary Family Law Principles	103
3.13	Conclusion.....	105

4	Adoption, the Conventions and the Impact of the European Court of Human Rights.....	107
4.1	Introduction	107
4.2	The United Nations Convention on the Rights of the Child 1989.....	108
4.2.1	Article 2—The Non-discrimination Principle	109
4.2.2	Article 3—The Best Interests of the Child Is a Primary Consideration.....	109
4.2.3	Article 7—The Right of the Child to Know Their Identity	109
4.2.4	Article 9—The Right of the Child Not to Be Separated from His or Her Parents.....	110
4.2.5	Article 12—The Right of the Child to Express an Opinion in Administrative and Judicial Proceedings	110
4.2.6	Articles 13 and 14—The Right of the Child to Self-Determination, Dignity, Respect, Non-interference and the Right to Make Informed Decisions.....	110
4.2.7	Article 18—The Primary Responsibility for the Upbringing of a Child Rests with the Parent(s)	111
4.2.8	Article 20—State Duty to Protect Child Without Family	111
4.2.9	Article 21—Adoption Shall Ensure that the Best Interests of the Child Shall Be the Paramount Consideration	112
4.2.10	Article 25—Adoption Placements Must Be Subject to Periodic Review.....	113
4.2.11	Article 27—Every Child Is Entitled to a Reasonable Standard of Living	113
4.2.12	Article 35—Prevention of Trafficking in Children	113
4.2.13	Articles 44 and 45—Every State Is Required to Audit, Progress and Publish a Report	114
4.3	The European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 and Rulings of the ECtHR.....	114
4.3.1	Article 6—Everyone Is Entitled to a Fair and Public Hearing Within a Reasonable Time by an Independent and Impartial Tribunal Established by Law	116
4.3.2	Article 8—The Right to Respect for Private and Family Life.....	118

4.3.3	Article 12—The Right to Marry and Found a Family	135
4.3.4	Article 14—Prohibition of Discrimination	135
4.4	Conclusion.....	136
5	Intercountry Adoption and The Hague Convention.....	137
5.1	Introduction	137
5.2	Definitions	138
5.2.1	Full and Simple Adoptions.....	138
5.2.2	Intercountry Adoption.....	139
5.2.3	Overseas Adoption.....	139
5.3	Background	141
5.3.1	Needs.....	141
5.3.2	The Countries.....	145
5.4	The Law: Developments Leading to an International Framework.....	148
5.4.1	The Common Law	148
5.4.2	The European Convention for The Protection of Human Rights and Fundamental Freedoms 1950.....	149
5.4.3	The Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoption 1965.....	149
5.4.4	The European Convention on the Adoption of Children 1967	150
5.4.5	Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally 1986	150
5.4.6	The United Nations Convention on the Rights of the Child 1989	151
5.4.7	The Hague Conference on Private International Law	153
5.5	Contemporary Intercountry Adoption: Policy and Principles	155
5.5.1	A Controversial Policy	155
5.5.2	Some Guiding Principles	157
5.6	Contemporary Intercountry Adoption Law: The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption 1993	162
5.6.1	The Hague Convention: Aims and Objectives	163
5.6.2	The Hague Convention: Principles	165
5.6.3	The Hague Convention: Procedures.....	168
5.6.4	The Hague Convention: Outcomes	170
5.6.5	The Hague Convention: Limitations.....	170

5.7	The European Convention on the Adoption of Children (Revised) 2008	171
5.7.1	The Council of Europe.....	173
5.8	Contemporary Intercountry Adoption Practice	174
5.8.1	An Overview: The Trends.....	174
5.8.2	Sending Countries.....	177
5.8.3	Receiving Countries.....	178
5.8.4	Some Issues in Contemporary Practice.....	179
5.9	Conclusion.....	186
Part III Contemporary Law, Policy and Practice in a Common Law Context		
6	England & Wales.....	191
6.1	Introduction	191
6.2	Background	192
6.2.1	The Social Context Giving Rise to Adoption.....	192
6.2.2	Resulting Trends in Types of Adoption.....	196
6.2.3	Emerging Characteristics of the Adoption Process.....	199
6.3	Overview of Adoption Law and Policy	203
6.3.1	Contemporary Adoption Related Legislation	203
6.3.2	International Law	207
6.3.3	Adoption Principles, Policy and Alternatives	207
6.4	Regulating the Adoption Process	210
6.4.1	Length and Breadth of the Process	211
6.4.2	Role of Adoption Agencies and Other Administrative Bodies.....	211
6.4.3	Role of the Determining Body.....	214
6.4.4	The Registrar General	216
6.5	Threshold for Entering the Adoption Process: Eligibility and Suitability Criteria.....	216
6.5.1	The Child	216
6.5.2	The Birth Parent(s).....	219
6.5.3	The Adopters: Eligibility and Suitability Criteria	221
6.6	Pre-placement Counselling.....	223
6.6.1	Wishes, Welfare and Safety of the Child	224
6.7	Placement Rights and Responsibilities	224
6.7.1	Authority to Place	225
6.7.2	Placement Supervision.....	230
6.8	The Hearing	231
6.8.1	Where Consent Is Available.....	231
6.8.2	Where Consent Is Not Available.....	232
6.9	Thresholds for Exiting the Adoption Process.....	235
6.9.1	The Welfare Interests of the Child	235
6.9.2	Representing the Child's Welfare Interests	238

6.10	The Outcome of the Adoption Process.....	238
6.10.1	Adoption Order	238
6.10.2	Alternative Orders.....	240
6.11	The Effect of an Adoption Order.....	242
6.11.1	The Child	242
6.11.2	The Birth Parent(s).....	243
6.11.3	The Adopters	244
6.11.4	Dissolution of an Adoption Order.....	244
6.12	Post-adoption Support Services	245
6.12.1	Adoption Support Services	245
6.13	Information Disclosure, Tracing and Re-unification Services	246
6.13.1	Information Disclosure	246
6.13.2	Adoption Registers.....	246
6.13.3	Conditional Access.....	247
6.13.4	Tracing and Re-unification Services	248
6.14	Conclusion.....	250
7	Ireland	253
7.1	Introduction	253
7.2	Background	254
7.2.1	The Social Context Giving Rise to Adoption.....	255
7.2.2	Resulting Trends in Types of Adoption.....	261
7.2.3	Emerging Characteristics of the Adoption Process	266
7.3	Overview of Adoption Law and Policy	269
7.3.1	Contemporary Adoption and Related Legislation.....	270
7.3.2	International Law	272
7.3.3	Adoption Principles, Policy and Alternatives	272
7.4	Regulating the Adoption Process	274
7.4.1	Length and Breadth of the Process	274
7.4.2	Role of Adoption Agencies and Other Administrative Agencies	275
7.4.3	Role of the Determining Body.....	277
7.4.4	The Registrar General	277
7.5	Threshold for Entering the Adoption Process: Eligibility and Suitability Criteria.....	278
7.5.1	The Child	278
7.5.2	The Birth Parents	279
7.5.3	The Adopters: Eligibility and Suitability Criteria	281
7.6	Pre-placement Counselling.....	284
7.7	Placement Rights and Responsibilities	284
7.7.1	Authority to Place	285
7.7.2	Placement Supervision.....	286

7.8	The Hearing	286
7.8.1	Where Consent Is Available	286
7.8.2	Where Consent Is Not Available	287
7.9	Thresholds for Exiting the Adoption Process.....	289
7.9.1	The Welfare Interests of the Child	289
7.9.2	Representing the Child’s Welfare Interests	291
7.10	The Outcome of the Adoption Process.....	291
7.10.1	Adoption Order	291
7.10.2	Alternative Orders.....	293
7.11	The Effect of an Adoption Order.....	293
7.11.1	The Child	294
7.11.2	The Birth Parent(s).....	294
7.11.3	The Adopters	295
7.11.4	Dissolution of an Adoption Order.....	296
7.12	Post-adoption Support Services	297
7.12.1	Adoption Support Services	297
7.13	Information Disclosure, Tracing and Re-unification Services	298
7.13.1	Information Disclosure	298
7.13.2	Adoption Registers.....	300
7.13.3	Conditional Access.....	302
7.13.4	Tracing and Re-unification Services	302
7.14	Conclusion.....	305
8	The United States of America	307
8.1	Introduction	307
8.2	Background	308
8.2.1	The Social Context Giving Rise to Adoption.....	308
8.2.2	Resulting Trends in Types of Adoption.....	312
8.2.3	Emerging Characteristics of the Adoption Process.....	321
8.3	Overview of Modern Adoption Law and Policy	330
8.3.1	Contemporary Adoption Related Legislation	332
8.3.2	International Law	338
8.3.3	Adoption Principles, Policy and Alternatives	339
8.4	Regulating the Adoption Process	341
8.4.1	Length and Breadth of the Process	341
8.4.2	Role of Adoption Agencies and Other Administrative Bodies.....	341
8.4.3	Role of the Determining Body.....	344
8.4.4	Registrar	344
8.5	Thresholds for Entering the Adoption Process: Eligibility and Suitability Criteria.....	344
8.5.1	The Child	345
8.5.2	The Birth Parent(s).....	345
8.5.3	The Adopters; Eligibility and Suitability Criteria.....	347

8.6	Pre-placement Counselling.....	352
8.7	Placement Rights and Responsibilities	352
	8.7.1 Authority to Place	352
	8.7.2 Placement Supervision.....	353
8.8	The Hearing	353
	8.8.1 Where Consent Is Available	353
	8.8.2 Where Consent Is Not Available	353
8.9	Thresholds for Exiting the Adoption Process.....	354
	8.9.1 The Welfare Interests of the Child	354
	8.9.2 Representing the Child's Welfare Interests	355
8.10	The Outcome of the Adoption Process.....	355
	8.10.1 Adoption Order	355
	8.10.2 Alternative Orders.....	356
8.11	The Effect of an Adoption Order.....	357
	8.11.1 The Child	357
	8.11.2 The Birth Parent(s).....	357
	8.11.3 The Adopters	358
	8.11.4 Dissolution of an Adoption Order.....	358
8.12	Post-adoption Support Services	358
	8.12.1 Adoption Support Services	358
8.13	Information Disclosure, Tracing and Re-unification Services	359
	8.13.1 Information Disclosure	359
	8.13.2 Adoption Registers.....	360
	8.13.3 Conditional Access.....	361
	8.13.4 Tracing and Re-unification Services	362
8.14	Conclusion.....	363
9	Canada	365
9.1	Introduction	365
9.2	Background	366
	9.2.1 The Social Context Giving Rise to Adoption.....	367
	9.2.2 Resulting Trends in Types of Adoption.....	373
	9.2.3 Emerging Characteristics of the Adoption Process	377
9.3	Overview of Adoption Law and Policy	384
	9.3.1 Contemporary Adoption Related Legislation	384
	9.3.2 International Law	384
	9.3.3 Adoption Principles, Policy and Alternatives	384
9.4	Regulating the Adoption Process	386
	9.4.1 Length and Breadth of the Process	386
	9.4.2 Role of Adoption Agencies and Other Administrative Bodies.....	386
	9.4.3 Role of the Determining Body.....	388
	9.4.4 The Registrar General	388

9.5	Threshold for Entering the Adoption Process: Eligibility and Suitability Criteria	388
9.5.1	The Child	388
9.5.2	The Birth Parents	389
9.5.3	The Adopters: Eligibility and Suitability Criteria	391
9.6	Pre-placement Counselling.....	393
9.7	Placement Rights and Responsibilities	393
9.7.1	Authority to Place	393
9.7.2	Placement Supervision.....	395
9.8	The Hearing	395
9.8.1	Where Consent Is Available.....	396
9.8.2	Where Consent Is Not Available.....	396
9.9	Thresholds for Exiting the Adoption Process.....	396
9.9.1	The Welfare Interests of the Child	397
9.9.2	Representing the Child's Welfare Interests	399
9.10	The Outcome of the Adoption Process.....	399
9.10.1	Adoption Order	399
9.10.2	Alternative Orders.....	400
9.11	The Effect of an Adoption Order.....	400
9.11.1	The Child	401
9.11.2	The Birth Parent(s).....	401
9.11.3	The Adopters	401
9.11.4	Dissolution of an Adoption Order.....	402
9.12	Post-adoption Support Services	402
9.12.1	Adoption Support Services	402
9.13	Information Disclosure, Tracing and Re-unification Services	403
9.13.1	Information Disclosure	403
9.13.2	Adoption Registers.....	403
9.13.3	Conditional Access.....	404
9.13.4	Tracing and Re-unification.....	405
9.14	Conclusion.....	407
10	Australia.....	409
10.1	Introduction	409
10.2	Background	410
10.2.1	The Social Context Giving Rise to Adoption.....	410
10.2.2	Resulting Trends in Types of Adoption.....	416
10.2.3	Emerging Characteristics of the Adoption Process	420
10.3	Overview of Adoption Law and Policy	425
10.3.1	Contemporary Adoption Related Legislation	426
10.3.2	International Law	427
10.3.3	Adoption Principles, Policy and Alternatives	427

10.4	Regulating the Adoption Process	430
10.4.1	Length and Breadth of Process	430
10.4.2	Role of Adoption Agencies and Other Administrative Bodies.....	430
10.4.3	Role of the Determining Body.....	431
10.4.4	Registrar General	431
10.5	Threshold for Entering the Adoption Process: Eligibility and Suitability Criteria.....	431
10.5.1	The Child	431
10.5.2	The Birth Parent(s).....	432
10.5.3	The Adopters: Eligibility and Suitability Criteria	433
10.6	Pre-placement Counselling.....	435
10.6.1	The Adoption Applications Committee	435
10.7	Placement Rights and Responsibilities	435
10.7.1	Authority to Place	435
10.7.2	Placement Supervision.....	436
10.8	The Hearing	436
10.8.1	Where Consent Is Available.....	437
10.8.2	Where Consent Is Not Available	437
10.9	Thresholds for Exiting the Adoption Process.....	438
10.9.1	The Welfare Interests of the Child	438
10.9.2	Representing the Child's Welfare Interests	439
10.10	The Outcome of the Adoption Process.....	440
10.10.1	Adoption Order	440
10.10.2	Alternative Orders.....	441
10.11	The Effect of an Adoption Order.....	442
10.11.1	The Child	442
10.11.2	The Birth Parent(s).....	443
10.11.3	The Adopters	443
10.11.4	Dissolution of an Adoption Order.....	443
10.12	Post-adoption Support Services	444
10.12.1	Adoption Support Services	444
10.13	Information Disclosure, Tracing and Re-unification Services	444
10.13.1	Information Disclosure	445
10.13.2	Adoption Registers.....	445
10.13.3	Conditional Access.....	446
10.13.4	Tracing and Re-unification Services	447
10.14	Conclusion.....	448
11	New Zealand	451
11.1	Introduction	451
11.2	Background	451
11.2.1	The Social Context Giving Rise to Adoption.....	452
11.2.2	Resulting Trends in Types of Adoption.....	458
11.2.3	Emerging Characteristics of the Adoption Process.....	460

11.3	Overview of Adoption Law and Policy	464
	11.3.1 Contemporary Adoption Related Legislation	465
	11.3.2 International Law	466
	11.3.3 Adoption Principles, Policy and Alternatives	467
11.4	Regulating the Adoption Process	470
	11.4.1 Length and Breadth of the Process	470
	11.4.2 Role of Adoption Agencies and Other Administrative Bodies.....	470
	11.4.3 Role of the Determining Body.....	471
	11.4.4 The Registrar General	471
11.5	Threshold for Entering the Adoption Process: Eligibility and Suitability Criteria.....	472
	11.5.1 The Child	472
	11.5.2 The Birth Parents	472
	11.5.3 The Adopters: Eligibility and Suitability Criteria	473
11.6	Pre-placement Counselling.....	476
11.7	Placement Rights and Responsibilities	476
	11.7.1 Authority to Place	476
	11.7.2 Placement Supervision.....	477
11.8	The Hearing	478
	11.8.1 Where Consent Is Available.....	478
	11.8.2 Where Consent Is Not Available.....	479
11.9	Thresholds for Exiting the Adoption Process.....	479
	11.9.1 The Welfare Interests of the Child	480
	11.9.2 Representing the Child's Welfare Interests	481
11.10	The Outcome of the Adoption Process.....	481
	11.10.1 Adoption Order	481
	11.10.2 Alternative Orders.....	482
11.11	The Effect of an Adoption Order.....	482
	11.11.1 The Child	482
	11.11.2 The Birth Parent(s).....	483
	11.11.3 The Adopters	483
	11.11.4 Dissolution of an Adoption Order.....	483
11.12	Post-adoption Support Services	483
	11.12.1 Adoption Support Services	484
11.13	Information Disclosure, Tracing and Re-unification Services	484
	11.13.1 Information Disclosure	484
	11.13.2 Adoption Registers.....	485
	11.13.3 Conditional Access.....	486
	11.13.4 Tracing and Re-unification.....	487
11.14	Conclusion.....	488

Part IV Contemporary Law, Policy and Practice in a European Civil Law Context

12 Sweden	493
12.1 Introduction	493
12.2 Background	494
12.2.1 The Social Context Giving Rise to Adoption	494
12.2.2 Resulting Trends in Types of Adoption	500
12.2.3 Emerging Characteristics of the Adoption Process	502
12.3 Overview of Adoption Law and Policy	506
12.3.1 Contemporary Adoption Related Legislation	507
12.3.2 International Law	510
12.3.3 Adoption Principles, Policy and Alternatives	510
12.3.4 Adoption Alternatives: Long Term Fostering and Private Family Orders	511
12.4 Regulating the Adoption Process	511
12.4.1 Length and Breadth of the Process	511
12.4.2 Role of Adoption Agencies and other Administrative Agencies	512
12.4.3 Role of the Determining Body	512
12.4.4 The Registrar General	513
12.5 Threshold for Entering the Adoption Process: Eligibility and Suitability Criteria	513
12.5.1 The Child	513
12.5.2 The Birth Parent(s)	514
12.5.3 The Adopters: Eligibility and Suitability Criteria	515
12.6 Pre-placement Counselling	516
12.7 Placement Rights and Responsibilities	516
12.7.1 Authority to Place	517
12.7.2 Placement Supervision	517
12.8 The Hearing	517
12.8.1 Where Consent Is Available	518
12.8.2 Where Consent Is Not Available	518
12.9 Thresholds for Exiting the Adoption Process	518
12.9.1 The Welfare Interests of the Child	519
12.9.2 Representing the Child's Welfare Interests	519
12.10 The Outcome of the Adoption Process	520
12.11 The Effect of an Adoption Order	520
12.11.1 The Child	520
12.11.2 The Birth Parent(s)	521
12.11.3 The Adopters	522
12.11.4 Dissolution of an Adoption Order	522

12.12	Post-adoption Support Services	522
12.12.1	Adoption Support Services	522
12.13	Information Disclosure, Tracing and Re-unification Services	522
12.13.1	Information Disclosure	523
12.13.2	Adoption Registers.....	523
12.13.3	Conditional Access.....	523
12.13.4	Tracing and Re-unification Services	523
12.14	Conclusion.....	524
13	France.....	525
13.1	Introduction	525
13.2	Background	526
13.2.1	The Social Context Giving Rise to Adoption.....	527
13.2.2	Resulting Trends in Types of Adoption.....	532
13.2.3	Emerging Characteristics of the Adoption Process	535
13.3	Overview of Adoption Policy and Law	539
13.3.1	Adoption Related Legislation	540
13.3.2	International Law	542
13.3.3	Adoption Principles, Policy and Alternatives	543
13.4	Regulating the Adoption Process	544
13.4.1	Length and Breadth of Process	544
13.4.2	Role of Adoption Agencies and Other Administrative Agencies	544
13.4.3	Role of the Determining Body.....	546
13.4.4	The Registrar General.....	547
13.5	Thresholds for Entering the Adoption Process: Eligibility and Suitability Criteria	547
13.5.1	The Child	547
13.5.2	The Birth Parent(s).....	549
13.5.3	The Adopters: Eligibility and Suitability Criteria	551
13.6	Pre-placement Counselling.....	553
13.7	Placement Rights and Responsibilities	554
13.7.1	Authority to Place	554
13.7.2	Placement Supervision.....	555
13.8	The Hearing	555
13.8.1	Where Consent Is Available.....	556
13.8.2	Where Consent Is Not Available.....	557
13.9	Thresholds for Exiting the Adoption Process.....	557
13.9.1	The Welfare Interests of the Child	557
13.9.2	Representing the Child's Welfare Interests	558
13.10	The Outcome of the Adoption Process.....	558
13.10.1	Adoption Order	558
13.10.2	Alternative Orders.....	559

13.11	The Effect of an Adoption Order.....	559
13.11.1	The Child	559
13.11.2	The Birth Parent(s).....	560
13.11.3	The Adopters	560
13.11.4	Dissolution of an Adoption Order.....	561
13.12	Post-adoption Support Services	561
13.13	Information Disclosure, Tracing and Re-unification Services	561
13.13.1	Information Disclosure	562
13.13.2	Adoption Registers.....	563
13.13.3	Conditional Access.....	563
13.13.4	Tracing and Re-unification Services	563
13.14	Conclusion.....	564
14	Germany	565
14.1	Introduction	565
14.2	Background	566
14.2.1	The Social Context Giving Rise to Adoption.....	566
14.2.2	Resulting Trends in Types of Adoption.....	570
14.2.3	Emerging Characteristics of the Adoption Process.....	573
14.3	Overview of Adoption Law and Policy	576
14.3.1	Contemporary Adoption Related Legislation	576
14.3.2	International Law	578
14.3.3	Adoption Principles, Policy and Alternatives	578
14.4	Regulating the Adoption Process	579
14.4.1	Length and Breadth of the Process	579
14.4.2	Role of Adoption Agencies and Other Administrative Bodies.....	580
14.4.3	Role of the Determining Body.....	581
14.4.4	The Registrar General	581
14.5	Threshold for Entering the Adoption Process: Eligibility and Suitability Criteria	582
14.5.1	The Child	582
14.5.2	The Birth Parents	582
14.5.3	The Adopters: Eligibility and Suitability Criteria	584
14.6	Pre-placement Counselling.....	586
14.7	Placement Rights and Responsibilities	586
14.7.1	Authority to Place	586
14.7.2	Placement Supervision.....	588
14.8	The Hearing	588
14.8.1	Where Consent Is Available.....	589
14.8.2	Where Consent Is Not Available.....	590
14.9	Thresholds for Exiting the Adoption Process.....	590
14.9.1	The Welfare Interests of the Child	590
14.9.2	Representing the Child's Welfare Interests	592

14.10	The Outcome of the Adoption Process.....	592
14.10.1	Adoption Order	592
14.10.2	Alternative Orders.....	593
14.11	The Effect of an Adoption Order.....	593
14.11.1	The Child	594
14.11.2	The Birth Parent(s).....	594
14.11.3	The Adopters	595
14.11.4	Dissolution of an Adoption Order.....	595
14.12	Post-adoption Support Services	596
14.12.1	Adoption Support Services	596
14.13	Information Disclosure, Tracing and Re-Unification Services	596
14.13.1	Information Disclosure	597
14.13.2	Adoption Registers.....	597
14.13.3	Conditional Access.....	597
14.13.4	Tracing and Re-unification Services	598
14.14	Conclusion.....	598

Part V Contemporary Law, Policy and Practice in Asia

15	The Adoption Process in an Islamic Context.....	603
15.1	Introduction	603
15.2	Background	605
15.2.1	The Social Context Giving Rise to Adoption.....	606
15.2.2	Resulting Trends in Types of Adoption.....	611
15.2.3	Emerging Characteristics of the Adoption Process.....	613
15.3	Overview of Adoption Law and Policy	617
15.3.1	Contemporary Adoption and Related Legislation.....	617
15.3.2	International Law	619
15.3.3	Adoption Principles, Policy and Alternatives	619
15.4	Regulating the Adoption Process	621
15.4.1	Length and Breadth of Process	622
15.4.2	Role of Adoption Agencies and Other Administrative Agencies	622
15.4.3	Role of the Determining Body.....	622
15.5	Threshold for Entering the Adoption Process: Eligibility and Suitability Criteria	623
15.5.1	The Child	623
15.5.2	The Birth Parent(s).....	624
15.5.3	The Adopters: Eligibility and Suitability Criteria	624
15.6	Pre-placement Counselling.....	626
15.7	Placement Rights and Responsibilities	626
15.8	The Hearing	626
15.8.1	Where Consent Is Available.....	626
15.8.2	Where Consent Is Not Available.....	627

15.9	Thresholds for Exiting the Adoption Process.....	627
15.9.1	The Welfare Interests of the Child	627
15.9.2	Representing the Child's Welfare Interests	628
15.10	The Outcome of the Adoption Process.....	628
15.10.1	Adoption Order	628
15.10.2	Alternative Orders.....	629
15.11	The Effect of an Adoption Order.....	629
15.11.1	The Child	629
15.11.2	The Birth Parent(s).....	631
15.11.3	The Adopters	632
15.11.4	Dissolution of an Adoption Order.....	632
15.12	Post-adoption Support Services	633
15.13	Information Disclosure, Tracing and Re-unification Services	633
15.13.1	Information Disclosure	633
15.13.2	Tracing and Re-unification Services	633
15.14	Conclusion.....	634
16	Japan.....	637
16.1	Introduction	637
16.2	Background	638
16.2.1	The Social Context Giving Rise to Adoption.....	639
16.2.2	Resulting Trends in Types of Adoption.....	647
16.2.3	Emerging Characteristics of the Adoption Process	650
16.3	Overview of Adoption Law and Policy	653
16.3.1	Contemporary Adoption and Related Legislation.....	653
16.3.2	International Law	657
16.3.3	Adoption Principles, Policy and Alternatives	657
16.4	Regulating the Adoption Process	659
16.4.1	Length and Breadth of Process	659
16.4.2	Role of Adoption Agencies and Other Administrative Agencies	660
16.4.3	Role of the Determining Body.....	662
16.4.4	The Registrar.....	662
16.5	Threshold for Entering the Adoption Process: Eligibility and Suitability Criteria	663
16.5.1	The Adoptee	663
16.5.2	The Birth Parent(s).....	664
16.5.3	The Adopters: Eligibility and Suitability Criteria	665
16.6	Pre-placement Counselling.....	666
16.7	Placement Rights and Responsibilities	667
16.7.1	Authority to Place	667
16.7.2	Placement Supervision.....	669

16.8	The Hearing	669
16.8.1	Where Consent Is Available	670
16.8.2	Where Consent Is Not Available	671
16.8.3	Application to the Family Court	671
16.9	Thresholds for Exiting the Adoption Process.....	672
16.9.1	Welfare Interests	672
16.9.2	Representing the Child’s Welfare Interests	673
16.10	The Outcome of the Adoption Process.....	674
16.10.1	Adoption Orders.....	674
16.10.2	Alternative Orders.....	675
16.10.3	No Order	675
16.11	The Effect of an Adoption Order.....	675
16.11.1	The Child/Adoptee.....	675
16.11.2	The Birth Parent(s).....	676
16.11.3	The Adopters	676
16.11.4	Dissolution of an Adoption Order.....	676
16.12	Post-adoption Support Services	677
16.13	Information Disclosure, Tracing and Re-unification Services.....	677
16.13.1	Information Disclosure	678
16.13.2	Adoption Registers.....	678
16.13.3	Conditional Access.....	680
16.13.4	Tracing and Re-unification Services	680
16.14	Conclusion.....	681
17	China	683
17.1	Introduction	683
17.2	Background	684
17.2.1	The Social Context Giving Rise to Adoption.....	685
17.2.2	Resulting Trends in Types of Adoption.....	692
17.2.3	Emerging Characteristics of the Adoption Process.....	697
17.3	Overview of Adoption Law and Policy	701
17.3.1	Contemporary Adoption Related Legislation	701
17.3.2	International Law	702
17.3.3	Adoption Principles, Policy and Alternatives	702
17.4	Regulating the Adoption Process	703
17.4.1	Length and Breadth of the Process	704
17.4.2	Role of Adoption Agencies and Other Administrative Agencies	704
17.4.3	Role of the Determining Body.....	705
17.4.4	The Registrar General	706
17.5	Threshold for Entering the Adoption Process: Eligibility and Suitability Criteria.....	707
17.5.1	The Child	707
17.5.2	The Birth Parents	708
17.5.3	The Adopters: Eligibility and Suitability Criteria.....	708

17.6	Pre-placement Counselling.....	710
17.7	Placement Rights and Responsibilities	710
	17.7.1 Authority to Place	711
	17.7.2 Placement Supervision.....	712
17.8	The Hearing	712
	17.8.1 Where Consent Is Available	712
	17.8.2 Where Consent Is Not Available	713
17.9	Thresholds for Exiting the Adoption Process.....	713
	17.9.1 The Welfare Interests of the Child	713
17.10	The Outcome of the Adoption Process.....	714
	17.10.1 Adoption Order	714
	17.10.2 Alternative Orders.....	715
17.11	The Effect of an Adoption Order.....	715
	17.11.1 The Child	715
	17.11.2 The Birth Parent(s).....	716
	17.11.3 The Adopters	716
	17.11.4 Dissolution of an Adoption Order.....	716
17.12	Post-adoption Support Services	717
	17.12.1 Adoption Support Services	717
17.13	Information Disclosure, Tracing and Re-unification Services	718
	17.13.1 Information Disclosure	718
	17.13.2 Adoption Registers.....	719
	17.13.3 Conditional Access.....	719
	17.13.4 Tracing and Re-unification Services	719
17.14	Conclusion.....	719

Part VI Contemporary Law, Policy and Practice in an Indigenous Peoples Context

18	Intraculture Adoption.....	723
18.1	Introduction	723
18.2	Indigenous People and International Law	724
	18.2.1 Provisions with Generic Application	724
	18.2.2 Provisions Specific to Indigenous People	727
18.3	Australia: The Indigenous or Aboriginal People	728
	18.3.1 Background.....	728
	18.3.2 Adoption as an Imposed System.....	729
	18.3.3 Contemporary Adoption Law and the Aboriginal People	732
18.4	New Zealand: The Māori.....	739
	18.4.1 Background.....	739
	18.4.2 Legislative History	741
	18.4.3 Contemporary Adoption Law and the Māori	744

18.5	Canada: The Inuit	749
18.5.1	Background	749
18.5.2	Contemporary Adoption Law and the Inuit	751
18.6	Conclusion.....	760
Part VII The Influence of Politics		
19	Politics and a Regulatory Regime for Adoption.....	765
19.1	Introduction	765
19.2	Adoption and a Regulatory Regime	766
19.2.1	A Regulatory Regime.....	766
19.2.2	The Process	768
19.2.3	Rights of the Parties	771
19.2.4	The Order Made.....	773
19.3	Adoption as a Public Social Service.....	775
19.3.1	Adoption and Family Planning	775
19.3.2	The Unadopted.....	776
19.3.3	Post-adoption Support and Services	779
19.3.4	Post-adoption Information Rights.....	780
19.4	Adoption and Human Rights: Regulating for Structural Faults.....	781
19.4.1	International Conventions	781
19.4.2	Human Rights and Domestic Adoption	782
19.4.3	Human Rights and Intercountry Adoption.....	782
19.4.4	Equality Issues and Adoption.....	785
19.5	Adoption in a Family Law Context.....	786
19.5.1	Key Family Law Principles.....	786
19.5.2	Convention Law, Family Law & Adoption: Balancing Public and Private Interests.....	789
19.6	Conclusion.....	790
20	Politics and a Contemporary Social Role for Adoption	793
20.1	Introduction	793
20.2	Politics and the Social Role of Adoption	793
20.2.1	Historical Perspectives.....	794
20.2.2	Adoption and Religion.....	795
20.2.3	Contemporary Perspectives.....	798
20.3	Fixing Re-configured Families: Step, Kinship and Same Sex Adoptions.....	800
20.3.1	Step-Adoption	800
20.3.2	Kinship Adoption	802
20.3.3	Same Sex Adoption.....	802
20.4	Child Care Adoption.....	802
20.4.1	State Policy for Coercive Adoption.....	803
20.4.2	State Policy Against Coercive Adoption	804
20.4.3	Correlation Between Children in Care and ICA.....	804

Contents	xxix
20.5 Intercountry Adoption	804
20.5.1 Beginnings	805
20.5.2 Disaster Relief Response	805
20.5.3 Intercountry Adoption Policy Shaped by Domestic Pressures	806
20.5.4 Intercountry Adoption and Surrogacy.....	809
20.5.5 International Commercial Surrogacy and Trafficking	812
20.6 Adoption: An Increasingly Uncertain Social Construct	814
20.6.1 Adoption and Cultural Context.....	814
20.6.2 The Changing Social Role of Adoption.....	815
20.6.3 Broadening the Right of Access to Adoption.....	816
20.6.4 Broadening the Outcomes of Adoption.....	820
20.6.5 Broadening the Definition of Adoption.....	820
20.7 Conclusion.....	823
Conclusion	825
Aspects of Change	825
Indigenous Culture and Open Adoption	827
Index	831