We often hear that it is very difficult for people to adopt children from overseas.

(1) Read the notes on the relevant pages of your textbook and any other notes that your teacher has provided. What are the key aspects of the law concerning overseas / inter-country adoption?

(2) Read / view the following media (items A-D) and then write a structured response to this question:

_ Identify the issues of inter-country adoption._

_Comment on the benefits and limitations of inter-country adoption. Evaluate the effectiveness of the legal system in dealing with this sensitive issue._

(You may have found your own media items on this topic area that will aid you in developing a full response).

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**Media Item A – Tim’s new home team is playing game of its life**

*By Rachel Browne, October 24, 2004 - The Sun-Herald*

(Happy family ... Tim Gavel and Jenny Andrew with Eskedar and Eskinidir.)

Child-rearing is an amazing journey but when Tim Gavel and wife Jenny Andrew resolved to become parents, their decision took them to places they had never imagined.

Four weeks ago, the Canberra-based ABC Radio sports broadcaster and his wife arrived in the Ethiopian capital of Addis Ababa to meet their children for the first time.

It was a profoundly moving experience for the couple, who had spent two years and thousands of dollars in their quest to adopt two children.

“You would think, if you had been through this process for two years, you would be prepared, but nothing prepares you for the feeling you experience when you pick them up,” Gavel said of the moment he met daughter Eskedar, 4, and her brother Eskinidir, 2.
But the couple's journey has not been without its hurdles. Gavel admits he had reservations about becoming a parent via the invasive process of inter-country adoption.

"We got to the stage where we realised it was unlikely that we would have kids of our own because we were both in our 40s and time was running out," he said.

"One of the alternatives was adoption but I wasn't so sure about it . . . I'd had very little exposure to adoption and was not totally sure I was equipped to deal with it."

Having met Ethiopian runners in the course of covering track and field events and having admired their "wonderful nature", he decided to try to adopt from the African country.

Before the arrival of the children, his priority was work and he often spent a lot of time on the road covering sporting events for the ABC's Grandstand program.

"It was difficult for me because I had a lot of emotional barriers," he said. "I needed to bring them down to proceed with the adoption process. We had our lives analysed, there were police checks, medical checks, financial checks, all to determine whether we were appropriate parents. So all this information you would normally keep very private was suddenly exposed."

But as they play with Eskedar and Eskindir in their home, Gavel, 42, and Ms Andrew, 44, now believe it was a small price to pay.

"It was all worthwhile," Gavel said. "I'm glad I went through that process because it's achieved this incredible outcome."

Eskedar and Eskindir had been living with their grandmother and 14 others in one room in Addis Ababa, after both their biological parents died.

When their grandmother decided to relinquish them for adoption, she put them in a foster home, Koala House, named for the number of Australians who have found children there.

On top of the adjustment of becoming first-time parents, the couple also had to deal with the language barrier and extreme cultural differences.

Eskedar had effectively been a mother to Eskindir and was so protective of her younger sibling, she treated the new parents with initial suspicion.

"I gave her some space and eventually she grabbed my hand and everything was fine," Gavel said.

"When I started this process I wasn't sure if I was ready but now I think it's the best thing we have ever done as a couple."

Media Item B – The parent trap

Why does overseas adoption seem so easy for celebrities and so hard for everyone else? Madonna has done it. So have Nicole Kidman and Meg Ryan. Angelina Jolie is famous for it.

It’s not acting I’m talking about. It’s overseas adoption. And the big question is: why is it so easy for them, and so hard for ordinary folk in Australia? The answer is that celebrities who adopt from overseas aren’t applying within the Australian system.

Australia currently has the second lowest rate of overseas adoptions amongst developed countries. In fact, the number of adoptions in Australia has fallen drastically from a peak of almost 10,000 in 1971-72, to just 576 in 2004-05. While this drop has a lot to do with fewer Australian mothers putting their children up for adoption, it also speaks of an adoption system gone awry.

In the United States, adopting a child from overseas normally takes about nine months. Here, it can take more than six years. ABC journalist Tim Gavel knows only how arduous the process can be. In 2004, Gavel and his wife adopted two children from Ethiopia, but it took two years before they could finally bring them home. “In Australia, you wait until a child is allocated to you,” he told the Canberra Times. “You don’t pick or choose. It’s absolutely different to the whole Madonna thing,” he says.

In late 2005, a report by a House of Representatives’ standing committee, Overseas Adoption in Australia, found there was general attitude against intercountry adoption in government departments, ‘which [ranged] from indifference or lack of support to outright hostility’. The report stated that in NSW a department representative had told prospective parents they should consider fostering Australian children instead. And in Western Australia, parents were told they’d be better off donating money to developing countries.

“It seems to many prospective parents as if the government agencies responsible are screening out families, rather than screening them in,” says psychologist Trudy Rosenwald, who specialises in adoption issues and is herself a mother of two children adopted from overseas.

The problem is compounded by the lack of a national adoption system. “Each state and territory in Australia has its own procedure to follow when approving applicants,” says Ricky Brisson, Chief Executive Officer of Australian Families for Children. In fact, the policies vary so much there is different legislation concerning the minimum and maximum age prospective parents; whether singles, de facto or homosexual couples can apply; and, would you believe it, whether or not you have to be an Australian citizen!

A further difficulty for adoptive parents is that they aren’t provided with the same amount of government financial support as birth parents.
For example, many adoptive parents miss out on welfare payments like the maternity payment and the baby bonus, usually because their children are too old when they finally arrive in Australia.

And adoptive parents could do certainly with the extra cash. Peter Gogarty, a father of two children adopted from overseas, says overseas adoption already costs parents an average of more than $40,000. "Our financial needs are far greater than someone breastfeeding a baby in a cot, yet we get no financial support." He and his wife had to redraw on the equity of their home to foot their $75,000 bill. 'We have really weathered the storm of adoption,' he told the Sunday Telegraph.

While there's no doubt the Australian adoption system has plenty of room for improvement, it should be noted that some of the red tape is there for good reasons.

Unfortunately some parents in developing nations feel pressured to give their child a 'better life' in the western world. Shockingly, a number of parents are also hood-winked into adoption, or paid to give up their children.

In order to put a stop to such practices, The Hague Convention on Intercountry Adoption was established 'to protect children and their families against the risks of illegal, irregular, premature or ill-prepared adoptions abroad'. Australia signed the treaty in 1998, agreeing to play the role of gatekeeper with even greater consideration for the adopted child.

While there's no doubting the Convention's importance, its presence has made intercountry adoption more difficult; Australia can only deal with the limited number of nations that have also signed up. Yet as Australian actress Deborra-lee Furness argues, there's an easy solution to this problem. Many poor countries don't have the infrastructure to meet adoption standards and pursue membership of the Convention, so the Australian government should put their resources into helping these nations join. This will not only make adoption a safer practice world-wide, but also shorten Australian waiting-lists.

"It breaks my heart to think there are thousands of abandoned children overseas waiting for loving families to take them but the government is making it so hard," says Furness, who has two adopted children with husband Hugh Jackman. She has been a vocal advocate for change ever since. And recently her lobbying paid off when Prime Minister Kevin Rudd announced the formation of federal peak body, which will oversee the states so that they operate under the same rules.

This is a good start. But we need to get the ball rolling faster. As Furness warns, "every month we sit around discussing this, another child gets left behind in the paper trail, and hopeful parents give up."

Media Item C – Excerpts from: Workshop report on intercountry adoption: Interdisciplinary perspectives on Intercountry Adoption in Australia – History, Policy, Practice and Experience

Trends in the number of children sent by states of origin were based on their returns to the Hague Special Commission or on estimates derived from country data provided by the receiving states. The analysis concentrated on the period from 2004 to 2009 when estimated annual global numbers declined from 45,000 to 29,000, fewer than those recorded in 1998. (p. 2)

This panel concluded with a paper by Judy Cashmore (University of Sydney) ‘Making space for the voice and views of the child in Family Law’ in which key insights from practice and research in family law were brought to bear on adoption.

As Cashmore argued, the best interests of the child, children’s right to live with their families and to have continuing contact with their family members as well as their right to express and have their views taken into account about matters that affect them are key planks of the UN Convention on the Rights of the Child. In making decisions about children’s living arrangements and family composition - including adoption and foster placement and post-separation arrangements – children have experiences and perspectives that can inform the decision-making process and need to be taken into account, both in relation to their own circumstances and more generally in terms of adults’ understanding of children’s experiences and perspectives. This paper provided a valuable review of the relational and children’s rights arguments as well as insights from the experiences and perspectives of adopted children and young people.

The theme of the third panel was ‘Different ways of doing family’ and sought to bring critical perspectives from gay and lesbian studies to bear on considerations of ICA. In her paper, ‘Lesbian and gay parented families: structure, outcomes for children and implications for adoption law and policy’ Deborah Dempsey (Swinburne) discussed different types of lesbian- and gay-parented families, including those created through IVF, surrogacy and donor insemination. A brief overview of the now extensive literature indicating good developmental outcomes for children raised in same-sex couple families was provided; and the implications for adoption law and policy of lesbian- and gay-parented families formed through ART were considered in light of recent Australian and international research.
Patricia Fronek’s paper ‘The future of intercountry adoption: A paradigm shift for this century?’ argued that popular discourse that describes ICA has changed little since the 1950s. Increasingly evidence is mounting that necessitates a paradigm shift in how the international community conceptualises and responds to ICA. Outmoded thinking focuses solely on individual solutions for individual children. Approaches that address the structural issues that separate children from their families are called for. Currently the only overarching international framework for ICA is a legal one which is limited when applied to the prevention of family separation. Fronek argued for a shift in paradigm from the legalistic to the socioecological in managing ICA in the 21st century. This would entail, among other things, applying lessons learned from other arenas, such as health, to adoption; and would require a new international vision, strong policy leadership and intersectoral collaboration focussed on the needs and interests of children.

Also questioning the adequacy and child-centredness of international legal frameworks for ICA, Denise Cuthbert’s paper, Intercountry Adoption, the global care of children and the “failure of national politics” began with the assessment of legal scholar Kerry O’Halloran that ICA arises from a ‘failure of national politics’ in sending countries with which national politics in receiving countries are complicit.

Using this as a starting point, this paper asked whether the transnational instrument of The Hague Convention (1993), which is commonly viewed as an instrument which protects the rights of children, is sufficient to overcome the deficiencies in national politics of which O’Halloran writes. It concluded that the Hague Convention, while commendable in many respects, is destined to reproduce the failures of national politics that give rise to ICA, rather than overcoming them and as a result is compromised in its protection of the rights of children.

Hague is historically, philosophically and instrumentally complicit in the politics which endorse ICA and work to ensure its continuation. Its presumptive bias in favour of ICA leads to it departing significantly from the United Nations Convention on the Rights of the Child (1989). The Hague Convention works to ensure the rights of children within ICA, and not their rights per se. In conclusion, Cuthbert argued, the global care of children requires a more robust and child-focused international legal framework than that provided by Hague. (pp. 4-5)

In her paper ‘Transnational Adoptive Parents in Australia: Cosmopolitan Horizons, Cross-Border Ties and Issues of Race,’ Willing examined the life experiences and outlooks on diversity that ‘ordinary’ Australian transnationally adoptive parents bring to the practice.
It reported on research with 35 transnationally adoptive parents, exploring their memories and experiences in raising children whom they have adopted from various countries in Asia and also from Ethiopia. Willing finds that most parents in the study grapple with issues of racism and processes of White racial privilege that also shapes their lives and that of their families.

There also appear to be a lack of formal avenues for these parents to gain mentoring from people who share the racial and ethnic background of adoptees. She concludes that in the future, more attention needs to be given to issues of race in adoption education and post adoption support services, and for the inclusion of more people from diverse backgrounds in the development and delivery of such services. (P.5)

Using this as a starting point, the paper explored these complex issues of the care of ‘other people’s children’ by using examples from Australian intracountry foster care as a way to open up discussions about intercountry adoption and in particular the ethical responsibility that rests with birth parents to develop practices of kinship and belonging that both celebrate the ‘birth’ of the adoptive family, whilst honouring ongoing connections to birth families. The final panel session of the workshop presented voices and perspectives often missing from public discussions of ICA in Australia: the adoptee voice, and the perspectives and insights from other episodes of child removal in our history.

Early career researcher and independent scholar, Jessica Walton presented a paper, ‘Revisiting the “unknown”: What it means to be adopted from the perspectives of Korean adoptees’ on the adoptee experience. Intercountry adoption happens, she argued, along well-travelled international routes - as social workers bring children on planes to the waiting arms of adoptive parents in the receiving country and as adoptive parents fly to the birth country to return with their child. This familiar and pivotal moment in the adoption process has life-long implications for everyone involved. For adoptees, this moment in time is something that many work to make sense of through their own travels back to their birth country. Walton’s paper examined what being adopted means as it is experienced from the perspectives of Korean adoptees. In particular, it addressed the on-going challenge of reclaiming what is often a largely ‘unknown’ part of their identity and making it into something meaningful. In her paper,

‘Intercountry Adoption: Are we creating another stolen generation?’ Evelyn Robinson (Member, National Intercountry Adoption Advisory Group, NICAAG) reflected on the development of ICA in Australia in the contexts of domestic child adoption and the removal of Indigenous children.
She suggests that that ICA has proceeded without close scrutiny of the values which underpin the transfer of children through adoption from one family to another. Domestic adoption has been occurring in Australia for almost a hundred years. The vast majority of children adopted in Australia during this period were born to unmarried, unsupported mothers. Post adoption support services have existed in Australia for more than thirty years and remain an untapped source of information on the long term outcomes of adoption separation. Australia as a nation needs to heed the lessons of its own history more closely: we have experienced the removal of Aboriginal children and the British Child Migrants from their communities. The ethical viability of ICA, Robinson concluded, must be assessed with the benefit of the knowledge which we already have of past Australian experiences of adoption and family separation. (p.6)

Key resolutions from this forum were:

1. The need for better dissemination of information, including better briefing of the media, as to current and future trends in relation to ICA in order to bridge the gap between popular understandings as to the availability of children and current realities faced by those charged with administering the ICA program.

2. The need for public conversations, informed by research, focusing on the needs of children (as distinct from those of adults) in ICA.

3. Critical review of research and policy in ICA with respect to the on-going issues of identity for adoptees with the questions of whether adoption must come at such a high price for those adopted; whether more open arrangements, such as inter-country fostering or sponsorship, as well as more robust family preservation and poverty reduction strategies might be more appropriate responses to the needs of children globally.

4. The need for discussions at a policy level as to issues of citizenship for ICA children, particularly the possibility of dual citizenship. (p.7)


**Media Item D**

Watch the following YouTube video: [http://www.youtube.com/watch?v=TXVduUOn9Jl](http://www.youtube.com/watch?v=TXVduUOn9Jl)