

**ADOPTION**

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**A. Chapter Competencies**

*After studying chapter 15 the student should be able to:*

1. define custody, guardianship, ward, termination of parental rights, adoption, paternity, foster care, and stepparent.
2. list the four kinds of adoption: agency adoption, independent adoption, black market adoption, and equitable adoption.
3. describe the nature of an agency adoption.
4. describe the nature of an independent or private adoption and state why such adoptions are widely used.
5. describe the nature of a black market adoption, and why such adoptions are illegal.
6. state who is eligible to be adopted.
7. state the role of the following criteria or standards for determining when it is in the best interests of a child to be adopted by an applicant: age, marital status, health, race, religion, wishes of the child, economic status, home environment, and morality.
8. state the eligibility of homosexuals to adopt or to be adopted.
9. state the function of a second-parent adoption.
10. distinguish between subject-matter jurisdiction and venue in adoption cases.
11. state the requirements for a petition to adopt.
12. state the notice requirement in an adoption case, particularly to the father of an illegitimate child.
13. state when natural parents must consent to an adoption and how this consent is obtained.
14. state the function of the Interstate Compact on the Placement of Children.
15. state the function of the Adoption and Safe Families Act.
16. state the rights of foster parents in adoption cases.
17. state when consent to adoption can be revoked.
18. state the standards used by a court to terminate parental rights involuntarily.
19. interview a parent in order to determine whether there has been an abandonment.
20. identify the major procedural issues in a proceeding to terminate parental rights.
21. state the standards that a court will use in making the placement decision in adoption.
22. explain why it is legally impossible for children to "divorce" their parents.
23. identify the major procedural issues in challenges to adoption decrees.
24. state why the Illinois Supreme Court forced Baby Richard to be turned over to his biological father.
25. state the function of the putative father registry.

26. state the consequences of an adoption decree.
27. state the rules of confidentiality in adoption records.
28. state the function of a reunion registry.
29. state the function of a contact veto.
30. describe open adoptions and the difficulties that they can pose.
31. define an equitable adoption and describe the circumstances under which it will be recognized.

## B. Expedited Adoption Procedure

The chapter describes the somewhat elaborate procedures followed in adoption cases. In some states, there are exceptions. Here is a description of a program in New York City for adoption of foster care children that you may want to tell the students:

*“Over the last five years, the New York City Family Court has begun a fast-track agency adoption system. This intensive push by the court to speed up the adoption process for children in foster care has resulted in the completion of several thousand agency adoptions each year. The average time from filing to adoption is now two months, down from 12 months before the program began. Last Nov. 18, the Family Court participated in Adoption Saturday, a national endeavor to expedite the adoption of children in foster care. The New York City Family Court completed more than 200 adoptions in one day. Adoption Saturday is just one example of the court’s commitment to achieving permanency for children in foster care expeditiously.”*

Joseph M. Lauria, Administrative Judge, New York City Family Court. *Letter to the Editor*, New York Times, March 5, 2001, at A22.

## C. Assignment 15.17 (In re Petition of Doe)

- a. Justice Heiple blames quite a large number of people:
  - The natural mother: she blocked the father from information about the child. “To the extent that it is relevant to assign fault in this case, the fault here lies initially with the mother, who fraudulently tried to deprive the father of his rights.”
  - The adoptive parents (the Does): they failed to take steps to find the natural father when they knew he existed. They knew of his demand for the child 57 days after he was born. They should have given him to the father then.
  - the attorney of the Does: he failed to take steps to find the natural father when he knew the natural father existed.
  - the trial court, and the middle appeals opinion of Justice Rizzi: Justice Heiple thinks they’re pretty dumb about adoption law!
- b. The attorney for the adoptive parents, the Does, did a very bad job. He encouraged the Does to ignore the father. The court suggests fraud by the attorney.
- c. The court said that the best interests standard cannot be used until the court makes a determination that a child is available for adoption, e.g., through abandonment of the child. Whether a parent has abandoned a child and what is in the best interests of the child are two separate issues. We can’t say that a particular parent has abandoned a child *because* it would be better for the child to live with someone else.
- d. Expedited/fast track for disputed adoption cases? See the discussion of the Putative Father Registry later in the chapter.

Here are some reform suggestions of dissenting Judge Tully in the lower appellate court in this case. This is from Tully’s opinion:

*“First and foremost, laws are needed mandating a good-faith investigation into the identity and location of the biological father prior to the finalization of any adoption. Severe sanctions should be imposed upon parties and their counsel for concealing information regarding the whereabouts of the natural father. Secondly, the time period within which the natural father may assert his rights must be limited to a fixed period of time, for example, no more than 30 days from the birth of the child, unless he possesses an affirmative defense, but in no case should this period be extended beyond 120 days. Finally, any assertion of parental rights within this time period should mandate an emergency hearing on the best interests of the child’s disposition which would encompass the rights of the biological parent who had not terminated his parental rights. Within 30 days of this hearing, an expedited appeal should be filed and scheduled for immediate hearing and an expedited ruling. The entire process should take no more than six months, unlike the instant case,*

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*where the process took two and one-half years. If this had been the law, we would now be deciding the fate of a six-month old infant and not that of a two and one-half year old toddler.”*

*In the Matter of the Petition of John Doe and Jane Doe, Husband and Wife, To Adopt Baby Boy, A Minor*, 254 Ill. App. 3d 405, 627 N.E.2d 648, 194 Ill. Dec. 311 (Appellate Court of Illinois, First District, Third Division, 1993)(Presiding Justice TULLY, dissenting)

- e. Though a bit strange, the marriage is not relevant to whether the father was deprived of his rights. Of course, she consented to the adoption and this consent was probably irrevocable. It was *his* lack of consent that led to the return of the child.
- f. It certainly does not add to the dignity of the court to make such attacks. Justice Heiple seems to be overreacting here.
- g. If Justice Heiple thought the trauma would be insurmountable, he would not have ruled differently. The rationale of his opinion was that such considerations are irrelevant.
- h. *In re Petition of Doe* would apply. The adoption would be invalid. The consent of Paula is needed. Her parental rights were never terminated. There is no indication that she abandoned the child. The deceit of the other parent, Rich, prevented her from stating whether she consented to the adoption. The adoption, therefore, is not valid.

### D. United States Supreme Court

The United States Supreme Court ultimately refused to intervene in this case. Here is the Court’s opinion:

Edward J. O’Connell, Guardian Ad Litem for Baby Boy Richard v. Otakar Kirchner, John and Jane Doe v. Otakar Kirchner, 513 U.S. 1301, 115 S. Ct. 891, 130 L. Ed. 2d 873 (1995) Jan. 28, 1995.  
*Justice STEVENS, Circuit Justice.*

The guardian ad litem for Baby Boy Richard and his adoptive parents have filed with me in my capacity as Circuit Justice for the Seventh Circuit applications to recall the mandate of the Illinois Supreme Court and to stay that Court’s issuance of a writ of habeas corpus directing that custody of Baby Boy Richard be transferred to his natural father. The decision implements an earlier judgment entered by the Illinois Supreme Court, see *Petition of Doe*, 159 Ill. 2d 347, 202 Ill. Dec. 535, 638 N.E.2d 181 (1994); two months ago, this Court denied a petition for certiorari seeking review of that judgment, 513 U.S. 994, 115 S. Ct. 499, 130 L. Ed. 2d 408 (1994).

The applications are based on a procedural due process theory that Baby Boy Richard has a constitutionally protected liberty interest in remaining in the family of John and Jane Doe, his adoptive parents, and that the Does have a liberty interest in maintaining their relationship with Richard. Under this theory, no writ of habeas corpus ordering a change in the child’s custody could be issued absent a full and fair hearing. I accept the representation in footnote 5 of the Does’ application that this claim was presented to the Illinois Supreme Court, at least as to the rights of the adoptive parents. I must therefore assume that the state court passed upon this claim and that this Court has jurisdiction. I have concluded, however, that the claim cannot succeed. The underlying liberty interests the applicants claim have already been the subject of exhaustive proceedings in the Illinois courts, culminating in the Illinois Supreme Court’s decision last year. The result of those proceedings was a determination that the biological father was entitled to present custody. The habeas corpus proceeding from which the adoptive parents now seek relief was an execution of the Court’s prior decision, ordering the adoptive parents to surrender custody “forthwith.” That order adjudicated no new substantive rights, but merely enforced the mandate of the prior decision. Accordingly, applicants have received all the process due them under federal law.

The adoptive parents also claim that Illinois law requires an additional hearing in these circumstances. But the highest court in the State apparently disagrees; for if applicants correctly described their state-law entitlement, the Supreme Court of the State would have ordered the hearing they seek. I have no authority to review that Court’s interpretation of the law of Illinois. Finally, the regrettable facts that an Illinois court entered an erroneous adoption decree in 1992 and that the delay in correcting that error has had such unfortunate effects on innocent parties are, of course, not matters that I have any authority to consider in connection with the dispositions of the pending applications for federal relief.

*Accordingly, both stay applications are denied.  
It is so ordered.*

### E. Final Comments from Otakar’s Successful Attorney

Otakar’s successful attorney was sole practitioner Loren Heinemann. He was interviewed after the case was over. Here are some of his comments:

His original view of the case in 1991:

*“Originally I thought this would be—what do they say—quick in, quick out, we’ll have it knocked out fairly quickly. [I told Kirchner], Hey, look, you never consented. The child is less than two months old. I’m sure the adoptive parents would be reasonable. . . . [The public’s reaction:] I get calls on the phone [saying], ‘You’re a scum-sucking attorney. . . . How could you represent these people? My ads in the Yellow Pages, people tear them up and send them back to me.’”* 81 American Bar Association Journal 40 (7/95).

## **F. Impeachment of Justice Heiple**

Justice Heiple claims that his Doe opinion was responsible for the impeachment effort against him for attempting to avoid some traffic tickets. The Illinois House of Representatives committee that considered the case voted 8–2 against impeachment. The justice said that he was a victim of lingering resentment over his earlier Baby Richard ruling.

## **G. Ethics in Practice**

It is illegal, and therefore, unethical to pay someone to give up their child for adoption. Giving the birth mother the receptionist job in this set of facts was such a payment.