

CONTENTS

Preface	v
Acknowledgments	vii
Table of Cases	xvii
Table of Statutes	xxv
Table of Statutory Instruments	xxxiii
Table of Abbreviations	xxxvii
Chapter 1	
Parenthood	1
What is meant by ‘parent’?	1
Biological or genetic parenthood	4
Applications for declaration as to parentage	6
Legal parentage: mother, father or parent?	7
Terminology: mother, father, parent	9
Child of the family	12
Acquiring legal parenthood	13
UK adoption	13
The presumption of legitimacy	14
Assisted reproduction	16
Tracing legal and genetic parentage	17
Children born since the HFEA 2008 came into force on 6 April 2009	20
Surrogacy and parental orders	25
Legal parenthood following surrogacy if a parental order is not made	29
Effect of a parental order on legal parentage	32
Conclusions	33
Chapter 2	
Parental Responsibility	35
Defining parental responsibility	35
Acquiring parental responsibility by agreement or order	39
Parental responsibility agreement	39
Application for a parental responsibility order	40
When will the court make a parental responsibility order if it is disputed?	41
Application for a residence order	43

Chapter 3	
Surrogacy	45
What is surrogacy?	45
What is commercial surrogacy?	47
What are the routes to a commissioning parent becoming the child's carer following surrogacy?	55
Need for an order	55
What type of order?	57
Making the application for a parental order	69
Registration of parental orders	72
Adoption	72
Guardianship	73
International surrogacy	74
Chapter 4	
Private Law Applications	81
Scope	81
Historical background	82
The welfare principle	87
The welfare checklist	88
Parental responsibility	89
Section 8 orders	91
Contact order	92
Residence order	102
Prohibited steps order	108
Specific issue order	109
Special Guardianship	111
Applications	113
Permission to apply for a section 8 order	113
Parties to private law proceedings	117
Chapter 5	
Same Sex Adoption	119
What is the function of the Adoption Panel?	140
The constitution of the panel	140
How does the Adoption Panel work in practice?	143
Chapter 6	
Gender Recognition	145
Meaning of 'same sex relationship' and gender recognition	145
Introduction	145
Trans(sexual)/transgendered people	146
Gender recognition background	147
Development of transgender legislation	148
What is 'Gender Recognition'?	152
Determination of applications	153
Evidence	154
Overseas application process	156

Successful applications	157
Consequences of issue of GRC	157
Summary	157
Registration	158
Married couples and civil partners	160
Parenthood	173
Contact with children following a breakdown of relationship in a transgender relationship/context	174
Social security benefits, pensions and tax issues	180
Proposals for change	182
Chapter 7	
Personal Protection	185
The Family Law Act 1996	188
Cohabitants	188
Relevant children	189
Associated persons	189
Regulation of the home	190
Categories	191
Making an occupation order	194
Without notice orders	196
Transfer of tenancy	196
Breach of occupation orders	196
Non-molestation orders	197
Part IV orders: duration	198
Forced marriage	199
Protection from Harassment Act 1997	200
Chapter 8	
Civil Partnership	203
Formation and recognition of civil partnerships	203
Definition of a civil partnership	203
Is a civil partnership a marriage?	204
Civil partner or not and does it matter?	206
Registering as civil partners: procedure in England and Wales	210
Ceremony	210
Location	211
Eligibility	212
Gender change and eligibility for marriage/civil partnership	212
Pre-registration procedure	214
Registration at a British Consulate	216
Recognition of overseas relationships	218
Requirement for registration	220
Meeting of formalities	221
Capacity	222
Effect of overseas relationship being treated as a civil partnership	224
Checklist for recognition in England and Wales of overseas relationships	225

Recognition overseas of English civil partnership	225
International recognition generally	227
Dissolution and the property consequences	227
Declarations as to civil partnership status	228
Civil partnership: valid, void, voidable?	230
Grounds on which civil partnership is void	232
Breakdown of a civil partnership	235
Application for dissolution in England and Wales	235
Jurisdiction of the courts of England and Wales to consider an application for dissolution, separation or nullity	239
Jurisdiction: applications in more than one country	240
Recognition of dissolution, nullity and legal separation between different countries	242
Recognition in the UK	245
Ability to apply for financial provision following overseas dissolution	247
Chapter 9	
Financial Provision on the Breakdown of Civil Partnership	253
Overview	253
Financial provision on dissolution for civil partners	254
Schedule 5	254
Provision for children of the family	256
Matters to be taken into account	256
The general approach to applications for provision for civil partners	257
First consideration to the children	266
Duration of the partnership	267
What are the partnership assets?	268
The family home	270
Pensions	271
Procedure	272
Consent orders	273
Financial relief in the magistrates courts	274
Alternatives to court	274
Financial relief after overseas dissolution	275
Chapter 10	
Financial Provision on the Breakdown of Cohabiting Relationships	281
Introduction	281
The family home: occupation	283
The family home: ownership	285
The family home: the legal framework	286
Acquisition of an interest: two legal owners	286
No TR1 (or pre-1998 TR1) and no declaration of trust	290
Inadequate declaration of trust	295
Agreement to vary the declaration of trust	296
Ownership in one name only: constructive and resulting trusts	296
Resulting trusts	298

Proprietary estoppel	299
‘Engaged’ couples	299
Orders in relation to property owned by cohabitants	300
Proposals for reform	303
The family home: rented property	305
Other property issues	309
Bank accounts	309
Personal bank accounts	309
Chattels	310
Provision for children on relationship breakdown	312
Child support	312
The formula	315
Proposals for change	316
Schedule 1 Children Act 1989	316
Property transfer orders	319
Lump sum provision	320
Periodical payments	320
Big money cases	321
Procedure	321
Chapter 11	
Succession	323
Introduction	323
Property which does not pass under a will	323
Interests in real property held on a joint tenancy	323
Payments made by pension schemes and under insurance policies	325
Personal property	325
Chattels	326
The body of the deceased	326
Inheritance under a will	326
Is the will valid?	326
Gifts by will to children	328
Intestate succession	330
Inheritance on intestacy	336
Succession to tenancies	341
Rent Act tenancies	341
Assured tenancies	343
Secure tenancies	343
Inheritance and family provision	344
Civil partners	348
‘Child of the deceased’	351
‘Child of the family’	351
‘Any person ... who immediately before the death of the deceased was being maintained, either wholly or partly, by the deceased’	354
What provision can be made?	356
‘Reasonable financial provision’	356
Matters to which the court is to have regard	356
The approach in civil partnership cases	357

xiv	<i>Children and Same Sex Families: A Legal Handbook</i>	
	Other points in relation to the 1975 Act	358
	Proposals for reform	359
	Chapter 12	
	Welfare Benefits	361
	Introduction	361
	Background	361
	Relevant legislation and effects on social security and tax credits	365
	Means-tested benefits and non-means-tested benefits	367
	Social security benefits and definitions of same sex couple	368
	Tax credits and definitions of same sex couple	368
	The living together test	369
	What is meant by 'living together'	369
	Meaning of living together as husband and wife ('LTAHAW')	369
	Meaning of living together as civil partners ('LTACP')	370
	The 'living together' cohabiting same sex couples (couples who are unmarried and not civil partners)	370
	Same sex co-parents not living together	377
	Gender recognition and implications for welfare benefits	378
	Gender recognition and the 'living together test'	378
	State pensions, benefits and tax issues	379
	Disagreement with decision maker	380
	Other benefits issues relating to same sex couples	380
	Pensions provisions	380
	Tax	380
	Summary	381
	Appendix 1	
	Flowcharts Tracing Legal and Genetic Parentage	383
	Appendix 2	
	Forms	387
	Appendix 3	
	Material Relating to Gender Recognition	401
	Appendix 4	
	Statutory Materials	459
	Children Act 1989	460
	Civil Partnership Act 2004	497
	Family Law Act 1996	600
	Gender Recognition Act 2004	606
	Housing Act 1985	620
	Housing Act 1988	621
	Human Fertilisation and Embryology Act 2008	622
	Inheritance (Provision for Family and Dependants) Act 1975	634
	Rent Act 1977	638
	Surrogacy Arrangements Act 1985	641

<i>Contents</i>	xv
Trusts of Land and Appointment of Trustees Act 1996	646
Appendix 5	
Useful Contacts	649
Index	651

Trim Size = 246mm x 156mm

