Susan L. Crockin
Spring 2017 Course Syllabus and Partial Reading List*
(*Readings are subject to modification/supplementation)
12/5/16

**COMPARATIVE REPRODUCTIVE TECHNOLOGIES LAW and “REPRODUCTIVE TOURISM”**

The use of the Assisted Reproductive Technologies (“ARTs”)—and crossing national borders to obtain them—has become a burgeoning multi-billion dollar, international industry. While the desire to have children may be universal, legal protections and restrictions on access to reproductive technologies vary immensely from country to country, and often reflect conflicting cultural and religious values.

This seminar will explore and compare a diverse number of legal systems’ approaches to selected reproductive technologies with a particular emphasis on the legal implications for “cross-border reproductive care” (sometimes called “reproductive tourism”). Other planned topics include: comparative access to and affordability of IVF, egg and sperm donation, and surrogacy; reprogenetics (including pre-implantation genetic diagnosis (“PGD”) and sex selection); embryo dispositions; ART treatment for same-sex couples; professional liability; and briefly mitochondrial donation and embryonic stem cell research as they intersect with gamete donation and the use of IVF embryos. Guest lectures will provide medical, psychosocial and policy perspectives to broaden an understanding of the legal and policy challenges in this unique developing field of law. Two potential field trips are planned during, but extending, class time. We will discuss this for any scheduling issues it might raise in the 1st class.

**COURSE INFORMATION:**

**Class Requirements:**

1) Class attendance & participation, including Reflections and 1-2 current event presentations (35% of grade for 3 credit; 40% for 2 credit).
   a. All assigned readings to be completed before assigned class date.
   b. After week 1, a weekly 1 page required “Reflection” on the readings will be due via email and/or posting to our Canvas site each Monday by 12:00 noon. It should reflect your thoughtful response and reactions to some aspect(s) of the week’s readings. It will **not** be graded for content but gives me a good
sense of issues of interest, confusion, and those that would benefit from discussion, clarification or amplification. Some weeks we will substitute drafting exercises. In some weeks comments to one another will be invited. You are permitted to skip 2 weeks during the semester: the week you are submitting a current event (see below) and any other week if you are jammed up on other work (please email me that week not to expect a Reflection). You are of course welcome to submit a Reflection every week.

c. After the 2nd week, students will choose and be responsible for tracking a specific country or region during the semester and one student will post and present a current event articles/news stories/legal case reflecting an ARTs issue (ideally from that particular country or region), for class discussion at least once during the semester for class reading. We will discuss country options in class, but potential countries include:
   i. Australia, Canada, France, Germany, India, Israel, Italy, Iran, Mexico, Spain, and the UK.

d. Guest Lectures: Weeks #4 and 8 or 9: Week #4 will be a trip (if scheduling allows) to a local IVF center for an expert guest lecture by Dr. Robert Stillman, a nationally renowned reproductive endocrinologist and tour of his IVF facility. Each student should prepare 2 questions for him. Week #8 will be in class with Dr. Andrea Braverman, PhD, an internationally recognized mental health expert in 3rd party ART and co-director of medical education at Jefferson Hospital on gamete donation and surrogacy. Weeks #10 and/or 11 will be held for a potential guest lecture, field trip and lecture on international ART developments, depending on scheduling availability (ours and theirs).

2) Final Paper assignment in two parts (totaling 65% of grade for 3 credit; 60% for 2 credit):
   a. Students will present their paper topics in the form of oral presentations during one of the two final classes.
   b. Final paper will be in the form of a traditional research paper.
      i. Students will choose an approved topic.
      ii. The final 1-2 classes will be oral presentations and Q&A (2 credit presentations will be shorter than 3 credit).
      iii. The final paper will be due on the final day of the exam period, and should include both applicable precedent for your chosen jurisdiction, and reference persuasive authorities (legislative and case law) from other
jurisdictions, and scholarly articles. 3 credit course students should have a comparative analysis of at least two countries; 2 credit course students may focus on one country if they prefer. Topic selection should be done after preliminary research and discussion to ensure you have found a topic worthy of your time and effort and not so broad that you cannot do a thoughtful analysis and presentation.

iv. Topic to be preliminarily approved by week #3; annotated bibliography due week #8; final paper should be 3500-words (2 credit) or 6000-6500 words (3 credit); submitted electronically in WORD by final day of exam period; citations should be in proper Blue Book form.

v. Students must meet with me at least twice: once during weeks 2 or 3 to discuss and before their final selected topic and format, once after to review their preliminary research and direction no later than week 8. I am available and happy to meet to further discuss paper topics, research and drafting progress; I will have office hours but please email me to arrange or confirm mutually convenient times.

Texts/Materials: there are no required books to buy; all materials should be available on CANVAS or online. Please note: this is an extremely dynamic field, so some readings after the first 3-4 weeks may be substituted and/or updated to try to provide you the most current cases and developments w/o overloading the required reading. In some of these cases, you will find the earlier reading moved to an Optional Reading section for those with the time and interest to read more.


2) As a reference: Bioethics Legislation in Selected Countries”, Library of Congress, Global Legal Research Center, LL File No. 2012-00818 (10/12) [WWW]

3) As a reference: “IFFS Surveillance 2013”, [WWW] (you should print this out, as we will read different chapters throughout the course).

4) 2010 CBRC Conference Articles: all articles referenced as well as additional ones from Marcia Inhorn’s 2010 Conference are accessible together at: [WWW]

a. Additional Course Readings will be posted on CANVAS or emailed, including updated and excerpted cases, articles, and other materials such as professional guidelines—in many instances these are short readings.
5) I would recommend setting up Google alerts for, inter alia, “sperm donation,” “egg donation,” “international surrogacy.”

6) You may want to subscribe and/or follow: www.bionews.org; http://www.rbmonline.com; www.bioedge.org; www.bioethics.net; www.asrm.org for potential sources of news articles; all to be read with a critical eye.

CLASS OUTLINE & SYLLABUS:

Class #1-Jan. 17: COURSE INTRODUCTION & OVERVIEW: (Reflection for Class #1 is OPTIONAL)

Overview of scope and structure of course; introduction to legal aspects of assisted reproductive technologies (ARTs) and 3rd Party ARTs, underlying reproductive rights, family law principles, and global differences driving the explosive growth in transnational aspects of ARTs, including CBRC.

QUESTIONS TO CONSIDER AS YOU READ:

1) In an international ARTs arrangement, who are the “players” and what are their respective roles?
2) Are there clearly designated “Good Guys” and “Bad Guys” here? If yes, who and why?
3) What do you think are the most compelling reasons for crossing borders for ART treatment?
4) Are there any ART treatments you think do not justify cross-border treatment?

READINGS:

2) *Cheng, M., “Strict Fertility Treatment Bans in Europe Draw Criticism”, USA Today (4/13/12), [WWW]
3) “IFFS Surveillance 2013”, PAGES 8-20; [WWW]
4) *Gurtin, Z. and Inhorn, M, “Introduction: Traveling for conception and the global assisted reproduction market”, RBMOnline Special Issue, Nov. 23, 2011. [Science Direct] [EBSCO]

Class #2: Jan. 24: “EMBRYO LAW” & “WHERE DO PARENTS COME FROM?”
A medical primer and legal perspectives on pre-implantation IVF or ex utero IVF embryos; with a very brief legal perspective on embryonic stem cell research (ESCR)

QUESTIONS AS YOU READ:

1) Ask yourself: 1) “When does life begin?” and 2) “What is an embryo from medical, scientific and legal (and your personal) perspectives?”
2) Test your own answers and attitudes by considering different contexts. Does your answer change depending on whose or what perspective you are considering (MDs/other medical professionals; gov’t/policy makers; prospective parents; 3rd parties-- i.e. gamete donors or surrogates?)
3) RE: (1) and (2) above, what is LA’s perspective behind its statute?
4) Should legislation be held to medically accurate standards or should legislatures be free to enact their own definitions of terms?
5) What is the basis for the Inter-American CT’s decision in Artavia Murillo v. Costa Rica?

***Email me, no later than with your Reflection, a list of 3 countries, in order of preference, that you would like to track this semester, with a very brief comment explaining your interest in each.

READINGS (most of these are very short):

N.B.: Readings (1) and (2) will give you a medical primer or background for the legal issues we will be studying this semester; the remaining readings will give you a deeper understanding of the nuanced treatment and approaches to IVF embryos and why it matters from both a legal and a policy perspective.

2) LC pp. 20-30 (an overview of embryo litigation concepts; US centric; as of 2010)
3) McQueen-Gadberry v. Gadberry, Mo. Ct. Apps, (November 15,2016); [WWW]
4) LA Health Law, Ch. 3. Human Embryos, LA-RS 9 §§121-133 (an unusual statute)
5) Artavia Murillo and others v. Costa Rica, judgment of the Inter-American Court, issued Nov. 28, 2012. (posted) 
6) Crockin, S., Lefebvre, C., “Sound Bites or Sound Law and Science? Distinguishing “Fertilization” and “Conception”
8) IFFS Surveillance 2013, Ch. 6, pp 28-38 (worldwide cryopreservation survey; mostly tables),

OPTIONAL READING:

b) “LC”, pp. 31-73 (embryo litigation chapter)
d) 4 other recent US embryo disputes: Findley v. Lee, [WWW]; Dunston v. Szafrański (IL); Reber v. Reiss (PA 2012 divorce case) [WWW], and Mbah v. Anong, MD (1/7/13), the latter two lower courts appear to reverse trend favoring non-procreative rights.

Class #3: Jan. 31: REPROGENETICS and PRE-IMPLANTATION GENETIC DIAGNOSIS: International and comparative perspectives on genetic screening (carrier, pregnancy, and embryo) for disease detection/diagnosis, sex/trait selection, savior siblings, or family balancing.

QUESTIONS:

1) Test yourself: identify the range of available genetic tests; on what or whom are they performed; and for what potential purposes? New gene sequencing (“NGS”) is the hottest new “kid on the block”, ensuring much greater accuracy than any prior testing. I have included a link explaining it, but you may also want to google for updates and commentary.

2) Consider your views and reasons about selecting out/in for certain traits: Downs? Cystic fibrosis? Huntington’s? Deafness? Sex selection (when yes/no/maybe)? Can you justify any different views? For example, do you feel the same about deafness and Downs; ask yourself why or why not?

3) How do the UK’s HFEA and Germany address these issues? How if at all do their policies differ from US approaches?

READINGS:

1) http://www.rhtp.org/fertility/pgd/default.asp Pre-Implantation Genetic Diagnosis (“PGD”) explained (in terms law students can understand!) by the Reproductive Health Technologies Project

2) “NGS”: New Gene Sequencing explained here: http://genesisgenetics.org/ngs/

3) Robertson, J, “Reproductive Technology in Germany and the United States: An
Essay in Comparative Law and Bioethics" (2004); pp. 211-210; 221-227 [section on ESCR and therapeutic cloning are optional] [WWW]

4) (Germany) Bioethics Legislation in Selected Countries", pp. 17-22., Library of Congress, Global Legal Research Center, LL File No. 2012-00818 (10/12) [WWW]


6) “Federal Court Allows PGD” [Germany] [WWW]


OPTIONAL READINGS:

a) www.genesisgenetics.org; this is a leading genetics testing entity, led by pioneer Dr. Mark Hughes. There are very readable explanations of various technologies.


c) Note, “Regulating Preimplantation Genetic Diagnosis: The Pathologization Problem”, 118 Harvard Law Review 2770 (6/05) [HeinOnline][Westlaw][Lexis Advance]

d) ASRM Ethics Committee (2001); Pre-Conception Genetic Selection for Non-Medical Reasons [WWW]

e) Flawed Embryos Seen as Stem Cell Source”, Boston Globe, (1/28/08) [WWW]


Class #4-Feb 7: FIELD TRIP TO SHADY GROVE FERTILITY CENTER (extended class by 1 hour): MEDICAL PERSPECTIVES and the REALITY ON THE GROUND: IVF, ART TECHNOLOGY ADVANCES and the PRACTICE of CBRC:
Guest lecturer and facilities tour: Dr. Robert Stillman, former medical director of Shady Grove Fertility Center, one of the largest IVF centers in the US, with a substantial international practice. Dr. Stillman pioneered single Embryo Transfer (eSET) in IVF, and has a substantial international ARTs practice, particularly with patients from Canada and England. Please review the website: http://www.shadygrovefertility.com/doctor/stillman

QUESTIONS/PREPARATION FOR FIELD TRIP:

1) PREPARE 2 QUESTIONS FOR Dr. STILLMAN AND SEND TO ME IN ADVANCE

2) Consider the myriad of ways CBRC happens: what/who travels and why?

3) Whose interests are affected by CBRC? What is a country’s legitimate role or sphere of influence over CBRC? Are there cross-border commonalities that can be relied upon?

4) Who is/are “the patient(s)” and how does an MD discharge his or her duty of care to that patient(s)?

READING/CLASS PREPARATION:


3) Bioethics Legislation in Selected Countries”, pp. 12-16 (England), Library of Congress, Global Legal Research Center, LL File No. 2012-00818 (10/12) [WWW]

4) Hudson, N., Cully, L. “Assisted Reproductive Travel: UK Patient Trajectories”, from the series of articles produced following the 2010 conference, “Cross Border Reproductive Care: Ethical, Legal and Socio-Cultural Perspectives”, chaired by Inhorn and Guerin (N.B. you read my legal commentary to this conference for Week 1): [WWW]; (Vol.23 Issue 5; Nov. 2011) [Science Direct] [EBSCO]


OPTIONAL READINGS:
a. Elective Single-embryo Transfer, Practice Committee of SART, Fert. & Stert., Vol. 97, No. 4 (April 2012) [Science Direct]
b. Belgian legislation, single embryo transfer Repro Biomed Online 2005 April 10(4) 436-41 [Science Direct] [EBSCO]
c. One Embryo is Better than Two in In Vitro Fertilization” (12/21/10) [WWW]
d. All articles from the Inhorn conference are posted at: [WWW] [Science Direct] [EBSCO]
e. Whittaker, A., “Reproduction opportunists in the new global sex trade: PGD and non-medical sex selection.” Consider Whitaker’s perspectives: as an anthropologist arguing Bioethics has much to learn/share, is she persuasive from a legal perspective? Are some of her arguments more persuasive than others? Do you agree with her about “Orientalism” and family balancing? Is there another explanation, and how would this translate into policy or law?
f. [WWW] (Vol.23 Issue 5; Nov. 2011); [Science Direct] [EBSCO]

Class #5-Feb 14: GAMETE AND EMBRYO DONATION Legal Aspects & Int’l Perspectives

QUESTIONS:

1) Consider the most significant differences between the UK, Canada, the US, and Iran in terms of gamete donation.
2) What are the underlying value differences that account for these different approaches?
3) How does the ECHR decision impact ART treatment within the EU?

READINGS:

1) Case of SH and Others v. Austria, European Court of Human Rights Application no. 571813/00 (11/3/11) [HUDOC.ECHR Judgment]
5) Italian Constitutional Court overturns ban on gamete donation (Legge 40/2004); article at: [WWW] [Science Direct]

NO CLASS FEBRUARY 21 (Faculty Retreat)
**Class #6-Feb. 28: SAME-SEX COUPLES & ART** (gamete donation & surrogacy)

**READINGS:**

1) LC, pp. 301-31; and online update of *Miller v. Jenkins* and related litigation.


3) Articles and translated excerpts from the Court of Appeal of Liege, 1st Chamber, 9/6/10 (DQ/20)

4) Jones, B. “Gay Couple Win “Surrogacy Twins” Parentage Case in Australia” [WWW] (2/7/11)


6) Gas and Dubois v. France (3/15/12) [HUDOC.ECHR Judgment]

*NOTE: The remaining Readings are likely to change/be updated*

**CLASS #7 Mar. 7: 3rd PARTY ART: SURROGACY (#1)- INTERNATIONAL CBRC INVOLVING THE US:**

This is the 1st of 2 classes that will focus on cross-border surrogacy. Americans and others are going abroad in increasingly frequent numbers to access ART treatment for a variety of reasons: ART services may not be available, not be accessible due to cultural restrictions; be of poor quality, or be unaffordable in their home countries. Unique issues face both patients in those countries willing to act as surrogates or donors, including informed consent, undue influence, and health risks, and, intended parents who are attempting to create families and return to their home countries with their child/ren.

The 1st class will focus on American involvement in cross-border surrogacy; the 2nd class will focus on selected other countries. As you will see, the separation is somewhat artificial, but helpful to keeping track of the differing perspectives and allowable treatments. Issues we will study include: legal incentives and obstacles to CBRC/surrogacy; current practices in the US; how parentage is established; which patients are at increased risk (singles, same-sex, unmarried couples), the impact of compensation and traditional surrogacy; and obstacles to bringing these children “home”.

“Are YOU My Parents?” We will analyze at least 1 “hypothetical” cross-border surrogacy case gone awry.
QUESTIONS:

1) What is the “margin of appreciation” and how have the courts applied it?
2) Ask yourself what time frame these cases apply and how it impacts the parties?
3) What do different courts/countries emphasize in determining parentage?

READINGS:

1) “Googlebaby”: please watch, available on Utube, link below is to the trailer: [WWW]
2) LC: Chapter 6 (Surrogacy): focus on summaries of the following seminal parentage establishment cases: RR v. MH, 689 NE 2d 790 (Mass 1998) [Westlaw] [Lexis Advance]; Johnson v. Calvert, 851 P/2d 776 (CA 1993) [Westlaw] [Lexis Advance]; Culliton v. BIDMC, 756 NE 2d 1133 (MA 2001) [Westlaw] [Lexis Advance]
4) “Room for Debate: The Role of International Law for Surrogacy Must Be Expanded,” L. Ikemoto; [NYTimes.com]
5) TBD: given the continuing cascade of international surrogacy cases, updated readings may be added here.

No Class March 14 – Spring Break

Class #8 March 21: GUEST LECTURER ANDREA BRAVERMAN, Ph.D., Associate Medical Director for Education at Jefferson Hospital, 3rd party ART mental health expert: A Cross-Disciplinary, Global Introduction to 3rd PARTY ART with an emphasis on sperm and egg donation including anonymity and identity concerns for donor offspring

READINGS:

1) “Must I Tell My Fiancée?”, NY Times “Ask the Ethicist”, NYTimes, 1/13/12 [Lexis Advance] [NYTimes.com]
4) IFFS Surveillance 2013, Chs. 8 and 9.
6) Excerpts from European Court of Human Rights Challenges
7) Allan, S., “Psycho-social, ethical and legal arguments for and against the retrospective release of information about donors to donor-conceived individuals in Australia”, (2011) 19 JLM 354
9) LC: pp. 132-138 (med/legal commentary for sperm donation); 188-195 (med/legal commentary for egg donation); OPTIONAL: *case summaries.*

**OPTIONAL READINGS:**

a) Allan, S., “Psycho-social, ethical and legal arguments for and against the retrospective release of information about donors to donor-conceived individuals in Australia”, (2011) 19 JLM 354
c) Selected articles from 19 JLM 354 (2011)

**CLASS #9 March 28: PARTY ART: SURROGACY (#2)- CBRC OUTSIDE THE US.**

**READINGS:**

1) “Bioethics Legislation in Selected Countries”, pp. 9, 36-47 (Israel and India), Library of Congress, Global Legal Research Center, LL File No. 2012-00818 (10/12) [WWW]
2) Article 8 of the European Convention on Human Rights; [WWW]
3) Labasssee v France, ECHR, (6/24/14) and Mennesson v France, ECHR, (6/24/14); http://hudoc.echr.coe.int/app/conversion/pdf?/library=ECHR&id=003-4804617
5) India: update on surrogacy regulation: TBD

**OPTIONAL READING:**


**Class #10 April 4: CBRC: SETTING STANDARDS- International Courts and Efforts to Create Legal Frameworks for CBRC (Potential guest lecturer/field trip)**

**QUESTIONS:**
1) How can we balance and synthesize issues of informed consent, financial inducements, and cultural sensitivities?

2) What are the respective and, at times, competing interests and vulnerabilities of the various participants in, and offspring from, cross-border surrogacy?

**READINGS (and more TBA):**


2) Hague conference on International Surrogacy; updates

3) TBD

**Class #11 April 11: 1) PRACTICING ART and CBRC LAW: Access, Professional Duties, and Criminal Prosecutions; and 2) THE FUTURE? Implications and Predictions for ART Law and Medicine:** Exploring legal and other duties and standards of care owed by professionals involved in CBRC.

**QUESTIONS:**

1) Consider what does access to ART mean, and what is the nature of any such right in the US? Costa Rica? Your chosen country?

2) Consider your role as a lawyer representing a surrogacy facilitator—what duties do you owe and to whom?

**READINGS: TBD**

1) Case of Parillo v. Italy, ECHR, [HUDDC.ECHR Judgment] (8/25/15)


**NO CLASS APRIL 18 (Spring Break)**

Class #12 April 25: Class Presentations; adjust if/as needed.