This 2 or 3 credit seminar (with an option for having the 3 credit course meet the Writing Requirement as noted) will provide an overview of the underlying and competing laws and policies arising from the assisted reproductive technologies (ARTs) that continually make front-page news. Since the 1980 opening of the country’s 1st IVF clinic, The Howard and Georgeanna Jones Institute-- amidst protests and pickets, courts and legislatures have struggled to create laws and policies in response to continually evolving reproductive advances. Topics will include: the legal status of the IVF embryo in the context of procreative rights embryo and gamete cryopreservation, storage, disposition and mix-ups; reproductive genetics; posthumous reproduction; egg and sperm donation; traditional and gestational surrogacy; unique issues for non-traditional patients; rapidly changing issues for same-sex couples; the economic and regulatory aspects of the ARTs; and a brief look at the intersection of ART and embryonic stem cell research. Three national experts in their respective fields will provide guest lectures on: medical advances in ART; psychosocial aspects of donor egg and 3rd party ART; and regulation and public relations for ART providers. For week #2, there will be a field trip to a nationally renowned IVF facility, where we will tour the facility and get a lecture on the medical aspects of ART.

COURSE INFORMATION:

Class Requirements (*3 credit course requires a 6,000 word paper that conforms to the writing requirement):

1) Class attendance and participation (35% of grade).
   a. All reading assignments are to be completed before Class
   b. A weekly reading “Reflection” will be due at least 24 hours before class. It may be emailed to me or posted on Canvas. It should be 3+ paragraphs reflecting on at least 2 aspects of the weekly readings. It will not be “graded” per se, but is expected to demonstrate you have read and thought critically about the weekly reading; it may include questions you have or issues you’d like to discuss about the readings. In some weeks, specific assignments will supplement or be substituted for reflections.
   c. One student will be responsible each week to post and briefly present 2 current event articles/news stories for class discussion (post at least 24 hrs. before class; discussions will be 5-10 minutes at beginning of class). We will establish a rotation during our 1st class.

2) Final Paper assignment in two parts (65% of grade):
   a. Oral presentation of draft final paper during one of two final classes.
b. Final paper: Topic of your choice: must be approved, identify supporting and opposing views; have a minimum of 10 primary sources, including cases, statutory or model legislation, and academic and professional journals. Popular press sources are acceptable but in addition to primary sources. Paper should reflect both original thinking and demonstrate a solid understanding of the existing legal and policy perspectives, as well as identify ethical aspects, of the chosen topic.

c. I will meet with students at least once to finalize topic and once during the research and writing phase of your papers, and more frequently if requested.

d. Required:
   i. meeting #1 is to discuss and approve topic (by week #4)
   ii. an annotated bibliography is due week #8
   iii. oral presentation and lead class discussion of topic during one of final two classes (paper need not be finished at this point)
   iv. final paper to be 4000 (2 credit) -6000 words (3 credit); double-spaced and 12 font; submitted electronically by final day of exam period. Citations should be in Blue Book form as footnotes.

3) *3 Credit Writing Requirement: JD students will be required to submit a paper that is at least 6,000 words (and not to exceed 6,500 words), and which meets all of my requirements and the requirements of the Writing Requirement, which include the following:
   a. Meet with me after submitting at least a 2 paragraph topic/paper proposal to me in writing; I will be happy to help you revise and refine that topic or to speak with you before this point;
   b. Submit a detailed outline of your paper, including at least 5 initial references, which I will review and provide feedback on;
   c. Submit a draft paper of at least 6000 words exclusive of footnotes, which I will review and provide feedback on; and
   d. Final paper is to be at least 6000 words exclusive of footnotes.

Office Hours: I will generally be available, by appointment, on Tuesdays after class until 3:30; and am also happy to try to accommodate other times with notice. Please email me at [email] or [email] if you would like an appointment.

Texts/Materials:
1) Daar, J. Reproductive Technologies and the Law, 2012 2nd ed. LexisNexis (loose-leaf copy available as you prefer) (“RTL”). Copy should be on reserve.
2) Crockin, S. and Jones, H., Legal Conceptions: The Evolving Law and Policy of Assisted Reproductive Technologies, JHU 2010 (“LC”). Copy should be on reserve. I will also post a PDF copy if you do not want to buy the book,
3) *Supplemental materials: recent cases, articles and other materials listed in syllabus will be available in print; and some may be posted on the Courseware/Canvas site. websites as noted. (Note: most current non-case materials are fairly short so don’t be concerned if you see a number of them). NOTE: when you are assigned an ASRM Ethical Opinion or Practice Guideline, you should always ready the key points, discussion and summary/recommendations. If the document is technical (an example is screening requirements for donors, the technical details are OPTIONAL.

4) Helpful websites include:
   a.  [www.ASRM.org](http://www.ASRM.org) (the website for the American Society of Reproductive Medicine, the professional medical society that promulgates (and posts on its website) voluntary professional guidelines and ethical statements referred to throughout the course; it also posts my monthly column, *Legally Speaking ®*)
   b.  [www.nccusl.org](http://www.nccusl.org) (promulgates Model Acts, including the Uniform Parentage Act, and has lists of relevant state statutes)
   c.  [www.resolve.org](http://www.resolve.org) (national patient infertility organization,)
   d.  [www.surromomsonline](http://www.surromomsonline) (lively discussions of surrogacy issues)

5) You should set up alerts for a few key terms: including “surrogacy”; “egg donation”; “sperm donation”; “embryo donation”; “IVF”; “embryonic stem cell research (ESCR)”

CLASSES/READINGS*: 
[*Note: readings are subject to revision during the semester as new developments are common, and a few topics and classes may need to be rearranged to accommodate scheduling conflicts; there is a field trip on 10/6; we will need to reschedule 10/20 class, and possibly 11/17 class.]*

(1) 9/1: CLASS # 1: Introduction to the Law of Assisted Reproductive Technologies: 
Introduction and explanation of class; survey of students; presentation and discussion will include overview of legal background, historical perspectives on the ARTs, and the critical role of language in ARTs Law.

**READING FOR CLASS #1**

i.  LC, pp. ix-xii; 3-10; 13-30
ii.  RTL (2nd ed.): pp. 26-29; 35-47; 56-60 (pay particular attention to Jones & Veeck article)
v.  Look up the term “Retronym” and consider its applicability to ART
OPTIONAL: Watch the documentary, “Google Baby”
http://www.imdb.com/title/tt1490675/ for an overview of how large an industry international surrogacy has become. While the subject is largely beyond the scope of the fall class it will help contextualize what we will be studying on the domestic side. If you elect to take my spring course on Comparative Reproductive Technology Law, you will be a step ahead!

QUESTIONS BEFORE/AS YOU DO THE READING:

1) What assumptions do you bring to this class and topic? Do you have your own opinion about “when does life begin?” If so, what is it based on? Consider what, if any, biases you have toward or against when “life” begins, abortion, use of medical technology to have a family, use of donor sperm or eggs, non-traditional families (e.g., same-sex couples, single parents, unmarried parents or older (as you define it) parents? Does your own family of origin, or the families of people you know, affect your perspective?

2) Try to imagine yourself wanting to have a child but unable to without medical intervention; consider what means you would use to try to have a child and how you think those costs should be distributed.

3) Bring (any) 2 examples of a retronym to class.

A REFLECTION IS OPTIONAL FOR 1ST CLASS: I’d be delighted, but am not requiring, a Reflection this week. If you write one, please email it to me 24 hrs. before class.

(2) 9/8: CLASS #2: Embryos: Cryopreservation and Dispositions: including divorce, donation and clinic mix-ups

QUESTIONS BEFORE/AS YOU DO THE READING:

1) Before you do the reading, write down a paragraph or two about what you think about the status of a pre-implantation IVF embryo. You may, but do not need to, include it in your Reflection; date it and save it to your file for this class.

2) Consider as you read what you think about consent forms, their purpose, and their significance. If you represented an IVF Center, what language might you recommend they include or modify re: embryos?

3) Embryo donation is a currently an intriguing side effect of IVF. Consider how many ways embryos donation can come about and what legal framework you think should control its practice. Consider the role of language choices surrounding embryos; specifically consider the debate over embryo “donation” v. “adoption”: who uses each and why? Consider what you think the future of embryo donation will be; is it likely to increase or decrease and why?
READING FOR CLASS #2

i. RTL (2nd ed.): pp. 60-74; 506-514; 612-617; 618-32.

ii. Reber v. Reiss, No. 1351 EDA 2011, April 11, 3011 (PA Sup.Ct.)

iii. Dunstan v. Szafranski, appeal pending: Lewin, T., Chicago Court Awards Woman Embryos Over Ex-Boyfriend’s Wishes,”


iv. The SART Model Informed Consent, pp. 23-25 on embryo dispositions (remainder is optional); will be posted.


vi. Ethics Committee of the American Society of Reproductive Medicine (ASRM):


ix. Familiarize yourself with these websites: www.nightlight.org (“Snowflakes”) and www.embryodonation.org

x. OPTIONAL: Google “embryo donation” and “embryo adoption” and see if you think the subject has gained or lost public attention.

(3) 9/15: Reproductive Genetics: Balancing Patient Choice & Professional Duties in ART
An overview of novel legal issues confronting ART patients and professionals, involving reprognetics (PGD, PGS, NGS, genetic anomaly, sex and traits' deselection/selection).

QUESTIONS BEFORE/AS YOU DO THE READING:

1) Envision you represent an IVF program that needs its policy revised. What guidelines would you recommend for doing PGD? What legal concerns would you have in creating guidelines or a policy for your client?

2) A couple consults you because they have 4 wonderful daughters, but the husband has always wanted a son. They were told by their local IVF clinic (who you do not also represent) that they do not do PGD for sex-selection. What advice will you give them?

REFLECTION/ASSIGNMENT: Draft an outline of a policy for your client IVF program. What services should they offer, to whom, and who should cover cost?

ASSIGNMENT #2: Prepare two questions for Dr. Hughes
READINGS FOR CLASS # 4
i. LC, pp. 332-349
ii. RTL (2nd. Ed), pp. 288-292; 305-323; 333-370
iii. ASRM Ethics Committee Opinions:
   1. “Use of PGD for Serious Adult Onset Conditions,” Fert Stert Vol 100, No. 1, July 2013
   2. “Use of Reproductive Technology for Sex Selection for Nonmedical Reasons,” Fert Stert, ol. 103, No. 6, June 2015
vii. Review the Genesis Genetics website and familiarize yourself with NGS (next generation sequencing) and other new developments

(4) 9/22; Class #4: 3rd Party ART (Part 1): Sperm Donation and Paternity Dilemmas

This begins our examination of 3rd Party or Collaborative ART: Examination of the sperm donor model; history of sperm donation and artificial insemination laws; evolving laws and current legal conflicts over paternity

QUESTIONS BEFORE/AS YOU DO THE READING:
1) You, your male significant other, or your brother has been asked to be a sperm donor for an acquaintance. What do you want the donor to know before deciding whether to agree or not? What are your initial thoughts about agreeing or not, and why or why not?
2) Check the DI law in your home state and include it in your Reflection. Note who it does and who it does or may not protect

READING FOR CLASS
i. LC, pp. 132-187; pay particular attention to In the Interest of KMH at 165.
ii. RTL (2nd ed.) pp. 371-79; 464-74; 196-205
   (YOU MAY SKIM MEDICAL SCREENING REQUIREMENTS SECTIONS; NOTE DIFFERENT GUIDELINES FOR EACH TYPE OF DONATION)
vii. In Supp: “His or Hers: Who Owns a Donor’s Sperm?” Ronny, L.G.,
http://www.haaretz.com/news/features/his-or-hers-who-owns-a-donor-s-
sperm-1.505332 (2/24/13)

viii. In Supp: The CA Model Family Act, CA SB115,
http://legiscan.com/CA/text/SB115/2013; and google commentary on this
troublesome CA sperm donor bill.

Guest Lecturer Attorney Amy Altman, Boston, MA, private practice exclusively ART
Family Building

Past, present, and future practices, including egg freezing and mitochondrial replacement

QUESTIONS:
1) What do you think about compensation limits for donors?
2) Some countries do not allow compensation for gamete donation, which
   policy do you think is more defensible, and why?
3) How would you compare ‘full’ egg donation to mitochondrial
   replacement?

REFLECTION/ASSIGNMENT: Review the ASRM guidelines and Kamakahi
case, and draft a revised policy for egg donation in the US- include age, number
of donations, compensation, and anything else you think is important.

READING FOR CLASS #5

i. LC, pp.188-208
ii. RTL (2nd ed.) pp. 205-11; 215-243
iii. Kaminer, A., “Must I tell My Fiancée?,” “The Ethicist” column, NYTimes
    1/13/12; www.nytimes.com/2012/01/15/magazine/ethicist-
    donor-remorse.html
iv. ASRM:
   • Ethics Opinion: “‘Interests, Obligations, and Rights of the Donor in

   Requirement to Provide-Disclosure”) (1st state donor ID mandate)
vi. Perez v. IRS, 144 T.C. No. 4, Dkt # 9103-12 (1/22/15)

vii. Kamakahi v. Am. Soc’y for Reproductive Med., ___ F.R.D. ___, No. 11-cv-
     01781-JCS, 2015 WL 510109 (N.D. Cal. Feb. 3; 2015); egg donors’
antitrust class-action, subsequently Court allowed two future donors to
     intervene; more updates possible.
viii. OPTIONAL: SART Model Donor Egg Consent (working draft provisions to be supplied)

(6) 10/6: CLASS #6: Medical Aspects and Constitutional Implications of IVF:
GUEST LECTURER & FIELD TRIP: ROBERT STILLMAN, MD, Shady Grove Fertility Center: Medical aspects of IVF, cryopreservation (embryos and gametes); technological innovations; family permutations made possible by IVF; emerging technologies including egg freezing, ICSI, PGD/PGS; ESCR; reproductive cloning.

QUESTIONS BEFORE/AS YOU DO THE READING:
• Prepare 2+ questions for Dr. Stillman from your readings this week and prior weeks; we may not get to ask them all but it will be helpful to thinking about what you don’t know but want to learn.

READING FOR CLASS #6
i. RTL (2nd ed.) pp. 1-18; 35-56
iii. Stillman, et. al, “Refuting a misguided campaign against the goal of a single-embryo transfer and singleton birth in assisted reproduction”, Human Reproduction, Vol. 0, No.0, pp.1-9 (2-13)
v. “Risk-sharing or refund programs in assisted reproduction: a committee opinion, Ethics Committee of ASRM,F&S, Vol. 100, Issue 2, pp. 334-6 (8/13)
vii. Go online and find 1-2 programs doing egg freezing and familiarize yourself with their website, including cost information.

(7) 10/20 [will reschedule date; conflicts w/ASRM annual meeting] SURROGACY #1: LAW of SURROGACY Evolving trends and law (parentage and health) in traditional surrogacy and gestational carrier arrangements; professional standards; duties of care; and professional liability
QUESTIONS BEFORE/AS YOU DO THE READING:

i. There are almost no cases articulating a standard of care in ART law practice; as you read Stiver and Huddleston, try to extract the standards those courts articulate and the basis for them. Do you think they do/should apply in other areas of ART? What other standards should guide practitioners?

ii. Surrogacy is becoming an increasingly accepted and recognized method of family building. Consider what are the essential elements of a surrogacy arrangement, what are the risks and vulnerabilities for each participant, and how would you recommend in particular establishing parentage in surrogacy cases, especially those that involve one or more donor gametes.

READING FOR CLASS #7:

i. LC, pp. 209-216 (pp. 217-274; case summaries are optional)
ii. RTL (2nd ed.): pp. 394-431; 439-453 (state statutory schemes)
iii. Stiver v. Parker, 975 F.2d 261 (6th Cir. 1992) posted excerpt
vi. In Re Paternity or F.T.R./Rosecki v. Schissel, 2013 WI 66 (a good, recent example of courts' analyses of surrogacy agreements and disputes)
ix. Go online and familiarize yourself with stories from surrogates, intended parents, and others. Try surromomsonline.com for one option. Post others you find of interest.

NOTE: NO CLASS 10/13: [Monday classes]

(8) 10/27: Class #8: 3rd Party Art: MHP Perspectives Guest lecturer: Andrea Mechanick Braverman, PhD, Associate Director of the Educational Core; Clinical Associate Professor of Ob/Gyn & of Psychiatry & Human Behavior; past member of ASRM Ethics Committee; founding member of SART Donor Registry Committee.

QUESTIONS BEFORE/AS YOU DO THE READING
1. Prepare 1-2 questions you have for Dr. Braverman
2. If you were considering egg donation for yourself or your closest friend, what are the top 3 things you want to know?

READING FOR CLASS #8:

i. Informing Offspring of their Conception by Gamete Donation”, Vol._No._ F&S (2013)
http://www.sart.org/uploadedFiles/ASRM_Content/News_and_Publications/Ethics_Committee_Reports_and_Statements/informing_offspring_donation.pdf


iii. “To the Parents Raising My Eggs,” https://www.yahoo.com/parenting/i-was-24-years-old-when-i-decided-to-donate-my-117797920600.html


(9) 11/3: Same-Sex ART, Single & Non-Traditional Patients/Families [*may require make-up date]

Same-sex couples, unmarried couples, single parents, and transgender patients present unique, and fast changing, legal and public policy issues. DOMA related issues and state-by-state variations raise conflicts of law and full faith and credit issues; the varying roles of genetics and intent; and other novel and challenging legal issues.

READING FOR CLASS #9

i. LC, pp. 301-331
ii. RTL (2nd ed.), pp. 478-498
iii. Obergefell v. Hodges, 576 S ____ (2015); read for impact on same-sex legally married couples procreative rights

v. Adoption of a Minor, SJC-11797 (MA March 2, 2015)
vi. AGR v. DRH, PA Super. Ct. (12/13/11); together with


x. Adar v. Smith, 639 F. 3d 146 (5th Cir. 2011) posted excerpt
10) 11/10 Class #10: Life After Death? Fertility Preservation & Posthumous Reproduction

QUESTIONS AS YOU DO THE READING:
1) Clients come in to see you; H is suffering from ALS, which will eventually and likely soon cause his demise. The couple would like to have children, even after the H's anticipated death, by preserving sperm and/or embryos. What advice to you render, and why?
2) Client comes to see you; she is the 2nd wife and now widow of a man who deposited sperm before his unfortunate death from cancer. She would like to use the sperm but no posthumous consent to use was recorded. What advice to you give her?
3) Your client is the clinic; they are now offering egg freezing for all of their female patients prior to cancer treatment. What policies will you recommend? Consider that they will be freezing eggs for females from age 13-45.

READING FOR CLASS #10
i. LC, pp. 275-300
ii. RTL (2nd ed.): 521-34; 540-6; 551-71
iii. Astrue v. Capato, 566 US ____ (2012) (excerpts); case summary is adequate to read if you wish

OPTIONAL READING:

11) 11/17 CLASS #11 Regulating ART? Access, Cost, Profit, and Regulation [rescheduling may be needed].

QUESTIONS/ASSIGNMENT IN LIEU OF A REFLECTION:
1) As you complete the readings, think about policy options-- what would you ideally like to see in place for ART treatments? Then, instead of a "Reflection" this week draft a model statute that addresses: 1) insurance coverage for whatever treatments you think appropriate (if any); 2) any prerequisites for specific treatments (e.g. number of months trying, lower tech before higher tech...); 3) who has access to, and (possibly separate question) coverage for, ART (e.g. same-sex, singles, non-medically infertile, persons with genetic disorders); and 4) which treatments are permitted, covered and if allowed and covered under what circumstances? (e.g. PGD for late onset or only fatal or only early onset serious disorders?), PGS? sex-selection? If so for any/all reasons?

2) Consider and note what, if any, additional data you would think helpful on the cost of ART services?

READING FOR CLASS #11

i. LC, pp.74-81
ii. RTL 2ND ed. pp. 655-69; 675-92
v. See www.resolve.org for current state-by-state Insurance coverage


QUESTIONS:

1) Draft a provision for a Legal Professional Code of Ethics re: multiple representation; see current AAARTA provision in the readings

READINGS FOR CLASS #12:

i. LC, 350-360; 374-91
ii. RTL (2nd ed.) pp. 703-16; 731-5; 744-5; 760-73
vi. www.ncsl.org/issues-research/health/embryonic-and-fetal-research-laws (see table and current review stem cell statutes for CA, MA and NY)
vii. www.cell.com/cell-stem-cell/abstract/S1934-5909%2810%2900011-
ix. AAARTA Current Draft Code Provision on Multiple Representation (to be updated when available)

(13) 12/1: Class #13: Student Presentations (potentially extra hr. added; lunch served)