ASSISTS REPRODUCTIVE TECHNOLOGIES LAW: Fall 2013

Susan L. Crockin, JD

This 2 or 3 credit seminar 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; posthumous reproduction; egg and sperm donation; traditional and gestational surrogacy; unique issues for non-traditional patients (singles and 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.

COURSE INFORMATION:

Class Requirements (*3 credit requires 2 additional short papers; see (3) below):

1) Class attendance and participation (30% 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 Courseware. 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.
   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 rotation during our 1st class.

2) Final Paper assignment in two parts (70% of grade for 2 credit course; 55% for 3 credit course):
   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 regarding your papers, and more frequently if requested. Meeting 1 to discuss and approve topic (by week #4); annotated bibliography due week #8; final paper to be 20-25 pages (5000-6500 words; 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 Requirement: 2 additional short papers focused on current challenges in ART practice (max. 2000 words each), described below:
   a. A number of entities are currently studying ways in which the field of ART law and practice can be updated, revised and improved, reflecting: a growing sophistication with current practices; a growing awareness of the limitations of older codes, model acts, policies and ethical positions; and the inter-disciplinary nature of this field. From sitting on some of these committees and task forces, I assure you the issues are real and serious. These efforts will benefit from new approaches and perspectives, and your papers can have a real world impact. The paper requirements address these goals.
   b. Each paper will address, analyze and recommend improvements to: 1) an existing ART law; 2) an existing inter-disciplinary policy position; or 3) an existing legal ethics position.
   c. Due dates: 10/10; 11/14. One meeting required before topic is approved/finalized.
   d. The purpose of these papers is to analyze selected current provisions, and propose any appropriate updates, revisions, and improvements. I will be happy to discuss and aid in development of potential topics (there are many). Students may choose different or overlapping topics.
   e. I’m happy to meet individually to discuss topics or papers in progress.

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.
3) *Supplemental materials: recent cases, articles and other materials listed in syllabus will be available in print; and some may be posted on Courseware site.
4) Helpful websites include:
   www.ASRM.org (the website for the American Society of Reproductive Medicine, the professional medical society that promulgates voluntary professional guidelines and ethical statements referred to throughout the course)
www.resolve.org (patient infertility organization,)
www.surromomsonline (lively discussions of surrogacy)

CLASSES/READINGS*:
[Please note: readings are subject to revision during semester]

1) 9/4: 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. Watch the documentary, “Google Baby”
   http://www.youtube.com/watch?v=xnCMPhNUF1A
ii. LC, pp. ix-xii; 3-10; 13-30
iii. RTL (2nd ed.): pp. 26-29; 35-47; 56-60 (pay particular attention to Jones & Veeck article)

2) 9/12: CLASS #2 Embryos: Cryopreservation and Dispositions: including divorce, death, donation and clinic mix-ups [discussion of the constitutional right to procreate/ not procreate; legal status of IVF embryos]

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. Ethics Committee of the American Society of Reproductive Medicine (ASRM):
vi. Familiarize yourself with these websites: www.nightlight.org (“Snowflakes”) and www.embryodonation.org
3) 9/19: CLASS #3: Sperm Donation and Paternity Dilemmas
Examination of the sperm donor model; history of sperm donation and artificial insemination laws; evolving laws and current legal conflicts over paternity

READING FOR CLASS #3
i. LC, pp. 132-187
ii. RTL (2nd ed.) pp. 371-79; 464-74; 196-205
http://www.sart.org/uploadedFiles/ASRM_Content/News_and_Publications/Ethics_Committee_Reports_and_Statements/informing_offspring_donation.pdf

4) 9/26: Class #4: Egg Donation: Policies, Practices, and Maternity Dilemmas: 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.
Past, present, and future practices, including egg freezing and donor registry efforts

READING FOR CLASS #4
i. LC, pp.188-208
ii. RTL (2nd ed.) pp. 205-11; 215-243
iv. Ethics Committee of the ASRM:
http://www.sart.org/uploadedFiles/ASRM_Content/News_and_Publications/Ethics_Committee_Reports_and_Statements/informing_offspring_donation.pdf


vii. Complaint in Kamakahi v. ASRM, SART, et.al., (Civ.Action #11-1781 (N.Dis.CA 2011) ; egg donors’ antitrust class-action,

http://www.courthousenews.com/2011/04/13/Ova.pdf ~or~

viii. SART Model Donor Egg Consent (working draft provisions to be supplied)

5) 10/3 CLASS #5: Reproductive Genetics: Balancing Patient Choice & Professional Duties in ART

An overview of novel legal issues confronting ART patients and professionals, including reprogenetics (sex and trait selection); access to treatment; multiple embryo transfers; and potentially conflicting duties in 3rd party arrangements.

READINGS FOR CLASS # 5

i. LC, pp. 332-349

ii. RTL (2nd Ed), pp. 299-323; 333-370


v. Green, A., “Jury awards nearly $3m to Portland area couple in ‘wrongful birth’ lawsuit against Legacy Health”,


6) 10/10: CLASS #6: Medical Aspects and Constitutional Implications of IVF: GUEST LECTURER: 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.

READING FOR CLASS #6

PREPARE 2-3 QUESTIONS FOR DR. STILLMAN FROM YOUR READINGS OVER PAST FEW WEEKS.

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.

http://humrep.oxfordjournals.org/content/23/10/2266.full

7) 10/17: Class #7: Surrogacy and Gestational Carrier Arrangements:
Evolving trends and law (parentage and health) in traditional surrogacy and gestational carrier arrangements; professional standards; duties of care; and professional liability

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.wd 261 (6th Cir. 1992) posted excerpt


vi. Rosecki v. Schissel, 2013 WI 66


http://www.utsandiego.com/news (10/15/11)

ix. In Re Baby, TN Ct. Apps. (1/22/13); 2013 WL 245039; appeal pending hso this reading may be updated

OPTIONAL: 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.

8) 10/24: Class #8: ART and Non-Traditional Families
Same-sex couples, unmarried and single parents 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 #8
i. LC, pp. 301-331
ii. RTL (2nd ed.), pp. 478-498
iv. AGR v. DRH, PA Super. Ct. (12/13/11); together with

9) 10/31: Class #9: Regulating ART? Access, Cost, Profit, Regulation and Professional Liability; Guest lecturer: Sean Tipton, ASRM Director of Public Relations

READING FOR CLASS #9
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

10) 11/7: CLASS #10: Life After Death? Fertility Preservation & Posthumous Reproduction

READING FOR CLASS #10
i. LC, pp. 275-300
ii. RTL (2nd ed.): 521-34; 540-6; 551-71
iii. Shari Roan, “On the Cusp of Life, and of Law,”
http://articles.latimes.com/2008/oct/06/health/he-embryos6

iv. ASRM Practice Committee Guideline: [NOTE OPTIONAL SECTIONS]


OPTIONAL READING:


READINGS FOR CLASS #11:

i. LC, 350-360; 374-91
ii. RTL (2nd ed.) pp. 703-16; 731-5; 744-5; 760-73

vii. www.ncsl.org/issues-research/health/embryonic-and-fetal-research-laws (see table and current review stem cell statutes for CA, MA and NY)

12) 11/21: Student Presentations (Day 1)

13) 12/5: Student Presentations (Day 2)