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” (“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 embryonic stem cell research as it intersects with egg donation and the use of IVF embryos. Guest lectures will provide medical, ethical and policy perspectives to broaden an understanding of the legal and policy challenges in this unique developing field of law.

COURSE INFORMATION:

Class Requirements:

1) Class attendance and participation (40% of grade).
   a. All reading assignments are to be completed before assigned class date.
   b. After week 1, a weekly required “Reflection” on the readings of 1-2 pages will be due via email each Wed by 9 a.m.; it should contain your thoughtful response and reactions to some 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.
c. Students will choose and be responsible for tracking a specific country or region during the semester and to post a current event articles/news stories/legal case reflecting an ARTs issue (ideally) from that particular country or region’s for class discussion at least twice during the semester for class reading. Countries may include: Australia, Costa Rica, Canada, France, Germany, India, Italy, Iran, Turkey, Spain, and the UK.

d. Guest Lectures: Weeks #4, 5 and 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; weeks ##5 and 9 will be Dr. Andrea Braverman, PhD, an internationally recognized mental health expert in 3rd party ART and co-director of medical education at Jefferson Hospital; and Professor Maggie Little, Director of the Kennedy Institute for Ethics at GU.

2) Final Paper assignment in two parts (totaling 60% of grade):

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: 1) a traditional research paper; or 3) model legislation with legislative history:
   i. Students will choose both an approved topic and format.
   ii. The final 1-2 classes will be oral presentations and Q&A.
   iii. The final paper will be due on the final day of the exam period, and should include both applicable precedent for chosen jurisdiction, and reference persuasive authorities (legislative and case law) from other jurisdictions, and scholarly articles.
   iv. Topic and format to be approved by week #3; annotated bibliography due week #8; final paper should be ~5000 words; submitted electronically by final day of exam period; citations should be in proper Blue Book form.
   v. Students must meet with me at least twice: once before their final selected topic and format, once after to review their preliminary research and direction. 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:
3) Additional Course Readings will be posted on Courseware, including updated and excerpted cases, articles, and other materials such as professional guidelines.


CLASS OUTLINE & SYLLABUS:

Class #1-Jan. 16: COURSE INTRODUCTION & OVERVIEW:

Overview of scope 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/Bad” guys here?
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:

1) “Googlebaby”: please watch, available on Utube.


**Class #2: Jan. 23: “EMBRYO LAW” and “WHERE DO PARENTS COME FROM?”**

A medical primer and legal perspectives on ex utero embryos; with a very brief legal perspective on embryonic stem cell research (ESCR)

**QUESTIONS AS YOU READ:**

1) Ask yourself: “when does life begin?” and then, “what is an embryo from medical, scientific and legal 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*?

6) Prepare a list of 3 countries, in order of preference, that you would like to personally track this semester

**READINGS: (N.B. most of these are very short)**

(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 policy perspective.


2) “LC”, pp. 13-73

3) *Reber v. Reiss* (PA 2012 divorce case) http://caselaw.findlaw.com/pa-superior-court/1598692.html, one of two recent frozen embryo disputes (the other is not
assigned, Mbah v. Anong, MD (1/7/13) should you wish to locate and read about it) in which intermediate court appearing to reverse trend favoring non-procreative rights.


5) LA Health Law, Ch. 3. Human Embryos, LA-RS 9 §§121-133 (an unusual statute)


7) Artavia Murillo and others v. Costa Rica, judgment of the Inter-American Court, issued Nov. 28, 2012. (posted)


10) IFFS Surveillance 2013, Ch. 6, “Cryopreservation”, pp. 41-53.

Class #3: Jan. 30: 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.

2) Compare Fost’s and McDougall’s perspectives, approaches and outcomes: how do they differ?

3) 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; why or why not?

4) 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](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) *Ross McDougall, Acting Parentally: An Argument Against Sex Selection, 31 Journal of Medical Ethics 601 (2005) [http://jme.bmj.com/content/31/10/601.full](http://jme.bmj.com/content/31/10/601.full)


7) “Federal Supreme Court Allows PGD" [Germany] [http://www.biotechnologie.de/BIO/Navigation/EN/Funding/foerderbeispiele,did=113700.html](http://www.biotechnologie.de/BIO/Navigation/EN/Funding/foerderbeispiele,did=113700.html)


11) THIS READING HAS BEEN MOVED TO WEEK 4


OPTIONAL READINGS:


2) ASRM Ethics Committee (2001); Pre-Conception Genetic Selection for Non-Medical Reasons
   http://www.asrm.org/uploadedFiles/ASRM_Content/News_and_Publications/Ethics_Committee_Reports_and_Statements/preconceptiongender.pdf

Class #4-Feb 6: 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

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 commonalities that can be relied upon?

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

5) Consider Whitaker’s perspectives (Reading #4), 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?
READING/CLASS PREPARATION:


7) OPTIONAL READING:
b. OPTIONAL: Belgian legislation, single embryo transfer Repro Biomed
   Online 2005 April 10(4) 436-41

c. OPTIONAL: One Embryo is Better than Two in In Vitro Fertilization”
   (12/21/10 http://abcnews.go.com/Health/WomensHealth/single-
   embryo-transfer-effective-safer-double-embryo-
   transfer/story?id=12451473&page=2#.T9oTdStYuFc

d. All articles from the Inhorn conference are posted at:
   http://www.rbmojournal.com/issues?issue_key=S1472-
   6483%2811%29X0014-7

Class #5-Feb. 13: A Cross-Disciplinary, Global Introduction to 3rd PARTY ART
with an emphasis on sperm and egg donation

GUEST LECTURER ANDREA BRAVERMAN:

READINGS (1):

1) “Must I Tell My Fiancée?”, NY Times “Ask the Ethicist”, NYTimes, 1/13/12
2) LC: Medical and Legal Commentaries to Chapters 4 and 5 (sperm and egg
   donation); case summaries that follow are optional.
3) Inhorn, “M., He Won’t Be My Son”, Medical Anthropology Quarterly, Vol. 20,
   No.1, pp.94-10 (2006)
4) Larijani, B., Zahedi, F., “Ethical and Religious Aspects of Gamete and Embryo
5) IFFS Surveillance 2013, Chs. 8 and 9.
   Reproductive Certainty: Fertility and Genetics Beyond 1999, The Plenary
   Proceedings of the 11th World Congress on IVF and Human Reproductive

OPTIONAL READINGS:

1) 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
2) Allan, S., Guest editorial: “Donor Conception secrecy and the search for
FEB 20\textsuperscript{th} NO CLASS

~Additional Readings will be posted for remaining classes~

CLASS #6 2/: GAMETE AND EMBRYO DONATION#2: Legal Aspects and International 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 (partial):

1) Case of SH and Others v. Austria, European Court of Human Rights Application no. 571813/00 (11/3/11)

MARCH 6-SPRING BREAK – NO CLASS

Class #7 3/13:

3rd PARTY ART: SURROGACY (#1)- INTERNATIONAL XBRC INVOLVING THE US:

These next two classes 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 XBRC/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?

Class #8 3/20: THIRD PARTY ART: SURROGACY (#2)- CBRC OUTSIDE THE US.

Class #9 (3/27 – ETHICS, ART and CBRC: Guest Lecturer Prof. Maggie Little, director of the Kennedy Institute for Ethics, Georgetown University.

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 (more TBA):

1) Revisit Googlebaby

Class #10 (4/3) SAME-SEX COUPLES & ART (gamete donation & surrogacy

Class #11 (4/10): PRACTICING ART and CBRC LAW: Access, Professional Duties,
and Criminal Prosecutions: Exploring duties and standards of care owed by professionals involved in XBRC. What are the legal duties, standards, and obligations for: doctors, lawyers, facilitators/brokers? What expertise must an attorney possess—ARTs, family law, immigration? Is it a matter of licensure or competency?

**QUESTIONS:**

1) Consider what access to ART means? What is the nature of this right in the US? In Costa Rica? In S. Africa?

2) Consider your role and duties as a lawyer representing a surrogacy facilitator—what duties do you owe and to whom? What conflicts, if any, do you see?

Class #12 (4/17): (1) SETTING STANDARDS? NATIONAL & INTERNATIONAL EFFORTS TO MEET THE CHALLENGES OF CBRC; start In-class presentations.

CLASS #13 (4/24): #2 In-class presentations- we will adjust if/as needed.