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; reprodgenetics (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 (35% 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 and/or posting to our Courseware site each Tuesday by 6 p.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. And in some weeks comments from one another will be helpful and invited. 

c. After the second week, 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 from that particular country or region’s for class discussion at least once during the semester for class reading. We will discuss country options in class, but potential 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; week #5 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 on gamete donation; and week #9 will be Professor Maggie Little, Director of the Kennedy Institute for Ethics at GU on international surrogacy. 

2) Final Paper assignment in two parts (totaling 65% 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 a traditional research paper.

   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 to be approved by week #3; annotated bibliography due week #8; final paper should be 6000 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:** there are no required books to buy; all materials will be available on Courseware or online.


4) 2010 CBRC Conference Articles: all articles referenced as well as additional ones from Marcia Inhorn’s 2010 Conference are accessible together at: http://www.rbmojournal.com/issues?issue_key=S1472-6483%2811%29X0014-7
   a. Additional Course Readings will be posted on Courseware, including updated and excerpted cases, articles, and other materials such as professional guidelines—in many instances these are short readings.

5) Also you may want to 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 critically.

**CLASS OUTLINE & SYLLABUS:**

**Class #1-Jan. 15: 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. 22: “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) 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

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. 20-30 (an overview of embryo litigation concepts; US centric)

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:


2) “LC”, pp. 31-73 (embryo litigation chapter)


Class #3: Jan. 29: 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 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 commentary.

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) "NGS": New Gene Sequencing explained here: [http://genesisgenetics.org/ngs/](http://genesisgenetics.org/ngs/)


4) 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] [http://www.utexas.edu/law/faculty/jrobertson/rt_germany_usa.pdf](http://www.utexas.edu/law/faculty/jrobertson/rt_germany_usa.pdf)


7) “Federal Court Allows PGD” [Germany] [http://www.biotechnologie.de/BIO/Navigation/EN/Funding/foerderbeispiele,did=13700.html](http://www.biotechnologie.de/BIO/Navigation/EN/Funding/foerderbeispiele,did=13700.html)


OPTIONAL READINGS:


3) ASRM Ethics Committee (2001); Pre-Conception Genetic Selection for Non-Medical Reasons
4) Flawed Embryos Seen as Stem Cell Source”, Boston Globe, (1/28/08)  
http://jme.bmj.com/content/31/10/601.full

Class #4-Feb 5: 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) OPTIONAL READING: 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:


OPTIONAL READINGS:


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

c. 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. 12: 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

GUEST LECTURER ANDREA BRAVERMAN, Ph.D., Associate Medical Director for Education at Jefferson Hospital, 3rd party ART mental health expert:
READINGS:

1) “Must I Tell My Fiancée?”, NY Times “Ask the Ethicist”, NYTimes, 1/13/12
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.
10)

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
3) Selected articles from 19 JLM 354 (2011)

FEB 19th NO CLASS

NOTE: The remaining Readings are subject to change/update

CLASS #6 2/26: 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:

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

Class #7 3/5: 3rd PARTY ART: SURROGACY (#1)- INTERNATIONAL CBRC INVOLVING THE US:

These next 2 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?

READINGS: TBD (there have been a cascade of international surrogacy cases recently, so I am updating, and deleting some of the older, readings in order to avoid overload but be as current as possible.

MARCH 12-SPRING BREAK – NO CLASS

Class #8 3/19: THIRD PARTY ART: SURROGACY (#2)- CBRC OUTSIDE THE US.

READINGS:

3) Assisted Reproductive Technology (Regulation) Bill of India’ (proposed 2008, as yet not enacted) http://www.indian-surrogacy.com/item/proposed-art-regulations-for-international-surrogacy-in-india.html
4) LWV and another v. LMH [2012] QChC 26 (Children’s Court of Queensland 8/8/12),
5) In the matter of E and Y (children) and Section 54 of HFEA, Neutral Citation Number: [2011] EWHC 3147 (Fam) 2011 WESTLAW 3903077, Case Nos: EU11P00024 EU11P00023 IN THE HIGH COURT OF JUSTICE FAMILY DIVISION, Royal Courts of Justice, Strand, London, WC2A 2LL, 06/12/2011 (excerpts)
6) D and L, EWHC 2631, Case. No: UK 11P00690 (9/28/12)
7) (France) Decision No. 370 of April 6, 2011 (10-19.053) – Court of Cassation – First Civil Chamber
8) Article 8 of the European Convention of Human Rights
9) “Childless Couples Win the Right to Pay Surrogate Mothers”, British Telegraph (12/8/2010) and excerpted decision
11) Two recent ECHR surrogacy decisions; Labassee and Mennesson (6/26/14)

Class #9 (3/26 – 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 (and more TBA):

1) Revisit Googlebaby
3) News articles:
   e. “New” Indian surrogacy regulation (2010 and counting?)

Class #10 (4/2) 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.bionews.org.uk/page_87623.asp (2/7/11)
6) Gas and Dubois v. France (3/15/12)

Class #11 4/9: 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 does 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?

READINGS:
   a. LC: pp. 106-132
   b. Excerpts:
      c. US v. Erickson, Neiman, et.al.
      d. Peruse websites of various international surrogacy/repro-vacation centers
      e. ASRM Ethical Statements and Guidelines on Gestational Carrier Arrangements (2012) and Cross-Border Reproductive Care (2012)

Class #12 4/16: SETTING STANDARDS? NATIONAL AND INTERNATIONAL EFFORTS TO MEET THE CHALLENGES OF CBRC

Moving forward: proposals, access: costs/discrimination/insurance; can/how can we safeguard participants and offspring: Model laws- future challenges?

Reading:
2) United Nations Convention on the Rights of Children
3) Hague efforts to regulate International Surrogacy (see Library of Congress report and updates; white papers)
CLASS #13: April 25: In-class presentations- we will adjust if/as needed.