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Assisted Reproductive Technology and the Law

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Assisted Reproductive Technology and the Law

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Introduction

When one thinks of assisted reproductive technology, a variety of ideas can come to mind. Cloning has been a recent political hot topic, and it's not too uncommon to hear on the news about a 60 year old woman giving birth to twins! Though assisted reproductive technology can incorporate a multitude of topics, this project will focus on what is known as artificial insemination or in vitro fertilization (IVF). The scope of this legal research project is to familiarize attorneys with the legal aspects of assisted reproductive technology.

About the Author

Margaret Akin - Fall 2005 - Health and Biotechnology Law; Family Law

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Primary Sources

Federal Statutes

42 U.S.C.A. §§ 263a-1 through 263a-7	Fertility Clinic Success Rate and Certification Act of 1992
42 U.S.C.A. § 263a-1	Assisted Reproductive Technology Programs
42 U.S.C.A. § 263a-2	Certification of Embryo Laboratories
42 U.S.C.A. § 263a-3	Accreditation Organizations
42 U.S.C.A. § 263a-4	Certification, Revocation and Suspension
42 U.S.C.A. § 263a-5	Publication

42 U.S.C.A. § 263a-6	Fees
42 U.S.C.A. § 263a-7	Definitions

Georgia Statutes

O.C.G.A. § 19-7-20	What children are legitimate; presumption; legitimization by marriage of parents
O.C.G.A. § 19-7-21	Children conceived by artificial insemination
O.C.G.A. § 19-7-54	Motion to set aside determination of paternity based on newly discovered evidence
O.C.G.A. § 31-10-9	Birth registration
O.C.G.A. § 43-34-42	Administration of artificial insemination
O.C.G.A. § 53-2-5	Rights of inheritance of and from individual conceived by artificial insemination
2005 GA House Bill No. 4	To require the identification on birth certificates of certain children born as a result of artificial insemination

Legislative History

Fertility Clinic Success Rate and Certification Act of 1992 42 U.S.C.A. §§ 263a-1 through 263a-7	
Bill No.	H.R. 4773
Statutes at Large No.	106 Stat. 3146
Public Law No.	Pub. L. 104-493
House Report	H.R. Rep. 102-624
Senate Report	S. Rep. 102-452
Enacted	October 24, 1992

United States Constitution

U.S. Const. Amend. VIII	"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."
U.S. Const. Amend. XIV	". . . nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Federal Cases

Winters v. Costco Wholesale Corp., 49 F.3d 550 (9th Cir. 1995).	Employee, a participant in her company's self-insured ERISA health benefits plan, not entitled to reimbursement for in vitro fertilization procedures.
Egert v. Conneticut General Life Ins. Co., 900 F.2d 1032 (7th Cir. 1990).	Insured covered under employee health insurance plan pursuant to terms of ERISA is entitled to reimbursement for in vitro fertilization where plan authorizes reimbursement for "illness" and administrator had described infertility as "illness" in its own internal guidelines.

Goodwin v. Turner, 908 F.2d 1395 (8th Cir. 1990).	Restriction by the Bureau of Prisons on inmate procreation, including artificial insemination of wives by male inmates, is reasonably related to furthering the legitimate penological interest of treating all inmates equally. I.e. The right to procreate does not survive incarceration.
Gerber v. Hickman, 291 F.3d 617 (9th Cir. 2002)	Incarcerated prisoner had no federal constitutional right to require prison warden to accommodate prisoner's request that he be allowed to provide his wife with a sperm specimen with which she could be artificially inseminated, and the state's refusal to allow prisoner to provide the sperm sample for artificial insemination did not violate the Eighth Amendment's prohibition against cruel and unusual punishment.

Georgia Cases

Baker v. Baker, 582 S.E.2d 102 (2003).	Deligitimization of a child presumed legitimate is a high hurdle for a father to get over. He must show . . . that the child was not conceived by artificial insemination while he and the biological mother were married . . . .
Pruitt v. Lindsey, 407 S.E.2d 750 (1991).	Dicta that in limited situations, such as artificial insemination, biological paternity does not correspond with a duty to support.
Noggle v. Arnold, 338 S.E.2d 763 (1985).	Dicta that the law favors legitimacy - methods of legitimacy besides birth after wedlock include birth by way of artificial insemination.

Administrative Regulations

Obstetrical and Gynecological Devices, 21 C.F.R. § 884 (2005). Subpart G. Assisted Reproduction Devices	
21 C.F.R. § 884.6100	Assisted Reproduction Needles
21 C.F.R. § 884.6110	Assisted Reproduction Catheters
21 C.F.R. § 884.6120	Assisted Reproduction Accessories
21 C.F.R. § 884.6130	Assisted Reproduction Microtools
21 C.F.R. § 884.6140	Assisted Reproduction Micropipette Fabrication Instruments
21 C.F.R. § 884.6150	Assisted Reproduction Micromanipulators and Microinjectors
21 C.F.R. § 884.6160	Assisted Reproduction Labware
21 C.F.R. § 884.6170	Assisted Reproduction Water and Water Purification Systems
21 C.F.R. § 884.6180	Reproductive Media and Supplements
21 C.F.R. § 884.6190	Assisted Reproductive Microscopes and Microscope Accessories
21 C.F.R. § 884.6200	Assisted Reproduction Laser System

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Secondary Sources

Treatises

Dan E. McConaughey, Georgia Divorce, Alimony, and Child Custody § 11-24 (2004).
Mary F. Radford, Redfearn Wills and Administration in Georgia § 9-3 (6th ed. 2004).

Encyclopedias

10 Ga. Jur ***Decedents' Estates and Trusts*** §6:16 (2005).
41 Am Jur. 2d ***Illegitimate Children*** § 2 (2005).
14 C.J.S. ***Children Out-of-Wedlock*** § 11 (2005).

Journal Articles

Laura R. Rojas, ***In the Courts: The Legal Status of Children Conceived from Non-Traditional Methods***, 23 Child. Legal Rts. J. 53 (2003).	Exploration of the Legal Status of children conceived via non-traditional forms of reproduction, including in-vitro fertilization and artificial insemination.
Bruce L. Wilder, ***Assisted Reproduction Technology: Trends and Suggestions for the Developing Law***, 18 J. Am. Acad. Matrimonial Law 177 (2002).	Article exploring the changing and developing world of assisted reproduction technology, and ideas on how the law should evolve to stabilize and protect the rights of persons utilizing ART.
Renee H. Sekino, ***Posthumous Conception: The Birth of a New Class***, 8 B.U. J. Sci. & Tech. L. 362 (2002).	Exploration of the 2002 ruling of the Supreme Judicial Court of Massachusetts in which the court held that a child conceived through artificial insemination after her biological father's death can be a legal heir of the dead parent if certain requirements are satisfied.
Carl H. Coleman, ***Assisted Reproductive Technologies and the Constitution***, 30 Fordham Urb. L.J. 57 (2002).	Discussion of present and future assisted reproductive technologies, and the social, legal, moral, and political implications.
Daniel I. Steinberg, ***Divergent Conceptions: Procreational Rights and Disputes Over the Fate of Frozen Embryos***, 7 B.U. Pub. Int. L.J. 316 (1998).	Explores legally significant factors of IVF and cryo-preservation of embryos.
John E. Durkin, ***Reproductive Technology and the New Family: Recognizing the Other Mother***, 10 J. Contemp. Health L. & Pol'y 327 (1994).	Explores the rights of lesbian couples who have children, including through assisted reproduction.

Law Review Articles

Lucy R. Dollens, ***Artificial Insemination: Right Of Privacy And The Difficulty In Maintaining Donor Anonymity***, 35 Ind. L. Rev. 213 (2001).	Exploration of the legal issues that may occur as a result of artificial insemination by donor (AID).
Lisa Walgenbach, ***Artificial Insemination Behind Bars: The Boundaries of Due Process***, 36 Loy. L.A. L. Rev. 1357 (2003).	Explores whether the fundamental right to procreate survives incarceration, either through traditional means or artificial insemination.
Gaia Bernstein, ***The Socio-Legal Acceptance of New Technologies: A Close Look at Artificial Insemination***, 77 Wash. L. Rev. 1035 (2002).	Exploration of artificial insemination and its disruption of the socio-legal value of the family as a basis for the introduction of new technology into society.
Brianne M. Star, ***A Matter of Life and Death: Posthumous Conception***, 64 La. L. Rev. 613 (2004).	Exploration of the ramifications of posthumous conception on paternity and inheritance laws.

ALRs

Elizabeth A. Trainor, Annotation, ***Right of Husband, Wife, or Other Party to Custody of Frozen Embryo, Pre-Embryo, or Pre-Zygote in Event of Divorce, Death or Other Circumstances***, 87 A.L.R.5th 253 (2005).	Collects and analyzes cases in which courts have addressed the issue of the right of a husband, wife, or other party to custody of a frozen embryo, pre-embryo, or pre-zygote in the event of divorce, death, or other circumstances.
Ardis L. Campbell, Annotation, ***Determination of Status as Legal or Natural Parents in Contested Surrogacy Births***, 77 A.L.R.5th 567 (2005).	Collects and discusses state cases addressing the issue of who are the legal or natural parents of a child born from a surrogacy arrangement.
Michael J. Yaworsky, Annotation, ***Rights and Obligations Resulting from Human Artificial Insemination***, 83 A.L.R.4th 295 (2005).	Collects and discusses cases in which courts have adjudicated matters involving rights and obligations arising from artificial insemination in humans.
Edward L. Raymond, Jr., Annotation, ***Coverage of***	Collects and analyzes state and federal cases which have

Artificial Insemination Procedures or Other Infertility Treatments by Health, Sickness, or Hospitalization Insurance, 80 A.L.R.4th 1059 (2005).	considered the liability of an insurer under a health, sickness, or accident policy for expenses incurred by an insured for artificial insemination procedures and other infertility treatments.

Books

Howard Ball, The Supreme Court in the Intimate Lives of Americans: Birth, Sex, Marriage, Childbearing, and Death (2002). Call No. KF3760 .B35 2002	Fairly recent overview of the Supreme Court and its decisions that have affected the lives of Americans with regard to birth, sex, marriage, childbearing and death. Contains many case studies of decisions having an effect on these areas of Americans lives.
Rachel Kranz, Reproductive Rights and Technology (2002). Call No. RG133.5 .K73 2002	Extensive overview of reproductive rights and technology, including a guide on how to research the subject further.
Elizabeth C. Britt, Conceiving Normalcy: Rhetoric, Law , and the Double Binds of Infertility (2001). Call No. RG 133.5 .B756 2001	Explores how the law, infertility, and reproductive technology interact and influence the other areas. Specifically looks at a Massachusetts statute enacted in 1987 that defines infertility as a medical condition and provides almost unlimited access to medical treatment.
Designing Life? Genetics, Procreation and Ethics (Maureen Junker-Kenny ed., 1999). Call No. RG133.5 .D47 1999	Based on a public lecture series, this book is a collection of essays on reproduction and reproductive technology by several authors from different backgrounds including, genetics, psychology, law, and theology.
Lynda Beck Fenwyck, Private Choices, Public Consequences: Reproductive Technology and the New Ethics of Conception, Pregnancy, and Family (1998). Call No. RG133.5 .F46 1998	Almost 400 page book exploring all aspects of assisted reproduction technology through personal stories collected by the author. Note that the author has a definite agenda of regulation of ART.
Inmaculada de Melo-Martin, Making Babies: Biomedical Technologies, Reproductive Ethics, and Public Policy (1998). Call No. RG133.5 .M45 1998	Explores and evaluates four prominent institutional assessments of IVF. Discusses how inadequate assessments are not in the public's best interest.
Cheryl L. Meyer, The Wandering Uterus: Politics and the Reproductive Rights of Women (1997). Call No. RG133.5 .M48 1997	Explores the politics surrounding gamate donation, IVF, the control of women's bodies, reproductive issues in the workplace, and reproductive choice.
Valerie Hartouni, Cultural Conceptions: On Reproductive Technologies and the Remaking of Life (1997). Call No. RG133.5 .H383 1997	Explores many aspects of reproduction and technology, including assisted reproduction, surrogacy, abortion, and cloning.
Rosemarie Tong, Feminist Approaches to Bioethics (1997). Call No. RG133.5 .T65 1997	Explores assisted reproduction – contraception, sterilization, abortion, artificial insemination, in vitro fertilization, surrogate motherhood, and genetic screening – through a feminist and then non-feminist perspective.
Carson Strong, Ethics in Reproductive and Perinatal Medicine (1997). Call No. RG133.5 .S77 1997	Explores ethical issues raised in reproductive and perinatal medicine.
Dion Farquhar, The Other Machine, Discourse and Reproductive Technologies (1996). Call No. RG133.5 .F37 1996	A study of the technologies, procedures, and inventions that have come to be called assisted reproductive technologies.
Laura M. Purdy, Reproducing Persons: Issues in Feminist Bioethics (1996). Call No. RG133.5 .P87 1996	Explores the ethics and morality surrounding issues such as the right to reproduce, abortion and the right not to reproduce, and reproductive technology.
New Ways of Making Babies: The Case of Egg Donation (Cynthia B. Cohen ed., 1996). Call No. RG 133.5 .N49 1996	Part of a series developed by the National Advisory Board of Ethics in Reproduction, this book contains a series of articles by medical doctors, scholars, and attorneys presenting reasoned discussion of ethical and policy issues raised by new reproductive technologies.
Jose Van Dyck, Manufacturing Babies and Public Consent (1995). Call No. RG133.5 .V36 1995	Exploration of how assisted reproduction technologies have essentially become commonplace.
Ruth Macklin, Surrogates & Other Mothers (1994). Call No. RG133.5 .M33 1994	Explores many topics surrounding infertility and surrogacy.
John A. Robertson, Children of Choice: Freedom and the New Reproductive Technologies (1994). Call No. RG133.5 .R63 1994	Explores many aspects of reproduction and reproductive technology, including abortion, contraception, and assisted reproduction.

Marcia Mobilia Boumil, Law, Ethics, and Reproductive Choice (1994). Call No. KF3771 .B68 1994	Exploration of reproductive technology, the involvement of the law, and ethics. Topics include surrogacy, in vitro fertilization, abortion, protection of the fetus from maternal abuses, fetal research, sterilization, and tort liability for reproductive injuries.
Julia J. Tate, Artificial Insemination and Legal Reality (1992). Call No. KF3830 .T37 1992	ABA pamphlet giving overview of artificial insemination, including techniques. Legal issues explored include relationships between husband and child, and donor and child, though information is somewhat dated.
Warren Freedman, Legal Issues in Biotechnology and Human Reproduction: Artificial Conception and Modern Genetics (1991). Call No. KF3771 .F74 1991	Although a bit dated, this book offers a good rundown of assisted reproduction technologies. In depth coverage of artificial insemination, including history, legal issues, religion and morality, related legal liability, international views, and governmental regulation.
Bruce Lord Wilder, Defining the Legal Parent-Child Relationship in Alternative Reproductive Technology (1991). Call No. KF3771.Z9 W4 1991	ABA pamphlet outlining all aspects of reproductive technology: cryo-preservation, artificial insemination by donor, surrogacy, as well as inheritance issues and same-sex couples.
Women and New Reproductive Technologies: Medical, Psychosocial, Legal, and Ethical Dilemas (Judith Rodin ed., 1991). Call No. RG133.5 .W65 1991	A collection of articles discussing reproduction and how it is viewed on the threshold of the 21st century. Includes perspectives from many different disciplies.
John Yeh & Molly Uline Yeh, Legal Aspects of Infertility (1991). Call No. KF 3830 .Y44 1991	Though dated, gives a good general overview of all aspects of infertility: ovulation induction, artificial insemination, assisted reproductive technology, surgical procedures, male infertility, surrogate motherhood, adoption, and insurance coverage. Also explores how the legal system has affected infertility practice.
Jonathan Glover et al., Ethics of New Reproductive Technologies (1989). Call No. RG133.5 .G57 1989	Explores issues raised by reproductive technology, and discusses its impact on society.

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Search Terms

- artificial insemination
- assisted reproduction
- human reproductive science or technology
- in vitro fertilization or IVF

Interest Groups

- CDC Assisted Reproductive Health
- eMedicine Assisted Reproductive Technology
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