

Syllabus: Assisted Reproductive Technologies

Faculty: Nanette Elster

(502) 387-3367

nanetteelster@sbcglobal.net

Office Hours: By Appointment

Meeting Dates and Times: June 8, 9:00 am-- 4:00 pm

June 9, 9:00 am – 3:30 pm

June 10, 11, 12, 13, 5:30 pm – 8:45 pm

This syllabus is intended to serve as guide for expectations and assignments during the term. This is not a binding document and changes may be made at any time throughout the session with readings or viewings being added or deleted.

DESCRIPTION: This course will explore the legal and ethical issues involved in assisted reproduction. Technological developments in reproduction have raised a host of legal and ethical concerns such as payment to gamete donors, custody or ownership of frozen embryos and fertility preservation. This course will explore the full range of issues including parentage, privacy, informed consent, and access to treatment.

Since the birth of Louise Brown, the first "test-tube" baby, in 1978, variations of assisted reproductive technologies (ARTs) and access to such technologies have increased dramatically. These new ways of building families have posed many legal and ethical challenges including: redefining the status of parent and child, reconsidering the boundaries of reproductive liberty, defining the status of the embryo, commodification of gamete donors, and the concept of infertility as a disease to name a few. The law in the United States has been very slow to keep pace with these ever-increasing challenges. In fact, to date, there is very little regulation of this multi-billion dollar industry and what does exist across the states is lacking in uniformity and consistency.

In this course, the current lack of regulation, the possible reasons behind this laissez-faire response and potential policies for regulating ART will be discussed. The concept of reproductive freedom and how it relates to technologies such as surrogacy, egg donation and sperm donation, post-menopausal maternity and posthumous reproduction as well as accessibility of ART to same sex couples and unmarried individuals will be explored. Case law, statutory law and professional society guidelines will be reviewed and analyzed with consideration of how collaborative reproductive arrangements and new ways of building families have challenged our legal and social definitions of "family."

The course will present an overview of constitutional law principles that define the rights of parents and children; discuss specific statutory and case law defining parentage in sperm donation, egg donation, embryo donation and surrogacy; review the inheritance rights of children who may not only be born but be created following the death of one of his or her legal parents. This course will also consider the status of the embryo and how legally, scientifically, and morally this may differ and has presented enormous challenges not only with regard to disposition of frozen embryos but with regard to the use of embryos for other purposes. In addition, this course will consider the question whether infertility is a disease, whether it should be considered a disability, and what that means with respect to insurance, employment and accessibility to services.

The law continues to evolve with respect to ART, but not nearly at the same pace at which the technology is advancing. The semester will conclude with a discussion of emerging laws and legal trends including laws or bills imparting rights from the moment of conception onward and how this may impact ART, and the rights, if any of participants in collaborative reproductive arrangements to gain access to information about progenitors or offspring, including the privacy implications of such access.

Course Material: *Reproductive Technologies and the Law*, 2nd Ed., Judith Daar, LexisNexis (2013). Other readings will be assigned and posted on TWEN or available from Lexis.

Per AR-105(B)(8): A student who does not take a scheduled examination will receive a grade of "F" for that examination, unless properly excused. In addition, any student who does not turn in a required paper on the scheduled date will receive a grade of "F" for that paper, unless properly excused. Failure to meet any course requirement can be the basis for a final grade of "F" in the class, unless properly excused.

Format: The format for this course will include faculty presentations, guest lectures, student presentations, case analysis and group discussions. Each session will begin with a review of current ART issues in the news. Each session, one or two students will be asked to find and report on an ART story currently (or recently) in the news and to discuss the legal and ethical issues raised. This includes being prepared to lead your classmates in a discussion about the article. **The news issue need not reflect the topic under discussion during the particular class session in which it will be presented and must come from a popular press source and not an academic source.** All sessions will include faculty or guest lecture presentation and/or a group activity or discussion.

Evaluation :

Class Participation

20%

Class discussion is a very important aspect of this course because of the new and ever changing issues that arise in the area of ART and the evolution of

law and policy in this area. Therefore, everyone is required to express his/her thoughts on the full range of issues discussed and respect for one another's viewpoints is of the utmost importance. Given the compressed nature of the course, it is essential that everyone come to class prepared so that our discussions are meaningful and informative.

Note: *Some of the topics that we will cover can be controversial and may engender strong and, at times, conflicting viewpoints. I do not discourage this but merely ask that all comments be respectful, not personal, and relevant to the discussion at hand. I hope that we can take the opportunity to learn from one another especially when differing views are expressed in a constructive and informative way.*

Weekly News Update

20%

Each session, one or two students will be responsible for identifying an ART issue in the news (within the last 6 months) and making a 10-15 minute presentation about the legal, ethical, and/or policy implications of this issue. If two students are making presentations, these should be separate presentations and should not be done as a "team" or "group" project. This presentation need not be formal (i.e. no slides or written materials are required).

Case Discussions

20%

Each student will participate in a role play exercise in which the perspectives of several stakeholders will be considered. Cases will typically be assigned the day before the discussion with roles assigned at that time. Please advocate for the position that your character would be likely to take given the scenario. Once the positions of the characters have been presented, the class will then ask questions and participate in the discussion.

Reflections

20%

Beginning with our class on Sunday June 9, each of you will be asked to write a 500-750 word reflection on one of the topics that was discussed in the previous session (for a total of 4 reflection papers to be turned in 6/9, 6/10, 6/11, 6/12). Reflections are not intended to be research papers, but rather your thoughts about the issues and concepts discussed, whether your views changed after our discussion and the readings, and if so, how as well as whether you think the law adequately addresses the matter or whether the law even has a role to play. Additionally, if you have recommendations please include those as well.

Legislative Commentary

10%

On June 12, I will post two or three proposed pieces of legislation to TWEN. You will be asked to select one of the bills to write a 750 - 1000 word commentary about. Your commentary should identify the impacted stakeholders, potential ethical issues raised, the legal problem which the bill is seeking to solve and your own views regarding the impact and import of the bill or case. Also, please

discuss whether you think that the proposed law or case was initiated because of an actual dispute or dilemma or if the law itself poses a dilemma. Papers should be submitted through TWEN and in Word (no pdf, please), with the file named with your last name first. This assignment must be submitted to TWEN on Monday, June 17.

Course Schedule

Session 1

Introduction/Logistics

June 8

The Right to Reproduce/Sterilization/
Contraception/Abortion
Pages 81-130

ART as a Fundamental Right
Pages 130-172

The Science of Art
Pages 1-56

CDC, 2010 Assisted Reproductive Technology
(ART) Report: Section 1—Overview at

<http://www.cdc.gov/art/ART2010/section1.htm>

Session 2

June 9

Embryo Status
Pages 56-79, 731-744

Shari Roan, "On the Cusp of Life, and of Law,"
<http://articles.latimes.com/2008/oct/06/health/he-embryos6>

[Parrish v. Am. Infertility Group of Ill., 2008 Ill. App. LEXIS 1045 \(Ill. App. Ct. 1st Dist., Oct. 24, 2008\)](#)

ART and Divorce: Embryo Disputes
Pages 574-654

Early ART Cases (will be posted in TWEN)

Regulation of ART
Pages 656-702

Session 3

June 10

Commerce and ART

Pages 173-284

Gamete Donation/Sperm Donation
Pages 371-393; 462-497

Guest Lecture: Karen Spence, JD

Session 4
June 11

Surrogacy
Pages 394-462

Posthumous Reproduction
Pages 521-72

Guest Lecture: Karen Spence, JD

Session 5
June 12

Disclosure Issues in ART
Readings posted to TWEN

**Guest Lecture: Allannah Elster, Donor-
Conceived**

Session 6
June 13

Fertility Preservation
Readings posted to TWEN