Assisted Reproductive Technologies: An Annotated Bibliography, 2013-2018

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This bibliography covers law review articles published, for the most part, after 2012. Articles for which the title is self-explanatory or that concern only a single case, state, or statute are cited, but not annotated.

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Access to ART


Judith A. Hoechst & Sean C. Sobottka, *Roadblocks to Surrogacy*, FAM. ADVOC., Winter 2018, at 44 (noting that “cumulative costs for agency fees, in vitro fertilization (IVF), legal assistance, egg donor and surrogate compensation, medical costs, and other expenses rang[e] from $70,000 to $175,000”).


Nicole M. Mattson, *On Ice: The Slippery Slope of Employer-Paid Egg Freezing*, 32 ABA J. LAB. & EMP. L. 255 (2017) (noting that several prominent employers have started to pay for employees to freeze their eggs and evaluating the benefits, as well as the risks (such as employment discrimination claims) of these programs).

Dorothy E. Roberts, *Why Baby Markets Aren’t Free*, 7 UC IRVINE L. REV. 611 (2017) (discussing the costs of the goods to create babies—eggs, sperm, and a gestational carrier—as well as the additional costs imposed by currents of race, gender, and disability discrimination that operate in the United States).

Mary Ziegler, *Abortion and the Constitutional Right (Not) to Procreate*, 48 U. RICH. L. REV. 1263 (2014) (examining the relationship between how courts have approached constitutional issues about abortion rights and how they should handle issues about access to assisted reproductive technologies).

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**ART Agreements (see also Surrogacy)**

Kaiponanea T. Matsumura, Public Policing of Intimate Agreements, 25 YALE J.L. & FEMINISM 159 (2013) (arguing that courts should not invoke public policy as a ground for avoiding enforcement of intimate agreements, and discussing agreements about use of assisted reproductive technologies as an example).


**Biology and Technology of Assisted Reproduction**


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(arguing for enhanced regulation of assisted reproductive technologies).

Dov Fox, Selective Procreation in Public and Private Law, 64 UCLA L. REV. DISCOURSE 294 (2016) (proposing a framework for thinking about ethical and legal issues relating to choosing genetic traits of children).


Amy B. Leiser, Note, Parentage Disputes in the Age of Mitochondrial Replacement Therapy, 104 GEO. L.J. 413 (2016).


Genetic Modifications


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**Child Support** *(See also Egg and Sperm Donation)*

Susan Frelich Appleton, Between the Binaries: Exploring the Legal Boundaries of Nonanonymous Sperm Donation, 49 Fam. L.Q. 93 (2015) (discussing the resolution of various legal cases involving known sperm donors, including whether sperm donors can be held liable for child support).


Meldie Moore, Senate Bill 115 Would Give Sperm Donors Standing to Petition for Paternity, Orange Cty. Law., Sept. 2013, at 38 (California).


**Children’s Rights**

Elizabeth Bartholet, Intergenerational Justice for Children: Restructuring Adoption, Reproduction and Child Welfare Policy, Law & Ethics Hum. Rts. 103 (2014) (arguing that children’s interests should be given as much value as adults’ interest in making decisions about issues including assisted reproductive technologies).
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Naomi Cahn, *Do Tell! The Rights of Donor-Conceived Offspring*, 42 Hofstra L. Rev. 1077 (2014) (discussing whether donor-conceived children have a right to know they are donor-conceived or to know the identity of the donor, and arguing that greater weight should be given to children’s rights).

Pamela Laufer-Ukeles, *The Lost Children: When the Right to Children Conflicts with the Rights of Children*, 8 Law & Ethics Hum. Rights 219 (2014) (proposing that assisted reproductive technologies should be regulated in order to protect basic civil rights of children born via these technologies).


**Egg and Sperm Donation**


could pursue custody of the child conceived through ratification insemination after his relationship with the woman ended).


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**Market in Blood, Milk, and Sperm in Modern America** (2014)).


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Embryo Disposition

Anna El-Zein, Note, Embry-Uh-Oh: An Alternative Approach to Frozen Embryo Disputes, 82 MO. L. REV. 881, 884 (2017) (reviewing the three evaluative methods different state courts use regarding embryo disputes: “the balancing interests approach, the contractual approach, or the contemporaneous mutual assent approach”).


Anthony Jose Sirven, Note, *Undue Process: A Father’s Proprietary Interest in an Embryo and Its Clash with Casey*, 68 FLA. L. REV. 1469 (2016) (discussing how widespread use of assisted reproductive technology has led some courts to recognize a property interest in human embryos, which could give fathers a legal basis for objecting to an abortion of their unborn children).

Mark Strasser, *The New Frontier? IVF’s Challenges for State Courts and Legislatures*, 17 SMU SCI. & TECH. L. REV. 1235 (2014) (discussing cases about couples with frozen embryos who end their relationship and cannot agree on whether or how the embryos should be used).

Sasha M. Swoveland, *Surrogacy and Insurance: The Call for Statutory Reform in Ohio*, 26 J.L. & HEALTH 143 (2013) (arguing that it is pregnancy discrimination for insurers to exclude coverage for surrogate mothers under insurance plans covering maternity services).

Chanel Vegh, *My Body, My Property, My Baby? The Extension of Property Rights to Sexual Reproductive Cells and Embryos*, 14 CARDozo PUB. L. POL’Y & ETHICS J. 649 (2016) (arguing that “the extension of property rights to human reproductive cells is an inevitable progression in law” and urging legislatures to get ahead of this development with appropriate regulations).
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Alison P. Barbiero, Comment, What to Expect Before You’re Expecting: Clarifying Florida’s Statute Governing Pre-Embryo Disposition Agreements and Divorce, 40 NOVA L. REV. 257 (2016) (Florida).


**Estates, Trusts, and Inheritance**


Elise N. McQuain, Note, *Inheritance of Frozen Reproductive Material*, 40 Ohio N.U. L. Rev. 301 (2013) (arguing that people depositing reproductive material for cryopreservation should be required to execute a death clause document clearly stating what should happen if depositor dies while the material is in storage).


**Posthumous Conception**

Arianne Renan Barzilay, *You're on Your Own, Baby: Reflections on Capato’s Legacy*, 46 Ind. L. Rev. 557 (2013) (discussing the U.S. Supreme Court’s decision in *Astrue v. Capato* and how it relied on a primarily male-dominated hetero family model).

Katie Christian, Comment, “*It's Not My Fault!*: Inequality Among Posthumously Conceived Children and Why Limiting the Degree of Benefits to Innocent Babies Is a “No-No!”*, 36 Miss. C. L. Rev. 194, 195 (2017) (examining the “smorgasbord of state laws” regarding posthumously conceived children in light of the U.S. Supreme Court’s decision in *Astrue v. Capato* in which the Court upheld the denial of Social Security benefits to children conceived after their biological father’s death).

Jeffrey W. Sheehan, Note, *Late Fathers’ Later Children: Reconciling the Limits of Survivor’s Benefits in Response to Death-Defying Reproductive Technology*, 15 Vand. J. Ent. & Tech. L. 983 (2013) (suggesting changes to rules governing eligibility for social insurance benefits as reproductive technology makes it possible for a child to be born long after the death of one or both genetic parents).


**Ethical Issues**


Martha M. Ertman, *Unexpected Links Between Baby Markets and Intergenerational Justice*, 8 LAW & ETHICS HUM. RTS. 271 (2014) (arguing that intergenerational justice concerns do not justify increased regulation of reproductive technologies, but suggesting that embryo markets would pose more difficult ethical issues than gamete markets).

REV. 429 (2015) (discussing arguments for recognizing a man’s right to not procreate, including in situations involve sperm stashing, nonconsensual sexual intercourse, and improper use of artificial reproductive technology).

Scott FitzGibbon, *The Law’s Duty to Promote the Kinship System: Implications for Assisted Reproductive Techniques and for Proposed Redefinitions of Familial Relations*, 29 BYU J. PUB. L. 389 (2015) (arguing that law should promote systematically organized kinship systems, and then applying this argument to suggest how law should respond to assisted reproductive techniques).


Jessica Knouse, *Reconciling Liberty and Equality in the Debate over Preimplantation Genetic Diagnosis*, 2013 UTAH L. REV. 107 (arguing that prospective parents should be given relatively broad latitude to make choices about their prospective children’s traits through use of nontherapeutic preimplantation genetic testing).

Myrisha S. Lewis, *Sex and Statutory Uniformity: Harmonizing the Legal Treatment of Semen*, 7 CHARLESTON L. REV. 235 (2012-2013) (proposing model legislation that would treat males who are victims of contraceptive fraud, sexual assault, or statutory rape in the same manner as anonymous sperm donors under artificial insemination statutes).
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Hannah Lou, Note, Eugenics Then and Now: Constitutional Limits on the Use of Reproductive Screening Technologies, 42 Hastings Const. L.Q. 393 (2015) (arguing that non-medical uses of genetic screening should be limited in order to prevent this technology from becoming a backdoor form of eugenics).

Zakiya Luna & Kristin Luker, Reproductive Justice, 9 Ann. Rev. L. & Soc. Sci. 327 (2013) (discussing reproductive technology issues as an example of an area where questions arise about who has or lacks a right to have a child).

Kimberly M. Mutcherson, Procreative Pluralism, 30 Berkeley J. Gender L. & Just. 22 (2015) (arguing that the fundamental constitutional right to procreate includes a right to use assisted reproduction).

Kimberly M. Mutcherson, Transformative Reproduction, 16 J. Gender Race & Just. 187 (2013) (examining positive and negative perceptions of assisted reproductive technology and discussing a reproductive justice framework for analyzing the ways in which the technology transforms family and reproduction).


Noel K. Tucker, As ART Technologies Evolve, Watch for Hidden Malpractice Pitfalls, Fam. Advoc., Fall 2017, at 46 (focusing on Model Rule 1.7, which bars lawyers from representing multiple clients who have conflicting interests).


to unborn impacts issues, like assisted reproductive technologies, other than abortion).

Debra Wilson, *Avoiding the Public Policy and Human Rights Conflict in Regulating Surrogacy: The Potential Role of Ethics Committees in Determining Surrogacy Applications*, 7 UC Irvine L. Rev. 653 (2017) (examining legal decisions in the United Kingdom, Australia, and New Zealand, and the processes that other jurisdictions use to handle ethical issues that arise in surrogacy cases).


**Fertility Treatments and Financing**


Seema Mohapatra, *Using Egg Freezing to Extend the Biological Clock: Fertility Insurance or False Hope?*, 8 Harv. L. & Pol’y Rev. 381 (2014) (discussing significant legal, economic, and so-
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cial problems created by increased use of egg freezing technology to enable women to delay fertility).


Informed Consent

Jennifer S. Bard & Lindsay Penrose, Responding to Requests for Assisted Reproductive Technology Intervention Involving Women Who Cannot Give Consent, 25 Health Matrix 227 (2015) (discussing legal implications of advances in assisted reproductive technology that could result in a viable, fertilized embryo when the mother is permanently unconscious from a brain injury or has lost brain function and therefore cannot give consent).


International & Comparative Law


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Bruce Hale, *Regulation of International Surrogacy Arrangements: Do We Regulate the Market, or Fix the Real Problems?*, 36 Suffolk Transnat’l L. Rev. 501 (2013).

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Valeria Camboni Miller, *Legal and Ethical Considerations on the Use of Assisted Reproductive Technology in the United States and Italy*, 24 *Digest, Nat’l Italian Am. Bar Ass’n L.J.* 17 (2016).


**Internet Resources**

*The Academy of Adoption and Assisted Reproduction Attorneys*, https://adoptionart.org/ (last visited July 5, 2018) (offering a wealth of resources for intended and adoptive parents, surrogates, donors, and ART professionals, as well as an attorney directory).


*Assisted Reproductive Technology*, Centers for Disease Control, https://www.cdc.gov/art/index.html (last visited July 5, 2018) (presenting reports and data about different fertility clinics’ success rates, national and state data about various procedures’ success rates, as well as patient resources).

The Donor Sibling Registry, https://donorsiblingregistry.com/ (last visited July 5, 2018) (helping to make connections between people born from anonymous egg and sperm donation).


Society for Assisted Reproductive Technology, https://www.sart.org/patients/a-patients-guide-to-assisted-reproductive-technology/general-information/assisted-reproductive-technologies/ (last
visited July 5, 2018) (providing a patient’s guide to ART, including various tests and risks).

**LGBTQ Rights**


Jillian Casey et al., *Assisted Reproductive Technologies*, 17 GEO. J. GENDER & L. 83 (2016) (providing an overview of ART methods and legal issues, such as property ownership, inheritance, and parentage, that have unique twists for same-sex couples).


Douglas NeJaime, *The Nature of Parenthood*, 126 YALE L.J. 2260 (2017) (examining inequalities in the ways in which law treats families that are formed with assisted reproductive technology and urging greater legal recognition of the social realities of parenthood).

nities as an example of the potential trajectory of family redefinition if queer rights continue to advance and establish the idea of dignity as a key component of liberty).


Jessica Feinberg, Consideration of Genetic Connections in Child Custody Disputes Between Same-Sex Parents: Fair or Foul?, 81 MO. L. REV. 331 (2016).


Tricia Kazinetz, Note, *You Can’t Have One Without the Other: Why the Legalization of Same Sex Marriage Created a Need for Courts to Have Discretion in Granting Legal Parentage to More Than Two Individuals*, 24 Widener L. Rev. 179 (2018).


Miscellaneous

Valarie K. Blake, Ovaries, Testicles, and Uteruses, Oh My! Regulating Reproductive Tissue Transplants, 19 WM. & MARY J. WOMEN & L. 353 (2013) (discussing regulatory and ethical issues raised by reproductive tissue transplants).

Judith Daar, The Outdated Pregnancy: Rethinking Traditional Markers in Reproduction, 35 J. LEGAL MED. 505 (2014) (considering how assisted reproductive technologies may eventually break down the significance of pregnancy as a bright line marker in legal regulation of reproductive decisionmaking).


**Parentage**


Ayelet Blecher-Prigat, *Conceiving Parents*, 41 Harv. J. L. & Gender 119 (2018) (arguing that relationships, as well as biology and intent, should be considered in at-birth parentage determinations).


Jennifer S. Hendricks, Fathers and Feminism: The Case Against Genetic Entitlement, 91 TUL. L. REV. 473 (2017) (arguing that fathers should not have a right to parent based only on the contribution of genetic material and maintaining that courts should give special consideration to mothers’ objections to fathers’ establishment of a parental relationship).

Michael J. Higdon, Constitutional Parenthood, 103 IOWA L. REV. 1483 (2018) (addressing various theories that courts have recognized to confer parenthood, including psychological parent, functional parent, and biology plus intent, and urging the U.S. Supreme Court to define what parenthood means).


Lynne Marie Kohm, Rethinking Mom and Dad, 42 CAP. U. L. REV. 441 (2014) (arguing that it is in the best interests to have two parents, one of each gender, and law should promote that arrangement whenever possible).

Yehezkel Margalit, Bridging the Gap Between Intent and Status: A New Framework for Modern Parentage, 15 WHITTIER J. CHILD & FAM. ADVOC. 1 (2016) (urging the determination of parenthood by legal agreement and applying this framework to gamete and zygote donation, frozen embryos, and domestic and international surrogacy).


Jeffrey Parness, Constitutional Constraints on Second Parent Laws, 40 OHIO N.U. L. REV. 811 (2014) (discussing constitutional concerns about requiring child support to be paid by some-
one who is legally recognized as being a child’s second parent despite having no biological or formal adoptive ties to the child and not having entered into a child creation agreement).

Jeffrey A. Parness, *Dangers in De Facto Parenthood*, 37 U. Ark. Little Rock L. Rev. 25 (2014) (discussing how assisted reproductive technologies produce situations where parentage determinations become operative long after a child’s birth, creating a need for statutory and common-law reforms of state de facto parenthood laws to ensure that children’s interests are protected).

Mark Strasser, *Presuming Parentage*, 25 Tex. J. Women, Gender, & L. 57 (2015) (addressing the different approaches courts have taken to presumed parentage and parenthood by estoppel, with a focus particularly on Maryland, Michigan, and Pennsylvania).


Multiple-Parent Babies


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Catherine Villareale, Comment, *The Case of Two Biological Intended Mothers: Illustrating the Need to Statutorily Define Maternity in Maryland*, 42 U. BALT. L. REV. 365 (2013) (Maryland).

**Surrogacy**


Khiara M. Bridges, Windsor, *Surrogacy, and Race*, 89 WASH. L. REV. 1125 (2014) (considering how surrogacy arrangements may reaffirm racial hierarchies and exacerbate marginalization of those already unprivileged by virtue of race or class, but arguing that there are better ways to address this than banning surrogacy).

Andrea B. Carroll, *Discrimination in Baby Making: The Unconstitutional Treatment of Prospective Parents Through Surrogacy*,
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265 (2016) (maintaining that most surrogacy practices are tantamount to the sale of children under international laws).


Brittney Kern, “You Are Obligated to Terminate This Pregnancy Immediately”: The Contractual Obligations of a Surrogate to Abort Her Pregnancy, 36 WOMEN’S RTS. L. REP. 344 (2015).


Megan Seaton, *Contract Law-Proper Procedure for the Termination of Parental Rights in Traditional Surrogacy Agreements—in


**Tax**


**Tort Remedies**

Jolene S. Fernandes, Note, *Perfecting Pregnancy via Preimplantation Genetic Screening: The Quest for an Elusive Standard of Care*, 4 UC IRVINE L. REV. 1295 (2014) (proposing a standard of care for physicians deciding whether to provide emerging assisted reproductive technologies, particularly optimized PGS-anaploidy screening services).
Dov Fox, *Reproductive Negligence*, 117 Colum. L. Rev. 149, 149 (2017) (examining the liability of reproductive professionals for claims such as infliction of emotional distress and breach of contract for a variety of reproductive errors, such as “misconduct that (1) imposes unwanted pregnancy or parenthood, (2) deprives wanted pregnancy or parenthood, and (3) confounds efforts to have or avoid a child born with particular traits”).

R.A. Lenhardt, *The Color of Kinship*, 102 Iowa L. Rev. 2071 (2017) (evaluating the racial implications of *Cramblett v. Midwest Sperm Bank, LLC*—that the fact of the sperm donor being black made the baby’s birth somehow “wrongful”).


