

December 28, 2015; Surrogacy Laws Can Differ

A few weeks ago, I received an email from a California attorney asking me about the status of surrogacy laws in Guam. Although I had a vague idea of what the term meant, I was very hazy on the details so I immediately went online to better educate myself. I found the research fascinating and thought I'd share my findings with my readers.

Over the last several decades, medical advances have dramatically altered the "natural" process of human reproduction. For example, in 1944 a Harvard medical professor first fertilized a human egg, or ova, outside of the uterus. Nine years later, researchers successfully froze male sperm using a method that left the sperm viable, or able to fertilize an ova at some time in the future.

Eventually, advances in reproduction technology resulted in the birth of Louise Brown in 1978. She was the first "test-tube" baby. Because her mother had problems naturally conceiving, the doctors removed her ova and fertilized it with her husband's sperm inside a test-tube. The embryo was then successfully implanted back into Louise mother's uterus through the process of in-vitro fertilization, or IVF, and a normal birth followed.

Further technological advancements have also opened the possibility of parenting to couples even when the female is unable to carry a baby to term. This can occur through surrogacy. With surrogacy, a woman who is not the intended mother gives birth to a child. The intended parents expect the surrogate to give up any legal right to the child after its birth.

Surrogates can be either voluntary or professional. A voluntary surrogate, frequently either a relative or friend of the intended parents, expects no payment in return for carrying the baby. On the other hand, the services of a professional surrogate are contracted and the provision for payment is included in the contract.

There are two types of surrogacy, gestational and traditional. As we explore together the details of possible surrogacy arrangements, please think like a lawyer. For each type of surrogacy arrangement ask yourself, who are the biological parents? Who are the intended parents? Who should the law consider as the legal parents? Are there moral concerns linked to these various situations? Should moral concerns impact the laws affecting surrogacy?

In gestational surrogacy, a surrogate gives birth to child who has no genetic connection to the surrogate herself. There are several types of gestational surrogacy. They are as follows:

- The sperm from the intended father and the egg from the intended mother are fertilized through IVF and the embryo implanted into the surrogate's uterus. The resulting child is genetically linked to both of the intended parents, but not the surrogate.
- A surrogate is implanted with an IVF embryo created from the sperm of the intended father and the egg from a donor, other than that of the surrogate. The resulting child is genetically linked to the intended father, but not to the intended mother or surrogate.

- A surrogate is implanted with an IVF embryo created by using the intended mother's egg and the sperm from a donor. The resulting child is genetically linked to the intended mother but not the intended father or the surrogate.

- A surrogate is implanted with a donor IVF embryo that was created from the egg of a donor mother and sperm of a donor father. The resulting child is not genetically related to either the intended mother or father or to the surrogate.

With traditional surrogacy, the child is the biological offspring of the surrogate but the surrogate is not the intended mother. There are two types of traditional surrogacy arrangements. In the first, the sperm of the intended father is used to either naturally or artificially fertilize the surrogate's egg. The resulting child is genetically linked to the intended father and the surrogate but has no genetic link to the intended mother.

With the other type of traditional surrogacy, the surrogate is artificially inseminated with donor sperm. The resulting child is genetically unrelated to either the intended mother or father, but is genetically linked to the surrogate.

As you may imagine, certain legal issues arise with each of these surrogacy arrangements. For instance, what happens if a surrogate changes her mind and wants to keep the baby after its birth? Should a male who donates sperm or a woman who donates an egg have any legal rights or obligations towards the child?

As we've seen in many family law matters, each state and territory has the authority to establish its own laws concerning surrogacy. These laws differ greatly from jurisdiction to jurisdiction. Next week, we'll explore how various states have resolved different legal issues involving surrogacy.