

Article: How Modern Assisted Reproductive Technologies Challenge the Traditional Realm of Conflicts of Law

Sonya Bichkov Green (John Marshall Law School) has written an article on the conflict-of-laws issues arising out of Assisted Reproductive Technologies (ART), focusing on the current legal and judicial framework in the United States (see our previous posts by *Gilles Cuniberti* on a case of surrogate parenthood involving French authorities: 1, 2): **“Interstate Intercourse: How Modern Assisted Reproductive Technologies Challenge the Traditional Realm of Conflicts of Law”**. The paper is available for download in the Selected Works of Berkeley Electronic Press.

The abstract reads as follows:

New technologies have always posed challenges to established legal norms. Assisted Reproductive Technologies (ART) in particular pose legal and ethical challenges to the law, and create never before seen legal problems. Although the ABA House of Representatives recently approved the Model Act Governing Assisted Reproductive Technology, differences in laws and rules will continue to exist. The legal issues involved are wide-ranging, including: liability issues arising from the failure of ART technology, parentage issues, disposition of embryos, and many others. As ART becomes more widely used, it is also used more in an interstate and international context. Thus, when a dispute arises, it often involves litigants from different states, and therefore creates the potential of conflicting laws.

This article discusses how many ART procedures can be done, and often times are done, across state lines, and between individuals from different states. This creates challenging legal situations for the courts, both in deciding what the law is, or should be, and second in deciding which state’s law to apply. Recent scholarship has addressed the first question but this article focuses on the second. It proposes solutions to complicated – and current – ART choice of law

conundrums.

The first section describes Assisted Reproductive Technologies, so that the reader understands the background to the potential problems that may arise. The second section discusses possible problems with ART and lawsuits that have arisen, some, within the last year. The third section describes current choice of law options, and how these might be applied, and have been applied, to ART lawsuits. The last section proposes solutions for resolving multi-state ART lawsuits, including the best choice of law approach for this area of the law, and how parties can protect themselves through more proactive choices of law in contract formation.

As an appendix, readers will also find three pieces of poetry on the complexity of conflict of laws, written by *Thurman Arnold*, *James A. McLaughlin* and the author herself:

The field of Conflicts of Law inspired two great legal thinkers - separately - to write poetry about its complexity. To their efforts, this author adds her addition to the poem, considering the particular problems created by ART.