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Surrogacy Agreements

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Research Guides

Surrogacy Agreements

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Purpose

This research guide attempts to present the legal issues relating to surrogacy agreements and pull relevant resources into this one guide. While I have tried to make the material accessible to non-lawyers who might want a general outline of those issues surrounding surrogacy agreements, this guide is not meant to replace the legal advice of a competent attorney. Those folks interested in exploring surrogacy to address their reproductive needs should seek an experienced and qualified attorney to determine those options available to them in their home state.

Scope

Reproductive science and technology has advanced at a considerable pace. In many jurisdictions such advancements have not been adequately dealt with by statute or case law and often present novel questions of law with regard to contracts, parentage, and adoption. This research guide collects and annotates those legal materials relevant to surrogacy agreements.
Because surrogacy agreements are creatures of contract law and family law, they are governed largely by state law and their validity and application will vary from state to state. This guide focuses on the state laws and case law governing surrogacy agreements, while discussing some common themes found in surrogacy agreements.

About the Author

I am Joshua Saunders and I am currently a third-year student at Georgia State University's College of Law. Though I am not a parent myself, I do have the privilege of being a Godparent of several wonderful children, some of whom were conceived through the use of technology and/or have been lucky enough to have two parents through the use of common law "second-parent adoption." I also have been appointed as an executor for one family who availed themselves of reproductive technology to bring their son into their lives. It was through observing the many legal steps that family had to go through that piqued my interest in this area of the law.

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Definitions

Black's Law Dictionary

Black's Law Dictionary (8th ed. 2004).

Surrogacy: Traditionally, the act of performing some function in the place of someone else, in the reproductive context it is the process of carrying and delivering a child for another person.

Gestational Surrogacy: A pregnancy in which one woman (the genetic mother) provides the egg, which is fertilized, and another woman (the surrogate mother) carries the fetus and gives birth to the child.

Traditional Surrogacy: A pregnancy in which a woman provides her own egg, which is fertilized by artificial insemination, and carries the fetus and gives birth to a child for another person. Traditional Surrogacy is called "traditional" largely because it was in practice before the advent of technology which allowed for the transplantation of fertilized eggs into a non-egg-donating surrogate.

Second-parent adoption: An adoption by an un/married cohabiting partner of a child's legal parent, not involving the termination of the "first" legal parent's rights; often an adoption in which a lesbian, gay man, or unmarried heterosexual person adopts his or her partner's biological or adoptive child. With regards to traditional surrogacy, the father would be the "first" parent and his partner would second-parent adopt the child after the surrogate brought it to term and surrendered parental rights. Some states have established presumptions as to parentage in the surrogacy context (examined below).

Legitimation/Parentage: The act or process of authoritatively declaring a person legitimate, particularly a child whose parentage has been unclear. In the case of surrogacy many states' current legitimacy presumptions regarding parentage often assume that the birth mother is also the genetically-related mother and may not take into account the genetic relationship between a surrogate-born child and its genetically related mom.

Contract: An agreement between two or more parties which creates obligations that are enforceable or otherwise recognizable at law. It may also refer to the writing that sets forth such an agreement.

Baby-selling/baby-brokering/baby-bartering: The exchange of money or something else of value for a child. All states have prohibitions against baby-selling. It should be noted that it is not considered "baby-selling" for prospective adoptive/intended parents to pay money to a birth mother for pregnancy-related expenses.

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Primary Sources

States with Surrogacy Statutes

Primary Sources: States with Surrogacy Statutes
**The States listed below have specific statutory language dealing with surrogacy agreements and whether such agreements are enforceable.*

Arizona
Surrogate Parentage Contracts; Prohibition; Custody; Definition, Ariz. Rev. Stat. Ann. § 25-218 (2006)

Provides that "no person may enter into, induce, arrange, procure or otherwise assist in the formation of a surrogate parentage contract." It also provides that the surrogate mother is entitled to custody of the child and, if she is married, her husband will be presumed to be the father but the biological father may rebut this presumption. This statute was later overturned in Soos v. Super. Ct. in and for County of Maricopa. 182 Ariz. 470. 817 P.2d 1356 (1994). However, the statute has not been officially repealed.

District of Columbia
Surrogate Parenting Contracts: Prohibitions and Penalties, DC Code §16-402 (2007)

States that surrogate parenting contracts are prohibited and unenforceable in the District. It also provides that those who are involved in, assist, induce or otherwise arrange for the formation of a surrogacy agreement may be subject to $10,000 fines, imprisonment of up to one year or both.

Florida
Gestational Surrogacy Contract, Fla. Stat. § 742.15 (West 2007)

Permits gestational surrogacy contracts but allows them only where the commissioning couple is married, over 18, and has a doctor certify that gestation would cause a health risk to the commissioning mother, the fetus or otherwise be impossible. Requires the commissioning couple to pay only those fees which represent reasonable living, legal, medical, and psychological expenses that are "directly related to prenatal, intra-partal and post-partal periods."

Illinois
Gestational Surrogacy Act 750 Ill. Comp. Stat. Ann. 47 (West 2006)

A comprehensive act which covers a host of definitions, allows for the formation of surrogacy agreements, sets forth eligibility requirements for both surrogate and intended parent(s), and establishes contractual minimums and rights. Amongst other provisions, it requires that the surrogate have had at least one child already and have completed a physical and mental health evaluation. It requires that both intended parents and surrogate have separate and independent legal counsel. It requires the intended parents to have undergone a mental health evaluation, have a medical need for gestational surrogacy, and contribute at least one gamete to the pre-embryo. It allows for reasonable compensation (paid into escrow) and states that parental rights vest immediately in the intended parent(s) upon the birth of the child.

Indiana
Surrogate Agreements, Ind. Code Ann. § 31-20-1-1 (West 2007)

Renders surrogacy agreements void if they require the surrogate to become pregnant or undergo medical examination or treatment. Also states that such agreements are against public policy. But only applies to those agreements formed after March 14, 1988.

Louisiana

Contract for Surrogate Motherhood; Nullity, La. Rev. Stat. Ann. § 9:2713 (2006)

Renders surrogacy agreements, null, void and unenforceable as against public policy. Fails to take into account gestational surrogacy by defining a surrogacy contract as being any agreement a woman not married to the contributor of sperm agrees for valuable consideration to be inseminated, to carry any resulting fetus to birth, and then to relinquish to the contributor of the sperm the custody and all rights and obligations to the child."

Michigan
Surrogate Parenting Act; Contracts Void Unenforceable, Mich. Comp. Laws Ann. § 722.855

Renders surrogacy parentage contract void and unenforceable as against public policy. Unlike the Louisiana statute which seems to make no distinction between traditional surrogacy and gestational surrogacy, this Michigan statute defines surrogacy in § 722.853 to include both traditional surrogacy and gestational.

Nebraska
Surrogate Parenthood Contracts, Neb. Rev. Stat §25-21,200 (2006).

Renders any contract made with a woman to carry a child for compensation void and unenforceable.

Nevada
Surrogacy Agreements, Nev. Rev. Stat. Ann. § 126.045 (West 2005).

Permits surrogacy agreements between married couples and the surrogate mother. Requires that the agreement delineate the rights of each of the parties including parentage, custody of the child in the event of a change in circumstances, and the responsibilities and liabilities of the contracting parties. It also limits the surrogate's compensation to those "medical and necessary living expenses."

New Hampshire
Surrogacy, Regulatory Procedures, N.H. Rev. Stat. Ann. § 168-B:16 (2006)

Permits judicially pre-approved surrogacy agreements and requires medical and psychological evaluation of parties. It also prohibits the solicitation or inducement of fees or other valuable consideration for the agreement. It also establishes parentage presumptions.

New York
N.Y. Surrogate Parenting Contracts Law § 122 (McKinney 2006)

Provides that surrogacy agreements are contrary to public policy and are void and unenforceable. Section 121 defines a surrogacy contract as one where a woman agrees to be inseminated with the sperm of a man who is not her husband or to be impregnated with an embryo which is the result of an ovum fertilized by a man other than her husband.

North Dakota
Surrogate Agreements, N.D. Cent. Code § 14-18-05

Provides that an agreement where a woman agrees to become a surrogate or to relinquish her rights to a child conceived through assisted conception is void.

Virginia
Status of Children of Assisted Conception; Surrogacy Contracts Permissible, Va. Code Ann. § 20-160 (West 2006)

Permits surrogacy contracts but requires a great deal of both surrogate and intended parents including: home visits, appointment of guardian ad litum to represent the best interests of the resultant fetus, physical and psychological examinations of all parties to the agreement, that the surrogate have already given birth before, both surrogate and intended parents meet the standards applicable to adoptive parents, at least one of the intended parents must contribute a gamete, the intended mother be unable to carry a child to term without significant health risks, and that the agreement be judicially pre-approved.

Washington
Surrogate Parenting- Compensation; Prohibited, Wash. Rev. Code Ann. §26.26.230 (West 2007)

Prohibits any person or organization from entering into or assisting in the formation of a surrogate parenting contract for compensation. Section 26.26.240 renders any surrogacy contract entered into for compensation, whether in Washington or not, unenforceable and void in Washington courts

Georgia Cases

Primary Resources: Georgia Cases Regarding Reproductive Technologies and Parentage

Second-Parent Adoption and Artificial Insemination
Wheeler v. Wheeler, 2007 WL 596924 (Ga. 2007)

The Georgia Supreme Court denied certiorari, refusing to overturn the Superior Court's refusal to set aside a second parent adoption. The petitioner was a woman who's same-sex partner adopted petitioner's biological child. The two women had since split up and petitioner sought to have the adoption overturned on the grounds that it violated Georgia's Constitutional ban on gay marriage because such familial recognition would impermissibly extend a benefit of marriage to a same-sex couple. The dissent argued that because second-parent adoptions were common in several Georgia counties, the question was of novel importance and should have been heard by the court.

Second Parent Adoption by Non-Biological Parent
In Re C.N.W., 274 Ga. 675 (Ga. 2002)

The Georgia Supreme Court granted certiorari to petitioner to review the lower courts' refusal to grant a second-parent adoption which would allow him to adopt his non-biological stepson. The court concluded that O.C.G.A. §19-8-6(a)(2) allows for second parent adoptions even if the child's biological father is living. Justice Hines reasoned that subsection (e)(2) of the statute allows for a biological, but non-legal, father to surrender all his parental rights precisely to effect such an adoption. Applied to a surrogacy agreement involving unmarried intended parents, it is likely that such case law would work to allow for a second parent adoption.

Lack of Surrogacy Agreements in Georgia Case Law

Georgia courts have not grappled with surrogacy agreements in published opinions. Using the same searches I used for the other states, I turned up no surrogacy agreement case law in Georgia. Like many other states without specific statutes dealing with surrogacy, courts are left to use those family provisions governing adoption, parentage, and baby-brokering to determine whether surrogacy agreements are void, voidable, or enforceable.

Seminal Surrogacy Cases

Primary Resources: Seminal Cases in Surrogacy

Right to Privacy: Fundamental Interest in Bearing Children and the Question of State Interference

Eisenhardt v. Baird, 405 US 438 (1972)
In determining the validity of a Massachusetts statute permitting married couples to obtain contraceptives but precluding single persons from obtaining contraceptive the court held that if the right to privacy is to "mean anything it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamental" as the decision whether to bear a child.

Doe v. Kelley, 307 NW.2d 438 (1981)
In this case, the parties desiring to enter into a surrogacy agreement challenged a Michigan statute which prohibited the payment of fees in connection with adoption proceedings. They argued that the prohibition of payment to the surrogate mother unconstitutionally interfered with their right to have children (established in *Eisenhardt v. Baird*) . The court held that there was no unconstitutional interference because while prohibiting the payment of money in conjunction with adoption proceedings the state did not actually prevent the parties from having the child as planned. It went on to note that though the decision to bear a child was a fundamental interest protected by the right to privacy, the parties sought to use the adoption statutes to alter the child's legal status (which included the child's right to support and inheritance) and such an aim was not one of those fundamental interests protected by the right to privacy from government intrusion.

Surrogate's Termination of Parental Rights

Re Baby M., 537 A.2d. 1227 (1988) (on remand, 542 A.2d. 52).
Even though the Supreme Court of New Jersey found that both the intended parents and the surrogate mother entered the traditional surrogacy agreement in good faith and thought it "right and constructive", the court held that the surrogacy contract was invalid and void. It disagreed with the trial court's ruling that the NJ statutes regarding adoption and termination of parental rights did not represent the legislature's intent with regard to surrogacy agreements and therefore did not apply to surrogacy agreements.
Instead, it held that the surrogacy agreement ran afoul of:
1) statutes prohibiting the exchange of money in connection with the placement of a child for adoption
2) statutes requiring proof of parental unfitness before terminating parental rights and approving adoption and
3) statutes that otherwise make consent to adoption placement revocable. It further held that the basic premise of the surrogacy contract, that the parents could determine the custody of the child in advance of the birth, is in direct conflict with the settled law that such considerations are analyzed solely in terms of the best interest of the child.

Determining Maternity in Gestational Surrogacy

Johnson v. Calvert, 5 Cal.4th 84, 851 P.2d 776 (Cal.,1993).
Where a gestational surrogate refused to surrender the child, the intended parents brought suit seeking to establish maternity using a genetic test similar to the California statute which provides for blood tests to determine paternity. The court determined that since both gestation and a blood test may be determinative of maternity under California statutes, it must look to the parties' intentions. It found that the intended parents took affirmative steps to effect in vitro fertilization and but for their acted-on intention the child would not exist. It held that under California law "she who intended to procreate the child-that is, she who intended to bring about the birth of a child that she intended to raise as her own-is the natural mother under California law." Therefore, in California, gestational surrogacy arrangements now have a common law presumption that the intended, non-surrogate mother, is the natural mother.

Arredondo by Arredondo v. Nodelman, 622 N.Y.S.2d 181 (Sup. Ct. 1994)
Similar to the result in Johnson v. Calvert, the court determined that the woman whose eggs were fertilized and implanted was the mother of twins born through gestational surrogacy. The case arose not because the surrogate claimed maternity but because the birth certificates declared the surrogate to be the mother and a lower court believed it lacked jurisdiction to determine maternity.

Elisa B. V. Super. Ct, 37 Cal. 4th 108 (Cal., 2005)
Under the Uniform Parentage Act, a child may have two parents, both of whom are women. The court determined that where a former lesbian partner had been presumed a parent under the Uniform Parentage Act, the petitioning partner could not rebut the presumption to avoid paying child-support after the dissolution of the relationship with her former partner. This is notable because in Johnson v. Calvert the California Supreme Court noted that the ACLU's amicus brief urged it to find the child had two mothers but declined to hold that a child could have two mothers.

Equal Protection Considerations in Surrogacy Agreements

Soos v. Super. Ct. in & for County of Maricopa, 182 Ariz. 470. (1994).
Here the genetic mother of triplets born to a gestational surrogate challenged an Arizona law which declared all surrogates to be the legal mothers of the children they gave birth to, regardless of whether the surrogacy was gestational or traditional. The Arizona Court of Appeals held that because the statute which allowed a biological father to prove paternity and automatically granted surrogate mother status as legal mother but did not allow any means for biological mother, who donated eggs, to prove maternity the statute violated the equal protection clause. Generally surrogacy agreements will not run afoul of equal protection considerations unless they provide or preclude different methods to prove parentage to fathers and mothers.

Appropriateness of Court as Forum to Address Legality of Surrogacy Agreements

Re Baby Girl L.J., 505 NYS2d 813 (1986)
The court found that current statutes did not prohibit intended parents from paying surrogates and held that surrogate agreements were not void but instead were voidable. It granted the adoption of a child conceived through traditional surrogacy based on the child's best interests but stated that the legislature was the appropriate forum to address the legality of surrogacy agreements.

Distinguishing Surrogacy Scenarios from Baby Brokering

Surrogate Parenting Assoc., Inc. v. Commonwealth, 704 SW.2d. 209 (1986)
The court held that there was an important difference between those arrangements targeted by baby-brokering statutes and surrogacy agreements. It reasoned that baby-brokering statutes were intended to prevent the inducement or financial coercion of already expectant mothers to abandon their children while surrogacy agreements occurred prior to conception with the goal of assisting those who cannot conceive.

States Without Surrogacy Statutes: Georgia

Primary Resources: Georgia Statutes Regarding Reproductive Technologies and Parentage
Because Georgia, like many other states, has no specific law regarding surrogacy agreements, practitioners and families must look to existing law regarding artificial insemination, second-parent adoptions, and legitimation processes for guidance.

Searching the Official Code of Georgia for Free on LexisNexis: Lexisnexis offers free searching of the O.C.G.A. to those without subscriptions, using either natural language or terms & connectors. That site is hyperlinked here.

O.C.G.A. §19-7-20

O.C.G.A. §19-7-20

O.C.G.A. §19-7-20 What children are legitimate; presumption; legitimation by marriage of parents

Children born within wedlock are presumed legitimate. This presumption may be disputed by evidence to the contrary.

O.C.G.A. § 19-7-21

O.C.G.A. § 19-7-21

O.C.G.A. § 19-7-21 Children conceived by artificial insemination

Children conceived by artificial insemination and born within wedlock are irrebutably presumed to be legitimate if both spouses have consented in writing to the use of artificial insemination for conception. Does not deal with legitimation presumption with regard to artificial insemination of unmarried partners or surrogates.

O.C.G.A. § 19-7-22 Petition to legitimize child

Details the necessary procedure to follow for a person to establish the paternity of a child. Does not address maternity, which would be an issue in gestational surrogacy.

O.C.G.A. § 19-8-1 Adoption definitions

Defines: Child, Biological Father, Legal Father, Guardian, Legal Mother, and Parent.

O.C.G.A. § 19-8-3

O.C.G.A. § 19-8-3

O.C.G.A. § 19-8-3 Who may petition to adopt a child

Person wishing to adopt must be at least 25 years old, 10 years older than the child, a six-month resident of the state, and able to care for the child. As other courts have done in states without express surrogacy statutes, this statute might be applied to rule out a surrogacy agreement which requires the surrender of parental rights to an intended parent who might not meet these requirements.

O.C.G.A. § 19-8-4 Surrender of rights to child being placed for adoption through department or any child-placing agency

Requires a voluntarily, written surrender of all rights from each parent and a court order terminating parental rights of each parent. Surrender of rights to child being placed for adoption through department or any child-placing agencyRequires a voluntarily, written surrender of all rights from each parent and a court order terminating parental rights of each parent.

O.C.G.A.§ § 19-8-9. Affidavit by adoptive mother of child being placed for adoption; withdrawal of surrender of rights

Affidavit by adoptive mother of child being placed for adoption; withdrawal of surrender of rightsAllows for the withdrawal of surrender of parental rights within ten days of the surrender. Surrogacy agreements in Georgia may need to account for this ten day grace period and not require an irrevocable surrender of parental rights upon the birth of the child in order to avoid running afoul of this statute.

O.C.G.A. § 19-8-19(a)(2) Effect of decree of adoption

Provides that "a decree of adoption creates the relationship of parent and child between each petitioner and adopted individual as if the adopted individual were a child of biological issue of that petitioner."

O.C.G.A. § 19-8-24 Unlawful advertisements and inducements; prohibition of sale or offer for sale of child; violations and penalties.

Prohibits persons, organizations and agencies that have not been established as a child-placing agencies by the Georgia Department of Human Resources from advertising that they will arrange for or cause children to be adopted. It prohibits the payment of any financial inducement to get parents to part with their children except for the payment of medical expenses directly related to the birth or care for the child. Violation of this statute results in a felony, fines up to $10,000, and imprisonment of not more than 10 years.

O.C.G.A. § 19-8-26 Form for adoption.

Form for adoption. Form for final release for adoption. Must be witnessed, signed, and notarized.

O.C.G.A. § 19-8-3

O.C.G.A. § 19-7-21

O.C.G.A. §19-7-20

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Secondary Sources

ALR

American Law Reports

Danny R. Veilleux, Annotation, ***Validity and Construction of Surrogate Parenting Agreement,***
77 A.L.R. 4th 70 (1989).

This annotation discusses the different approaches courts have taken and their reliance on state statutes which make no express mention of surrogacy to determine the construction of the agreement and whether it is enforceable. It discusses surrogacy agreements and cases in the context of a constitutional right to privacy as well as state statutory language that provides for parentage, custodial rights, and termination of parental rights.

Ardis L. Campbell, Annotation, Determination of Status as Legal or Natural Parents in Contested
Surrogacy Births, 77 A.L.R. 5th 567 (2000).

This annotation contains more relevant and up-to-date cases, however, because of the proliferation of statutes and court opinions on the subject of surrogacy, it reflects the particular instability of this are of law. The 1989 annotation by Danny Veilleux is more concise and covers earlier case law which may be an easier point of entry into the subject than this annotation. They both cover many of the same foundational cases.

Law Review Articles

Law Review Articles & Comments

Marsha Garrison, ***Law Making for Baby Making: An Interpretive Approach to the Determination of Legal Parantage,*** 113 Harv. L. Rev. 835 (2000).
This very detailed law review journal identifies the ways in which traditional family law may be applied to advanced technological methods of conception and birth to get both reasonable and unreasonable results. The author deals with the same question that surrogacy requires the law to answer, which is determining legal parentage in the face of advanced technology. She also focuses on the newer practice of gestational surrogacy using pre-embryos or completely donated ovum and sperm, resulting in a non-genetically related child and the need to reanalyze the intention-based test articulated in *Johnson v. Calvert*.

Adam P. Plant, Comment, ***With a Little Help from My Friends: The Intersection of the Gestational Carrier Surrogacy Agreement, Legislative Inaction, and Medical Advancement,*** 54 Ala. L. Rev. 639 (2003).
Shorter and easier to read than the Harvard law review article, this comment covers the basic approaches states have taken with regard to surrogacy agreements. The author classifies state action into four categories: those states that have complete prohibitions on surrogacy agreements, those with prohibitions on compensated surrogacy agreements, those who have no legislative governance of surrogacy agreements, and those with statutes expressly governing surrogacy agreements.

Georgia Secondary Materials

H.B. 1073, 1995 Gen. Assem., Reg. Sess. (Ga. 1995).
This bill would have amended Chapter 7 of Title 19 to clarify the legal status of those children born through artificial insemination, in vitro fertilization, and donated eggs, sperm, and pre-embryos. It failed to pass and no bill prescribing parentage presumptions with regard to surrogacy has since been raised in the Georgia Legislature.

John C. Mayoue, 8 Ga. Jur. Family Law § 7:37 (2006).
The family law sections of the Georgia Jurisprudence were not particularly helpful. They essentially repeat the statutory language found in the Official Code of Georgia. I would recommend any researcher to stick with the O.C.G.A. for relevant family law that might touch upon surrogacy agreements.

Sara K. Alexander, Note, ***Who is Georgia's Mother? Gestational Surrogacy: A Formulation for Georgia's Legislature***, 38 Ga. L. Rev. 395 (2003).
Details the difficulties inherent in applying Georgia family law to construe surrogacy agreements. The author argues that surrogacy, especially gestational surrogacy, does not comport with current statutory definitions which determine maternity. This note gives a brief analysis of those policy arguments for and against surrogacy, touching upon social fears of "reproductive slavery" which are often behind prohibitions against compensatory surrogacy agreements.

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Additional Materials

Books

New York State Task Force on Life and the Law, Surrogate Parenting: Analysis and Recommendations for Public Policy. (1998).

This book, because it is focused on the public policy implications of surrogacy, details the various social perceptions of surrogacy and catalogues the public dialogue and its institutional implications. Unlike many of the other materials compiled for this guide, it also detailed some social trends in infertility which may make surrogacy more and more relevant as our social norms change regarding child-bearing.

Web Sites

Most of the Web sites dealing with surrogacy are in some way tied to fertility clinic, surrogacy providers, and even professional surrogates. That said, many offer support groups for infertile couples and FAQs that describe the process from both the surrogate's and the intended parents' point of view.

The American Surrogacy Center

Surrogate Moms On-Line - This Web site has posted sample surrogacy contracts. I would not presume anything as to their legal validity but they may give you an idea of what rights are at issue with surrogacy agreements.

HRC – The Human Rights Campaign has a list of those states which have surrogacy laws with brief summations of those laws. Some of the research contained in this guide conflicts with that found on HRC's Web site; researchers would be well-advised to Shepardize or Keycite their cases and statutes as this area of law is subject to change.

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Search Engines and Queries

Westlaw

Westlaw is a commercial search engine used by lawyers and law firms for all forms of legal research. Because it is a site requiring a subscription (usually free with enrollment at an accredited law school), it may be cost-prohibited for individual researchers not affiliated with a law school.

Keynumbers

*These key numbers did not bring very much up for me during my search. I found the root expanders much faster and less frustrating in my research. I don't believe the Keys for "Artificial Insemination" even actually bring anything up.
West's Key Number Digest, Parent & Child 285
West's Key Number Digest, Assisted Reproduction Surrogate Parenting, 285k20k

Terms to Use

When using legal, commercial search engines such as Westlaw or Lexisnexis, terms with root extenders (ex. “surroga!”) will yield results with "surrogate" and “surrogacy” in them but those results will likely represent a legal concept unrelated to surrogacy agreements.

Searches such as "surroga! /s contract agreement" or "surroga! /s mother agreement" will capture more relevant cases because they will find the words “contract” or “agreement” within the same sentence as “surrogate” or “surrogacy.”

When working with statutes in legal, commercial search engines, I found it easier to enter "re,ca (surroga! /s contract agreement)" so I could be sure that some form of surrogacy was in the caption of the statutes. This made sorting through the many state statutes much faster.

Lexisnexis

I used both Lexisnexis and Westlaw to compile this research guide. While I found them both helpful, my familiarity with Westlaw led me to use it more for this project. As mentioned above, both sites are commercial sites which require either a free law student membership provided by your law school or a paying membership to search.

Affordable Searching

For those of you in need of more affordable, as sometimes simpler, databases, consider Loislaw or Findlaw. Both will likely be less expensive than Lexisnexis or Westlaw. If you happen to be a member of the Georgia Bar you have access to a free service in Loislaw called case-maker with which you may be able to pull up the cases referenced above for free. Though the services offered through Loislaw and Findlaw may be more cost-effective, it is important to note that given the novel questions of law presented by surrogacy agreements and the growing number of infertile couples, all researchers would do well to insure their cases are up-to-date, current law. Both Lexisnexis and Westlaw allow non-subscribers to pay a one-time fee to Shepardize or Keycite particular cases.

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