

## A LEGAL PRIMER FOR THE NON-LAWYER

### **Intro: “Law 101” for the Non-Lawyer—Legal terms and concepts you should know<sup>1</sup>**

- Law comes from both Courts and Legislatures: At the state and federal levels, legislatures enact statutes and courts may interpret those statutes or decide novel issues which creates “caselaw.”
- Where does “ART Law” fit in? Seemingly everywhere! ART has a large impact on “Family Law” (see below), but can also involve Constitutional Law, Contract Law, Trusts & Estates Law, and many other areas.
- Jurisdiction: A court must have “jurisdiction” before it can consider a matter, meaning it must be the right court in the right state to decide the type of case brought before it.
  - State law and usually state courts address Family Law issues, including most ART court cases that involve parentage status, rights, and obligations. (If the parties are from more than one state, which state has jurisdiction and which state law applies will need to be determined—and can sometimes be contested).
  - Federal courts generally must follow and interpret state law, unless the issue involves a federal law, such as discrimination under the Americans with Disabilities Act (the “ADA”), or a federally recognized Constitutional right.
- Precedent and how it works and applies: Within any given state, until the highest-level court decides a case, it is of limited value as “precedent” (law which must be followed) in that state. No court decision or legislation from one state is precedent for another state. Decisions by the Supreme Court of the U.S. (“SCOTUS”) are direct precedent in the federal system and must be followed by all courts on issues of US Constitutional or other federal law. In some instances, state laws or state Constitutions may provide greater protections.
- Full faith and credit: A court order decided by one state may be brought to another state for enforcement. For instance, a pre-birth order granted in the state where intended parents live may be brought to the state where the baby is born. The “full faith and credit” clause of the U.S. Constitution requires a court in any state to recognize and uphold decisions made by courts from another state if brought before them to be enforced. For example, a same-sex adoption recognized in California must be legally recognized in Arizona if the family later moves there or if the child was born in Arizona and, following the adoption in California, a new birth certificate needs to be issued by Arizona.
- Statutes of limitation: Statutes of limitation require lawsuits to be filed within a certain period of time and vary based on both the jurisdiction and type of legal claim.
- Contract (also Agreement) v. Informed Consent: A contract is an agreement between private parties about their reciprocal rights and duties regarding past or future performances. Unless an agreement or contract is found to violate a state’s law or public policy, it should be enforceable. In contrast, informed consent is a process, typically reflected in a signed, written form, that evidences a patient’s competence, and their understanding and acceptance of the risks, benefits and alternatives to a medical procedure. As you will see, ART often utilizes both concepts (contract/agreement and informed consent), and at times may confuse them. As of 2019, SART recommends, and increasingly programs use separate documents: an informed consent for IVF-related medical protocols and a contract or “dispositional agreement” to record patient(s)’ future frozen embryo and gamete disposition choices.

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<sup>1</sup> Adapted in part from SUSAN L. CROCKIN AND HOWARD W. JONES, LEGAL CONCEPTIONS: EVOLVING LAW AND POLICY OF ASSISTED REPRODUCTIVE TECHNOLOGIES 9 and 11-12 (*Law 101: A Selective Primer for the Nonlawyer*) (2010).