

Reviews on the Regulations of Parenthood in the Assisted Reproductive Era

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Abstract

The advance in reproductive medicine made it possible for many infertile spouses to have the chance to breed their “own” children. Nevertheless, the application of assisted reproductive technique hereinto also created discrepancy between sanguinity and parenthood by applying gametes other than the spouses’, which therefore overthrew the traditional family concept and challenged the principle of our Civil Code. Consequently as supplement, the Artificial Reproduction Act was promulgated on March 21, 2007 for the purpose maintaining social ethics, and protecting the rights and interests of infertile spouses, children conceived through artificial reproduction, and donors.

The nowadays arising real-life cases caused either by negligent fertilization with wrong gamete cells or through illegal procedure have fled far beyond the legislator’s then imagination. In abovementioned circumstances, an astonishing and debating conclusion will be drawn about the parenthood if the contemporary Artificial Reproduction Act and Civil Code were applied. The unconsidered inconsistencies in the parenthood exhibited herein will urge us to a critical and integrated review on these regulations.

The core doctrine “Mater semper certa est” i.e., legitimating motherhood by the fact of delivery, served to build up the traditional parenthood in our family laws of Civil Code, has been bitterly challenged by the modern assisted reproductive technique through simply introducing gametes other than the mother-to-be’s and thus inventing the discrepancy between the gestation and the sanguinity. In as much as the fact that “women delivering children” could no

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longer assure the genuine maternal sanguinity, this article asserts that the children delivered should be “presumed” to be legitimate not only on paternal side, as already stipulated, but also on maternal side, either of which should be allowed to be disavowed if proved otherwise. In response, this article carefully and deliberately attempts to amend all the relevant provisions in Artificial Reproduction Act and Civil Code regarding the parenthood with special emphasis on the integration in between.

Hopefully this endeavor will successfully dodge the troublesome parenthood disputes and controversies regarding the assisted reproductive minority without disturbing the naturally conceived majority, and will keep in complete accord with the constitutional principles as held in J.Y. Interpretations No. 587 to balance the maintenance of a stable family status order and the protection of a child's interests.

Keywords: assisted reproduction, parentage, embryo, Mater semper certa est, Pater est quem nuptiae demonstrant, legitimate child, presumption of legitimacy, disavowal of the legitimacy presumption, sanguinity