

CASE #15: REPRODUCTIVE MEDICINE – SURROGATE PARENTING

Introduction:

Modern science, and particularly artificial reproductive technology, has made significant advances in the entire area of reproductive medicine. Surrogacy has made it possible for many couples and individuals to become parents who were previously unable to (the LGBTQ+ community and women who physically cannot give birth). As with many new scientific breakthroughs this also leads to ethical and legal issues and challenges. Today's societal and cultural debates and divisions can make these decisions even more complicated.

Terms and background:

There are two types of assisted reproduction option: **Traditional surrogacy** is when the surrogate's egg is used to create the embryo she is carrying. In this case the traditional surrogate is the biological mother of the baby, and the sperm can come from any male donor or the intended parent. The second is **gestational surrogacy** in which a woman carries a pregnancy that was created by another women's egg and the intended father or another donor's sperm. In this case the surrogate carries no genetic material with the baby. Additionally, there are two approaches to surrogacy: **altruistic surrogacy** in which case no compensation is given beyond all the medical and additional costs involved in the pregnancy and delivery and **commercial surrogacy** where the surrogate receives a fee above and beyond the costs of pregnancy and delivery. Altruistic surrogates are usually family members or close friends.

There currently are no federal laws restricting or governing commercial surrogacy; however, laws vary from state to state. While some states like Michigan prohibit the practice; others like Idaho and California are deemed "surrogate friendly". Similarly, regulations vary. The American Society of Reproductive Medicine has standards that are often followed; however, these are not mandatory. They include the age of the surrogate (between 21 and 44), that the surrogate be financially solvent (thus removing economic hardship as a reason to serve as a surrogate), having had at least one successful pregnancy (thereby increasing the likelihood of a successful birth without complications).

The use of gestational commercial surrogacy has increased greatly from 738 births in 2004 to 2,807 births in 2015. Prior to the pandemic, surrogate mothers received on average \$30,000 for carrying a child to birth plus all medical and other expenses related to the pregnancy. With the cost for agencies that arranged for the surrogacy and the increased medical costs to enable the pregnancy the total cost of commercial surrogacy for prospective parents in the U.S.A. ranged between \$120,000 to \$200,000. These costs are not covered by insurance. While demand continues to increase the number of surrogates post-covid has failed to keep pace with demand. Wait times have increased and fees for the service are also increasing. More and more people looking for surrogates are looking to other nations for young women to serve.

Case Study on a commercial, gestational surrogacy: Laura and Jim are a happily married couple in their late 20s, both successful in their professions. It had always been their intention to have children; but an automobile accident left Laura injured and unable to have a child. However, they were able to remove several of her eggs for possible fertilization through a surrogate. They live in a "surrogate friendly" state and contacted an agency to find a suitable surrogate mother for them.

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Susan, the surrogate, fits the guidelines of the American Society of Reproductive Medicine – she is 24, had given birth to an infant when she was a teenager and gave that baby up to adoption, and has full time employment. Jim’s sperm is used to fertilize one of the wife’s eggs and it is implanted in the surrogate mother. The couple pays for all of Susan’s pregnancy-related expenses (approximately \$75,000), an additional \$30,000 as compensation for her surrogacy, and \$10,000 to the agency.

After giving birth to a healthy boy Susan is very conflicted and declares that she is too attached to *her* baby to give him up to Laura and Jim. She hires a lawyer, and a legal battle ensues.

Questions:

1. What determines who is a parent – is it the act of giving birth, the genetic make-up of the newborn, or a combination of factors?
2. Does commercial surrogacy “commoditize” both an embryo and a woman’s body (womb)? Even if the surrogate mother is not indigent, does allowing surrogate mothers to be paid for their service allow poorer women to be oppressed? (Nations like India have banned the practice for this reason). Due to the profitability for physicians and agencies and the increased difficulty in finding surrogates, there is an increasing threat that corners will be cut. What protections/regulations need to be considered?
3. An argument against the use of surrogates is seen in Susan’s emotional attachment to the baby which leads to legal conflict. Though adults sign a contract (which might not be legally binding in some states), the child could suffer if there is a long custody battle. Who is responsible for caring for the child during this dispute? Does Linda’s and Jim’s affluence give them greater power in this case? If she prevails, should Susan assume the expenses of the pregnancy and birth? Does the prospect of conflicts such as this negate the use of surrogates?
4. Related to traditional surrogacy (when the surrogate’s egg is used to create the embryo she is carrying), the AMA website states: “that surrogacy contracts, while permissible, should grant the birth mother the right to void the contract within a reasonable period after the birth of the child. If the contract is voided, custody of the child would be determined according to the child’s best interests?” What do you think is a reasonable period? By what standards does a court determine what is the child’s best interest? How should one prioritize the interests of the genetic parents, the birth mother and the child?
5. Considering the above issues and other possible complications, is traditional or gestational surrogacy ever ethical? If you believe it is, who do you think should be the parent(s) of the boy and why?