

Short notes on:

## **SURROGACY AND THE LAW IN SOUTH AFRICA**

### ***What Is Surrogacy?***

Surrogacy is a method of assisted reproduction where intended parents work with a gestational surrogate who will carry and care for their baby(ies) until birth. The intended parents use surrogacy to start or grow their families when they can't do so on their own. A surrogate woman (surrogate mother) who carries a baby on behalf of the future parents (commissioning parties) who are medically unable to do so.

### ***Understanding Surrogacy Laws in South Africa***

Surrogacy became regulated in the year 2007 under South African law. It is regulated by the Children's Act, Act 38 of 2005 (hereafter the "Act"). In order for the commissioning parties to make use of a surrogate they need to comply with the requirements of the Act. The parties need to have a written agreement with the surrogate mother. This agreement needs to be made an order of Court (High Court).

Once the child has been conceived through artificial fertilisation the agreement may not be terminated. In terms of Section 292 and 293 of the Act, the surrogate mother and the commissioning parents needs to be domiciled within South Africa. If the surrogate mother is married or in a relationship her husband and/or partner should agree to her becoming a surrogate.

One of the crucial elements of surrogacy law is that psychological evaluations must be done regarding the surrogate mother and the commissioning parents. In terms of surrogacy laws and regulations enforced in South Africa, ovaries may not be taken from a woman younger than 18 years of age for the purpose of artificial insemination.

Accordingly, the preferred age for female donors is set between 21 and 34 years of age.

### ***Conclusion***

A child/and or children born from a surrogate mother is by law the child of the commissioning parents. The surrogate mother and her partner have no parental rights towards the child. A surrogate mother

is not allowed to receive payment for being a surrogate, other than expenses that she incurred i.e. medical expenses or loss of income due to her not working.

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