

Third Party Rights in Surrogate Mother Contracts

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Abstract

The agreement of the infertile couples to use another woman's uterus for gestational purposes and nurturing the embryo that belongs to the couples, and finally submitting the newborn to them by the surrogate mother, is based on the contract format of "Ested'a" and "Ejaabat" _ plea and granting. The parties to this contract are the infertile couples and the surrogate mother who accepts the embryo to nurture. According to the general principles of contracts, the existence and validity of such a contract is due to the intentions bound to the parties. Based on relativity principle of contracts, it is said that consequences of such a contract, will be limited to the parties of the contract (i.e. the surrogate mother and the couples). Contrary to the principle that the obligation against the third party is not valid, some third-party individuals or entities will be affected consequent to such contracts because of social life of the involved parties as human beings. The suffered loss can be economical or moral. The indirectly injured parties can be individuals like relatives of the surrogate mother or entities like her insurer organization. On the other hand, some other individuals would be injured directly due to this contract, and will be deprived from their civil rights. These include the husband of the surrogate mother and her infant baby. The embryo himself which is the subject-matter of the contract, from the point of view that recognizes him or her as a human being and not an object, in case of infringements and breaches of his/ her rights to genesis and completion on behalf of the parties to the contract, is regarded as a third party that appoints individual trustee authorities or other legal bodies to file a suit to protect his/ her rights. Introducing, classifying the injured third party and discussing the type of infringed rights and eventually studying the methods of contribution of the mentioned parties is an important issue that has to be significantly addressed in the codification of relevant Acts.

Key Words: Infertile couples, Surrogate mother, Consequence, Contract, Third party, Permission, Compensation.

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