

Start at the Top Family Law Conference. Friday 22<sup>nd</sup> January 2016

International Commercial Surrogacy Session with Felicity Gerry QC – Handout.

The session will start with a PowerPoint presentation followed by a workshop session.

In the workshop, please discuss the following:

The current public interest litigation in India relating to the importation of embryos has led to the Indian Government indicating it will ban ICS for foreigners. The Indian Supreme Court has issued directions asking all parties to file submissions on questions set out below. In light of the recently announced Australian parliamentary inquiry into ICS, how would you answer these questions (assume you don't have to know Indian law but discuss and answer from the perspective of Australian law)?

1. Whether in commercial surrogacy the surrogate mother is the only mother of surrogate child? The Petitioner raises this issue in view of the pain and suffering the mother undergoes for 9 months and the risk along with all the psychological and emotional problems?
2. Whether a lady who donates her egg in connection with a commercial surrogacy mother can be said to be mother?
3. Whether both “surrogate mother” and “genetic mother” (who has donated the egg) can both be said to be mother of the surrogate child?
4. Whether commercial surrogacy involved sale of a child in view of the fact that surrogate mother relinquishes her parental rights for money?
5. Whether commercial surrogacy amounts to renting of a womb?
6. Whether commercial surrogacy is immoral and is opposed to public policy and therefore void u/s 23 of the Contract Act.

7. Whether commercial surrogacy as practiced in India amounts to economic and psychological exploitation of surrogate mother?
8. Whether commercial surrogacy is inconsistent with the dignity of Indian womanhood and therefore violative of Article 21 of Constitution?
9. Whether commercial surrogacy involves trafficking in human beings as it involves sale of a surrogate child, relinquishment of the surrogate's parental rights for money and involves rent of womb thus violating Article 23 of the Constitution.
10. Whether commercial surrogacy should be prohibited?
11. Whether import of human embryo amounts to commoditization of human life and thus violates article 21? Whether notification dated 2.12.2013 of the GOI issued under S.5 of the Foreign Trade (Development & Regulation) Act is violative of Articles 21 & 23?
12. Whether human rights of a surrogate child born out of commercial surrogate are violated and as such child would face psychological & emotional problems.
13. Legal system does not seem to have answer to the following questions:
  - (a) What happens if surrogate dies during child birth?
  - (b) What can surrogate do if commissioning couple refuse to take child on the ground that it is abnormal of physically/mentally challenged.
  - (c) Case when surrogate refuses to hand over child.
  - (d) remuneration of surrogate.
  - (e) Who will bear the medical bills if surrogate falls ill.
  - (f) What happens to unused eggs or embryos and who supervises their fate.
  - (g) Should surrogacy arrangements be disclosed to child. If so, when?"