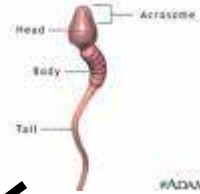


Legal and Ethical Issues in Embryo Mix-Ups

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The usual course

Intended source



Intended source



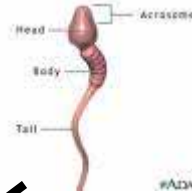
Embryo from intended gametes



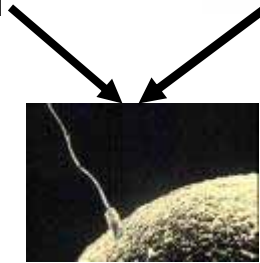
Intended gestator

Mix-ups can occur at any stage

Unintended source



Unintended source



Embryo from one or both unintended gametes



Unintended gestator

Robert B. v. Susan B., 135 Cal.
Rptr. 2d 785 (Cal. Ct. App. 2003)

- Embryos of Robert and Denise B (created with his sperm and donated ovum) accidentally given to Susan Buchweitz who had sought to be single parent
- Robert B. given split custody with Susan Buchweitz

Perry-Rogers v. Fasano, 715

N.Y.S.2d 19 (N.Y. App. Div. 2000)

- Donna Fasano, who is white, accidentally given one of the embryos created by the Rogers, who are black
- Ms. Fasano gave birth to twins, one white and one black
- The Rogers were given exclusive custody of the black twin

The problem

- Neither intent nor genetics work well in the case of a mix-up
- Split custody among prior strangers likely to be even harder than typical divorce

Bender's proposal for priority

- a. Gestational mother (and her chosen co-parent, if there is one)
- b. Genetic mother (and her chosen co-parent, if there is one)
- c. Genetic father (and his chosen co-parent, if there is one)
- d. Intended parent (and chosen co-parent) with no genetic or gestational connections to the child
- e. Adoption by stranger uninvolved in the ART process that created the child.

The relevance of family history

- At present desirable to obtain family history from gamete donors if they are not the ultimate custodians
 - This may become less relevant in the future
- Gestational history will continue to be relevant in those cases in which gestator is not ultimate custodian