ASSISTED CONCEPTION

*Louise Brown born 25 July 1978 is the first ‘test tube’ baby born. This now accepted as a common way of conceiving a child.

*Reproductive techniques: Cryopreservation, Assisted insemination by partner, Donor insemination, Egg donation, In vitro fertilization, GIFT, ICSI.

There are 3 legal issues with assisted conception: regulation, parenthood, anonymity.

REGULATION

*The Human Fertilisation and Embryology Act 1990 and 2008

*The Human Fertilisation and Embryology Authority created s5 1990 Act. Regulates provision of fertility treatment, assisted reproductive technology, and carrying out of embryo research through process of licencing and inspections, ensuring it is safe and ethical.

*HFEA divides activities into: unlawful activities, lawful if clinic has a licence, lawful even without a licence.

LEGAL PARENTPAGE

*Under common law, biological parents are also legal parents.

*Father – more problematic. Presumptions developed to assist: husband or a married woman will be the father unless rebutted by evidence (s29 Family Law Reform Act). Also man named on birth cert.

*Presumptions less important due to increased use of blood and DNA testing. Can be a person be compelled to submit to testing? S20(1) and s21(1) FLRA. Inferences can be drawn if refuse to consent –s23(1)FLRA and Re A (A Minor). Can take sample from a child with consent of those with ‘care and control’ or if in child’s best interests (Re H and A). Will depend on child’s case (Re E).

Assisted reproduction – IVF. Possible to prescribe general parents, carrying parent, social parents. s21 FLRA can be amended.

*Father – S35 HFEA 2008 the husband of a married woman who gives birth to a child conceived using donated sperm is the father (s35(1)) – Leeds Teaching Hospital NHS Trust v A. Where agreed fatherhood conditions satisfied – s36/37. Where a man donates sperm for the purposes of ‘treatment services’ – sperm donors – s41(1) – not legal father. The other parent –CP (s42) and same sex couples (s43).

Posthumous parents – s39/40. S44 partner of woman (male or female) if agreed parenthood conditions apply.

Surrogacy

*Rules of parenthood depend on how the pregnancy was brought about and marital/partnership status of the surrogate. HFEA 2008 applies. Legal mother will be the surrogate but parenthood can be transferred in 2 ways: parental order (s54 HFEA – see provisions-nb have to wait 6wks) adoption.

*Not enforceable –s1A Surrogacy Arrangements Act 1985. However, could be in child’s best interests to remain with couple: Re P cf Re TT (child remained with surrogate). Criminal offence to enter into surrogacy arrangement if done on commercial basis.

ANONYMITY

*Gamete donation: anonymity - HFEA (DOD) Regulations 2004 – came in effect meaning that a child once they reach 18yrs old can discover name/address of donor. Also payment for gametes is only permitted if authorised by HFEA. The current EU Tissues and Cells Directive states only expenses are to be paid re donating sperm.

CONTRACTION

*The most common forms of contraception are: condom, intra-uterine device (IUD), injectable contraceptives, contraceptive pill, sterilization, natural methods.

Contraception is a legitimate and beneficial treatment in cases where it is medically indicated - Lord Scarman Gillick v Norfolk AHA. Must be licensed by the Medicines and Healthcare Products Regulatory Agency.

MINORS AND CONTRACEPTION

Gillick v West Norfolk and Wisbech AHA – 1. The girl would although under 16 understand the advice. 2. She could not be persuaded to inform her parents or to allow the doctor to inform the parents that she is seeking contraceptive advice. 3. She as likely to have sexual intercourse with or without contraceptive treatment. (Lord Scarman – harm to child) (Lord Fraser – best interests of child)

CONTRACTION AND ABORTION

Contraception Eg. morning after pill. Meaning of word ‘miscarriage’ - R (on the application of Smeaton) v Sec of State for Health and Others

STERILISATION –procedure that renders a person incapable of reproduction. Meant to be permanent.

• Ethical objections: irreversibility

• Issues of consent and individual autonomy (Re D (minor)/ Paton v British Pregnancy Advisory Services Trustees)

*Normal rules on consent apply – competent adult or with consent.

*If patient lacks capacity then sterilisation can be performed if doctor believes it is in the patients best interests and is the least intrusive way of protecting their interests - s16/17 FLRA. If for non-therapeutic reasons a declaration should be made by 2 competent doctors.

STERILISATION WITHOUT CONSENT

*Re B (A minor)(wardship: sterilisation): 17 year mentally disabled epileptic girl. Lord Hailsham LC “the conclusion that the procedure of sterilisation should never be considered for non-therapeutic purposes is totally unconvincing and in startling contradiction to the welfare principle.” There was no urgenetics conditions, it was purely what is in the best interests of the child.

*See also Re M (a minor)(wardship: sterilisation) & Re P (A minor) (wardship: sterilisation)

*Adults unable to consent – ct can declare lawful practice if in patient’s ‘best interests’. Relevant factors: professional opinions all agree; sterilisation should be a ‘last resort’; immediate risk of pregnancy. Re LC (medical treatment: sterilisation); ability of person to care for a child. Re X

*Therapeutic reasons – no need get cts approval. Menstrual excess Re E (a minor) (Medical treatment/ re GF. Two doctors must agree; operation was necessary for therapeutic purposes; it is in the patients best interests; no practicable less intrusive treatment was available; see Re Z (medical treatment: hysterectomy) and Re S (adult patient: sterilisation)