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00:02
All right. Well,

00:03
everyone,

00:04
thank you for having me. I am a solo attorney out in Carlsbad. And I practice about 60% assisted reproductive law, or arts law. And then a little bit of estate planning and just a little bit of Family Law, I do a lot of custody. To better tailor what I'm going to discuss today, I would really love to know what practice areas you guys do. Do you mind sharing?

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We have. So good to see you. I'm

00:39
glad you made it.

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So Suzanne, and Suzanne and I have talked about this very topic. And you are probably more

fresh on the pronunciations and some of the last name. So actually, I would love for you to chime in, if I miss characterizing some of the stuff. Okay, and on the back row over here. We can start. Okay. And what kind of lobby practice? Okay, great. So this could impact divorces or if you're drafting estate plans for folks.

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Yeah. And your estate planning. So litigation, Okay. Great. Yeah. Insurance defense. And, and these are my new reference of a general practice.

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Okay, great. Fantastic. Okay, so I wanted to give you guys a little background about me. Where did all of this knowledge come from? Well, growing up we have different examples in the media of surrogacy and egg donation, I think the most famous of which is Phoebe from friends carrying embryos for her brother who had conceived the embryos with his wife who is like a teacher. And that really got the wheel spinning for me. And then I saw Oprah interview an IVF doctor in India, and it said well into the desires I had to represent children in the foster care system. And so I went to law school with the intention of doing foster care work juvenile dependency, which I did for a while and also exploring this area of law, surrogacy. So with with that goal and that desire in law school, I started doing informational interviews with some of the main practitioners in Southern California. And here in San Diego, we have some really great lines. Just off the top of my head, Steve Kline and filata inclined does quite a lot of surrogacy work. You also have Janna stocks of stocks and Colburn her daughter does a lot of Quadro work, but they also are very, very knowledgeable about art law up in LA. Some of the big players up there, rich Vaughn, and verse wars, maximun are great resources as well. So I interviewed them through law school, and then just locked into a informational interview with Stephanie Caballero, who's a practitioner in Carlsbad. And she's looking to hire someone. So I worked with her for a few years and then went out on my own about four years ago and continue to do this type of work. And this area of law, art law is growing. I looked at the statistic from the CDC, a more recent percentage is still at about 12% of the adult population of women. Now, if you look at the word they're experiencing infertility, that doesn't necessarily mean that the woman herself is completely infertile, it just means they're having challenges with fertility, the person, the percent of women between ages 15 and 44. So within the feasible reproductive years, that are completely infertile, is 6.7%. But as a culture and as a society, more women are waiting until their late 20s through their 30s and early 40s, to build their family and with that comes challenges in the infertility area. So if you are working with families who are divorcing, or who are creating an estate plan, and you can do the quick arithmetic on when they have their children, you might be even more incentivized to ask about whether they have the way that I catch it. And if you guys want to write this down, I always ask clients if they have any frozen genetic, frozen genetic material, and I usually get a blank stare.

When I'm doing estate planning, I bring it up when I'm asking you about all sorts of belongings I asked about pets. I asked about My arms. And then I said, Do you have any frozen genetic material like cord blood? Everybody seems to know what cord blood is. And then once I say like cord blood, like frozen eggs, sperm or embryos, and they say, Oh, yes, I do or don't. So it's a very special type of property. I'm getting ahead of myself a little bit. But just to give you a preview, I can't emphasize enough how important it is. You know, animals are technically property, but you certainly would find people that will create custody agreements about their dogs and cats. And so I think, if it's a memory trigger for you, try and ask about frozen genetic material, when you're asking about pets, firearms, any any belonging that's going to stir up a lot of conversation and try to be really tactful in your language, because to that family, that's not a piece of personal property, that's a potential sibling to their children. Okay, and this is still a stigmatized area within our culture, mental health and reproductive health are still very delicate. And so bear in mind that they might not be forthcoming The first time you ask, but if it's something they're going to have conflict about later, it's worth asking maybe twice.

06:19

So the frozen genetic material or the frozen embryos, they have closet property characteristic when it comes to ownership, control transfer. And then I I wanted to get you guys like a quote or an ex excerpt from the Sofia Vergara case, that's out of Louisiana. She's the actress on more modern family, she and her boyfriend, I think he was briefly a fiance created embryos together, and then they broke up, and she did not want them to be used. And in my very biased opinion, my cynical opinion, I think he wanted his 15 minutes of fame, but he took her to court to try and use the embryos and that was shot down and didn't go up to appeal. The Trial Court said, This is not your only source of genetic material, sir, you could continue to find another egg donor or find a surrogate you don't need these exact embryos. They are not your only shot at parent at biological Parenthood. So I couldn't get you a quote. But in case you were wondering, because that's pretty, or it was pretty hot in the news. And if she's photographed in the like, awards, ceremonies, and it comes to mind, there's the answer to how that went. So let's back up and talk about how frozen embryos came into being. And 1978. Louise Brown was born in the United Kingdom. She was the first child that was successfully conceived via in vitro fertilization. This was colloquially colloquially known as the first test tube baby. She's doing both. And in vitro fertilization is the introduction of hormones into a woman's body. Usually it's done with injections and needles that the woman will do at home and it stimulates her ovaries. her ovaries have follicles on them, just like we all have the scalp with follicles. And typically, if a woman's ovulating. On those follicles, one or two eggs will go into the fallopian tubes, daily fertilized, but when she's taking these hormones, it'll stimulate more of her follicles to produce more eggs. So the doctor will go through the vagina, small insertion and take the eggs off of the follicles of the ovary. She's under general anesthesia when that happens. And then within the for lack of better words, petri dish, they will introduce the sperm to the eggs, they may even force the fertilization. But sometimes they're just introduced in

the dish together, they will grow from a single fertilized cell to I think on day five, there's like 16 to 32 cells. And then her cervix is dilated so that the embryo can be placed into her uterus. The statistics for the freezing and falling is 80 to 90%. That's a big change because in the 80s they did slow freeze and the success rate from defrosting was like 25%. There were ice crystals just like we imagine putting water into the freezer and creating ice cubes. There's a lot of crystals that form and now they do a flash freeze and so the success from coming out of deep freeze is very high. And this is good to know because once more the families who are concerned about these embryos are very likely Be aware of the statistics on how potentially viable those frozen embryos are going to be.

10:08

The medical industry has a standard of transferring, at very most at the total discretion of the doctor, if there's been a history of failed previous transfers, maybe three embryos, but commonly to and there's a big discussion in the industry to actually only transfer one embryo in each in vitro fertilization cycle. The challenge is not from the doctors, it's actually from the parents because this is a cost of 30 plus $1,000. And so they may want if the doctor is going to dilate her cervix and put an embryo into her uterus, but she may be she and her husband may be or her partner may request that the doctor actually placed two embryos. But the doctor is going to warn that family What if one of them splits you're suddenly carrying triplets now Natalie Suliman, also known as optimum, her embryologist and the doctor that did the transfer lost his medical license, they actually introduced about 1212 or 15 embryos into her uterus. But that clinic had a very low success rate of the embryos actually taking and she had had previous failed embryo transfers. So they, they tried this huge amount, I was still absolutely beyond the scope of what the medical industry permits. But that's how that took place. Okay, so a big concern in the industry is whether embryos should be donated, if there's a family and they froze 15 embryos, and they used 10 of them to end up having four or five biological children. They still have five frozen embryos, what do they do with those five frozen embryos, they have four options, they can ask the clinic to discard or dispose of the embryos, they can donate them to science for research, they can give the frozen embryos to other families who may want to or who want to create a family. Or there's a fledgling part of the industry that is creating embryo for lack of better words, banks, just like we have sperm banks, we're now seeing the advent of egg banks. And now embryo banks, which should ring a little hard on the ears. And there's a really famous one called snowflake embryo adoption. The challenge with characterizing it as snowflake embryo adoption is that it's creating personhood to an embryo. And I was just looking at some of the material today or some somewhere in the legal community today, there's a celebration of the anniversary of Roe v. Wade. And if there's a lot of other industries that are calling embryos, people, then that is going to potentially diminish the argument behind Roe v Wade, pro life pro choice. So I'm not trying to get on a political soapbox, but I would caution you against using personhood language when discussing embryos, because it can be a big politically, you know, volatile word to say adoption.

So currently in the industry. donation is a more appropriate characterization, because it that acknowledges that it's still a property status, although very special one. And the reason I have a picture of george bush on there, he had some sort of, I'm Rusty on the event, I'm sorry, I wasn't able to look it up beforehand. But around 2003, he brought all the families on stage who had intent towards adopted or been the recipients of donated embryos. And and sort of it was a great PR moment for snowflake adoption, embryo adoption, but it was also a big, hot button item for other folks in the industry who don't believe it should be called adoption. Okay. So although they were pushing to characterize embryos as persons in that PR event, the current standard within our court system is that embryos are not people. They are property, entitled to special respect as a result of their potential for life. And that's a quote from McQueen. It comes up later, but a quote from the queen, which was out of an Illinois case, there are some great quotes in California cases that we can get to a little later.

14:52

So I looked up this case, it's very interesting. artificial insemination, insemination is not the same as in vitro fertilization. artificial insemination is the proverbial turkey based or I only say that to help draw the distinction between the very medically invasive process of in vitro fertilization. artificial insemination can be done with an at home kit kit. And a lot of same sex couples who are working with a woman who's agreed to carry a pregnancy for them will use artificial insemination. And in 1909, there was an article published in the American Medical Journal called medical world. And it was authored by Addison Davis hard. And then this 1909 article. And they said that 25 years ago, America's first medical medical record of artificial insemination, which is what this little cartoon is depicting, was a case that took place at Jefferson Medical College in Philadelphia. And the mother came in, she was a patient of Dr. William pancoast. And she was married to a local merchant. He was 15 years her senior. And when the doctor examined both individuals, they determined that the husband was sterile. And so the doctor asked the woman, the wife to come back in and on the pretense of doing some additional testing. He'd spoke with his students about what to do and one suggested Well, the best looking at a lot of us and this is straight from the article from 1909. The best looking at a lot of us should be the sperm donor. They introduced the sperm into her body. Lo and behold, she became pregnant at that point Once there was a viable pregnancy. Very ethical, Dr. pancoast informed the dad the dad was pleased, and apparently mom was never told until 25 years later, so artificial insemination dates back for a while. And to that end, for a while our family law code had sesh statute 7613 B, which said that a man who has donated his genetic material sperm to a woman can't retroactively be considered a father if there's a later dispute about Parenthood. And it was it took us until last January to add to our code 7613 C, which applies to female egg donors. But sperm donation has been around for longer, so you're going to see more case law about it. And so here's the obvious way that artificial insemination is done. And just if if you're working on a case, artificial insemination is now out of Vogue, the more appropriate terminology would be intrauterine insemination. And that's what

takes place at the doctor's office, they'll assist with that introduction, and they will potentially clean up the sperm it's they get rid of some of the exterior cells. Okay, and if you like pop culture references, then john and Kate plus eight the Gosling stick sex tuplets they were born, do two or through clause it through artificial insemination. So john and Kate had an history of infertility. They had their twins with the help of an IVF. Doctor. They were going to try this route again. But she hyperstimulated so there were a lot of follicles on both of her ovaries that had eggs present, then things get a little murky, but what I've heard and this is just anecdotal, and maybe it's not accurate, but that against doctor's orders, she may have had relations with her husband, and that could have been the result. But the bottom line is intrauterine insemination. artificial insemination is hard to control, because if the woman is taking hormones and there's more than one egg that's in her body, then depending on the potency of the sperm, you can have a lot of children result.

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Okay, so in California, what case law do we have in remarriage? Zamka is from the appellate court in 1998. I've listed some of the folks on both sides of this case because they're all in Southern California. This originated in Orange County. And so if you wanted to interview the attorneys, I think that's really the best source to go to. You can read the case. The case is in my opinion, I'd characterize It's rather sad of couples divorcing. The husband did not want to pay child support. He pointed out that he was not the biological father of the child, they had used a sperm donor. Ultimately, the court said no, no, just because you are not the genetic parent doesn't mean you don't have parental rights, you assumed parental rights. We're going to analyze this in a similar way to adoption cases, you don't necessarily have to have a biological connection to be deemed a parent. An earlier case that went up to the California Supreme Court from 1993 was Johnson v. Calvert. And this was really a conflict between the intended parents and their surrogate. Once more, if you look at the names of the council, they this also came out of the Orange County area. So once again, if you want to do interviews, or if you want to investigate this further, there you go. There's counsel. The conflict between the intended parents and surrogate resulted in the Supreme Court of California stating the intention about whether or not to parent is going to control our decision making. And you guys clearly had a written contract. You guys signed that contract, it was clear that you did so freely and voluntarily and that it was your desire surrogate to carry and just ate this embryo for these parents. Throughout the documentation. They were referred to not as recipients, but they were referred to as intended parents, and adoption. The folks who will one day parent the child are called prospective adoptive parents. paps is the acronym and in art law, they're called IPS or intended parents and then tension language stems from this case, the seminal case. So, to harken back to law school days, of course, we have the uniform parentage act 1973. And that was adopted in California Code Section 7600 through 7679 62. I could get into a whole lecture about how surrogacy works. But the basic tenants of what needs to go into a surrogacy contract are right there and 7962. I'm sorry that I forgot to put the title of this little image that is the logo for the donor sibling registry. So I encourage you guys to write that down.

It's a website that you should be familiar with, if you do have a couple that you are representing, who are fighting about what to do with their frozen genetic material. Or if you have someone who's creating a state plan and has frozen embryos. The donor sibling registry is a website that was designed to help people track their potential potential biological half or full siblings. Interestingly, with sperm donation and egg donation, the donor can state whether they want to be informed about each family that's using the material or not. And the recipients of the material can likewise make a designation about whether they want to know how many other families have used this source, source material, lack of better words, this, this sperm or these frozen eggs. And with egg donors, the egg donor agrees to have retrieval done of her eggs. And once more if the family gets 15 eggs, they turn 10 of them into embryos, and they only use five of those frozen embryos. That family can potentially donate those embryos from the egg donor to other families. And if she didn't ask way back when she donated that she wanted to be notified each time the embryos went to different families that might not take place. So donor sibling registry has encouraged all of us in the industry to

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at the very minimum inform our clients about the use, if not mandate that they use it. So that does vary. agency by agency, clinic by clinic, how well or how poorly informed parents are about the existence of donor sibling registry. The drawbacks about it are twofold. One, it can be expensive to maintain the membership on that website to the privacy protections. People are always wary about website databases. But they do. They do. I've heard anecdotally they they are stronger with their known matches. And it's harder to track when there is an anonymous from donation anonymous egg donation. So it's not universally accepted yet, but there's a lot of discussion about whether that ought to be something that takes place. So once more that DSR donor sibling registry. Anecdotally, I like to tell my clients about its existence so that they can decide whether or not they want to use it. And their clinic may insist that they use it or their their agency may insist that they use it. Okay, so let's go on to the heart of the topic, of course, frozen embryos, the embryos when transferred about five to eight cells large. And now of course, they're doing flash freezing. So freezing, this means that we have perhaps a little under a million frozen embryos within the United States. And because of the advances in technology, more and more of them would be viable if they were followed. And I read that the oldest frozen embryo was recently delivered by a woman in her 30s. And it was frozen about 30 years ago. And she's quoted as saying, The irony is not lost on me that this embryo could have indeed been my mother, but I am from an age perspective, not from a genetic perspective. So this is going to be something that will be discussed. Some clinics will more and more clinics will have language saying if you don't pay your storage fees, or if our clinic disbands, you know, and are informed in advance, in advance that the frozen embryos will be discarded or disposed of destroyed as the most appropriate word. Alright, so what happens in a divorce case where there is a disagreement between the parties about what to do with that frozen genetic material, we don't have a universal decision. Of course,

this is family law, which is a state issue. And so it goes up to the court of appeal. And we have different decisions and different Courts of Appeal. But for the most part, the the overarching decision is that the parent who does not want to have more children via these frozen embryos, their interest will prevail over the parent who wants to keep and utilize the frozen embryos, with some very narrow exceptions. So if this is coming up, then McQueen the gamberi, is a great one to read. Davis v. Davis is also good, but it's older law. So starting with McQueen v. Cadbury, which I'm using as an example, to give us context about what takes place. So this is my story to use for greater context. So this couple got married in 2015, and 2005. They created four embryos couple years later, and then they had two children. So there were two frozen embryos that were left in storage, around 2007. And then they split up in 2010. The IVF clinics will have paperwork that parties need to sign, but there isn't a universal one size fits all type of designation form each IVF clinic will hopefully consult with an attorney and create their own questionnaire. So when they signed that questionnaire in 2007, it said that the wife could keep the embryos in the event they ever divorce, although How will how capable they are of understanding what their sentiments will be at the time of divorce is very questionable.

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So to that end, the court opined that they may not have had the same, really the same idea in their minds when they were filling out these forms.

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So,

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the life McQueen argued that under Missouri law, the embryos have personhood, and therefore they have a protectable right to life and well being from the point of conception onwards, and so frozen embryos are there for children. This argument is frequently utilized, especially from pro life community. The husband, Gad Berry, said that Missouri law had no such requirement that frozen embryos were classified His children, and his counsel, Tim Schlessinger gave a lecture that some of this material is pulled from. So again, for those that want more information, he's done copious amounts of research into this area, and is pretty friendly guy. So he may be open to assisting you if you wanted more information. So, their argument was that the frozen embryos were property. And the Court of Appeals agreed. The court said that although the wife had a right to procreate, the husband fund them fundamental constitutional right not to procreate would have been irrevocably extinguished if he were forced to have children against as well. And this case, leaned on some comments made in Davis v. Davis, from Tennessee in 1992. So it became the case that many reference to follow. And the court in that case did a balancing of interests and came up

with a notion to the party who did not want to become a parent should prevail, if the other parent had other ways to become a parent and to have biological children couch it because it makes you wonder, Well, what if it can't have biological children? We'll get to that in a moment. So terms of art, you could use your procreate creational autonomy governs the interest in the embryos. So these three different cases, for the most part, and in the same result, no, you can't use the frozen embryos. So you can or the courts have, for the most part, come to the conclusion that no, you parent who want the frozen embryos can't have the frozen embryos, backed up by three things, we are enforcing the contract that the IVF clinic had you sign, or it's against public policy to force people into Parenthood, they have a constitutional right not to have to go through that. And then I'm going to end with pointing out a couple cases that do allow the use of frozen embryos. Okay, so the first theory and enforce the consent forms from the clinic. Leader wits and lead with the form said that if there was no direction from the clinic, then the clinic would destroy. Interestingly, the wife in that case was the one who wanted to use the embryos, and they were not created from her eggs, there was an egg donor that was utilized. But she still had the right to contest, because the court said you are the owner of this property, therefore, you got to say so once more, it didn't matter that she didn't have a biological relationship to the frozen embryos. I think a contentious area that we might see is when the clinic says not just that we will destroy or discard the embryos, but that we will donate them to science that can mean a lot of different things usually means that the some of the exterior cells from the the frozen material are utilized. But it's contentious. And I'm probably using the wrong medical terminology. I'd bounce that question what exactly happens with scientific research to an IVF clinic? They can they have tons of paperwork on exactly what that would look like. So I requested to see the consent forms of a couple of local clinics. This is their special work product. So please respect that they were very kind in sharing with me their consent forms. They worked very hard on these, I'm sure with a different attorney assisting them. And I put their contact information up there in case you do run into folks who are looking to grow their family with the assistance of an IVF doctor. But as you can see these these forms just don't cover every possible scenario. So

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if you guys are divorcing, we agree that well, a court decree or a settlement agreement will decide what we're going to do. That creates some challenges because they aren't really in any sort of decision. They're just kicking the can down the road and saying we'll figure it out via court order. So were I to be in House Counsel for the clinic. I would say maybe let's tinker with this one and not let them make the decision. Later, although in that Missouri case, the court said was there even a meeting of minds to maybe this first option is like, you know, when you guys divorce, you've come to the meeting of the minds. Second, we're going to award for science for research purposes, including stem cell research, which may involve the destruction of the embryos, or destroy the embryos, I would point out on this form that I was given eight months ago. There is no box that says they'll be given to one party or the other. So maybe they were informed by some of

the decisions that I've shown to you. And then here's what San Diego Fertility Center provided San Diego Fertility Center

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has

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seven or eight different doctors, they're the one previously had three different doctors. And I liked it, they each have to sign that's not just a checkbox. But again, other what what would other mean? You have that number one again, which is I'm going to call it kick the can, they'll just direct, they'll wait and just do whatever a court decision says they need to do Thawne, discard donate to research, donate to another couple. That is also challenging because it could be donate to another individual. And do they have preferences, whether the donation goes to a same sex couple, or to a heterosexual couple. But I think it would be hard to create a consent form that was just sufficiently thorough, so you're going to be limited by whatever the consent form says. But the the takeaway that I hope you guys get from this lecture, is to always ask, do you have any frozen genetic material, whether you're in a divorce case, state planning case? And if the answer is yes, do you have your consent form from the clinic? And if they do not, I would be surprised if anyone did. There's a whole jumble of paperwork when that when they're going through IVF. But if they don't, that clinic should provide it. So you should ask your client to call the clinic and get a copy of their consent form and see what that said. So I've also included the contact information for San Diego Fertility Center, if you wanted to reach out to them. Alright, so that's theory. Number one, let's just go with whatever their clinic form said. Theory number two, the public has an interest in not forcing parenthood on folks who don't want to be don't want to have a biological child in the world against their will. So some quotes here from 2001. Over in New Jersey, the Supreme Court said we won't force JB to become a biological parent against her will. In 2000. Along the same coastlines, matter of public policy, we conclude that forced procreation is not an area amenable to judicial enforcement. I like that forced procreation. 2003 another Supreme Court said contemporaneous mutual consent. And I liked that characterization a little more than the meeting of the minds. But it's the same idea. It's against public policy to force a prior agreement between the parties that are the parties are no longer in agreement. It it's not fair to use that to dictate their future family and reproductive choices. So I think that's some great language there. Okay, so what's that carve out? Well, what if the person wanting the frozen genetic material, that's the only source of eggs they have the only source of sperm that they have? That's it, their only other way to parenthood is adoption. And it's for another lecture another day on how challenging adoption can be in 2018 with Hague Convention, some of the stuff going on in the foster to adopt arena. Nevertheless, you have rieber versus rieber. That came out of Pennsylvania in 2012. And they said that they didn't see any cases where a woman had no ability to conceive

naturally. And they decided to balance interest and her interest in having children that were her own genetic children, prevailed. And then in two, Prensky vs Dunston Illinois in 2015 the boyfriend agreed to help girlfriend create embryos right before she got it. cancer diagnosis. So she was going to go undergo treatment that involves radiation. So her oncologist told her to bang her eggs. And there was certainly a feeling as little as 10 years ago that a more successful way to freeze genetic material, rather than a single egg, which is a large cell. But still a single cell versus a collection of five to eight cells was to turn that egg into an embryo, so it would have a higher chance of surviving the FDA. And so he he provided firms so that she could create those embryos that then got into a disagreement, but because he had initially consented provided her the sperm

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and because she had no other way to get eggs, that would be viable. They let her use that frozen genetic material. So this presentation is really couched to help in the event of a divorce. But there's also implications for estate planning. And so we have hepes verses for your Court of California from 1993. a deceased person has the right to bequeath his own gamuts. And so this individual said, my frozen sperm can go to my girlfriend, his mother, his family did not want her to have access to that frozen genetic material, but his intentions and his forms prevailed. Also, you have Jeter versus Mayo Clinic in Arizona. Frozen, frozen embryo outside of the womb is not a person and matter of keeper, keeper, keeper nidal since 2008, what what they wrote down on the clinic form should prevail. And then there is a more recent case out of San Francisco and it's a husband and wife case. Suzanne, do you want to jump in because I can look through the paperwork but I'm sure you know it. I know it's not this one. It's um Oh, goodness. Okay, yeah. keeper keeper needle is when husband and wife froze husband's sperm. And then the on their consent form. They said that if somebody passed away, they would discard or destroy the genetic material. Well, then husband gotten in a helicopter crash. And I and the wife said, No, no, his frozen genetic material and now has insurmountable, priceless, sentimental value to me. I need that material to have genetic children. And they are from his line. And the court said no, his contract or his consent form controls his statement about wanting the materials to be discarded, will supersede your interest in procreating with your deceased material. But there are cases that go the opposite way to where the material is used after death of the source, individual. So I'm ending up a little early, but I wanted to allow time for questions.

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Yes. for research, that can be passed by will be sold to the highest bidder.

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That is, in the industry, considered immoral, unethical, and against various laws. And, and I'm

fearful to say there possibly is some black market for it, but you would never find any lawyer signing off on that. It is

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your laws against that. And even though there are laws permitting and donations and so forth,

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now, embryos can't have a monetary value. And that said, for example, in the contracts that I write, amongst families who are donating embryos to another family about eight different times we are not exchanging any monetary sum to complete this, this is strictly a donation. This is not a transaction.

44:42
Push it further, no money, no financial transaction, consents to have their change. reproduced for someone else who would like to Have a whole bevy of Olympic athletes, or musicians or whatever. Special?

45:12
Yeah. So it's a legitimate debate and I could forward you step back, it is a debate about the ethics there. In your scenario where there's a bevy of children being born, you also have to, therefore have a bevy or a whole host of women carrying these frozen genetic material, those frozen embryos. And so, right. And so there's a debate right now and there's a lecture, rich Vaughn is is putting it on. He sits on the board for the arteza Academy of assisted reproductive system, assisted reproductive technology attorneys. There's fellows, and they're discussing how many surrogates is too many surrogates, you know, if one family has four embryos, and they want to surrogates, one surrogate will have two embryos are supposed to her uterus, the other two. But what if the family can afford for surrogates? Five surrogates At what point? Does the agency who's arranging surrogates to meet and carry for the parents? At what point does the agency say no, at what point does the doctor say no? How informed does the clinic have to be have the possibility of those parents having embryos at multiple clinics, and certainly the surrogate has the right to know, but I will say it is standard for surrogacy agreements, to have both parties explicitly state I am in no other contractual agreement with any other for the parents, I would say for any other surrogate. And the surrogate would say I'm in no other current open contract to to carry for another couple. So if they signed that, and then it came out that they did have other surrogates that were caring for them. They'd be in breach of that contract. The breach consequences. There's a whole argument about whether punitive damages can be assigned in a breach of contract

surrogacy case. But certainly the emotional travel the intentions about this very special a special interest in parental rights, which we have characterized in a backward way as a constitutional right, the right not to procreate is considered constitutional. Those are the safeguards that are in place in addition to the clinic, the agency, no doubt losing their licenses, talking about civil law here to discuss the criminal, right, then I could try and pull the section for you. But there's penal code, I want to say 387 G. But if you get my email, I can try and pull it more specifically for you, which says that no parties. No individual, I'm going to miss characterize. I'm going to misquote it here. But it's essentially saying that a clinic or another individual can't use the eggs, sperm or embryos of another party without their Express written consent, understanding what that genetic material is going to be used for. So if it's determined that the clinic or a set of parents used eggs or sperm or use embryos without the consent of the donor, then they're in violation of that penal code. So there is a criminal implication to the two parties. I'm sorry, what's your question?

49:00

Based on the donor, the two donors being in full agreement,

49:06

yep, there, I'm going to give this sperm sample, or I'm going to give the however many eggs are retrieved from this egg retrieval to this set of parents. And I consent that if this set of parents has done building their family, they want to donate to other people. They don't need to inform me that that does pose a challenge. But where I think he would see issues come into play is again, how are they going to then have those frozen embryos carried in a in the way that you're describing in a huge, vast way, they'd have to get each and every surrogate, and again, no doctor is going to transfer more than one or two embryos to each surrogate. a surrogate has a document written with the parents, where the parents say we are not in concurrently having agreements with other surrogates. It's That's where the stop would come in. I'm not sure if I've answered your question completely. Okay. Anybody else want to jump in? Am I Is there a facet? I'm still missing for you. The person hands over 30 frozen embryos.

50:26

He and the woman or the woman that are perfectly agreement with us don't charge money, the sperm and egg donor in agreement. Right, facilitate all the surrogate mothers, they committed a crime.

50:52

Have they have they violated the California Penal Code? No. Now, you're also asking me about

some whether there's ICC regulations against this if their own home state wherever they have residents has restrictions. Certainly there are a lot of European countries, Asian countries, South American countries that do not permit surrogacy. So once more the challenge in your scenario is Who are these women that are going to carry the embryos for them in California, if they want to have a surrogate carry that embryo just ate the embryo for them deliver the baby for them, that surrogate has to have a contract, and no in vitro fertilization doctor is going to put the embryo into her uterus until two lawyers because 7960 to two lawyers have to represent one. So the parents one for the surrogate, before that embryo is going to be introduced to her body. The two lawyers have to reassure the doctor's office that a contract has completed has been completed. And the contract is in compliance with 7962. So in California, that medical process would not take place until she had counsel. They had counsel and both counsel say, Yep, we followed California Code about what's supposed to go into play. But I can connect you with counsel who have given this debate in this hypothetical, more extensive analysis, and could give you a more detailed answer. The intention of this lecture is really to give practitioners some tips about what to do when the question is posed at divorce or at at the creation of an estate plan. But again, they're like just this week, this debate was made about how many surrogates there they're talking about a scenario where there may be four or five surrogates, how do the clinics, the agencies, the lawyers work together to really define that. It's a really dynamic field. And there is a governing ethics body that continues to set out different best practices that we can abide by. And again, it's only 30 years old. So it's still somewhat in its infancy. But I'm really proud to be part of the California bar, in which we have some statutes in the family code that really hold the reins and make sure that people are going through this with an informed and careful decision. Any other questions? We're five minutes shy of one. So I think let's, let's end it here. Thank you for being here. Thank you for your question.