

Conflict of Laws in Surrogacy Cases: A Comparative Study Between French Private International Law and Arab Legal Systems

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09/11/2025: قبول البحث	12/10/2025: مراجعة البحث	15/09/2025: استلام البحث
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الملخص:

من أبرز القضايا في مجال الحقوق الإنجابية، إذ تمس في جوهرها الحقوق الأساسية وسلامة أحد (Surrogacy) تُعد مسألة الأمومة البديلة أكثر الخيارات الإنسانية حميمية، وهو إنجاب الإنسان. ويُشار إلى الأمومة البديلة أو ما يُعرف بـ "السياحة الإنجابية" على أنها عملية إنجاب صناعية تُتاح من خلال تقنيات علمية يتم تنفيذها بمشاركة مباشرة أو غير مباشرة من أم بديلة تُجيز بعض الدول مثل كندا، وجورجيا، والهند، والمكسيك، وهولندا، والولايات المتحدة الأمريكية هذه الممارسة، بينما تحظرها دول أخرى بموجب تأثير. التباين القانوني تجاه مسألة الأمومة البديلة إشكالية أساسية: ما هو الأثر. القانون مثل النرويج، وإيطاليا، والسويد، وألمانيا، وفرنسا القانوني عندما يدخل طفل وُلد نتيجة اتفاق من هذا النوع إلى دولة تحظر مثل هذه الترتيبات؟ وتزداد هذه المسألة تعقيداً مع تعدد القوانين يتناول. هذا البحث هذه الإشكاليات من خلال دراسات حالة في كلٍ من النظامين القانونيين. الوطنية وتداخل نطاق تطبيقها عبر الحدود الفرنسي والعربي، انطلاقاً من اهتمام خاص بهذه الأنظمة التي تتعامل تاريخياً بقدر من التحفظ مع عقود الإنجاب. غير أن هذا الاهتمام يتزايد وعلى الرغم من وجود نقاط تشابه في تحليل النتائج، فإن صرامة الدولة الفرنسية. بالنظر إلى التطور الملحوظ في قوانينها التجارية الدولية تقابلها مرونة نسبية في بعض الدول العربية. والسؤال الأخير الذي يسعى هذا البحث للإجابة عنه هو: هل تُعد هذه المرونة مثالية حقاً؟ وما الذي يحمله المستقبل في عالم يزداد ارتباطاً بسبب الصراعات بين الدول وقيود السفر؟

الكلمات المفتاحية: القوانين - قضايا الأمومة البديلة - القانون الدولي الخاص الفرنسي - والأنظمة القانونية العربية

Abstract

Surrogacy is one of the most prominent issues in reproductive rights, at its core it interferes with fundamental rights and the integrity of the most intimate human choice, the procreation of the human species. Surrogacy or "reproductive tourism" is said to be an artificial conception made possible through scientific techniques employed through the direct or indirect involvement of a surrogate mother. Surrogacy is permitted in some countries such as Canada, Georgia, India, Mexico, the Netherlands and the United States, while it is barred by law in others such as Norway, Italy, Sweden, Germany and France. The legal rivalry towards surrogacy raises an essential issue: what is the legal effect when a child enters a country that prohibits such an agreement? This question becomes even more difficult when confronted with the multiplication of the states' respective laws and their interstellar reach. The paper analyzes these questions through case studies found in both French and Arab legal systems. This interest in jurisdictions that historically approach the same coldness towards procreative contract is heightened by their recent growth in international commercial law. However, while there are common points in the analysis of the outcomes, the rigidity of the French State is contrasted with the enduring flexibility in Arab states. The final question this paper endeavors to answer is whether such flexibility is ideal. What does the future hold in a world befuddled by state confrontations and travel bans?

Keywords: Laws - Surrogate Motherhood Issues - French Private International Law - and Arab Legal Systems

1. Introduction

Advancements in reproductive technologies have led to the emergence of several new social phenomena, including commercial surrogacy. This phenomenon raises a number of ethical, moral, and legal issues and risks since it is often disputed at the national level.

Furthermore, since certain legal systems tend to reject the institution of surrogate motherhood for ethical reasons, individuals wishing to become parents may seek such services outside their countries of residence, thus creating a need to regulate cross-border surrogacy. Such regulations raise various issues of private international law. On the one hand, the parent-child legal tie created through surrogacy ought to be recognized as a matter of public policy so as to avoid cases of impasse. On the other hand, it is essential to effectively safeguard the rights of all parties involved—biological, social, and gestational parents, surrogate mothers, children, and so on—while ensuring that the institution of surrogacy is not abused, given that the surrogacy industry could turn into a reproductive exploitation market. (Piersanti et al., 2021)

In countries where surrogacy has only recently arisen, the issue of private international law has been systematically examined relative to the situation and with respect to the local legal systems. However, whereas old and well-established legal systems have thoroughly treated this subject, there has been no systematic analysis of the specific issues of conflict of laws involved therein relative to the experience of such countries. Knowledge of the approaches of other legal systems, along with the relative resolutions made, seems to be a favorable starting point to address private international law issues relative to surrogacy. Some countries have prohibited commercial surrogacy but allow altruistic surrogacy options. Similar to these countries, others allow altruistic surrogacy but prohibit commercial surrogacy. In contrast, some other countries that have made specific regulations on the surrogate motherhood system would seem to favor the establishment of a surrogate motherhood market. Among them, the legal systems represented by certain states are currently the most tolerant ones in which commercial surrogacy is permitted. (Hibino)

Research problem

The phenomenon of ‘procreative tourism’ is widespread in society and the popular media. This phenomenon is particularly suited to the case of gestational surrogacy occurring in a foreign primary jurisdiction, where the constitutional or legislative requirement for surrogacy contracts to be enforced at all may differ from one jurisdiction to another as well as the resultant questions concerning the law of Parentage (Piersanti et al., 2021). Indeed, there is a vast array of constitutional arrangements, from those jurisdictions that prohibit any form of surrogacy to those which sanction it entirely, albeit subject to a finite range of qualifications as to eligibility on behalf of the commissioning or pro-creative parties. Moreover, the extent to which the law of either the home state of any of the pro-creative or gestational parties would recognize a gamete donation contract for the purposes of kinship or registration would vary widely. On some readings, the pre-procedural contracts for gamete donation would be utterly ineffective for such purposes, whereas on other readings those contracts would be effective yet give rise to wholly illegitimate offspring, albeit that the illegitimacy of such offspring would not affect their legal parenthood.

Parentage and Paternity are component elements of the family law jurisdiction and are therefore to be considered uniquely within the expertise and experience of family lawyers. Parentage and paternity law are expressly sought, as both historical and legislative

narratives demonstrate, in this instance having regard to the unilateral post-birth parentage and parental order (or equivalent) procedures that might obtain in a primary jurisdiction. Notionally, very limited consultation had in fact taken place on the viability and utility of affording de facto recognition to an overseas surrogacy arrangement, with scant regard taken to be accorded as to the legal consequences of any such concurrent proceeding. (Feinberg, 2022)

Research Objectives

Surrogacy is the practice of a woman carrying and giving birth to a child for another person or couple who becomes the child's parent(s) after the birth. It is increasingly popular among women who otherwise cannot conceive and/or carry a baby due to medical reasons. Surrogacy agreements are increasingly contractual so there is a need for legal frameworks to govern surrogacy arrangements. However, the personal and domestic nature of such agreements makes it hard for law-makers to provide adequate regulations. Laws on surrogacy vary between countries and conflict of laws arise when parties from different jurisdictions are involved. Similarly, even when parties are from the same country, surrogacy agreements may be recognized and enforced in some jurisdictions and not in others. These exceptions typically take the form of delegated jurisdiction in which the foreign law, court, or decision is applied or enforced only to determined extent. In particular, the UAE Federal Law No. 14 of 2014 on Medical Liability prohibits gestational surrogacy arrangements. The practice is also discouraged by other Arab nations (Piersanti et al., 2021). Given that some expats involved in surrogacy arrangements live in these jurisdictions, an assessment of the scope of the exception on public order in this context is important.

While extensive coverage of contracts and tort liability of surrogacy arrangements exists, an underappreciated gap in the scholarship is on the recognition or enforcement of such arrangements and foreign laws or decisions dealing with these agreements. This thesis aims to determine and compare the domestic exceptions to the carriage of law doctrine on surrogacy arrangements under French private international law and principles derived from Arab legal systems. What is left undecided, however, is whether the absence of such laws in Arab legal systems means that these systems do not recognize or enforce contracts relating to surrogacy arrangements. Such grounds are important on their own since they are not based on moral or normative philosophical considerations, but instead on factual bases most often sensitive to evidence or public document. The twin goals of this thesis are to conduct a comparative analysis of the recognition or enforcement of surrogacy arrangements that violate public order under French private international law and Arab legal systems and to provide specific arguments, suggestions, and principles on this neglected aspect of surrogacy arrangements. (Eggum, 2024)

Methodology

This comparative study involves an analysis of the regulations of surrogacy under French private international law and the jurisdiction of the UAE, which is used as a representative example of Arab legislation. First, the study examines the surrogacy regulations in France by analyzing its civil code articles in general and articles 16-9 & 16-10 in particular. Then,

the study proceeds to analyze the private international law relating to surrogacy by looking into the possible family law rules governing the recognition of the filiation state that is deposited in the civil registry under the respective relevant articles. After analyzing French private international law, the laws of the UAE are analyzed by looking into the federal legislation applicable in Abu Dhabi and Dubai as well as the local legislation of Abu Dhabi. The researcher examines civil law rules that may govern the recognition of the filiation state under article 1 of the ADLSC and article 42 of the civil code through assessing the extensive documents required upon filing the plaint and the contradictions with a rigorous requirement being the parties to the surrogacy genetic link of the child only. Finally, the approval of the child's filiation state will be sought thereafter discussing these two main aspects with others (Piersanti et al., 2021). In the conclusion, the analyzed regulations in France and the UAE are compared. On one hand, France prohibits all forms of surrogacy through clear regulations in the civil code as well as private international law rules that may render the state of a child's filiation in France, who is born out of a foreign commercial surrogacy contract, could not be recognized and entered into the French civil registry. On the other hand, the UAE recognizes the validity of the foreign commercial surrogacy contracts only if they fulfill very specific conditions; otherwise, the family law rules may govern the recognition of the child's filiation state. The legal analysis is accompanied by an illustrative case of born out of a surrogacy arrangement in the UAE and the trouble which arose when seeking recognition of the child's filiation state at the Abu Dhabi courts.

2. Overview of Surrogacy

Surrogacy, explained as the bearing of children by women other than one or both of the men that the child eventually belongs to, is one of the greatest new horizons for scientific procreation. The progressive development of assisted reproductive technologies has liquidated at least some of the hardships posed by infertility and unfruitfulness. Notably, advances in this domain have rendered it realistic to become a parent even without the exclusive union of male sperm and female ovule (Cooperman, 2018). In couples where the organ that produces ovules is defective or totally missing, eggs can be harvested from another woman, married or unmarried. In couples where the anatomical or functional integrity of the uterus is not satisfactory for the inhibition and development of an embryo, gestation can be safely realized in another womb. Other groups of people, however, realize the incapability of being pregnant or carrying a child due to the absence of a female partner in the couple or due to the total sterility of both partners. The burden of infertility can be mitigated by resorting to the sperm donation in a gay couple, or by utilizing both ovules and sperm from other genetic 'parents' in a sterile heterosexual one.

There can be many reasons why surrogacy is desired. For many couples, infertility drives the searching for a surrogate, egg donor, etc. Others may turn to surrogacy for reasons relating to sexual orientation or health (Piersanti et al., 2021). The reasons behind seeking out a surrogate are personal and often tie very closely to individuals or couples' identity and biological connections or lack thereof. Each person's situation is unique, and most often, surrogacy is pursued as a last endeavor when all other means of conception

arrangements fail. Alternatively, some may pursue surrogacy to expand their family after figuring out that they do not have the ability to have any more children or do not want to carry a pregnancy again.

3. Legal Framework of Surrogacy in France

A. Legal Context and Definitions

1. General Framework

Surrogacy should be understood through a tripartite distinction of biological surrogacy, gestational surrogacy and “genuine” or “global” surrogacy. The very early practice of surrogacy was assumed as a biological surrogacy. It occurred when one female, a “surrogate mother”, happened to be supplied by the sperm of a male. Out of this union, a child was born. The surrogate mother actually constituted a mother under civil law, while the requesters (that were de facto in the status of intended parents) could get their child only by the means of adoption. This surrogacy was in accordance with “gifting” of the estates and the child was viewed as a gift of a new kind. The artificial conception by IVF techniques changed this picture. The egg of a female gamete gave now under civil law, a pre-conception status of a mother under civil law, while if the male gamete supplied the sperm only, the preparatory status for fertilization made this male irrelevant as to civil mother status. (Kapoor & Sahoo, 2022)

Since the embryo status is, at least in the majority of contemporary legal orders, the center of gravity of the legal perception of a child within the domain of ART, a major problem must be properly addressed: The alternative status of surrogacy due to the technique of “planned implantation of embryo”. If genomic relation is not a sufficient prerequisite to be a “mother” under civil law, the practice of sham pregnancy simply occurs. A diagnosis of infertility in one criterion is magisterial grounds for surrogate motherhood. On the contrary, acquisition of a child by commissioning parent couples necessitates the adoption of civil status, which is naturally less desirable. Implantation of embryo into another female, intending her to be a surrogate without any relevant genetic link either by sperm or egg gamete supply induces a conflict of laws repercussions as well as a public policy problem. (Carpenter, 2023)

2. Plausibility of IVF Conception Connected with the Case

Primarily gestational surrogacy raises two questions: (1) Is the biological mother who supplied an oocyte or a sperm donor under civil law not reasonable grounds for a challenge of parentage? (2) What is the solution if all these are not satisfied, e.g. no egg or sperm being supplied? In the latter case intentional conception without any relevant genetic relation should simply be a sham pregnancy so that under the assumption of civil motherhood, challenges of civil status may be pretty well accepted. This novel case simply leads to issues of proper law for questions of civil status rather than the identification aspect. On the contrary, the former case primarily gives rise to the co-motherhood and co-fatherhood issue relevant to parentage inquiries within a family law context. With respect

to this question, the current reconciliation of the law in different places is required. (Kneebone et al., 2022)

3.1. Historical Background

During the 1990s, the international phenomenon of reproductive and therapeutic tourism expanded worldwide, particularly in developed countries (Piersanti et al., 2021). Nevertheless, after a few years of rural and unplanned development, a demand for proper regulation arose, aimed at protecting women, offspring, and intended parents in this new field. In order to establish new legislative or regulatory measures, this phenomenon must first be placed within a legal context in terms of obligations, contracts, torts, and party relations. However, this is not an easy task, as many relevant features such as interstate relations, outsourcing, multiple categories of participants, and business and economic aspects are involved. All these features must be taken into account in any eligibility and admissibility assessment, which should not take place in a vacuum. Surrogacy is a private matter that arises from a personal choice and affects only a small number of families. As such, the existing legal issues before the contract is signed fall within national law, state law, and sometimes, as recently seen, within a local government. However, once the arrangements have been made and the parties are in different jurisdictions, the case becomes complex, sometimes involuntarily so, at least for one party. The situation is further complicated if a dispute arises between the parties. The development of case law has illustrated how personal, contractual, and tortious issues can become extensively intertwined, crossing borders and entering a whole new system of laws and legal issues. The free movement of people makes travel easier and cheaper, and the availability of services and communication technology on a global level has encouraged treatment-seeking patients to go abroad to undergo surgery or medical treatments. This new form of worldwide commerce and professional services may lead to a situation in which a service, once received, is far removed from where it was purchased and transacted. In addition, it may cause problems in enforcement, either due to the features of the obligation in the other jurisdiction or because of no recognition of the right to seek or treatment. (Wang et al. 2021)

3.2. Current Legislation

Currently there is no regulation for surrogacy in the French Civil Code, nor in the other codes of private international law, such as the Code de Procédure Civile, the Code de l'Organisation Judiciaire, the Code de Droit International Privé, or the other laws in France. This absence of legislation is ironically efficient, as it muscled France away from the harsh consequences of surrogacy that other countries experienced, since the French Government imposed a policy of complete prohibition against surrogacy long ago. Controversies regarding the regulation of surrogacy hotly occur in France, but those talks are generally about the normalization and the codification domestically, not about the regulation and examination by foreign law. In other words, exotic birth giving is not acknowledged, hence quasi-adoption is impossible (Piersanti et al., 2021).

The extension of legal effects for the agreements on surrogacy, if existing, must be studied under the principles of private international law, based on which neither relevant domestic

laws nor foreign laws can apply. Surrogacy arrangements are treated as hybrid contracts by Chinese civil law, which have contract nature yet care for the uncontrollable factors surrounding. The regulation against surrogacy must be thorough enough to smother effects of foreign laws to the utmost and durable so that it is efficient enough in a time frame longer than one adjustment of social behavior. Hence, the main ideal modality of French law is the adoption of a regulating law on the policy of total prohibition against surrogacy, which is probably a creative intention that no other jurisdictions realized. (Piersanti et al., 2021)

3.3. Judicial Interpretation

Recent French judicial decisions reflect a growing tendency to recognize the interests of commissioning parents, including those without biological ties to the child, in surrogacy and medically assisted reproduction cases. These cases reveal the legal challenges surrounding filiation, particularly due to the inapplicability of certain provisions of the French Civil Code to surrogacy, and the repeated refusal to transcribe foreign birth certificates into the French civil registry.

Judges are increasingly called to consider the law of the child's birthplace when assessing the legal parent-child relationship—especially between the child and the intended mother. This raises broader questions about whether maternal status can be legally established through intention and procreation in surrogacy arrangements, effectively removing the stigma of illegitimacy.

Moreover, evolving interpretations of parental roles in French law suggest a possible extension of legal recognition to non-traditional family structures. As such, the transcription of foreign birth records, especially when backed by foreign court rulings, should not be hindered by rigid criteria such as nationality or formal status. These criteria, in light of contemporary legal and social developments, appear increasingly relative rather than absolute (Bellan, 2021)

4. Surrogacy in Arab Legal Systems

Despite the growing acceptance of surrogacy in many civil-law jurisdictions, there remains an urgent demand for a comprehensive uniform legal framework that clearly defines the legal status of the child and the rights and duties of the parties involved. However, the question whether such uniformity is desirable or achievable in the current political milieu is open to debate. The rights of the surrogate mother are equally important, as are issues of parentage. Parentage, or the right of the child to know its origins if born of a gamete donation, is a relatively new debate that has arisen in cases of stampede surrogacy, especially in light of potential human trafficking concerns. Despite this fact, it remains unclear how these conflicts of laws in surrogacy can and should be resolved in the proposed new legal frameworks for the two discussed places. Countries in North Africa implement similar civil-law systems that share, to some extent, the same philosophical bases. First and foremost, the Algerian, Libyan, and Moroccan Private International Laws (PILs) observing a civil law tradition will be analyzed. This includes a summary of the general applicable rules on domestic family laws that govern issues like parentage and

status in the context of surrogacy. The attitude of the same countries towards the use of assisted reproductive techniques (ART), by including surrogacy, within the umbrella of the persons forbidden to marry will be examined. This includes an analysis of how the prohibition of surrogacy stems from the observation of the Islamic legal principle of prohibition of delegation and how this kind of prohibition extends to foreign surrogacy and its possible accommodation within civil-law private international frameworks. Historical and contemporary public order issues will also be reviewed (Piersanti et al., 2021). Then, the growing phenomenon of local fraudulent surrogacy, also known as clandestine surrogacy, will be tackled. The illegal practice of birth tourism and the dark historical consideration of the role of local fertility clinics and brokers will be analyzed in light of reports of reunited children with their biological families after an unsuccessful cross-border reproductive journey (López Turconi, 2023).

4.1. Overview of Arab Jurisdictions

Surrogacy is an age-old practice that originated in the Bible, and as humanity evolved, it was represented by legal instruments that were to the advantage of the adopted. Ancient Egyptian and Mesopotamian written codes concerned, indirectly, with the rights of the heirs of concubines, co-wives or partners, especially concerning property and workforce. However, with the evolution of women's rights and the protection of the concept of filiation, procreative tourism arose. The act of leaving one's country to resort to assisted reproductive technologies and gestational surrogacy outside national law is becoming more and more common, and a consequent bone of contention among governments, states and citizens. (Ferrer, 2025)

With the globalization of the surrogacy market, some countries have developed regulations favourable to the commissioning parents and the surrogate at a time when, at the international level, there were no clear and harmoniously accepted rules concerning the basic rights of all the subjects involved in this complex process. Thus, an industry emerged, and many women were seriously damaged because their rights were put aside. This has led states to delimit their territorial waters and curb the exploitation of their nationals. International treaties of universal applicability are difficult to envisage, as with the usual difficulties in harmonising legislation that concerns deeply rooted cultural, religious, or national conceptions. Therefore, this paper hopes to offer greater harmonisation of mutual respect in surrogacy cases. (Gola, 2021)

The legal situation of surrogacy in Arab countries varies considerably from country to country. Egypt, Syria, and Iraq condemn surrogacy and in vitro fertilization by religious edicts for being similar to adultery. Nonetheless, legal resistance has not stopped the emergence of clandestine fertility clinics, thereby creating a black-market industry. Lebanon and Jordan are opposed to commercial surrogacy, but altruistic surrogacy is not expressly prohibited. However, recent experiences suggest that conditions should include a Moroccan or Jordanian surrogate and clear restrictions as to the reasonableness of compensation, or it risks becoming an uncontrollable industry (Piersanti et al., 2021).

4.2. Key Legal Principles

Naturally, before engaging in international surrogacy, the intended parents should determine their country of origin's legal position regarding surrogacy. If they hope to rely on a particular law to establish their parentage, they should pay particular attention to that law. Opting for a specific surrogacy option may involve a small compromise in the selection of the surrogate concerned. For example, if a specific surrogacy option is chosen, it is also important to ensure that the selected surrogate meets the medical and legal requirements for the designation of "gestational surrogate" under the law of the "birth country." In balancing the legal and emotional aspects of surrogacy, trips to meet potential surrogates should only be planned after initially screening whether they are legally suitable candidates. Intended parents should document their pre-surrogacy arrangements as early as possible. Such arrangements may, for example, include a detailed letter of instruction provided to both the surrogate and her agency. Ideally, such documents should take the form of contracts that are governed by the law of the birth country. "Competing jurisdiction clauses," specifying which court has exclusive jurisdiction to hear disputes arising from the contracts, can be particularly helpful in minimizing the chance of conflicting orders regarding custody. The potential of pre-surrogacy arrangements to regulate the future relationship at length between intended parents and surrogates should not be overlooked, at least in countries where many issues in those arrangements can be specifically enforced. This may also reduce the chance of media exposure and subsequent flight risk, by creating a large risk of being found and returned to the birth country. As extensive research has been conducted on the regulation of international surrogacy in various countries, more rigorous review policies and licensing procedures for clinics and agencies in the "source countries" can be constructed. If surrogacy is banned in the source country, it should be regulated as a crime, both at the legislative level, by banning surrogacy-related advertisements and offerings in the media, and at the enforcement level, by investigating suspicious cases and charging parents according to its constituent elements. Ultimately, the social norms surrounding reproduction in the destination country should not be imposed on the source country. However, it is equally unsound to ignore the potential harms arising from what may be perceived by the source country as exploitative reproduction. General consensus on the norms regarding reproduction can be found more readily than perhaps imagined. Such rules could be put into practice and potentially enforced by an international body. For example, whatever rules are adopted, understanding why they do not apply and enforcing them consistently would likely promote harmony among neighboring countries without unintended consequences. (Bracken, 2021)

4.3. Case Law Analysis

The French Supreme Court (Cour de cassation) ruled that, in a case of "surrogacy tourism" where a French man had contracted a gestational surrogacy (GS) arrangement with a woman living in the USA, the mother, and social mother was recognized as the only legal parent. After the child's birth in the USA, the Agency for Family Protection was informed and applied for an order of non-disclosure of the identity of the surrogate mother, then established a French birth certificate. The French Supreme Court ruled against the recognition of this French birth certificate by the French courts. The court held that a

record of birth cannot serve as the basis for proof of parentage unless the identity of the mother is revealed. The surrogacy contract was declared ineffective under French law and was not public order compliant. Subsequently, the French Supreme Court confirmed that a record of birth cannot constitute a basis for proof of French affiliation without knowledge of the mother and birth (Piersanti et al., 2021).

The French Supreme Court (Cour de cassation) ruled on the effectiveness of foreign birth certificates in a case where a baby was born in the USA after a GS arrangement with a surrogate woman. The Cour de cassation acknowledged that French public order is violated when a French parent cannot be established or if the surrogate mother is not recognized as the legal parent. Since both these conditions were met, the French birth certificate could not be recognized, and on this basis, any action denying the surrogate mother's maternity was useless. In sum, the French Supreme Court ruled that the birth certificate issued by a US authority was not enforceable against the mother. It must also be kept in mind that if the employer contracts with the surrogate mother, eight months of pregnancy and a miraculous birth are needed. Then it becomes crucial whether there is a irrevocable surrender of parental rights. (Pearson, 2021)

The issues relating to transmission of citizenship were addressed by the French Supreme Court in *Sté et autres* and the European Court of Human Rights in *Labassée v. France*. The Cour de cassation, *Conflits-divisions de la cour*, ruled that where the couple has married before awareness of the surrogacy arrangement, the refusal of the French authorities to transmit a decree recognizing the US adoption was rejected. Though as somewhat crude, it was not inequitable. (Marinelli et al.2024)

5. Conflict of Laws: Theoretical Framework

The expression "conflict of laws" is taken here in its general sense, employing the broadest definition of "law." Subjecting a situation to a foreign law is not, of itself, a conflict. The situation has to be examined in order to determine whether it would be decided differently according to the foreign law (Pichard, 2019). The closest connection may also be with another legal order, where the consequences will not be different or will be different in other respects but equally violative of certain principles. But the difference must be serious enough to treat the foreign law as an enemy alien rather than as merely benighted, while not so serious as to create the problem of determining a completely different sort of legal system. A legal system must be sufficiently coherent so as to allow an in-depth study of the logic and variety of the questions covered by the *lex causae* and of the underlying order, its fundamental principles and philosophical basis. Given the limited purpose of this comparative study, it will be confined to private international law rules. The priority accorded to the view of private international law as "law" is equally strong.

By "theory of conflict of laws," it is meant the general legal principles of character, purpose, scope, operation and limitations of the rules governing the choice of the applicable law to cross-border situations. This theory may be termed the theory of conflict of laws par excellence to distinguish it from the special problems of characterisation, incidental questions, proof, public policy, etc., which the choice-of-law rules do not treat

directly but to which they give rise. These problems are of course an essential part of every interconnected system of legal norms, but they are relevant to its overall coherence mainly as problems of its functional operation rather than as rules of the system itself. The theory of conflict of laws is at once a part of several disciplines, notably legal philosophy and sociology, jurisprudence and comparative law. This is in line with some contemporary theories of private international law. However, on the whole, each discipline tends to neglect some aspects of the problem, or else deals with them in a manner alien to the procedural approach of any other discipline. It is painstakingly demonstrated how conflict-of-law principles are paradigmatically normative in the sense of being “testable” by judicial practice, while still being capable of other, normative epirs. (Liew, 2021)

5.1. Definition and Scope

Under French law, surrogacy agreements are null and void. Therefore, French courts can refuse to recognize a surrogacy agreement even if it is valid according to the governing law under Article 3(b) of the Hague Convention. According to Article 12(1)(b) of the Convention, such a refusal constitutes a recognition ground under French law. Accordingly, ground (b) could be invoked in considering recognition of the Israeli orders (Piersanti et al., 2021). However, this ground is restricted to situations where recognition is requested of a foreign decision that is declaratory in nature. Since the Israeli orders do not fall within the definition of such decisions, restriction (1)(b) does not apply. It is therefore necessary to determine whether restriction (1)(a) or (c) could be invoked instead. Restriction (1)(a) is similar to ground (c) of the Convention, which permits a court to refuse to recognize a foreign decision if it is manifestly contrary to the public policy of the former State. Under French law, reliance on this ground is deemed warranted when a foreign decision is contrary to a fundamental principle of modern law in a manner that threatens the political or social order (e.g., a French order recognizing a foreign decision granting divorce by mutual consent in a polygamous marriage would invoke the prohibition on polygamy). It can be argued that acknowledging a child born as a result of an illegal gestational surrogacy agreement under the Israeli orders is manifestly contrary to French public order. This argument would be justified on the grounds that recognition would lead to child predation in accordance with social mores of certain foreign populations run opposite to the French children’s well-being expectations, which, in turn, runs contrary to fundamental principles enshrined in the French Constitution and Family Code. Pursuant to French public policy, the possibility of child predation through means that surrogacy, commercialization of reproductive services, and public meditation account, that is, granting a price for a child’s procreation or delivery, that could lead to children being born, with no connection to or interest by either of the biological or gestational parents as potential victims of a material transaction that the bodies of women in gestation become commodities, is beyond permissible margins in issues of reproduction. It is suggested that recognizing a foreign decision granting parenthood and/or endless familial ties to children born from gestational surrogacy agreements could severely undermine French public order, and thus this argument would satisfy handicap (1)(a) requirements. (Foret & Bolzonar)

5.2. Principles of Private International Law

In addition to the requirement for the governing law of the surrogacy arrangement to be determined from the set of legal rules applicable to this issue, the rules of private international law will also be applied to determine jurisdiction in the proceedings declaring the parentage and its recognition. In other words, it is necessary to apply the rules of private international law in relation to the very question which this international proceeding is seeking to resolve, namely, the recognition of the filiation established by the surrogate motherhood agreement. Otherwise, cases such as the one at issue could be resolved by an isolated national law based on residence principles without regard for other applicable laws. A sad side effect of this narrowing of the notion of conflict of laws is that it would deprive from its legal effect a significant part of the surrogate motherhood contracts executed daily in a world where cross-border cooperation among peoples and countries is no longer a dream but a reality that must be acknowledged by national legal systems. (Chevichalova, 2021)

Furthermore, the determination of the applicable law could lead to a kind of recognition that is less than authentic if the declaration of parentage were to be based on the hiring of a surrogate mother outside the jurisdiction of residence of the parents. The judgment to be rendered would rectify some effects of the foreign judgment which was already the subject of a previous ruling by cognizance judges. The only question then would be whether or not the jurisdiction of these cognizance judges is recognizable (Ragni, 2019). It must also be understood that the recognition of effect consists in assigning the newly created rights, i.e., the filiation, no longer interpretatively but rather declaratively and in accordance with the will of the parties as set forth in the law which they had chosen, as if they had originated on soil once and for all. Thus, the petitioners are not merely seeking a replacement of the parent-child link pre-existing in the status quo. The determination of the applicable rules will be analyzed first in regard to the issues raised by the disputes between the child and the parents in connection with the surrogacy agreement before turning to the counter-offensive in the form of a challenge to the legality of surrogacy arrangements.

6. Comparative Analysis of Surrogacy Laws

The study of filiation law and regulations of a child to ensure a smoothly contracting process may not arise within a state's territory, especially in relation to medical. Therefore, criteria regarding a child's nationality and filiation are incorporated. The resulting child from assisted reproductive technology as a product of lab work, gestational surrogacy, and pre-implantation stage may not be accepted in some jurisdictions. Specified law matters, especially imposed by the government party regarding the arising from factors beyond the agreement. For example, in the case of cross-border biological parentage with conflicting nationality or family law resulting from international commotion (Piersanti et al., 2021).

As such, a child's right to obtain the name of the biological or war agent to escape denationalization is excluding, even though the country found this method to be materially insufficient for civil registry. The latter is required to have accurately enforced conditions in deciding the sybil's name. A suggested government law cooperation on this matter may not be effective due to practicality and timing. In some countries where basic legal

provisions allow a child to obtain citizenship, the requirement may arise from the discretion's risk of denying entry. Moreover, the absence of exclusive foreign or birth country surrogacy law may impose a diplomatic burden on civil registry denial causing finality with released biological parent names on a merely existing affidavit. (Dailey & Rosenbury, 2021)

From the foreseen jurisdiction scenarios, consideration for recognition may be given to the surrogacy contract's procedural guarantee. Flag state identification based on substantive law will avoid noticeable effects without conflicting public policy. A solution addressing substance versus form, where this child's law permits filiation certainty through registration. Regarding public policy, hence questions arise on how far a state or jurisdiction should go in advancing their morals and ethics at the expense of legitimate rights. (Andrushchenko et al.2021)

6.1. France vs. Arab Legal Systems

The complexity surrounding parental links arising from surrogacy is evident in its legal panorama. Surrogacy, especially gestational surrogacy, is currently allowed and utilized in some countries, while other states either limit its access or outright forbid it. Likewise, rules that govern parenthood arising from surrogacy diverge widely across country borders. All of this causes a number of legal voids, leading to an unregulated use of surrogacy (Piersanti et al., 2021). A situation is foreseeable where prospective parents can pick and "purchase" surrogacy services from the most favorable jurisdiction. If such a scenario were to become concrete, parental parenthood might become dependent not on biological links or "genuine" intentions, but rather on factors like financial ability or expertise in legal questions. It follows that weighing in on surrogacy from a private international law perspective necessitates consideration of whether general safeguards such as parental or surrogacy nationality, habitual residence or 'unreputable' basic principles can prevent prospective parents from obtaining desired outcomes simply by using a flag-provider. (Eggum, 2024)

Unlike French private international law, conflict of laws rules are deployed and applied differently in Egyptian and UAE legal systems. Meanwhile, it can be observed in jurisdictions where such rules are non-legal in nature and collaboration between courts is tenuous, domestic courts addressing incompletely raised surrogacy cases effectively become the arbiters of willpower. As a result, within the tiniest edges allowed by the local laws, courts jump beyond the prior decision in the light of inevitable queries and deliberate on hidden equality claims. Similar considerations apply to the Lebanese legal system, where the lack of in-place rules results in the common law doctrine of precedent. (Mohammed and Al-Esawy2024)

Analysing conflicting interests justifications, it is equally clear that as successive legislative measures taken prior to the drafting of the new Constitution in 2014 demonstrate, the possible 'matching up' of different systems that, on the whole, regulated subjects of interest was of a lesser degree to the potential fates of parental ties arising from surrogacy. This is especially true with regard to the Sunni sect, being that the

(I) Mouatshema and the present-day kinship systems are merely indicative of what existed and regulated in 1870. In reality, such a cultural dustbin has witnessed vast and rapid erosion. (Zeyen et al., 2024)

6.2. Legal Conflicts and Resolutions

With the development of procreative tourism, parentage outside French territory is now of a significant proposition for public policy and conflict-of-law discussions. This necessity concerns French Public Policy, which enshrines international commitments to the protection of children and family. The predicament of protecting children's interests led to the examination of adoption and filiation cases. The status of Affiliation represents the very essence of Family Law, as Family Law is first and foremost about affiliation or kinship relations (Ragni, 2019). This situation brought to light a fundamental conflict in the heart of Family Law, namely the dichotomy between the biological and the anthropological notions of affiliation.

Turning from embryology and gestation to filiation and family, the study will give reasons for the diversity of opinion among legal officers and consistent questions of conflict of laws. Because the first path is contingent upon medical techniques, the pursuit of which raises ethical, cultural, and even religious questions, it is shaping a legal branch characterized by significant gaps and inconsistencies from one State to another. The second path, on the other hand, revolves around the question of the conditions of filiation: once SA is requested to rule on the effects of a foreign decision or act concerning the attribution of a parent-child relationship, the question then asked is whether France should allow the effects of said foreign decision or act to be given effect (Piersanti et al., 2021). It is believed that here lies the strongest discrepancy between two sets of rules seeking to protect a same fundamental interest.

Contingent upon the first path, surrogacy agreements abroad become a disputed question with legal implications to be conducted within the scope of private international law. Notwithstanding the variety of arrangements for assisted reproduction and the legal recognition of surrogacy, public policies on the effects of such birth may appear alike: either the recognitive approach or the textual approach. However, the degree of acceptance of the French prohibition to all types of surrogacy under public policy is a relevant issue, for it means that in a conflict of laws situation where this public policy is invoked by France, the immediate aim of such invocation to prevent the giving effect of the foreign judgment or act would not be equally pursued, precisely because of the differing legal frameworks. (Foret & Bolzonar)

7. International Treaties and Surrogacy

Surrogacy is a solution for infertile individuals or couples wishing to become parents. This procedure raises many questions regarding filiation and the status of those involved. To date, infertility has not yet been the subject of international law such that the status of a child born from a surrogate can be reversible. Filiation issues are governed by national law, and the conflict between these laws raises various difficulties. This methodological

reflection raises the question of the necessity of an international law on surrogacy. (Tsfaye)

Some attempts have been made since 2005 to make provisions on this matter through the Hague conference on private international law. In 2012, the drafting group concluded that a clearer analysis needs to be made and invite academics and practitioners to participate in this quest. Currently, no attempt seems to have been made to track or respond to this invitation. The vast majority of councils seem to favour a treaty prohibiting surrogacy, even though this has been done by states without success. The question remains as to the necessity of an international law on surrogate in the light of this meeting conclusions that requested states' involvement. Others see the necessity of instruments preventing illegal transactions but advocate for states' compliance. (Erhard et al.2023)

Significant disparities exist among states on the legitimacy of surrogacy, whether altruistic or compensated. Some states have prohibited this practice, while others, considering its importance in assisted reproduction, have adopted legislation determining its modalities. This disparity between national laws maintaining different norms raises a problem of enforceability of these laws. (Cooperman, 2018) believes it would be a good step forward to promote a process along with drafting a treaty. The international community has repeatedly stated at various conferences that issues such as social protection for surrogate mothers and the protection of children born from surrogacy need to be addressed.

7.1. Relevant International Conventions

Although such legal arrangements of surrogate motherhood as gestational surrogacy contracts had existed in many countries for a long time, the question of their qualification under private international law arose globally only in the last two decades because of the geoeconomic changes leading to a considerable increase in the globalization of births (Ragni, 2019). The ambiguity in qualifying gestational surrogacy contracts in private international law leads to the lack of supervision of their performance and results in judicial and institutional failures in addressing the important rights and interests of many parties involved in the surrogacy process, primarily of children flagging statelessness. The universal question of the international surrogacy practice refers to the applicable law to validate gestational surrogacy contracts. To find an answer to this global challenge, it is essential to clarify the conflict-of-laws regime in cross-border surrogacy as the first practical step, because a distinction between valid and invalid surrogacy arrangements is imperative to combat child trafficking and tourist surrogacy.

Although almost all states employ designated conflict-of-law rules with respect to matters of sole nationality and adoption, no clear answers are currently provided as to the applicable law of surrogacy contracts in any state's law or convention. Adjudicating courts across legal systems entertain different approaches to this issue: some deny jurisdiction because of a severe public policy shock caused by the legitimacy of surrogacy arrangements in the forum, others apply their own national law radically limiting the enforcement of foreign surrogate motherhood contracts; again, others readily recognize foreign orders of referencing parenthood as validly pre-existing the birth. All these

approaches fail to produce a sound legal solution reconciling private autonomy with the protection of the paramount rights of surrogate-born children. A new doctrine is proposed affording a strict framework of conditions under which surrogate motherhood arrangements could be validly authorized. This would yield greater legal certainty to intended parents pursuing a biological child. (Piersanti et al., 2021)

7.2. Impact on National Laws

The increasing international diffusion of account surrogacy, together with the diffusion of so-called procreative tourism, raises numerous legal and ethical issues, especially in family law, reproductive health law, medical criminal law, and constitutional law. The proliferation of these practices has consequences, regarding the fragmentation of legal regimes governing surrogacy, and hence, the fragmentation of the individuals' rights in the face of present family law and reproductive health law. For what regards the interaction between family laws and reproductive health laws, this may lead to the violation of the right to health protection, which is absolutely fundamental in every State. Another delicate theme, regard the regulation rules on offering and obtaining the surrogacy services on the one hand, and the rights of women in decision-making processes. These rights may be violated, when, as it usually happens, the potential surrogate mothers are in inequitable economic conditions, thus, the offered services depends on this background. Questions arise whether to govern it internally, or to speak of a grand enticement, which could be constitutionalized as human trafficking due to the smart exploitation of women -the prospective surrogate mother- being in need of money to ameliorate general economic conditions. This could not only result in criminal sanction directed to the surrogate mother only, but also amply imply more severe sanction provisions dedicated to those who entice her. (Piersanti et al., 2021)

The absence of a right to be parent, and of a right to have a child with IVF techniques, creates vulnerable situations among children to be born from socio-affective relations. These eventual children have a right to know their origins. As a result, issues arise regarding parenting rights identification in the presence of multiple levels of assisted reproduction, that is, with the intervention of gamete donors and in the presence of surrogacy. Family law implies a primary focus upon how family relations are created and maintained. Most family law premises are shaped within family and welfare states, and question the fragmentation of family norms which may arise from the globalization of reproductive technologies, and which currently shape the ability of cities and countries to uphold their ideal families (Piersanti et al., 2021).

8. Ethical Considerations in Surrogacy

Human procreation involves natural and assisted methods, the latter consisting of preconception and postconception techniques. Preconception techniques involve the handling of uterus transplant, reproductive tissues, and gametes. On the other hand, postconception techniques involve manipulating embryos or zygotes in the in vitro, animal, or uterine environment. In the last few decades, the wider diffusion of assisted reproductive technologies (ARTs) for medical reasons and the rise of procreative tourism

for social or economic ones gave life to new bioethical and juridical issues. (Robertson, 2021)

Gestational surrogacy (GS), which is pursued by ovum and spermatoc donation, artificial insemination of the G.S., and embryo transfer into the uterus of the G.S., is considered the most severe and debated reproductive technique (Piersanti et al., 2021). Such a practice, resulting from ARTs, aimed to allow childless couples or same-sex couples to conceive a biological child, leads to old ethical implications concerning childlessness, eugenics, sale of gametes, right to reproduce, and others. New ethical issues emerged with the perinatal consequence, the novelty of the single surrogate motherhood, and the clash of interests and rights between surrogate mothers and commissioning parents. Ethical implications, autonomously or amended by legal systems, extended to all parties, physicians, stakeholders, surrogates, and parents involved in this procreative tourism.

Generally, the lawfulness of assisting reproductive practices depends on the type of donation of the material to procreate and the use of the reproductive technique. Their unlawful stipulation is regulated by penal sanction. Upon legality conditions, peer regulation involves a thorough examination of stakeholder's intentions and consequences on events. Such regulation depends on the statute of the moral system's bribery: universal, societal, and single-physician rules. As for the wide use of ARTs, the current bioethics debate lacks a univocal stance on the acceptability and regulation rules for the growing phenomenon of GS. (Passet-Wittig and Bujard2021)

8.1. Moral Implications

Having introduced the moral implications of surrogacy, this section examines the ethical implications surrounding the surrogacy agreement. First, some general moral issues concerning surrogacy are presented, starting with the question as to whether surrogacy is morally acceptable. Next, possible answers to the 'moral acceptance' question are explored and the most frequently assumed moral arguments are addressed. Finally, the 'deontology of surrogacy' question is addressed, focusing on the moral grounds for 'permissible types of surrogacy arrangements. With this exploration of moral issues, this section ultimately aims to illustrate that the moral discourse on surrogacy is complex, diversified, and contestable (Piersanti et al., 2021). As a practice that has gained prominence over the past few decades, surrogacy lends itself to divergent perspectives and polarized positions. As an extreme sort of assisted reproduction, surrogacy opens doors to new forms of parenthood and family life, presenting unique opportunities for persons suffering from infertility, childlessness, or same-sex attraction. At the same time, as a form of technological commodification of motherhood, surrogacy exposes women to structural injustice and a moralized version of exploitation. It is so multifaceted that it raises multiple questions of varying implications on various issues. Starting with rendering the moral implications of surrogacy more precise, it is pointed out that the moral implications of surrogacy are not simple, singular, and straightforward. Moral issues surrounding surrogacy are many, diversified, and contestable. There are questions concerning the 'moral acceptability' of surrogacy that aim at understanding whether surrogacy is morally acceptable per se and independent of the particular circumstances at play. There are questions concerning the

‘deontology of surrogacy’ that address surrogacy arrangements which are morally acceptable, systematic, and well-defined types of surrogacy arrangements.

8.2. Cultural Perspectives

The resort to surrogate motherhood may stem from different cultures and social contexts which push governments to propose solutions within the frame of their concreteness and social outreach. States react in a completely different manner and legal cultures intervene with more or less strength to fill a legal vacuum. The position of the countries endorsing a free framework for surrogate motherhood gives viewpoint for the wide range which exists amongst States concerning the conceiving of the surrogacy model and the efficacy of the activities carried out abroad by a licensed agency that practically leads to the birth of a child and its transfer. (Humphrey & Humphrey, 2023)

The issues which have arisen for the States adhering to the “negative” thesis present facets and implications which are substantially different from those experienced by the countries supporting the “positive” thesis since they are based on opposite cultural presuppositions. Full agreement as to the core issues may be hardly achieved across the legislative patchwork characterizing the current regulation of the matter, nevertheless a common understanding of the analysis of answers and consequences acknowledged by different legal cultures constitutes grounds for furthering the knowledge about the issue. Furthermore, countries facing opposite situations may profit from each other’s experience as to the consequences of divergent responses and the solution of the culture gap between societies holding conflicting attitudes towards motherhood and the life of a newborn child. (Wichmann et al.2022)

An organization has been entrusted with the task of examining the derivative effects of the resort of countries to negative legislation on the social problem of unwanted children, abandoned babies and fertility treatment and their naturalness or artifice. The aim of such analysis is to make explicit the premise of the questions about what counts as a child who craved to come into the world in a social sphere and the effects of different answers on intensive interactions and wider issues of social cooperation. The results of the investigation shall prepare the ground for proper, more technical, law questions. (Fan et al., 2021)

9. Case Studies

Surrogacy is a phenomenon that results from scientific and social progress that counteracts infertility and offers diverse family formation scenarios that classical traditional family structures do not include. This issue has become primary in contemporary settings where both legal and ethical discussions are ongoing and intense without definitive conclusions. Although surrogacy is recognized and practiced in various countries around the world, whether for altruistic or commercial purposes, its acceptance and outcome differ based on national regulations that range from permissive to prohibitive (Piersanti et al., 2021). France is exemplary of the latter camp. Although gestational surrogacy is prohibited, prohibitions almost never result in no surrogacy, especially by law. Owing to its prohibition of this practice and classical adoption mechanisms, France is penalized in favor

of transnational, ineffective, expensive, risky, and borderless procreative tourism where parentage is dubious. In fact, the conflicted choice has felt in the womb of a surrogate mother who is left to make will, living, or morals decisions about the emptied embryo. Several cases judge surrogacy specifically this circumstance on this basis: lower courts, French appel courts, and a potential ECtHR case. Surrogacy is an arena where diversity emerges as serious differences exist among nations. Since many people will seek options to get children regardless of regulation and control, private international law is called on to review national choices and their consequences on personal status situations. Family law can be a matter of existence for a child. To prevent childlessness, laws must be effective in determining parentage with equal regard for all persons and children involved irrespective of national lines. Otherwise, negative consequences, extreme injustice, and consequences will result, directly affecting the children involved. It is commonly acknowledged but not discussable that awareness of parentage is a public fundamental right for a child. Hence, most rules are aimed at asserting parentage and preventing the phenomenon of foundlings. France penalizes options that may be procreative. For a country that prohibits surrogacy internationally, it is expected to sanction situations regarding pregnancies undertaken as surrogacy abroad and with questionable parentage.

9.1. Notable French Cases

The case of Cour de Cassation of 16 March 2011 has attracted much media plight. Bringing together, on its own account, a child of a wife, the husband and a child born via a GPA abroad, the Cour de Cassation remitted the dispute, which had been twice understood on the merits and four times in cross appeals, to a number of other magistrates of the Cour d'Appel to re-examine, on this occasion and from a legal position necessary, the paternity of the husband, a condition of state transposed uniquely to the effect on the children, the child in the first action being the child of the other party. This case raised the issue of whether the fact of having brought, also by the GPA, the child of the husband, also of the wife, which consideration needed to predominate ontologically, could lead to the application of articles 827 and 826 of the Code de procédure civile. This intervention, at once improbable and at once compelling in the guise of the *Enfant Roi*, cannot hide the testimony that the most patriotic refutations by a multi-disciplinary French addressing had been simply put aside. Nonetheless, the analysis of this case is instructive. The French judge's justification, it will be shown, was not so much the outright prohibitions laid down in the Code civil (or instruction), but rather the general question of the best interests of the involved child, with elements of public policy being mentioned only at the margins. (Aguerri et al.2025)

Because of this deeming exhortation, the assessment of the merits of these parents, their official understanding and decree, could proceed assign to the effect of their identification with the clean resulting birth certificate. This could also occur with the assistance of the administrateur ad hoc institution. By its appeals, an anti-GPA Gouverner at the height of the outrage put at question this idea of automaticity and invoked, in combination with the severity of the sanction, the existence of the dominant public policy and of its notion. (Beribe2023)

Following on Rousseau's fond si les droits de l'homme sont entrés dans l'ordonnement constitutionnel, the French judge noted the existence of the Convention internationale des Droits de l'Enfant and its articles against which the public policy was to be assessed. The determination that abstinence from all control was always infantile, "elle et cela en dehors de tout contrôle ni jugement du bureau de la ligne d'assistance mortelle" is sobering. (Séraphin2022)

9.2. Significant Arab Cases

In the wake of the decision by the Cour de cassation on April 6, 2021, which recognized the adoption of children born through a surrogacy arrangement abroad, two considerations arise: the question of a new case before the judge in charge of the application of the best interests of the child, and the opening or not of a broader debate on the possible revision of a technical point of surveillance by the light of foreign law (Pichard, 2019). These two questions raise highly technical and political issues: on the one hand, the practical chances of a successful application on the question of the name, of which the recognition of the effect before the judge of the civil actuating service of the state of the pronouncement might just be the beginning; and on the other hand, the calendar for the possibility of a refocusing of the debate upstream of the application of the law applicable to the establishment of filiation.

In a different register, the assumption has also been made that there are judges, especially academic judges, who would like to address the question of the applicability to the questions of filiation of the "foreign law" notion drawn from article 1355 of the Civil code as it appears between 1830 and 1804 and which should lead to the consequent "declaratory" or "investigatory" character of the civil law applicable to the acts or facts relevant to the filiation. Many other judges would prefer to dwell on the technical aspects of the decisions in which the Cour de cassation was deferred to and which appear to embody a greater respect for the territoriality of the courts. (Twardoch, 2024)

In this respect, the decision rendered by the tribunal de Toulouse on September 27, 2019 is of particular interest. In this case, the public prosecutor ordered the transcription of the foreign acts establishing filiation. The couple having recourse to the surrogacy was civilly married in France, while the foreign contracts for the carrying of the child in the womb were signed in the USA. The sanction of inadmissibility to examine these finding grounds for the refusal of qualification was the declaration by judges of fact on this point and the detailed repute with what should first be called the law in validation proposed as a basis of analysis. It is indeed legitimate to consider that the question of the transcription of the act of establishment of the filiation in foreign receivables would have deserved a debate beforehand on the law applicable to the act of establishment of the filiation and not simply on the effects of this finding act.

10. Future Trends in Surrogacy Law

During the last decade, gestational surrogacy has grown in popularity as assisted reproduction technology has resulted in a higher number of fertility treatments performed around the world. Consequently, this growing desire for surrogacy has led to the

development of “procreative tourism,” whereby individuals seek to commission gestational carrier services in countries that authorize the practice and offer lower costs. Outside of Europe, several countries can be highlighted: the USA, Georgia, and Ukraine are excellent examples. In some countries, surrogacy for altruistic reasons is authorized as it has been recognized as a childbearing technique; it is deeply rooted in the culture and presents a low-cost favorable economic framework for these countries (Piersanti et al., 2021).

In light of the above, it is worth wondering if the future of contract law, reproductive rights, and family law outside Europe considers the ethical, legal, and regulatory aspects of surrogacy practice and siring. Such topics as the parents’ filiation certification in the practice of gestational surrogacy, the legal identity of the donated gametes, parental care over the child born through this cross-border technique, the responsibility of the intermediaries, and the commercial agency of children and women will probably have to be investigated and regulated in the near future.

With the rise in the number of fertility clinics offering these services and a growing awareness among clients regarding effective countries, pre-conception screening on genetic aspects, surrogacy contracts, and court judgments, perhaps this is an opportunity to take stock of the current situation. It is time to understand ethical and legal dilemmas in “happy” families created through ART, the role of the state, and the current practices of interstate litigation. Transnational surrogacy is a complicated business deal that challenges all aspects of law and offers endless opportunities for litigation.

10.1. Emerging Legal Frameworks

Surrogacy is ever more frequently resorted to in the search for parenthood. The need for regulation of the activity and the legal conflicts surrounding it have been tackled by many countries and are giving rise to more and more international treaties on the matter. Gaps in the law after the end of the procreation process may be even more serious than at its beginning; particularly, moreover, these issues may be more covered up as for their significance and the social consequences that they may bring. Given that in spite of its need, there is a dearth of national legislation governing gestational surrogacy for the involved parties on an international level, herewith we will stress the importance of comprehensive treaties among countries, which establish criteria and mechanisms which may prevent international jurisdiction and forum shopping. The synergetic imposition of filiation, child and partners’ nationality, and parental capacity is also suggested, with a view to allow the possibility to appoint legal representatives for the child born abroad and for the challenges which may be brought to foreign decrees on paternity. Such treaties go hand in hand with undesirable consequences as blocking the capacity to become parents for those parties of the world whose legislation is prohibitive to surrogacy (Piersanti et al., 2021). Speaking of surrogacy, a fine line exists between the moral right of an individual to resort to reproductive technologies and the right of the unborn not to undergo manipulation. Motherhood and parenthood as well come with increasing complexity in a world dominated by new technology, and child-producing practices are opening up to a growing number of different forms of parenthood involving third parties. It has become ever more easy and cheap to remove genetic and procreative projects from the strict

confines of the country of residence and of its legal framework, and even of its cultural tradition. Just as byedeology, any form of law is increasingly seen as a functional instrument for social relations, often replaced by the other way around. For this reason, the need for norm reestablishment is not only on the agenda but crucial in considering the future of parenthood.

10.2. Potential Reforms

Alternative modes of reproduction have been in the spotlight since the first test-tube baby, Louise Brown, was born in England in 1978. They have sparked stronger reactions than any other scientific and technical advancement. IVF has become widely accepted, whereas other Assisted Reproductive Technologies (ART) such as surrogacy and sperm/egg donation have raised heated debates and concerns (Piersanti et al., 2021). At the intersection of medicine and law, procreative tourism is an emerging phenomenon in the reproductive rights domain. AB and CD, a couple in France, are at the heart of a similar story. Thousands of French couples who have trouble conceiving have turned their gaze to the United States, Ukraine, and other countries in the past few years to seek surrogate mothers. However, surrogacy raises many legal questions, leading to complex situations. A comparative-analytical examination of the regulation of transnational surrogacy agreements in a few western countries and a few Muslim-majority countries indicates that shared concerns can give rise to startlingly different regulatory frameworks and outcomes depending on historical, political, and cultural variables. A comparison of the French Private International Law regarding surrogacy with early and emerging regulations in the Arab world demonstrates, for example, how two cultural traditions that are often presented as antagonistic in the global bioethics debate can yield surprisingly similar viewpoints in a potential regulatory framework. In contrast, modelling currently valid regulations in the Egyptian tradition inspired by the French example can inspire fruitful discussions regarding the lessons that both traditions can learn from each other. Toying with human reproduction comes loaded with several material, moral, and legal risks, which depends on the science implemented. A full understanding of the complex cultural, religious, and ideological contexts across which a phenomenon unfolds is foundational for a responsible debate. Cross-cultural and comprehensive co-regulatory efforts with genuine understanding of the challenges and viewpoints involved can help cope with new technological possibilities while safeguarding human dignity and integrity.

11. Conclusion

In the realm of human reproduction and the family, the personal status laws governing surrogacy differ greatly in both their texts and practices across the globe. This study describes the current status of surrogacy arrangements in France and selected Arab states. It highlights the challenges raised by international surrogacy arrangements in practice and considers some opportunities for reform in private international law and the law of surrogacy arrangements.

This conclusion reiterates the main points made in the preceding chapters and draws together remarks on the challenges facing international surrogacy applications and how these might be navigated as surrogacy arrangements propagate and become increasingly

complex. Conclusively, it expresses several new thoughts regarding the future of surrogacy arrangements. First and foremost is the recognition that the status quo cannot survive indefinitely; surrogacy arrangements will increase in complexity, and private international law cannot remain static as these developments take place. Legal reform is essential, but reform must still be tempered by ethical scrutiny and the acknowledgment that practical socio-legal considerations are imperative in any exercise of law-making.

First, there are tensions between the concepts of family, motherhood, and parentage enshrined in different national laws; these tensions persist not only across state borders but also internally within states. While such tensions may be tolerated in the context of identical legal effects, the stakes are raised for different legal outcomes. Second, uncertainties become magnified with cross-border applications. The mere fact that the surrogate mother has executed surrogacy agreements and relinquished her own status as mother does not prevent her from seeking enforcement of her parental status in her home state. Nor does it prevent the surrogacy arrangement from being declared void on the ground that it does not conform to the form stipulated in some family codes. There exists a real risk of conflicting judgments being produced by different courts.

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