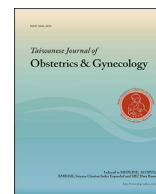




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Original Article

A survey of judicial decisions concerning surrogacy disputes in Taiwan

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ABSTRACT

Objective: Currently, Taiwan's Artificial Reproduction Act denies the legality of practicing surrogacy in Taiwan. The fact that numerous intended parents access surrogacy through fertility tourism or illegal practice leads to various types of disputes. This article illustrates the types of surrogacy-related disputes in Taiwan's legal environment, which lacks all regulation of surrogacy.

Materials and Methods: This study used “surrogacy” and “surrogate mother” as keywords to search for related district court civil and criminal decisions in the Law and Regulations Retrieving System maintained by the Judicial Yuan of the Republic of China. The authors read and selected decisions with true relevance to surrogacy issues, analyzed all cases, and categorized the cases according to the various types of disputes.

Results: This study found 27 surrogacy cases with 62 decisions and 2 records, which were categorized into five types: 1. Fraud and forging instruments (5 cases); 2. Contract disputes (2 cases); 3. Loss of consortium and adultery (5 cases); 4. Paternity and adoption issues (16 cases); and 5. Broker and medical institution's responsibility (5 cases).

Conclusion: Many patients in Taiwan are eager to access surrogacy, but the law does not allow it. Many disputes occur simply because the law forbids surrogacy. In Taiwan's current situation, some intended parents attempt fraudulent access to surrogacy. The authors of this article urge the Taiwanese government to legalize surrogacy to resolve intended parents' difficulties and avoid numerous possible disputes.

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Introduction

Marrying late and having children late in life have become trends in Taiwan [1,2]. Numerous Taiwanese people rely on assisted reproductive technology (ART) to have their children [3]; some even seek surrogacy. However, Taiwan's Artificial Reproduction Act (ARA) restricts ART to married couples in which the wife's uterus can carry a fetus and give birth [4], and this act declares that surrogacy will be regulated by a future act; unfortunately, for the past twenty years, no legislative action has been successfully taken. The ARA indirectly denies the legality of practicing surrogacy in Taiwan currently. However, numerous patients access surrogacy through fertility tourism [5] or illegal practice of surrogacy in Taiwan, which leads to various disputes. This study conducted a survey of judicial decisions concerning surrogacy to outline the types of disputes. Those disputes not only indicate the problem of forbidding surrogacy, but also prove the risk that medical personnel may face under current ARA, which does not allow surrogacy. The ultimate aim of this study is to highlight the potential of legalization of surrogacy in Taiwan.

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Materials and methods

First, we used “surrogacy” and “surrogate mother” as keywords to search for relevant district court civil and criminal decisions in the Law and Regulations Retrieving System maintained by the Judicial Yuan of the Republic of China. Second, we read all decisions returned from that search, selected all decisions with true relevance to surrogacy issues, traced the upper level courts' decisions regarding the decisions, and correlated decisions to map out the facts and the courts' opinions for each case. Third, we categorized all cases by type of dispute and analyzed the legal risks in the cases.

Results

In this study, we found 27 surrogacy cases with 62 decisions and 2 records. We categorized the cases into five types (one case may be categorized into more than one type): 1. Fraud and forging instruments (5 cases); 2. Contract disputes (2 cases); 3. Loss of consortium and adultery (4 cases); 4. Paternity and adoption issues (16 cases); and 5. Broker and medical institution's responsibility (5 cases) (Table 1).

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Table 1
Judicial decisions concerning surrogacy disputes in Taiwan.

Types	Case	Decisions		
Fraud and forging instruments	No.1 (loss of consortium)	2005 Su Zi No.262 Civil Judgment (Taiwan Hsinchu Dist. Ct. Apr. 21, 2006) 2006 Zhong Shang Zi No. 310 Civil Judgment (Taiwan High Ct. Nov. 14, 2006) 2007 Tai Shang Zi No. 1530 Civil Ruling (S. Ct. Jul. 12, 2007)		
	No.2 (forging instruments)	2008 Jian Zi No. 207 Criminal Judgment (Taiwan Shilin Dist. Ct. Apr. 30, 2008) 2008 Jian Zi No. 428 Criminal Judgment (Taiwan Shilin Dist. Ct. Aug. 12, 2008)		
	No.3 (forging instruments)	2010 Yi Zi No. 2546 Criminal Judgment (Taiwan Taipei Dist. Ct. Feb. 21, 2011) 2011 Shang Yi Zi No. 772 Criminal Judgment (Taiwan High Ct. Jul. 27, 2011) 2010 Su Zi No.4132 Civil Judgment (Taiwan Taipei Dist. Ct. Apr. 28, 2011) 2011 Shang Yi Zi No. 578 Civil Judgment (Taiwan High Ct. Aug. 16, 2011) 2010 Jia Su Zi No. 100 Civil Judgment (Taiwan Taipei Dist. Ct. Jun.17, 2011) 2011 Jia Kang Zi No. 147 Civil Ruling (Taiwan High Ct. Sep. 23, 2011) 2011 Tai Kang Zi No. 1026 Civil Ruling (S. Ct. Dec. 29, 2011) 2012 Jia Kang Geng Yi No. 1 Civil Settlement Record (Taiwan High Ct. Apr. 30, 2012)		
	No.4 (faud)	2014 Shen Su Zi No. 91 Criminal Judgment (Taiwan Taichung Dist. Ct. Aug. 19, 2014)		
	No.5 (forging instruments)	2010 Yi Zi No. 1261 Criminal Judgment (Taiwan Changhua Dist. Ct. Dec. 26, 2012) 2013 Shan Yi Zi No. 219 Criminal Judgment (Taiwan High Ct. Taichung Branch Ct. Apr. 25, 2013) 2015 Yi Ji Zi No. 19 Criminal Judgment (Taiwan Changhua Dist. Ct. Jul. 31, 2015) 2015 Yi Ji Zi No. 20 Criminal Judgment (Taiwan Changhua Dist. Ct. Aug. 24, 2015) 2012 Jian Zi No. 19 Criminal Judgment (Taiwan Changhua Dist. Ct. Mar. 28, 2012)		
	Contract disputes	No.6 (surrogacy agreement dispute)	2011 Qin Zi No. 83 Civil Judgment (Taiwan Shilin Dist. Ct. May 24, 2012) 2012 Jia Shang Zi No. 199 Civil Judgment (Taiwan High Ct. Dec. 4, 2012) 2012 Su Zi No. 315 Civil Judgment (Taiwan Shilin Dist. Ct. Nov. 1, 2012) 2012 Shang Zi No. 1350 Civil Judgment (High Ct. Feb. 19, 2013) 2012 Su Zi No. 332 Civil Judgment (Taiwan Shilin Dist. Ct. Apr. 30, 2012) 2012 Shang Zi No. 597 Civil Judgment (High Ct. Dec. 4, 2012) 2011 Jia Quan Zi No. 67 Civil Ruling (Taiwan Shilin Dist. Ct. Nov. 21, 2012) 2011 Jia Kang Zi No. 212 Civil Ruling (Taiwan High Ct. Dec. 29, 2011) 2012 Tai Kang Zi No. 226 Civil Ruling (S. Ct. Mar. 22, 2012) 2012 Jia Kang Geng Yi Zi No. 3 Civil Ruling (Taiwan High Ct. May 31, 2012)	
		No.7 (surrogacy agreement dispute)	2008 Su Zi No. 2432 Civil Ruling (Taiwan Taichung Dist. Ct. Oct. 13, 2009) 2009 Zhu Jian Zi No.281 Civil Judgment (Taiwan Hsinchu Dist. Ct. Dec. 31, 2009)	
		Loss of consortium and adultery	No.1 (loss of consortium)	
			No.3 (forging instruments)	
			No.8 (adultery)	2005 Su Zi No. 7 Criminal Judgment (Taiwan New Taipei Dist. Ct. Aug. 31, 2005) 2005 Shang Yi Zi No. 860 Criminal Judgment (Taiwan High Ct. Jan. 17, 2006) 2004 Jian Zi No. 5250 Criminal Judgment (Taiwan New Taipei Dist. Ct. Dec. 6, 2004) 2005 Jian Shang Zi No. 78 Criminal Judgment (Taiwan New Taipei Dist. Ct. Jun. 29, 2005)
No.9 (adultery)		1997 Hun Zi No. 542 Criminal Judgment (Taiwan Taichung Dist. Ct.) (The text of this decision is not found in the database.)		

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