

Godsend? or God's End?
IVF and Surrogacy: What Every Attorney Should Know

I. Preliminary Matters

A. When Does Human Life Begin?

1. Medical Textbooks: "a new human being comes into existence at the moment of sperm-oocyte fusion."
2. Peer-Reviewed Scientific Texts
3. The evidence from In Vitro Fertilization (IVF) itself

B. The Technological Imperative: If a thing can be done, should it be done? The limits of science and medical technology; the example of the atomic bombings. Who is the monster in the novel *Frankenstein*?

C. What did *Roe v Wade* (and *Casey*) hold?

1. The 14th Amendment (in relevant part): 'nor shall any state deprive any person of life, liberty or property without due process of law... .'

2. The Claim of Substantive Due Process: there are "substantive" guarantees in the 14th Amendment due process clause. Oxymoron?

3. The Second Holding of *Roe v Wade*: "the word person in the 14th Amendment does not include the unborn."

4. But see the Finnis/George amicus brief filed in the United State Supreme Court *Dobbs* decision: 14th Amendment does support a finding that the 14th Amendment positively protects the unborn. The Problem of Five.

D. The Advent of Fetal Homicide and Wrongful Death Statutes

1. The Limits of Roe's Second Holding; only for cases of abortion and under the 14th Amendment.

2. States and their Sovereign Police Power: States and their right to protect human beings from sperm-egg fusion to natural death.

- a. Police Power and Health and Welfare
- b. Sovereign Power and the right to protect human beings
- c. Human beings, outside the context of abortion, protected by Roe and Casey without any Constitutional problems.

E. Fetal Homicide Statutes: the history under *Roe* and *Casey*

F. Wrongful Death Statutes: the history under *Roe* and *Casey*

G. The Alabama Supreme Court Decision in *Lepage v Mobile Infirmary Clinic, Inc.* (2024)

1. The Facts

2. The Law

3. The Holding

4. The Response, what the public heard and the reaction of the Alabama State Legislature

II. In Vitro Fertilization (IVF) and Surrogacy

- A. Traditional IVF**
- B. Non-Traditional IVF**
- C. Gestational Surrogacy**
- D. Legal and other issues**
- E. Beyond IVF: artificial wombs, human cloning, 3-parent embryos, animal-human hybrids**
- F. 1984 and Brave New World**