



## A Comparative Study of the Impact of Mistakes on Lineage, Guardianship, and Custody of a Child Resulting From Medical Fertility Treatments in Iranian and French Law

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### Abstract

Medical fertility is one of the most important new technologies in the present era, the use of which can lead to the birth of a child. The widespread acceptance of the use of medical fertility methods in the last century indicates that human societies have a serious need for this field. The effects and consequences of using infertility treatment methods include social, cultural, and even legal-judicial fields. Therefore, the legal system of any society must provide an appropriate response to the challenges and ambiguities arising from infertility treatment, and silence and ambiguity in this field are not permissible. In other words, any ambiguity in the legal effects of infertility treatment methods can have serious, irreparable consequences for the parties to treatment contracts, especially for children resulting from infertility treatment methods. In the field of medical fertility, numerous contracts can be concluded depending on the illness and needs of the donor-recipient couples. The importance of contracts concluded in the field of medical fertility is also undeniable. In such contracts, which are continuous contracts, the possibility of defects of will, including mistakes, is possible and also has effects and consequences. Situational effects are among the effects of mistakes in medical fertility.

Medical fertility contracts are of double importance from the perspective of situational effects due to the nature and requirements of their special nature. The two general divisions of situational effects resulting from mistakes in medical fertility are non-financial effects and financial effects. The most important non-financial effects are matters such as lineage, guardianship, and custody, and the most important financial effects are matters such as alimony, inheritance, and compensation for damages.

It should be acknowledged that in medical fertility, there are ambiguities around the aforementioned matters as well. Now, if a mistake occurs, more serious and fundamental ambiguities and challenges can be raised, which require more serious explanation and examination to protect the child resulting from mistakes in the infertility treatment process, and also the victim. For this reason, each of the aforementioned cases will be examined and investigated in the research.

Among the most important non-financial effects of mistakes in medical reproduction are the issues of lineage (originality), guardianship (coercion), and custody (custody and



upbringing of the child). In the event of a mistake, in addition to the rights of the parties to the contract, the rights of the fetus and child resulting from it are also affected and in some way harm them; while they did not play a role in the occurrence of the mistake. To find the desired solution and localize them, the issues of guardianship, custody, and lineage in French law should also be examined to choose the best legal approach that is appropriate to the Iranian legal system. Although it is undeniable that the foundations of the two legal systems of Iran and France have deep fundamental differences, considering that in the civil law, the articles related to the occurrence of mistakes in contracts are derived from the Napoleonic Code, or the French civil law, many commonalities can also be found. Of course, with the latest amendments to the French Civil Code in 2016, the research will be reviewed.

In other words, examining the legal response to the ambiguities in other legal systems, including France, can be a solution, and if localized, it can resolve legal deadlocks in the event of ambiguities arising from errors in medical reproduction.

Therefore, using the descriptive-analytical method and a library method, legal solutions were examined to resolve the ambiguity of the non-financial effects of medical reproduction in the event of errors. The lineage of a child resulting from donation in the French legal system is based on an agreement between the parties, and the will and agreement of the parties determine the lineage, and the effects of lineage can also be examined based on this agreement. This is while natural (biological) lineage is the criterion in Iran, and in the event of an error, natural lineage is unchangeable. However, consensual or decreed lineage in the French system can be changed, which is consistent with the view of natural lineage in medical science and the nature of lineage.

In Iran, compulsory guardianship is reserved for the father and paternal grandfather, and if the natural or biological father is unknown, compulsory guardianship is also excluded, and alternative institutions such as guardianship are considered; but in France, the system of consensual guardianship of the donor's parents prevails, which can be continued in the event of a mistake, and in the event of the child's non-acceptance, guardianship is considered as another support institution. In other words, even if the mistake is important and fundamental in the French legal system, in the event of a secondary will of the donor couple and acceptance of the child, the guardianship of the spouses or parents remains the same as in the case of lineage. Regarding custody, in accordance with Article 3 of the Law on the Procedure for Donating Embryos to Infertile Couples, it is the responsibility of the donor couple, and the same issue also prevails in French law. In the event of an effective mistake in the event of donor's non-acceptance of the child, this issue is the responsibility of the support institutions, which in French law are much more numerous and advanced child support authorities, which can be a good model for promoting the support institutions for children resulting from donation.

**Keywords:** Medical Fertility, Descent, Guardianship, Mistake, Legal Father, Father by Agreement.

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