

A man in a grey sweater is holding a baby in a grey sweater and dark pants. They are outdoors, with a lake and mountains in the background. The man is looking up at the baby with a smile. The background shows a large body of water, possibly a lake or bay, with mountains in the distance under a cloudy sky. There are some trees with autumn-colored leaves in the foreground.

*The Evolving  
21st Century  
Family*

The more developed world is undergoing important demographic changes and religious, sociological and cultural shifts that impact the formation of families.

# In 2019...

Individuals are living considerably longer lives



29 countries provide for gay marriage on a national level



“Wealth” is no longer tangible



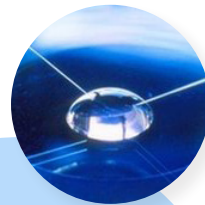
Recognition of children born out of a legal marriage



Decline in marriage rates and increases in the percentage of couples who live together without marrying



IVF and other scientific methods of birth



Increased influence of human rights principles, including non-discrimination on grounds of sexual orientation and the equal treatment of children



These shifts have a profound  
impact on a family's intention  
to plan for it's future.



- How do we define “family”?
- What do these shifts in demographics and religious, sociological and cultural attitudes mean to an individual’s wealth transfer plan?
- What practical applications does this have for advisors in the various common law systems, civil code systems and where two or more jurisdictions are relevant?
  - One Particular Issue – Who is an Heir?

# Historically, societies favored naturally born children of legally married parents.



- Bloodlines were favored
- Primogeniture was not uncommon
- Marriages were social and economic contracts
- Estates consisted primarily of land
- Certainty was important

# In today's society...



- The definition of wealth is liberalized and is less tangible. Certainty is less important.
- Marriages are considered to be partnerships.
- A large percentage of marriages end in divorce.
- A large percentage of individuals have more than one marriage during their lifetimes.
- An increasingly large percentage of individuals never marry and cohabitate with another in a relationship.
- Same sex marriages are accepted and increasingly common.

These changes in marriage and  
cohabitation patterns  
profoundly impact one important  
segment of the population...



# Children.

When does a parent-child relationship exist for inheritance purposes with regard to:



- Unmarried Couples
- Adopted Children
- Stepchildren
- Same Sex Couples
- Where only one is a biological parent
- Where neither is a biological parent
- Reproductive Technologies
- Donor and Child
- Surrogacy Agreements
- Posthumous Conception

# How do we manage the evolution of...

- A testator's presumed will?
- The assumed duty to provide for children and what a decedent "ought" to have intended?
  - The valid policy requirements of the state or states in which such testator lived and/or where such children live?

# How do we balance the needs/rights of the surviving spouse in relation to:



- Children of the marriage?
- Children outside the marriage?

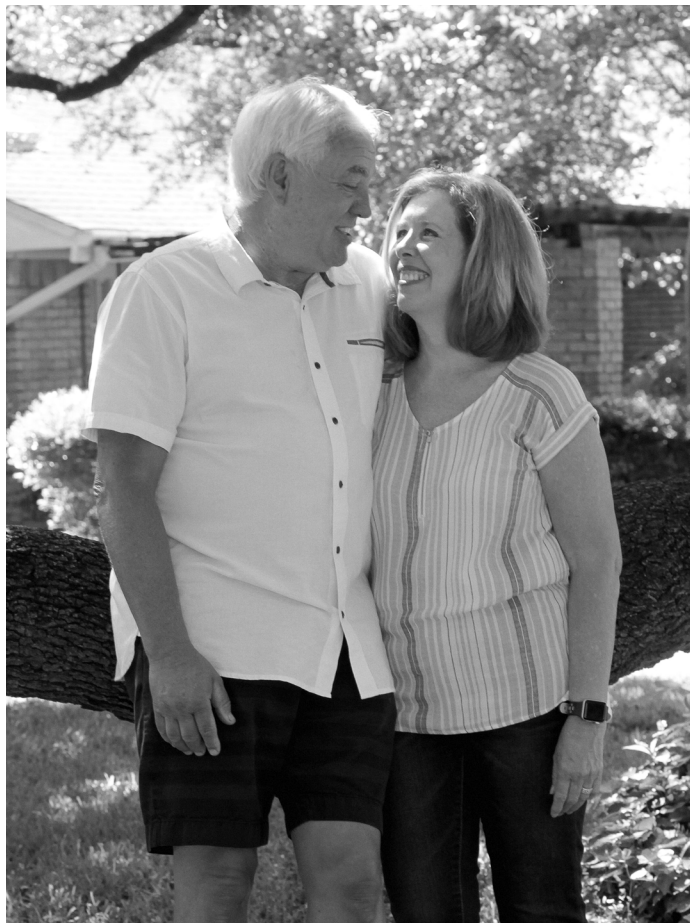
# Changes in demographic, sociological thought and cultural values:



- Marriage as a partnership and not a social contract
- Spouses will live longer
- Estates are no longer tangible and are often impacted by the laws of multiple jurisdictions

Current frontiers exist as a consequence of the increased emphasis on individual freedom, human rights and less emphasis on families created by marriage contracts and bloodlines.

# Cohabitants



- Should they qualify as heirs? If so, how much should they receive? What preconditions should be met?
- Can non-spousal cohabitation exist alongside marriage?
- How do societies create rules in this area that are reasonably straightforward and accessible?

# Trust Planning

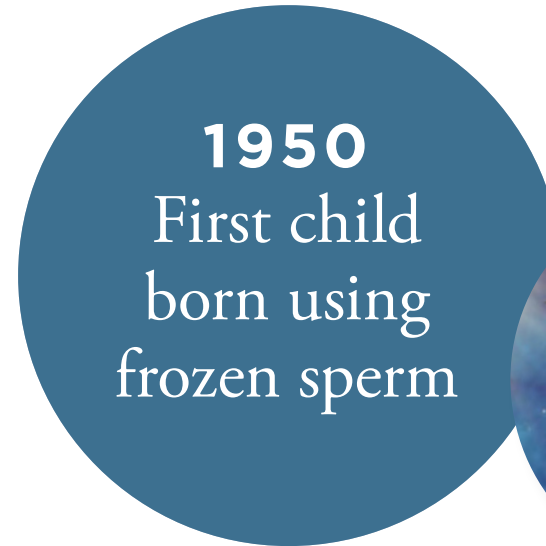


- How do we plan for the evolving family in terms of trusts, some of which may be intended to be “perpetual” in nature?
- How do we plan for a settlor’s intent if, over time, the nature of a family changes in a profound way?

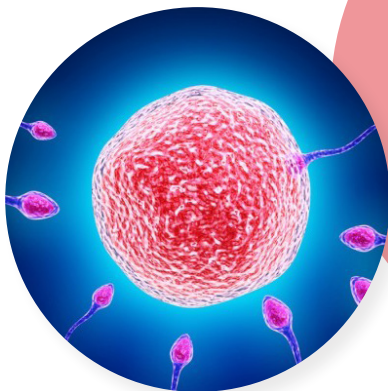
# Milestones in the use of A.R.T.



**1770**  
First reported  
intrauterine  
insemination



**1950**  
First child  
born using  
frozen sperm



**1986**  
First child  
born using a  
frozen egg



**2004**  
Child born  
using sperm  
frozen for  
21 years



# Ownership Issues



*Ownership and the use of genetic material:*

## 1. Is genetic material property?

Yes. Embryos may be treated differently, though.

## 2. Entitlement to and use of genetic material –

Who can use?

Who gets to decide?

To whom does genetic material and resulting embryo belong?

- *Sperm Donor?*
- *Egg Donor?*
- *Person commissioning use?*
- *Surrogate?*

# Succession Issues



1. When does class close?
2. Who will be included in the class?
3. When is the administration of the estate concluded?
4. How long does a trustee or executor need to wait?
5. Onus on trustee or executor to seek out genetic material? Determine who can use it and by when – give notice of distribution of estate.
6. Onus on trustee or executor if given notice of genetic material?
7. What is the liability of the trustee or executor re: distributing estate – delay to people alive at death of deceased vs. including people who are not yet born?

