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Case Note

A Scramble for the Eggs

Kass v. Kass, 696 N.E.2d 174 (N.Y. 1998)

by
ROBERT E. RAINS*

At risk of seeming rather crass,
I tell the tale of *Kass v. Kass*.

Way back in 1988,
Maureen and Steve agreed to mate.

But, sad to say—for them we grieve—
She was unable to conceive.

So, cash in hand, to docs they went
To get what should be heaven-sent.

Without sufficient hesitation,
They tried in vitro fertilization.

Her eggs were taken at her wish,
To join his sperm inside a dish.

For those who may be taking notes,
Such eggs are known as “pre-zygotes.”

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Some were implanted for gestation;
The rest had cryopreservation.

Nine times implanted, nine times failed,
75 G's, the two were nailed.

For them it was too many shocks,
Their marriage ended on the rocks.

So to the lawyers they had recourse,
Anticipating a divorce.

An amicable one, said they.
Attorneys know what that means, eh?

It often happens, one reneges:
Mo laid claim to the frozen eggs.

Was she trying to get even,
Implanting eggs conjoined by Steven?

Said he, who felt left in the lurch,
It's best to give them for research.

When love has died and couples flail,
The law decides who shall prevail.

So off to court went Steve and Mo,
To argue where the eggs should go.

The trial judge granted Mo's request,
In hopes with issue she'd be blessed.

But praying he'd get a revision,
Steve filed in Appellate Division,

Which, like its name, was quite divided
On how the case ought be decided.

Two judges said (and one concurred)
That Mo was bound by her own word.

For she had signed a form consent
Which set forth where they should be sent.

In the event no one agrees:
Then they must stay in their deepfreeze,

Until for research they're removed,
To help the process be improved.

But Mo, still hoping for the stork,
Went to the High Court of New York.

She argued that the pact was void,
As unclear terms had been employed.

The Court said: No, it is precise.
For now the eggs must stay on ice;

In order to have full compliance,
They only may be used for science.

The Court told Mo, a deal's a deal,
No matter how she now may feel.

* * *

Thus Mo and Steven both have lost,
With naught to show for all the cost.

Perhaps the eggs will help someone
To have a daughter or a son.

So when, some day, you sow your oats,
With luck they'll grow past pre-zygotes.

