

IVF MIX-UP

Sperm donor could file lawsuit too

He could sue for damages even with no legal precedent here, say lawyers

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THE clinic at the centre of the sperm-sample mix-up faces a potential lawsuit from the sperm donor, lawyers here have said.

Thomson Medical is already being sued by the woman who had a baby through an in-vitro fertilisation (IVF) procedure that mistakenly used someone else's semen instead of her husband's.

Now, lawyers say the man whose sperm was used in error could also claim damages.

And a big question mark hangs over his status and rights as the child's biological father.

No legal precedents exist here, but lawyers point to a 2009 Court

of Appeal case in England, which held that semen samples are to be treated as property.

Going by this, the question of his rights as the sperm owner is expected to come up eventually.

Thomson Medical, its fertility centre and two embryologists are being sued by the unnamed woman for alleged negligence.

Sperm from her husband was to have been used to fertilise one of her extracted eggs in the lab, but with a stranger's sperm being used instead, it has meant the baby girl conceived is biologically unrelated to her husband.

The child, who turns two in October, has her mother's name on her birth certificate, but the space for the father's name has been left blank.

The pending High Court case between Thomson and the child's mother is expected to resolve the quantum of damages payable, if liability is confirmed.

Meanwhile, the Thomson Fertility Centre said on Thursday that it had been in touch with the man whose sperm was used through the Ministry of Health (MOH).

But the centre declined further comment, citing privacy concerns and sensitivity.

The ministry spokesman stressed that assisted-reproduction centres are responsible for complying with the proper procedures.

Singapore Management University associate professor Kelvin Low said the legal position of the owner of the sperm here is now unclear.

He said common law traditionally does not recognise property rights in body parts. An exception is made for body parts used in dis-

section or preservation in the context of, say, the training of medical students; such body parts would be owned by the medical school.

The English Court of Appeal case that ruled semen samples were property arose from cancer patients seeking to freeze sperm samples for future use; these individuals thus had property rights to the samples.

Prof Low said: "There's no Singapore case taking the same view, though some commentators have called for a re-examination of the

traditional rule."

He added a German court took

an alternative view - the misuse or destruction of a sperm sample could be treated as a personal injury claim, rather than damage to property.

The outcome of the sperm donor's suit - should he pursue one - thus hangs on the approach the court here takes.

Prof Low raised another point: "It's also likely that the third party would be in a contractual relationship with Thomson Fertility

The case

■ **January 2010:** The couple goes to the fertility clinic for IVF procedures.

■ **Oct 1, 2010:** Baby girl is born. She has different blood type from parents. Tests find that sperm used was not husband's.

■ **June 2011:** Thomson Medical is fined \$20,000.

■ **June 2012:** The woman sues Thomson Medical, Thomson Fertility Clinic and two of its embryologists.

Clinic, so he will be able to sue for breach of contract in any event."

But third-party potential claims may not end in damages for negligence involving personal injury or property. This is because, with the man being the biological dad, issues such as access and custody stand to be clarified. The woman's husband is the child's legal father, which is different from being the biological dad.

An inter-agency group led by the Law Ministry is studying the issue of the man's rights as the biological parent.

A ministry spokesman said: "MinLaw is working with other agencies, including MOH, to study legislation which will clarify, among other things, the parentage of children conceived through artificial-reproduction technology. This review extends to issues such as parenthood in cases of IVF mix-ups."

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