Wrongful Conception, Birth, and Life

Eric E. Johnson
ericejohnson.com

The basics

• Wrongful conception
  – brought by parents for failed contraception
• Wrongful birth
  – brought by parents for unterminated pregnancy
• Wrongful life
  – brought by child for unterminated pregnancy
Wrongful conception

- Brought by parents for failed contraception (e.g., tubal ligation, vasectomy).
- Virtually all courts allow these claims.
- Damages allowed for costs associated with pregnancy and birth, including medical care and mother’s lost wages.
- Most courts do not allow damages for costs of raising child to adulthood.

Wrongful birth

- Brought by parents for negligent failure to diagnose fetal condition that will result in impairment (e.g., birth defect).
- To show actual causation, parents must prove pregnancy would have been terminated but for the failure to diagnose.
- While harsh sounding, in reality, these suits are generally about trying to fund the best care for the child.
Wrongful life

• Brought by the affected child for negligent failure to diagnose fetal condition that will result in impairment (e.g., birth defect).
• To show actual causation, child must prove pregnancy would have been terminated but for the failure to diagnose.
• Most courts have rejected this theory.
  – Problem with claim of "I'm damaged by being alive."
• A minority of courts allow a plaintiff to recover extraordinary costs associated with impairment.