



## Wrongful Conception, Birth, and Life

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### 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.