

## **Cases and articles for preparation of the presentation**

Please read the following cases and articles which are **indicated as important**. All the other materials are only for further interest, they will also be dealt with in my presentation but you need not read them before, but you can, of course ;-).

### **1) "Wrongful conception"**

#### *Important cases:*

- Germany -  
[http://www.ucl.ac.uk/laws/global\\_law/cases/german/bundes/bundes\\_28march1995.html](http://www.ucl.ac.uk/laws/global_law/cases/german/bundes/bundes_28march1995.html)
- France - Extract from Tort law, p. 123 (it is sufficient to read \_this\_ information, you do not have to look into the book)

- Judgment of the Cour de Cassation, First Civil Chamber, 25 june 1991
- unsuccessful abortion
- although difficult circumstances of the 22 year old mother of a healthy child no compensation granted by lower courts and this was upheld by the Cour de Cassation
- "The existence of a child... cannot in itself constitute for the mother a legally reparable loss even if the birth occurred after an unsuccessful abortion attempt."
- "in the absence of special damage which, in addition to the normal burdens of motherhood, would have been such as to enable the mother to claim damages, the court of appeal was... legally justified in reaching the decision that it did."

### **2) "Wrongful birth/life"**

#### *Important cases:*

- Germany -  
[http://www.ucl.ac.uk/laws/global\\_law/cases/german/bundes/bundes\\_18jan1983.html](http://www.ucl.ac.uk/laws/global_law/cases/german/bundes/bundes_18jan1983.html)
- France -  
[http://www.ucl.ac.uk/laws/global\\_law/cases/french/cassation/cases/cass\\_17nov2000.html](http://www.ucl.ac.uk/laws/global_law/cases/french/cassation/cases/cass_17nov2000.html)

#### *Voluntarily:*

- German constitutional decisions:  
[http://www.ucl.ac.uk/laws/global\\_law/cases/german/bverfg/bverfg\\_28may1993.html](http://www.ucl.ac.uk/laws/global_law/cases/german/bverfg/bverfg_28may1993.html)  
[http://www.ucl.ac.uk/laws/global\\_law/cases/german/bverfg/bverfg\\_12nov1997.html](http://www.ucl.ac.uk/laws/global_law/cases/german/bverfg/bverfg_12nov1997.html)
- article about France:  
<http://www.csmonitor.com/2001/1207/p1s3-woeu.html>

### **3) Moral discussions**

#### *Voluntarily:*

- [http://enquirer.com/editions/2000/01/27/loc\\_disabled\\_childs\\_case.html](http://enquirer.com/editions/2000/01/27/loc_disabled_childs_case.html)

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Source of the French case I mentioned above:

Tort Law - Cases, Materials and Text on National, Supranational and International Tort Law, Scope of Protection, Walter van Gerven, Oxford 1998; CIV 9 EU VANG 1998

## **Definitions of terms used in this subject**

Please read **the first three descriptions** carefully as they are used in my presentation. The others are only for further information, you do not need them for understanding the topic. The source of this overview is indicated below.

### **1) Wrongful life claim**

Action brought by the handicapped child; it includes among other things, a claim for pain and suffering and for extraordinary medical expenses.

### **2) Wrongful birth claim**

Brought by the parents in the above-mentioned situation and includes claims for emotional harm and medical expenses. The cost of bringing up the child tends to be the major item of such claims.

### **3) Wrongful conception (or pregnancy) claim**

Brought by parents for the birth of a (usually) healthy but unplanned child.

### **4) Wrongful death claims**

Brought, in England, by the dependants of a deceased person - in most cases the breadwinner.

### **5) Parents' personal claims**

Often the parents of an injured person (typically a child) have their own claims, for example for shock for witnessing (or more controversially) of being told of the accident. So-called "loss of consortium" claims may be included in this category.

### **6) Foetal injuries claims**

Typically to be made by a foetus once born alive. Jurisdictions which do not require "live birth", but content themselves with "viability" at the time of the injury, may allow these claims to be brought by the estate.

### **7) Pre-conception claims**

Claims made by a child for an injurious act (e.g. defective blood transfusion) to the mother prior to conception.

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Extracted from:

The German Law of Torts  
A Comparative Treatise, Fourth Edition, Basil S. Markesinis and Hannes Unberath, Oxford 2002; CIV 9 DE MARK 2000

p. 186