**MORAL STATUS OF FETUS**

*The foetus is a person from the moment of conception: The foetus is not yet a person but has the potential to be one. Because we do not know when life begins the safest assumption is that it begins at conception.

*Foetus becomes a person at 14 days (primitive streak)
*Foetus becomes a person from quickening (movement).
*Foetus becomes a person at viability.
*Foetus becomes a person when it is capable of sensation this is around 20-24 weeks
*Foetus becomes a person at birth.
*Personhood does not begin until some time after birth.

*Right to self-determination emphasises physical invasiveness of abortion – Jarvis Thomson 'The Violinist'.

*Rights of the pregnant women: right to privacy, right to bodily integrity, right to equality. Does the law give the women the right to an abortion?

**LEGAL STATUS OF THE FOETUS**

*A foetus is not a person until it is born: “the foetus cannot have any right of its own at least until its born and has a separate existence from the mother.” Paton v BPAS

*See also the Congenital Disabilities Act.


*St George’s Healthcare NHS Trust v S (1998) Judge LJ states that a 36 week foetus is “not nothing: it is not lifeless and is certainly human”.

**ABORTION: THE LAW**

*Offences Against the Person Act 1861

*Abortion Act 1967

*The Infant Life (Preservation) Act 1929

*Specific problems - Failure to diagnose pregnancy when termination is performed by a registered medical practitioner and two registered medical practitioners have opinion in the good faith.

**THE ABORTION ACT** - must satisfy grounds

(a)that the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family. Unclear as to what physical or mental health means. Women’s reasons? Also re time limit – moral issues in relation to late abortions.

(b)that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or

(c)that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or

(d) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

**How does the law balance the competing interests? Is there a balance?**

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**Action by child – prenatal injury**

*Claims bought on behalf of child born in a damaged condition as a result of negligence of another during birth.

*A child born after 1976 is granted a cause of action by the Congenital Disabilities (Civil Liability) Act 1976

*A child born before that date is owed a common law duty of care.

*Causation can be a major stumbling block

*Congenital Disabilities (Civil Liability) Act 1976 - S 1(1). The Act enables a child to sue for damages in respect of injuries inflicted before birth. The child must be ‘born disabled as a result of another’s negligence’.

*S4(1):The child must be born alive, there is no action for wrongful death

*Disabled is given a wide mean to encompass any personal injury: “any deformity, disease or abnormality including predisposition (whether or not susceptible of immediate diagnosis) to physical or mental defect in the future.”

*A number of hurdles to overcome: 1. that his disabilities were caused by an “occurrence” that affected either parent’s ability to have a normal healthy baby, the mother during pregnancy or during the course of birth (s1(1) and (2). 2. The person responsible for this occurrence was liable to the affected parent (s1(3)), ie there must be a breach of a duty to care to his .3 The Baby was not yet fit.

*There are also a number of defences: S1(4) the defendant is not answerable to the child if at that time either or both of the parent knew of the risk of their child being disabled; but if it is the child’s father this does not apply if the mother does not know.

*This was amended in s1A Congenital Disabilities (Civil Liability) Act 1976 – extends liability to occurrences during assisted conception. Added to s1Fertilisation and Embryology Act 1990.

**Action by child: wrongful life** -

*Claims brought against the parents to abort after the occurrence of the defect.

*Mackay v Constance: imposes such a duty would be contrary to public policy because it would involve the possibility of human life and devalue the life of a handicapped child. There is no proper measure of damages representing the different between the child’s disabled existence and non-existence, et thought that neither the doctor nor the mother were under a legal obligation to abort it to save its life. Open up floodgates to claims by children born handicapped against their mothers for not having an abortion.

**Action by parent: wrongful contraception claim** cases where the parents were deprived of the opportunity to avoid the conception or pregnancy.

*Wrongful pregnancy – a dr is not liable to any future or potential partner of his patient. The doctor for whom he has no knowledge – Goodwill v British Pregnancy Advisory Service. However, owes a d of c to both partners if they come together.

*Breach of duty? - Governed by the Bolam principle.

*Fallow v Randle - The Bolam principle had no application when what the judge has to decide is, on balance, which of the explanations of failure is to be preferred. This is a question of fact which the judge has to decide on the ordinary basis of a balance of probabilities. Also have to show c has suffered loss.

*Specific problems - Failure to diagnose pregnancy at time of sterilization Allen v Bloomsbury Health Authority/ Crouchman v Burke - Information disclosure - Blake v Maurice

*Damages: 2 main heads: 1. ‘mother’s claim’: those that derive from the pregnancy itself. 2. ‘parent’s claim’: those that derive from the upkeep of the resulting child. Udale v Bloomsbury AHA - costs of pregnancy. Udale and Crouchman v Bloomsbury AHA - costs not recoverable for public policy reasons. The coming of a child into the world is an occasion for rejoicing’. CF Emeh v Kensington and Chelsea and Westminster AHA – disabled’s child maintenance costs were recoverable.

*McFarlane v Tayside Health Board - pregnancy and childbirth do qualify as personal injury, but the costs of bringing up a healthy child is not recoverable.

*Parkinson v St James and Seacroft University Hospital NHS Trust - Mrs P gave birth to a disabled child following an negligent sterilisation. Extra costs associated with bringing up a child with a “significant disability” could be claimed.

*Groom v Selby - Unnoticed pregnancy child developed meningitis after birth as a result of contracting salmonella from mother’s birth canal. Was child normal at birth or disabled as a consequence of negligence?

*Rees v Darlington Memorial Hospital NHS Trust - healthy child who was born following a negligently performed sterilisation to a severely visually handicapped mother. Rejected her claim for the extra costs of child care occasioned by her disability, but allowed a conventional award.

*Parents of a child might seek damages against dr or pre-natal counsellor who has failed to either advise them of the risk of congenital illness or to carry out the correctly interpret appropriate diagnostic procedures which would have disclosed abnormality in the foetus. Effect of McFarlane? Rand v East Dorset HA.