

Reproductive Rights Insert

a. Interference with Procreation (Reproductive Rights)

i. Prenatal Injuries

- 1) **General Rule** -- There is generally a cause of action for injuries sustained while in the womb.

ii. Wrongful Birth

- 1) **General Rule** -- But for the defendant's negligent testing or counseling, the mother would have terminated or avoided the pregnancy to avoid the birth of a child with severe birth defects (or a healthy child in the case of negligent sterilization). Some form of recovery is generally allowed. Cases of this type are analogous to informed consent cases.

- a) Procreative Choice -- Many of these cases are about preserving the mother's right to procreative choice.

- b) Abortion -- Many states have passed laws prohibiting wrongful birth claims involving abortions.

iii. Wrongful Life

- 1) **General Rule** -- Cases where a child is born with severe birth defects and the physician negligently allowed the child to be born. Courts generally reject this claim.

iv. Damages

- 1) **General Rule** -- The damages that different jurisdictions award can be divided into four clusters.

- a) Generally -- Courts do not give damages for clusters 1, 2 and 4

- b) Rhode Island Approach

- i) *Healthy Child* -- Cluster 1 ONLY

- ii) *Defective Child (Physician Not on Notice)* -- Cluster 1, 2 and 3

- iii) *Defective Child (Physician on Notice)* -- Cluster 1, 2, 3, 4

- 2) **Cluster 1** -- A cluster of expenses from pregnancy

- a) Cost of Sterilization -- Assuming that there was a defective sterilization, recovery is usually granted for the cost of the 1st (defective) and 2nd sterilization.

- b) Pregnancy Expenses

- c) Loss of Consortium -- wife is pregnant, this impacts the husband-wife relationship

- 3) **Cluster 2** -- Emotional Distress

- 4) **Cluster 3** -- Extraordinary Child Care

- 5) **Cluster 4** -- Ordinary Child Care