

# Types of compensation claims in relation to pre-natal diagnosis negligence in the UK legal system

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## ABSTRACT

Counselors and experts of genetic science, along with the advancement of genetic science, are required to provide new information about diseases to the visitors. When couples decide to have a pregnancy and do not have a good position, they will refer to a genetic counselor. A physician, genetic counselor, pharmacist, or any other person involved in this relationship should observe standards and Principles. Therefore, according to the standards and principles, genetic counselors must be responsible in the event of an negligence. The Wrongful Birth and Wrongful life claims caused by negligence included a new tort in the UK's legal system. The Wrongful Birth is claimed by the parents of the disabled child and the life caused by error is claimed by the disabled child against the physician, with the explanation that, if there wasn't a doctor's mistake, the parents never satisfied the birth of the disabled child. The appearance of these claims was initially opposed by some experts. Opponents of these types of lawsuits put forward the moral, economic, and legal reasons. Despite these differences, the reasons for the wrongful birth caused by negligence were not legally acceptable, and the case was not accepted by the courts. But in relation to the Wrongful life claims, although there are more differences, the legal system seems to accept that the child can sue the physician, at least in severe disabilities.

**Keywords:** Prenatal Diagnosis, compensation, claims

## Introduction

The use of prenatal diagnostic methods to identify women at the risk of having children with congenital and genetic defects has become standard in the field of prenatal care over the past decades. Since 2004, genetic testing has been carried out to identify genetic defects associated with over 100 illnesses. The results of such tests are commonly used by parents to decide whether to end or continue pregnancy. Mistake in the diagnosis or negligence in the diagnosis before birth can be harmful to the family and the community. It means that the birth of a child with genetic disability will be financially, emotionally and socially harmful for both the child and the parents. <sup>[1]</sup> In some cases, screening techniques cause a mistake by a physician or genetic counselor in performing and interpreting the

experiments <sup>[2]</sup>. As a result, an negligence that may be treated in this process is one of the discussion topics that affect the family and the patient. In these cases, a claim is filed against physicians that abortion is recognized as a legal right for them in the event of genetic abnormalities and their physician has deprived them of this right, since a child born with this disability causes many social, emotional and financial problems. <sup>[3]</sup> The community benefits from reducing and preventing the birth of a defective child. Negligence in the birth of a disabled child is negligence in diagnosis or negligence in counseling; if timely and complete counseling is done, the parent avoids pregnancy or terminates the pregnancy and the disabled child will never be born. <sup>[4]</sup> Failure to provide the patient with the necessary information and failure to recognize pregnancy makes parents lose the opportunity to make informed decisions. <sup>[5]</sup> The child's parents expect to have a healthy child after pregnancy, so they will go to the laboratory and the genetic counselor for testing. In this case, two conditions occur. The first case is when parents themselves are aware that they carry genes that may cause a disability, so they will refer to the laboratory before pregnancy, but the medical staff and the laboratory do not take the necessary precautions. The result of this pregnancy is the birth of a child with severe disabilities. The second case is when the patient is pregnant, referring to a genetic counselor for prenatal

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diagnosis. In this case, a child with a disability is born due to a physician's mistakes in testing and inadequate counseling. The physician's fault in counseling causes the disabled child with pain and suffering.<sup>[6]</sup>

In Britain's legal system, when the disadvantaged people seek to restore their lost rights for the first time and the issue was raised in the courts of England, there were many supporters and opponents. Because of the importance of the issue in British law, the Congenital Disabilities Act was adopted in 1976, which applies to births after July 21, 1976. This law applies to children with congenital disability and in this Act, a child with a disability is a child with any disability and illness, such as physical or mental impairment.

Section 1 of Congenital Disabilities provides liability for persons who cause child defects due to fault in the decision or maintenance of the fetus.<sup>[7]</sup> Moreover, the Human Fertilisation and Embryology Act of 1990, which has advocated this and has set responsibility for the physician in the event of an negligence. Until 1992, British courts did not explicitly tent to pursue claim against the accused person had an negligence in causing injury to the mother's uterus inside the mother's womb. However, the courts have been slowly pushed to the point that they should be responsible for the negligence in diagnosis before birth.<sup>[7]</sup> When there is an negligence in genetic screening tests and genetic counseling, even with the advancement of medical science, it may lead to claims that require the existence of a law. In British law, the physician's misconduct in prenatal diagnosis led to a claim for birth due to negligences and the wrongful life.

## 1. claim for Wrongful birth

This is a lawsuit from parents for injuries caused by physicians and providers of medical services due to the birth of a disabled child. The injuries are not due to the disabled child, but because of the lack of informed and appropriate decision that if physicians provided parents with complete information, they would abort the disabled child. The injuries in this case is the birth of a disabled child.<sup>[2, 4, 8-10]</sup> there were disagreements between courts and lawyers at the dawn of these claims, but most courts, despite disagreement on the amount of injuries, have accepted the principle of the dispute.<sup>[11]</sup> Opponents for not accepting a parent's dispute believe that the assessment of injuries to parents is impossible. the benefits of the child's birth is greater than the costs incurred by him/her; the financial liability imposed on the families is not due to their fault; claim about such a dispute requires the adoption of a law in this regard; a child born in the current course will suffer a mental shock when it is understood that his or her parents did not want him/her. The cause of a disabled child's birth is sex and pregnancy, not the physician's actions<sup>[11]</sup> also claim for such injuries is contrary to public order; But these reasons could not exclude parents from the right to litigate because the physician or any other guilty party has been responsible for committing his or her own conviction and contravening the covenant against the parents of the party, and, under the pretext of public order and the necessity of legislature approval, only In order to

prevent financial responsibility that will be imposed on the medical profession by accepting these claims. The most of opponents are afraid of the profit of Plaintiff and disadvantages of the physician;<sup>[11]</sup> however, the rejection of these claims is equal to the permission to commit Fault without liability. The physician and Medical staff are committed to fulfilling a number of commitments by accepting the contract, so if they do not comply and fulfill these obligations, they will be responsible and no longer need to criticize other reasons.<sup>[12]</sup>

By accepting the claim, the parents must prove that not only there was the mistake of medical care, but they prevented pregnancy if the information about the child's situation was provided to them.<sup>[13, 14]</sup> in this case, Plaintiff has to prove the accuser's duty, that this duty has been violated by the accused and that he/she has not complied with medical standards in such a way that the injuries were as a result of a physician's negligence and there is a causal relationship between the physician's mistakes and the injury.<sup>[13, 15-17]</sup>

A group likened birth defects as we go to the supermarket to buy a particular item, but after the purchase, it does not meet the expectations and the buyer is returned to the supermarket by claiming a refund.<sup>[18]</sup> In fact, the McFarlane case could be considered as a turning point in the birth defamation case when it was handed down by five judges, each having different arguments, they were confused and caused different ways to pay compensation<sup>[18, 19]</sup>. In the case of wrongful birth, the parents expect a healthy baby to be born when their expectation is ended due to the physician negligence, the law attempts to restore the status of the claimant to before the injury, as a result of the expected losses' conclusions are claimable in the form of Concepts of civil liability.<sup>[7]</sup> Under the Congenital Disabilities Act of 1976, in cases where the child is harmed as a result of a medical negligence, parents can claim for injuries inflicted upon them as a result of the disabled child.<sup>[14]</sup>

## 2. claim for wrongful life

This is a claim by the child with disabilities against the physician. It means that if a physician or genetic counselor provided enough information for the parents about the risks, they would prevent their birth. As a result, the child's sue is not for their disabilities; it is because of the physician has caused them to be born, not their disability.<sup>[20]</sup> In other words, in a lawsuit brought about by a negligence, the Plaintiff does not claim that he should not be born disabled; rather, he claims that he should not have been born at all if the physician provided the parents with complete information about their pregnancy in order to end up the pregnancy.<sup>[21]</sup> Therefore, the child must prove that the physician had to give information about the child's disability, but failed to perform his duties and if the parents were aware of the disability, they would end the pregnancy.<sup>[22]</sup> In this case, the Plaintiff claims that the physician has not caused congenital defects, but its cause is the predetermined genetic disorder, but the physician was just born the disabled child. In claim for wrongful life, the Plaintiff is not necessary to prove that life is better than no- existence, but he/she has to prove that the

predictable and reasonable injury that is caused by the physician should be prevent from him/ her.<sup>[4]</sup>

The first claim about wrongful life was Mackay and another v Essex area Health authority concerning the birth of a disabled child because of his mother's Rubella disease. There are disagreements about the permission of the lawsuit between jurists in the UK Judiciary.

The issues that are the subject of claim for wrongful life are as follows:

1. What is the main cause of the child's disability?
2. How the injury can be assessed?
3. can a disabled child pursue claim against his/ her mother?<sup>[23]</sup>

To answer these questions, first look at the laws of England in this regard, and then we will look at the reasons of the opponents and supporters.

In England, children's lawsuits are enforced by children under the Congenital Disabilities Act 1976 for children who have been disabled before birth.<sup>[7]</sup> Section 1 and 2 of the Congenital Disabilities Act prohibit the child born from claim about wrongful life. The United Kingdom has not acted as a liberal in accepting the claim for wrongful life. In 1974, the Legal Correctional Commission banned the claim for wrongful life, followed by Congenital Disabilities Act in 1976, which was enforced for births after the date. The constitution is still in line with its previous view of accepting this dispute. In this case, we refer to Section 4<sup>[5]</sup> in relation to Section 1<sup>[2]</sup> that there is no liability for claim of wrongful life. Section 4<sup>[5]</sup> stipulates that this law shall apply to births that have been committed after its adoption and shall not apply to previous births before the adoption of this law. In this way, a person can be responsible to the child who is disabled.

Section 1<sup>[2]</sup> stated that "further explanation in this regard is related to the precondition of Congenital Disabilities Act, which states that the child has no right to claim for wrongful life." Clause 2 (t) of this draft stipulates that "it is for the birth of a normal child that could have been born healthy rather than not born at all." Therefore, the law does not change the legal status of the claim for wrongful life, so the claim is still unplanned. In this regard, we examine Section 1 (A) of the Congenital Disability Act with Section 44 of the Human Fertilization and Embryology Act. Section 1 (A) refers to the occurrence of a disability that results from infertility treatment. commission or omission at the time of the selection, maintenance or outside use of the womb with the fetus or used gamete ". This section states that the inability of such actions from the child in court against a person who commits an act or a verb is required to sue. The main problem is "choice of gamma or embryo" that this part is not in line with crime for wrongful life. Be born or not born. Contradiction arises from the fact that by recognizing " commission or omission in the process of selecting embryos and gametes," it is not only possible to determine whether a healthy fetus is born, but it is also possible to determine whether a child is born or not. If another embryo and gamete had selected instead of the selected embryo and gamete that

resulted in the present child, the baby or child would not be born. The selected embryo and gamete will be born and raised as a healthy child, but the child's claim on the selection of embryos and gamete in Section 1 (A) implies that he/she will not be born with the physician neglect, if the guilty person was not accused, he/she would not be born as a disabled person. This is one of the characteristics of the crime for wrongful life. There is a contradiction between the legal approach to crime for wrongful life and the legal approach to choosing cases under the constitutional disability Act. A group has differentiated between these two cases and cites the following reasons

1. In the process of selection, the accused can directly say that a healthy or disabled child is born. But in Mckay's case, the child has been disabled and he has not been disabled by the accused; his congenital condition has caused a disability that the failure to diagnose the illness has caused the birth of a child with disabilities.
2. The second difference is related to the issues of public order and the sanctity of human life, which is referred to as an abortion in claim for wrongful life. In the process of selection, the accused is certainly more responsible because he has direct involvement in the occurrence of a disability, but in claim for wrongful life the accused has only made a mistake in detecting it, without affecting the disease.

In response, it must be said that accepting the notion that the behavior of the person committing the act is more deserving of punishment than the person that omit it and it is not practical in the relationship between the patient and the practitioner, because in this regard the commission or omission are slightly different. When the physician's failure to recognize the disease is more deserving of punishment, does not look right if he was left to act currently, while the physician's primary role is diagnosing the disease. Therefore, performing the negligence in the selection process is not more reprehensible than inaccuracies in cases of diagnosis. As a result, this is not the logical criterion for the difference in litigation for wrongful life and the process of selecting the embryo and gamete.

3. In claim for wrongful life, the child's claim is that he was not born with the accused's fault. But it is quite different in the process of choosing a Plaintiff's claim. He/she claims that he/she will be born as another child, without the fault and selecting another fetus or gamete. But it is not be understood from this term, it means that the child A will not be born without the physician's fault, otherwise, child B (another) will be born, and the claim in the court is the child's case A, not the another child<sup>[24]</sup>. It should be noted that these reasons can not lead to a failure to recognize the claim for wrongful life. If an injury occurs, the new compensation method should be foreseen. Two solutions can eliminate this contradiction: one recognizes the cause and reason of claim for wrongful life; two, removes section 1 (A) that refers to the process of selecting the embryo and gamete Or at least is limited

by judges of interpretation; in this case, the claim for wrongful life in Section 1A, can be applied <sup>[24]</sup>

In Mckay case, the mother was referred to a physician due to being pregnant with rubella during pregnancy, with the explanation that she is pregnant and suffering from rubella and wants to ensure the child's health. The physician assured the mother that the child was not defective and no abortion was needed. The physician made a mistake in relation to two mother blood samples and one of the samples was mistaken for the other sample, resulting in negligence in the tests. <sup>[6]</sup> claim for wrongful life that was mentioned by the child, was rejected both in court of first instance and court of appeals. But there is a significant contradiction between the courts regarding the rejection of the lawsuit. In the primitive court, the judges rejected it because of the life's superiority compare with the non-existence. <sup>[6]</sup> However, at the Revision court of the problems about injury assessment issues were the reason for not accepting the lawsuit.

First, the reasons for the opposition at the primitive court and the arguments of the supporters of the claim for wrongful life

### 1.1 Lack of the duty of care

Opponents of the lawsuit in primitive court argued that one of the pillars of civil liability is the existence the duty of care. There is no caretaking in this case because the person is alive with legal obligation; therefore, the fetus has no legal obligation until it is born and nobody has the obligation of caretaking before the birth. So the compensation is realized when the duty of care is violated and the person is injured. As a result, the reason for this rejection is that the plaintiff goes to court for compensation before the birth, when he lacks a legal personality. <sup>[23]</sup> A physician has not responsibility to guarantee or end the child' life before the birth, because it is contrary to public order and destroys the sanctity of human life. The respondents said that the child's claim was a physician's negligence in advising the mother. This negligence was not made if the physician performed correctly, and rejecting the claim is a violation of the child' rights and it is unjust to take the physician away from the responsibility. <sup>[9]</sup> The care may be carried out in relation to a person who has not yet been born. The physician also cares about the pregnant woman and her fetus. Therefore, the disability is the same physical injury as a child who is incapacitated for Thus, the disability is the same physical injury as a result of the physicians' failure to observe the physician's care, and the child would never be born if the duty was observed. Therefore, in this case, the physician is responsible for the child through his or her parents and has the responsibility of taking care of him who has been treated.

### 1.2 Increased in insurance premiums and the costs of medical servis

Opponents believe that if the responsibility is taken for gynecologist and genetic counselor, the insurance will raise, so they will not only bear a heavy economic burden but also minimize the motivation of others to work professionally. the

increase in insurance, increases the cost of health care, so parents do not have the power to visit a specialist because of its high price. thus they deprived them of the right to make the correct decision and the birth of a disabled child will increase. It should be noted that the increase in the insurance should not result in the person refusing to provide good and proper services and this is not a good reason for non-liability. <sup>[23]</sup>

### 1.3 against the sanctity of human life principle

Opponents believe that if the physician provide all the information to parents and tells them about disabled child, parents are killing the child, which is against the sanctity of human life principle <sup>[25]</sup> and results in the Freedom of abortion. Freedom of abortion does not protect the interests of the fetus, but it supports the independence and the individual's right of the pregnant woman, since the suffering of the disabled child can be one of the reasons why the mother ends her pregnancy and abortion. <sup>[23]</sup> The concept of the holiness of human life, which has been established centuries ago, has low value by the court's decision to Compensation for the birth and death due to negligence, which is the opposite of life as sacred things. <sup>[18]</sup> Also, the value of the life of a person with a disability is not only less important than that of the normal person, but also so insignificant that its value is not preserved <sup>[25]</sup> because the lawsuit means that the value of the disabled child is not only less than that of the normal child, but also so insignificant that it should not be preserved, and this is a threat to the holiness of life. This message spreads in the community that the disabled child has a no value and parents also consider abortion instead of having a baby. It affects not only every person, but also every people with disabilities in each society, causes them to shame, declares that they are a burden on society and their life is less important than the lives of others.

The respondents said that this reason was not accepted, since the task of the genetic counselor or physician is to rigorously perform the examination and care. So the consultant has no obligation to abort. This is a parent's vision that should make a proper decision, according to the given information. Also, those who oppose abortion should not be involved in the duties of a genetic counselor or physician. The essence of their job is to provide the patient with sufficient and complete information. <sup>[23]</sup> On the other hand, it is not the duty of the physician to terminate the pregnancy, but he is obligated to give the mother full information about the condition of the fetus. The mother refers to the physician to help her with informed choice, the physician's fault results in the birth of a child with disabilities and pain, which precisely was intended to protect the physician. And the physician knows that our actions are influenced by the physician's advice. <sup>[23]</sup>

The physician is not responsible for the killing of the fetus, but he must provide the mother with complete information. If there is a risk of having a disabled child, this risk should be fully explained to the mother, but it can not be absolutely stated that the physician is responsible for the killing of the fetus. The physician is responsible for his/ her main duty to provide

information for the mother regarding any risk that the fetus is threatening. The duty of informing for the physician is the one that was presented in the discussion of informed consent. It is generally accepted that the physician is responsible to the mother and does not traditionally include the child. However, some believe that there is no reason why this task does not extend to the child through the representation, so the child can claim as the representation of his/ her mother because of a physician's breach of duty. Although in this case the mother is responsible for the decision, the child's inability to decide for being alive or not, should not deprive the physician from his/her duties. <sup>[23]</sup> In fact, this claim determines the child's existence; the child born due to negligence must be protected; the child is alive and need others' support. <sup>[6]</sup>

#### 1.4 life cannot be inferior to non-existence

The Opponents believe that living in the human-being hierarchy is the most important stage. In the legal field, everyone has a basic right to life, and most of the crimes and penalties are imposed on the lives of individuals. Also, the holiness of life applies the same to all, and the value of every human's life, regardless of its internal quality, has intrinsic value. Therefore, under any circumstances, being alive is superior than being dead. They believe that life itself is not a disadvantage and is always preferable to non-existence. Therefore, because humankind has no understanding of death, one can not say that it is better than being. <sup>[18]</sup>

Proponents of wrongful life in the response stated the important issue regarding the legitimacy of the claim is the preference of live with suffering. The principle of the holiness of life is not the same and not absolute, and in some cases the interests of others will abolish it. the principle of independence for abortion by a woman points to her right to self-determination and her independence. If the principle of the holiness of life was not absolute, we could use it to reject the dispute. But presenting the issues about preferring life with pain instead of no-existence is abstract.

In general, life is always preferable to non-existence, but a person with personal beliefs can believe that in this case, life with suffering is preferable. Non-existence is preferable to life with disabilities. This idea is a direct challenge to the theory about the holiness of human life. Society enjoys the fact that every human being is part of the community. Quality of life has grown with the social concept, with the explanation that every human being must have the same quality and the same facilities as other people in society. But today, in some cases, such as the birth of a disabled child, a person is left by his/her society.

But the fact is that in some cases, the child's disability is so high that the child is born initially and he/ she is died after bearing heavy costs for parents, which is generally ignored by the courts. <sup>[26]</sup> The law protects the interests of the child before birth, in cases where the condition of the child is like a tachkin or rubella, the benefit of the child is to be born, but for a child with a syndrome can be aborted. Therefore, if a person is born in a very difficult situation, in which his/her birth is not an advantage, he can design a claim for wrongful life. <sup>[25]</sup> The court

seems to be able to pay compensation for any pain that the physician could prevent or minimize. So, we can say that the lawsuit is permitted in severe illnesses, which are life-threatening and the child is not curable. <sup>[26]</sup>

### 1.5 The absence of a normal connection between the defendant's fault and the injury

Opponents believe that although in some cases the defendant's normal behavior causes injury, but in some cases these factors have been out of control, such as hereditary diseases and chromosomal aberrations. Therefore, there is no normal connection between the defendant's fault and the injury of the plaintiff. In the rejection of claim for wrongful life, the courts believe no connection between the physician's misbehavior and the child's disability, and the child's claim for compensation does not include any legal recognized injury and the disease of the rubella or the like causes these disabilities. The child's claim is not that the physician has caused the disability, but it is claimed that the physician's negligence in informing has caused his birth. <sup>[9]</sup> In other words, he/she does not claim that he has been disabled, with the accused's negligence, but he claims that he was not born except without the accused's negligence. <sup>[23]</sup>

Second, the reason of the opposition at the stage of revision and the arguments of the supporters about the wrongful life.

#### 2.1 The impossibility of assessing the injuries

The most important reason for rejecting wrongful life is the insolvency of problem about the injury assessment. The opposition in the revision court cited about the impossibility of assessing injuries <sup>[7, 9]</sup>. They state that one of the pillars of civil liability is the entry of injuries or losses. The debate is whether we can talk about disadvantages when we compare between the state of being dead or life with disability. Is it possible to assess injury? They believe that it is not legal and rational in this case. Because there is no possibility of comparing the status of the claimant before the occurrence of the loss with the status of the claimant at the time of the loss, since the concept of a loss between two states is assumed person, and the absence can not be used as a basis for comparison, and the aim of plaintiff for perusing claim against a physician is being at the situation before the injury is incurred, it means when the plaintiff has not a legal personality; therefore, he has no right to compensation. It is also impossible to compare the state of being alive and dead. Philosophers believe that this comparison is subject to paranormalism, which goes beyond human knowledge, or the existence and absence has no Common point to be compared. This opinion was appealed by the judges of the Mackay Court, which the court can not assess the state of non-existence. <sup>[4]</sup>

The advocates responded that it was difficult to assess the injury in this regard, but it can not be an excuse for exemption from liability. In the context of spiritual injury, it was difficult to assess at first, but over time, the injury was evident. In the case of wrongful life, we must evaluate the value of life in our own right, regardless of the pain suffered by the plaintiff, which, of

course, is impossible to do, we must compare between the being dead and life associated with pain. In other words, in order to assess the injury, the actual state of the seeker must be compared to a level of suffering and economic loss with a hypothetical state (absence) along with pain, suffering and economic loss. A person who is in a state of not existence does not endure the pain of an alive person.<sup>[14]</sup> Therefore, it is better to compare two modes of life with disability and life without disability instead of comparing the two modes of non-existence and life with suffering. Because the injuries to the child are compensable from the authorities, as well as the assessment of injury incurred after liability, it is impossible to do so.<sup>[23]</sup> In cases of life with suffering which is worse than non-existent, logic and rationality should not prevent compensation in assessing injury. Consequently, the determination of whether the injury has actually occurred or not is to be transferred to the court and, accordingly, the general injury must be compensated.<sup>[25]</sup>

## 2.2 birth of a disabled child as injury

About the question that (Whether being alive is considered harmful or not?) Opponents of the lawsuit argue that the birth of a disabled child is not considered as injuries, and the claim for wrongful life can not be stated.<sup>[7]</sup> On the other hand, the design of this case will make the physician give the abortion order, even in cases of doubt, for fear of negligence.<sup>[21]</sup> The lawsuit on wrongful birth and life in courts is sending a message that existence is in fact regarded as injuries, especially about the wrongful life, which the court ordered to pay compensation for the comparison between life and non-existence<sup>[18]</sup>

In the past, the person's disability was regarded as a misfortune, but today it is a negligence that the physician did not perform his duty in pre-natal diagnosis, and that the negligence occurred and they were considered victims of iniquity. There is difference between severe disability and minor disability in wrongful life. If the disability is minor, life with disability is better than being dead; but if the disability is severe, it would be better to say that abortion is a better a life with severe disabilities, and this is considered a case of harm.<sup>[21]</sup> Therefore, because of their susceptibility and vulnerability, they should be protected against any kind of disadvantage, and their inability to assess the life quality of a disabled person is sufficient, even if they are worthwhile or not.<sup>[25]</sup>

Advocators believe that the reason for the difference in the wrongful life is related to substantial risk and serious handicap. The term "serious handicap" is indirectly related to wrongful life when judges have established that claim for wrongful life can not be successful unless severely handicapped. This was the legal basis for the abortion (1967). The question is whether this is based on the protection of the fetus or the parents? This is highly dependent on the degree of harm. If the disability is too high, one can say that it is in favor of the fetus. But when the disability is not severe, parents have the right to abort their fetuses to protect themselves. Therefore, the lawsuit is permitted on the part of the parents, but from the child is not legal.<sup>[25]</sup> It seems that in some cases it is possible to give the

child the possibility of pursue claim because suffering from pains in life is very hard. The disadvantage or injury is so severe that life does not have to be worth. In some cases, the life quality of the fetus is described below zero and the child's benefit is not be born. So in this case, the severity of the disadvantage should be considered. In the case under discussion, the court ruled that it would be best for the child to be born unless there is a severe disadvantage.<sup>[25]</sup> If the mother fails to perform his duties in relation to the fetus, such as medical treatment and medical examination and the mother's duty to receive medical treatment is accepted as a principle, the possibility of litigation by the child arising from the wrongful life is available, when the child is severely disabled.<sup>[25]</sup> Some people believe that litigation for the wrongful life is a substitute for the wrongful birth. In the case of birth due to an negligence, the parents may receive some injuries, but these costs are for the child and the parents claim against the physician as a representative of the child.

It is true that the starting point of every life is to preserve it; but in some cases, the continuation of life is not considered to be a benefit to the child, because it is too hard. Judges do not have to implicitly consider the child's life worthless, but it must be declared that the child does not consider his life worthless. Therefore, for the litigation case, we go beyond the traditional notion of civil responsibility. In the traditional sense, the accused carries out the duty of care for the plaintiff, which has been violated and should be compensated. Therefore, a child's lawsuit must be examined in this context and content and According to that, denial of this dispute is significant by imposing traditional rules of civil liability on inadequacies.<sup>[22]</sup> For example, when pregnancy is out of the womb and parents choose fetal fetuses in the process of choosing their fetus, and are reluctant to transmit as a result of the live child. according to the congenital disability law, the child can claim about the wrongful life litigation. It does not seem to be possible to differentiate between the two cases.

In cases where the child is born due to an negligence in prenatal diagnosis with severe disability due to wrong counseling for the parents were aborted, it would be possible to determine the claim of the wrongful life.<sup>[25]</sup> Therefore, there is no reason to eliminate the lawsuit. In these cases, not only the person with disability may claim injuries, but other persons who have been with him and who have sustained this loss, can claim injuries. The disabled child admits that if the mother ended in pregnancy it would be in his/her favor, and the parents would admit that it was better for them not to be born at all. In the litigation case of the wrongful life, one can use the problems of the traditional principles of fault and compare the general conditions of the plaintiff and the conditions that the plaintiff had, in order to claim injuries<sup>[7]</sup>

When the claim for wrongful life is recognized, it may be argued that children with disabilities are challenged against their mothers due to failure to end their pregnancy, and such a claim could disrupt family life and the relationship between mother and child will be worst than before. According to the British law, according to the Congenital Disabilities law (1976), the

mother is not responsible for the child and the child is expressly prohibited from claim against her/his mother.

## Conclusion

In the British legal system, in the claim for wrongful life and birth, the claimant must prove the existence of a homework, a breach of the home care and the entry of the loss for the purpose of claiming damages; in other words, the claimant must prove that no damage was caused to him; Except by blaming the accused. Newborn births and life cases are the result of new crimes. The onset and prosperity of these claims, on the one hand, is due to advances in medical science in the diagnosis of fetal diseases and, on the other hand, the legal license for abortion. The birth of the error is made by the parents of the disabled child and the life caused by the child is handicapped against the physician, with the explanation that, if there was a doctor's mistake, the parents never satisfied the birth of the disabled child. The appearance of these claims was initially opposed by some experts. Opponents of these types of lawsuits are subject to moral, economic, and legal reasons. Despite these differences, the reasons for the birth defect were not legally acceptable, and the case was accepted by the courts. But in relation to life-stricken cases of mistakes, although there are more differences, it seems that there is a tendency to fight at least a child with severe disabilities.

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