COMMENTS

TORT LIABILITY FOR 'WRONGFUL LIFE'

BY
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Mrs. Alving: I gave you your life!
Oswald: I never asked you for life. And what sort of a life have you given me? I won't have it — you can take it back.

From Isben's *Ghosts.*

The tort of "wrongful life" has been variously defined in the legal literature and case law. For the purposes of this paper the following definition will be adopted: An action for wrongful life is an action for damages brought by the plaintiff child (thus distinguishing the action from that of "wrongful birth" which is brought by the child's parents) on the premise that were it not for the negligence of the defendant, the child would not have been born, or would not have been born in an impaired state of existence. On the basis of this definition the relevant wrongful life cases can be divided into two categories: the pre-conception negligence cases in which the child claims that but for the defendant's negligence he would not have been born; and the post-conception negligence cases in which the child claims that but for the defendant's negligence he would not have been born in a disabled condition, or would have been aborted if the disabled condition had been (or should have been) detected.[1] Although

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1 A third category of wrongful life is that brought by an illegitimate child either against a parent (*Zepeda* v. *Zepeda* 41 Ill. App. 2d, 240 (1963)) or a third party (as was the case in *Williams* v. *New York* 46 Misc. 2d 824, 260 N.Y.S. 2d 953 (1965) where it was alleged that the hospital by its negligent supervision had enabled a mental patient to commit rape on a woman patient, resulting in the plaintiff's birth). It has generally been held, however, that status cannot constitute an injury. Whether or not such a view is correct, the merits of life claims by illegitimate children have been weakened in recent years by the revision of laws that historically have given them inferior legal rights.

Australian precedent exists only in relation to post-conception negligence,[2] Lord Reid's statement in *Home Office* v. *Dorset Yacht Co. Ltd* is pertinent:

> There has been a steady trend towards regarding the law of negligence as depending on principle so that when a new point emerges, one should ask not whether it is covered by authority, but whether recognised principles apply to it.[3]

The elements of a tort action which must be proven to exist in an action for wrongful life are:[4] (a) the existence of a duty of care owed by the defendant to the plaintiff; (b) a breach of that duty; (c) a proximate cause between the misfeasance or nonfeasance of the defendant and the injury suffered by the plaintiff and (d) damage. Each of these elements will be discussed in turn, giving due consideration to the question of public policy.

It has been argued that a duty of care must be established at the time the act complained of was committed, and that as the plaintiff prior to conception is not a *persona in esse* no duty of care exists.[5] Even were the negligent act to occur after conception, a foetus is not possessed of a separate existence apart from its mother and is not therefore a legal person to whom a duty of care can be owed.[6] It is often the case, however, that it can only be determined *ex post facto* whether a duty existed not to commit the act which was in fact committed.

This view was inherent in the judgements delivered in *Watt* v. *Rama.*[7] Justices Winneke and Pape held that on the child's birth, (that is, when it became a *persona in esse*) it suffered injury such that *ex post facto* a duty of care was imposed upon the defendant.[8] The "injury" suffered by the child "whilst en ventre sa mere was but an evidentiary incident in the causation of damage" suffered at birth by the child as a result of the defendant's negligence.[9] Logically there would seem to be no reason for not applying the same analysis with respect to a negligent act committed prior to a child's conception; in both cases the injury is suffered *at birth* at which time one can *ex post facto* impose upon the tortfeasor a duty of care.[10]

Certain American decisions have taken a different approach to the problem. In the case of *Curlender* v. *Bio Science Laboratories* it was stated:

> We have no difficulty in ascertaining and finding the existence of a duty owed . . . to parents *and their as yet unborn children* . . . The public policy considerations

2 *Watt* v. *Rama* [1972] V.R. 353.
3 [1970] A.C. 1004, 1026-27.
4 See Restatement (Second) of Torts § 281 (1965).
5 See for example *Walker* v. *Great Northern Railway of Ireland* (1891) 28 L.R. Ir. 69 *per* Johnson J.
6 This was argued by the defendant in *Watt* v. *Rama,* note 2 *supra.*
7 *Ibid.* In this case the plaintiff child alleged that she sustained injuries — epilepsy and brain damage — as a result of a collision between a car driven by her then pregnant mother and a car driven negligently by the defendant.
8 *Id.,* 360.
9 *Id.,* 374-75 *per* Gillard J.
10 Although this *"ex post facto"* argument was the primary basis for establishing a duty of care in *Watt* v. *Rama,* Winneke and Pape JJ. did suggest two alternative ways in which one could establish a duty of care. One could postulate a continuing duty from the time of the accident, or alternatively, one could project the duty relationship into the future. The *'ex post facto'* argument is clearly the better view: note 2 *supra,* 361.

> with respect to the individuals involved and to society as a whole dictate recognition of such a duty. . . .[11]
>
> [emphasis added]

This approach is less casuistic than the *ex post facto* analysis and as a policy decision, should be no less acceptable in Australia than in America,[12] for as was stated in *Home Office* v. *Dorset Yacht Co. Ltd:*

> There is always inherent in the question of whether a duty exists the consideration of whether, *as a matter of policy*, the courts should recognise a duty situation . . . What the court should ask, looking at the problem as a whole is: "is this a situation where a duty ought to exist?"[13]
>
> [emphasis added]

The intermediate appellate court in *Park* v. *Chessin*[14] appears to have adopted a third approach. The court pointed out that parents have the right not to have children, particularly when it can be determined that the child will be deformed. By failing to inform them adequately, the doctor had interfered with this right. The court in deciding that the pleadings stated a good cause of action thus implied that the duty owed to the parents might inure derivatively to the child.

This is probably a more acceptable approach to the problem of duty of care in those pre-conception cases involving a physician's negligent advice and accords with § 311 of the *Restatement (Second) of Torts:*

> One who negligently gives false information to another is subject to liability for physical harm caused by action taken by the other in reasonable reliance upon such information, where such harm results . . . to such third persons as the actor should expect to be put in peril by the action taken.[15]

Clearly, a physician giving negligent advice to prospective parents could expect their children to be in that class of persons put in peril as a result of such advice.

The situation of a negligent parent raises two issues: If, as a matter of policy, parental immunity from actions for wrongful life is to be maintained, the view of *Park*

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11 106 Cal. Ap. 3d 811, 828; 165 Cal. Rptr. 477, 488 (1980). In this case a child born with Tay Sachs disease was held to have a cause of action because a genetic testing laboratory was negligent in not informing its prospective parents, prior to the child's conception, of their status as carriers of Tay Sachs genes, after carrying out the relevant tests.

12 Gillard J. in *Watt* v. *Rama,* note 2 *supra,* 377, stated in *obiter:* "if it were necessary [as a matter of policy] to come to the conclusion that the infant plaintiff should establish an existence in law in order for a duty of care to be owed to her . . . I would be inclined to the view . . . that for the purpose of protecting her interests, the infant plaintiff was . . . intitled to recover compensation for any damage caused by any breach of duty by the defendant at that period"; *Curlender* v. *Bio-Science Laboratories, ibid.,* of course goes further in establishing a duty of care even prior to conception.

13 Note 3 *supra,* 1025. *Cf.* Lord Pearce's statement in *Hedley Byrne & Co. Ltd.* v. *Heller & Partners Ltd.* [1964] A.C. 465, 536: "How wide the sphere of duty of care in negligence is to be laid depends ultimately upon the court's assessment of the demands of society for protection from the carelessness of others."

14 60 App. Div. 2d 80, 400 N.Y.S. 2d 110 (1977). The facts of the case were as follows: the Parks had given birth to a baby who lived for only five hours before dying from polycistic kidney disease, ". . . a fatal hereditary disease of such nature that there exists a substantial probability that any future baby of the same parents will be born with it." (111). The Parks asked the defendant obstetricians if the disease posed any risk to a child born to them in the future. The defendants contrary to acknowledged medical fact advised the parents that the chances of having another baby with polycistic kidney disease were "practically nil" and that the disease was not hereditary. Relying on this advice Mrs. Park became pregnant again and had a child who was born with the same disease.

15 Note 4 *supra.*

v. *Chessin* which admits of no duty to an unborn plaintiff either immediate or *ex post facto,* should be adopted. If however, the question of parental immunity is to be left open, then the "*ex post facto* view" expressed in *Watt* v. *Rama,* or the *Curlender* view of an immediate duty owed to the foetus, should be adopted. Clearly, parental immunity could still be maintained, if so desired, under the *Watt* v. *Rama* or *Curlender* tests as a matter of policy.

Before liability for negligence can be incurred, the plaintiff must show that the defendant not only owed a duty to the plaintiff but that there was a breach of that duty. The test for determining a breach of duty in an action for wrongful life as in any other negligence action is whether the injury could reasonably have been foreseen.[16]

In the case of post-conception negligence it has been held that if it could reasonably have been foreseen that a pregnant woman might be injured by the defendant's carelessness it must follow that the possibility of injury on birth to the child she was carrying was also reasonably forseeable.[17] It would appear from *Donoghue* v. *Stevenson* that it is immaterial whether at the time of fault the victim was a member of a class which might reasonably and probably be affected by the act of carelessness.[18] Since the child belongs to a class which is determined by reference to the time when injury is suffered, that is, at birth and not when the act is committed (whether it be prior to or following conception), one should not consider a class of children *en ventre sa mére* but rather that class to which a person unborn or not conceived at the time of the wrongful act will be found to belong at the time of the damage.

Although injury may be forseeable in a wrongful life action, a number of cases have foundered when it came to proving the element of causation. Post-conception cases of the *Watt* v. *Rama* type present no difficulty as the defendant's negligence can be seen to be the proximate cause of the plaintiff's injury. However, in post-conception cases of the type represented by *Smith* v. *United States*[19] it has been held that the damage suffered by the child was not caused by the doctor's negligent advice but by the infection contracted by the mother. It is submitted that this view is erroneous, for in a wrongful life action of that type, the child does not contend that the doctor's negligence caused *the defects;* rather the infant contends that the doctor's failure to inform the parents of the risks led to *the birth.* But for the doctor's negligence the parents would have avoided conception or aborted the pregnancy and the child would not have existed. Thus, if one accepts the idea that the damage for which the child is suing is not its deformity but rather its very birth, then the problem of causation would no longer seem to be insurmountable.

In pre-conception cases as in *Custodio* v. *Bauer*[20] it has also been argued that injury or damage suffered by the plaintiff was not the proximate result of any breach of duty but the result of an intervening cause, sexual intercourse between the child's parents. The court held, however, that the said act, being forseeable, did not constitute a *novus actus interveniens.*

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16 *Donoghue* v. *Stevenson* [1932] A.C. 562.
17 *Watt* v. *Rama,* note 2 *supra.*
18 *Per* Gillard J. in *Watt* v. *Rama, ibid.,* relying on *Chapman* v. *Hearse* (1961) 106 C.L.R. 112.
19 392 F. Supp. 654 (1975) (N.D. Ohio, E.D.).
20 251 Cal. App. 2d 303, 59 Cal. Rptr. 463 (1967).

In a case of the type of *Smith* v. *United States,* to satisfy the causation requirement the plaintiff must show that had his parents been informed of present or potential defects they would have prevented his birth. This raises the question whether an objective or subjective standard should be applied in determining whether the parents would have avoided conception or terminated the pregnancy; that is, is the physician required only to disclose information a reasonable person would have deemed relevant, or information that that particular patient would have deemed relevant. As the recent case of *P* v. *R*[21] illustrates, the question remains undecided in Australia. It is difficult to determine which test should be preferred. While the objective standard may give the doctor too much discretion, the subjective standard might leave physicians open to claims by particular patients who testify after the fact that they would not have conceived had they been better informed. Whichever test is adopted, proving proximate cause would not necessarily result in the child's recovery; damage must still be proved.

In pre-conception negligence cases the American courts have posed two related questions with respect to the element of damage. First, has the child suffered any legally recognisable injury; and secondly, if damage does exist, is it measurable?

As to the first question the court in *Gleitman* v. *Cosgrove*[22] reasoned that by asserting that he should not have been born the child makes it logically impossible to show damage. In essence the argument of the court was that it does not lie for B to claim damages when the act of A, which B claims injured him, is the very act but for which B would not exist.

Yet would not the courts recognise that legally recognisable damage may result from an act which confers upon a plaintiff both benefits and detriments as in the case of a doctor who negligently performs a life-saving operation such that the plaintiff's life is saved but at the unnecessary expense of further detriments to the plaintiff's health?[23]

One might well argue, however, that in wrongful-life cases we are not dealing with an equivocal act that may confer benefits and detriments; rather are we dealing with an act the consequence of which is of *absolute* value — the "gift" of life. This was the view taken by the court in *Gleitman* v. *Cosgrove.* Tedeschi has rightly criticised this view.[24] The notion of "gift" of life is, as he points out, irrelevant. Gift, that is, "enrichment", is understandable only in relation to an existing person or a person who is not in being at the time of the donor's declaration. When, however, the act of the so called "gift" is identical to the coming into being of the recipient, there is no *enrichment* of the recipient. Life itself should not be considered the *habere* of the living but as their *esse.*

A further question raised in *Gleitman* v. *Cosgrove* and *Becker* v. *Schwartz* is whether the law can recognise any injury suffered by a child, given that no-one knows whether the child would have preferred never having been born:

> Who then can say . . . that, had it been possible to make the risk known to the children to be . . . that the children too would have preferred that they not be born at

21 100 *Law Society Judgement Scheme,* Vol 51, 5th May, 1982.
22 49 N.J.22; 227 A. 2d 689 (1967).
23 T. Foutz, " 'Wrongful Life': the right not to be born" (1980) 54 *Tulane Law Review* 480, 493.
24 G. Tedesci, "On tort liability for 'Wrongful Life' " (1966) 1 *Israel Law Review* 513, 529.

all? To ordinary mortals the answer to the question obviously is "no one" ... Therefore ... I am compelled to conclude that the matter is not justiciable.[25]

Yet, should the ascertainability of a preference for non-existence be the basis upon which depends recognition at law of the injury of wrongful life? No doubt many people have expressed a preference for non-existence but have suffered no injury recognisable at law. In tort law the courts do not attempt to determine whether the plaintiff would have preferred not to have suffered the act he claims caused him "injury"; rather the court attempts to determine whether the act *should* have been suffered by the plaintiff (his subjective preference notwithstanding). To do this the court need only know its own "mind", not that of the unborn child.

There still remains, however, the problem of measuring the damage suffered. The rationale for granting damages is to put the plaintiff in the position in which he would have been, but for the negligent act.[26] In wrongful life cases the position occupied after the negligence is a disabled existence; the "but for" position is non-existence. Most courts claim that a comparison between the two positions is impossible because of the speculative nature either on a deformed life or on non-existence. It is argued that without such a comparison, damages cannot be ascertained:

> [The] cause of action ... demands a calculation of damages dependent on a comparison between Hobson's choice of life in an impaired state and non-existence. This the law is incapable of doing.[27]

Although certain courts (as in *Gleitman* v. *Cosgrove*)[28] have recognised that a life with defects has less value than a normal life, nevertheless they have asserted that life with defects always has greater value than non-existence. It is not the writer's intention to attempt to formulate a theory according to which the measurement of damages between non-existence and existence might ostensibly be possible.[29] Such attempts, by their very nature would seem to be doomed to failure.

If non-existence is neither a physical nor emotional state of being, it is submitted that the loss of that state is not able to be compensated materially. By the same token, monetary damages are inappropriate to vindicate reputation in the tort of defamation. In both cases logic would deny the need for material compensation but it is all the law can, or is prepared to offer for a recognised wrong.[30]

Hence logic is not always — nor should it be — the handmaiden of the law. Indeed as Lord Justice Stephenson stated with respect to wrongful life:

> If public policy favoured the introduction of this novel cause of action I would not let the strict application of logic or the absence of precedent defeat it.[31]

The problems discussed above with respect to damages are to be found only in relation to pre-conception negligence. The fact situation dealt with in *Watt* v. *Rama*[32]

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25 *Becker* v. *Schwartz* 46 N.Y. 2d 401, 416; 386 N.E. 2d 807, 815; 413 N.Y.S. 2d 895, 903 (1978).
26 The compensatory principle of tort damages was authoritatively settled in *B.T.C.* v. *Gourley* [1956] A.C. 185.
27 *Speck* v. *Finegold* 408 A. 2d. 496, 508. (1979).
28 Note 22 *supra.*
29 *E.g.*, the 'balancing test' theory propounded by T. Foutz, note 22 *supra,* 495 ff.
30 As regards alternative remedies for defamation see the Law Reform Commission's Report No. 11, *Unfair Publications: Defamation and Privacy* (1979).
31 *McKay* v. *Essex Area Health Authority* [1982] 2 All E.R. 771,784.
32 Note 2 *supra.*

(physical injury inflicted upon the child *en ventre sa mère*) presents no such problems for in such a case one can compare the child's potential for normal life against the child's present impairments caused by the defendant's negligence.

The type of post-conception negligence case that does pose problems is to be found in the fact situation of the recent cases *Kambouroglou* v. *Crown St. Women's Hospital*[33] and *McKay* v. *Essex Area Health Authority.*[34] In *Kambouroglou* the plaintiff was advised by her doctor that she was pregnant and that the pregnancy should be terminated. She was referred to the hospital where a servant of the defendant negligently advised her that she was not pregnant. Subsequently the child was born with serious abnormalities and defects of a permanent nature.

The question we must ask, is whether the child could bring an action in such circumstances claiming: "but for the defendant's negligence I would have been aborted". Although *Kambouroglou* was argued by the parents on the basis of wrongful birth, the issues with respect to abortion are identical.[35] The defendant argued that there was no basis in N.S.W. for eugenic abortion on the basis that the child might be born handicapped. The plaintiff argued, however, that the well recognised case of *R* v. *Wald*[36] indicated that abortion was not *prima facie* illegal. Moreover, in cases involving section 83 of the Crimes Act 1900 (N.S.W.) it was argued that the onus was still on the Crown to prove that what had been done, had been done unlawfully. On this issue the court decided in favour of the plaintiff.[37] The court went on to say that there would be no difficulty in finding the defendant's act as the proximate cause of the plaintiff's "injury". If then abortion is not *prima facie* illegal nor necessarily viewed as the destruction of life, there would seem to be no reason why, in such circumstances, an action for wrongful life could not be maintained, notwithstanding policy considerations.

What then are the policy considerations that might disallow such an action? In *McKay* Lord Justice Stephenson stated:

> I cannot accept that the common-law duty of care to a person can involve . . . the legal obligation to that person, whether or not in utero, to terminate his existence. Such a proposition runs wholly contrary to the concept of the sanctity of human life.[38]

It is submitted that the child does not claim, as Lord Justice Stephenson suggests, that the doctor has a duty to abort it; rather does the child claim that the doctor has a duty to explain the risks involved in continuing the pregnancy, including the risk of injury to the foetus. The decision whether or not to have an abortion must always be the mother's.[39] Whether or not a child might sue its mother who knew the risks and yet refused an abortion will be discussed below.

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33 2 December 1980. N.S.W. Supreme Court. Unreported.
34 Note 31 *supra.*
35 In the American case *Gleitman* v. *Cosgrove,* note 22 *supra,* one of the grounds upon which the court denied the child's recovery was the 1967 public policy preventing the court from sanctioning abortion. It is likely that after the decision in *Roe* v. *Wade* 410 U.S. 113 (1973) which recognised a woman's constitutional right to an abortion free from government influence, the courts would decide the issue differently.
36 (1971) 3 D.C.R. 25.
37 *Cf.* the recent English decision *Sciuriaga* v. *Powell* (1979) 76 *Law Soc. Gaz. 567.*
38 Note 31 *supra,* 787.
39 *Id.,* 790 *per* Griffiths L.J.

Although the sanctity of life argument still has validity as regards abortion *per se,* changing social attitudes make the argument less convincing. A further policy argument was put forward in the Law Commission Report on Injuries to Unborn Children:

> Such a cause of action if it existed would place an almost intolerable burden on medical advisors in their socially and morally exacting role. The danger that doctors would be under subconscious pressures to advise abortions in doubtful cases through fear of an action of damages is, we think, a real one.[40]

However, as Lord Justice Griffiths points out in *McKay* it is not suggested in a wrongful life action that the doctor should have advised an abortion:

> Provided the doctor gives a balanced explanation of the risks involved in continuing the pregnancy including the risk of injury to the foetus, he cannot be expected to do more, and need have no fear of an action being brought against him.[41]

Indeed, a balanced explanation of the risks involved is required of a doctor when he undertakes any operation; there is no reason to lessen that burden in an action for wrongful life.

The public policy considerations that have led the courts to reject actions for wrongful life and which are not peculiar to the issue of abortion, will now be discussed. Essentially, these objections are that (a) a flood of litigation would result; (b) there would be innumerable fraudulent suits; (c) an intolerable burden would be placed upon the medical profession, and (d) the action would allow children to sue their parents.

It is unnecessary to deal in any detail with that well worn shibboleth of judges that the floodgates of litigation would be opened. The spuriousness of the argument has been proved over and over again, and of late, judicial opinion would seem to be recognising this fact:

> The 'floodgates' argument is very familiar. It still may on occasion have its proper place but if principle suggests that the law should develop along a particular route and if the adoption of that particular route will accord a remedy where that remedy has hitherto been denied, I see no reason why, if it be just, that the law should henceforth accord that remedy, that remedy should be denied simply because it will ... become available to many rather than to few.[42]

The fear of encouraging fraudulent claims also has little merit. A competent court should be able to detect false testimony as it often must do, for example, in claims for emotional suffering. As the trial court in *Park* v. *Chessin* stated:

> [T]he Judiciary can intelligently sift the wheat from the chaff and ... it has the ability to succinctly deal with any attempted fraudulent scheme or claim and make short shrift thereof.[43]

The question of a physician's liability in the context of abortion has already been dealt with. Another question however, raised by some judges is as follows: If a doctor failed to advise that the risk of deformity to the child was substantial — which if he had, would have resulted in termination by the mother — and if the child is born with only a minor defect then would not the child have a claim for wrongful life

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40 Cmnd. 5709 (1974) para. 89.
41 Note 29 *supra,* 790.
42 *Junior Books* v. *Veitchi* [1982] 3 All E.R. 201, 209 *per* Lord Roskill.
43 N.Y.S. 2d 387 (1976) 204, 211.

remembering that the essence of the claim is not for defects but for being born?[44] If such results are possible the action should not be admissible at all.

However, the claim is not for being born *per se* but for being born *wrongfully*. To prove that one was born wrongfully, one would have to prove substantial defects as an evidentiary precondition of the claim. A mere squint would not, as Lord Justice Stephenson suggests, satisfy this precondition.

More difficult is the question of parental immunity from such an action. It was stated in *obiter* by the court in *Curlender* that:

> If a case arose where despite due care by the medical profession in transmitting the necessary warnings parents made a conscious choice to proceed with a pregnancy, with full knowledge that a seriously impaired infant would be born . . . we see no sound public policy which should protect those parents from being answerable for the pain, suffering and misery which they have wrought upon their offspring.[45]

It would appear that this *obiter* statement by an American court is consonant with the approach taken by the Court of Session in *Young* v. *Rankin:*

> The main argument on which the reclaimer's case rested is that an action of this nature is contrary to public policy. It was contended that it was unnatural for the son to sue his father, that actions of this kind would make for family dispeace, and that they are contrary to some precept of social morality or some rule of public interest. I was impressed by this argument, but I am unconvinced by it.[46]

This view was affirmed in *McCallion* v. *Dodd*[47] in which case it was held that parents enjoy no immunity from action brought by their children. As to the standard of care required of parents, the case of *Rogers* v. *Rawlings*[48] held that it must vary almost infinitely with the age of the child and the existing circumstances. This is just another way of expressing the "reasonable man" test — for reasonability must also vary depending on the particular circumstances — which was adopted with respect to parents by Mr. Justice Dixon in *Smith* v. *Leurs.*[49]

As emphasised in *Rogers* v. *Rawlings* however, the above described legal duty imposing liability for *active* misfeasance is to be distinguished from what can be described as the moral duties arising out of the fact of parenthood, for instance, feeding, clothing, and education. It has not been the policy of the law to regard these 'duties' as enforceable at the suit of the child.[50]

The counter argument in relation to a physician who denies liability on the basis that he gave the child the "gift" of life, applies to a parent making a similar assertion: the claim is not for being born *per se* but for being born wrongfully. Thus with no convincing argument to the contrary, there would seem to be no valid reason for not holding parents liable for active negligence which they reasonably could have forseen would lead to a "wrongful life". However, public policy would undoubtedly prevent the courts tolerating such a situation.

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44 Note 31 *supra,* 787 *per* Stephenson L.J.
45 Note 11 *supra,* 488.
46 [1934] S.C. 499, 508.
47 [1966] N.Z.L.R. 710.
48 [1969] Qd R. 262.
49 (1945) 70 C.L.R. 256.
50 Certain of these moral 'duties' are enforceable otherwise; *Cameron* v. *Commissioner for Railways* [1964] Qd R. 480.

Oriana Fallaci in *Letter to a Child Never Born*[51] writes that "every conception is a challenge replete with splendid and horrible possibilities". In this paper the writer has dealt with one such possibility, a child's claim for wrongful life. Whether such an action be described as a "splendid" or as a "horrible" posssibility it will doubtless be debated for many years to come.

51 Hamlyn Paper backs (1982) 77.