

產前檢查診斷失誤致誕生身障兒 之民事責任（上）

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摘要

生殖醫學科技發展極為迅速，使人類得以控制其生育行為，加以社會倫理、價值觀念變遷，墮胎並非隱諱的觀念，法律為尊重自主決定權，在一定要件下允許施行人工流產，然醫療人員未盡善良管理人之注意義務致檢查診斷失誤，因而提供錯誤資訊，致產下非所意欲之身障子女時，使父母必須承受極大之財務及身心壓力，更讓家庭成員帶來絕望與痛苦，以致往往在醫病之間產生極大爭議，尤其此類案件請求權人、請求權基礎、損害本質、損害賠償範圍等等，即極具爭議。近年來更在世界各地發生損害賠償訴訟，不但為損害賠償法帶來新的研究課題，更是目前國際上爭議性很大之法律問題。本文將以最高法院 92 年度台上字第 1057 號判決「唐氏症兒案件」為基礎，首先，介紹各國立法例與實務見解，之後，探討父母、身障子女請求權基礎及損害賠償範圍，期望能有新的認識，突破亟待改變的混亂現狀。

The Civil Liability of the Disabled Children's Birth Caused by Mistakenly Prenatal Diagnosis

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Abstract

Reproductive Medicine is an extremely rapid developing technology, so that the behavior of human beings can control their fertility, with social ethics, values change, and abortion no longer a taboo concept. In order to respect the autonomy of legal decisions, under certain requirements to allow an abortion, medical personnel deficiencies notice that a good administrator obligation cause diagnosis errors, thus providing erroneous information when induced birth of disabled children of non-wills, so parents must bear the financial and great physical and mental pressure, leaving family members to suffer from despair and pain. There is often seen between doctors and patients a great controversy, especially in such cases the claimant's claims based on the nature of the damage, compensation for damages, etc., that is highly controversial. In recent years, there have been all over the world more cause of actions for damages, which not only brings up new research topics for the Damage Compensation Act, but also a lot of controversial legal issues internationally. According to the Supreme Court bench ruling No. 92 Year 1057 judgment "of cases of Down's syndrome children" as the basis, this paper will firstly introduce legislation of each country and practical ideas, then discuss parents of disabled children whose rights to request compensation for damages in the foundation and expectations to have a new understanding, through breaking the chaos of the status quo to be changed.