



# Congenital Disabilities (Civil Liability) Act 1976

## 1976 CHAPTER 28

### 1 Civil liability to child born disabled.

- (1) If a child is born disabled as the result of such an occurrence before its birth as is mentioned in subsection (2) below, and a person (other than the child's own mother) is under this section answerable to the child in respect of the occurrence, the child's disabilities are to be regarded as damage resulting from the wrongful act of that person and actionable accordingly at the suit of the child.
- (2) An occurrence to which this section applies is one which—
  - (a) affected either parent of the child in his or her ability to have a normal, healthy child ; or
  - (b) affected the mother during her pregnancy, or affected her or the child in the course of its birth, so that the child is born with disabilities which would not otherwise have been present.
- (3) Subject to the following subsections, a person (here referred to as " the defendant") is answerable to the child if he was liable in tort to the parent or would, if sued in due time, have been so; and it is no answer that there could not have been such liability because the parent suffered no actionable injury, if there was a breach of legal duty which, accompanied by injury, would have given rise to the liability.
- (4) In the case of an occurrence preceding the time of conception, the defendant is not answerable to the child if at that time either or both of the parents knew the risk of their child being born disabled (that is to say, the particular risk created by the occurrence); but should it be the child's father who is the defendant, this subsection does not apply if he knew of the risk and the mother did not.
- (5) The defendant is not answerable to the child, for anything he did or omitted to do when responsible in a professional capacity for treating or advising the parent, if he took reasonable care having due regard to then received professional opinion applicable to the particular class of case; but this does not mean that he is answerable only because he departed from received opinion.

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*Status: This is the original version (as it was originally enacted).*

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- (6) Liability to the child under this section may be treated as having been excluded or limited by contract made with the parent affected, to the same extent and subject to the same restrictions as liability in the parent's own case; and a contract term which could have been set up by the defendant in an action by the parent, so as to exclude or limit his liability to him or her, operates in the defendant's favour to the same, but no greater, extent in an action under this section by the child.
- (7) If in the child's action under this section it is shown that the parent affected shared the responsibility for the child being born disabled, the damages are to be reduced to such extent as the court thinks just and equitable having regard to the extent of the parent's responsibility.