

Abstract

This thesis aims to study about the right and the protection of the unborn child in context of law of contract, law of tort, family law and law of succession, criminal law and human right.

The civil right of unborn child is recognized in paragraph 2 of article 15 of the Civil and Commercial Code which provided that "A child *en ventre sa mere* is capable of rights provided that it is there after born alive." For the purpose of this provision "born alive" means the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion. Incidentally, the rights that the unborn child is able to hold are all things tending to favours of the unborn, unless it contrasts with the nature of the unborn child. This thesis analyzed what kind of rights that the unborn child can hold.

To protect the unborn child, there are two gaps of law in the Criminal Code. First, the person destructs a fetus when it is still in womb, then the fetus born alive but it dies later because of that act. In this case, the Supreme Court decided that he commits a crime as attempting to procure abortion not successful abortion. For this reason this thesis recommends about the interpretation of procure abortion that it should be included an act destructing a fetus cause a stillbirth or born-alive infant but not be able to live any longer. Second, a person who kills a fetus at the moment of its delivery commits the crime just as abortion, although, his act is similar to a murder. The resolution of this problem is that the punishment of destruction of viable fetus must be heavier than abortion of unviable fetus.

There has been controversy about the right to live of the unborn child against the right to privacy of pregnant woman to procure abortion. This thesis has presented the evolution of abortion and the appropriate solution for this controversy. It said that the real solution is not the weighting between the right of the unborn and the

right pregnant woman who has been born. But it is appropriateness solution for social problems, e.g., unwanted pregnancy, illegal abortion and unwanted child. I recommend two causes of legal abortion added to the Criminal Code. The First is the case that pregnant woman is mental suffered by her pregnancy. The other one is the pregnancy of the adolescent who lack of ability to care her child. Moreover, the legal system has treated the fetus as part of the woman, without any rights separate from her. However, if the behaviors of pregnant women during their pregnancy tend to harm her fetus, the state should exercise its role in order to protect the fetus. Meanwhile, the balance between protecting a pregnant woman's privacy rights and protecting the health of her fetus is regarded as well.

While the in vitro fertilization offers hope for infertile couples to have their own child and the experiment embryonic stem cell offers hope for a cure to hundreds of thousands of people suffering from a number of debilitating diseases, there are many moral issues discussed, such as the moral standing of the embryos used in that fertilization or that experiment. Meanwhile the recent law is not legislated for the in vitro fertilization, it is necessary to provide a statute in order to support and control them.