

# Analysis of the legal consequences of fetal civil rights

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**Abstract.** With the increasing heat of fetal rights protection, the supporting measures of fetal civil rights protection in China have been gradually improved. But from the perspective of civil law, the legal consequences of the fetus is not in place, and the experience of related affairs in practice is also missing. This paper will analyze and discuss the legal consequences of stillbirth after donation or inheritance.

**Keywords:** civil legal; legal consequences; Claim Right

## 1. Analysis of the current protection of fetal rights and interests and the necessity of this paper

### 1.1 Analysis of the current status quo of fetal civil rights and interests protection

From the General Provisions of the Civil Law of the People's Republic of China, the Inheritance Law of the People's Republic of China to the promulgation of the Civil Code of the People's Republic of China, China has continuously clarified a practice in the form of legislation to protect part of the civil rights of the fetus in a way regarded as capable of rights. According to Article 16 of the Civil Code: " If it involves the protection of the fetus such as inheritance or acceptance of gifts, the fetus shall be deemed to have capacity for civil rights. However, if the fetus is dead at the time of delivery, its capacity for civil rights does not exist from the beginning." [1] but Article 1155: " When the body is divided, the share of the fetal inheritance shall be retained. When the fetus is delivered and is dead, the retained share shall be handled according to legal inheritance." [1] This can be regarded as the specific embodiment of the general provisions in the inheritance section. These provisions reflect the protection of the civil rights such as the gift and inheritance of China as the Supreme People's Court on the Application of the Civil Code of the People's Republic of China " involves the inheritance, accept the gift, the People's Court." [2] This interpretation establishes that when the civil rights of the fetus cannot be realized, its parents should claim this procedure standard as their legal agent, which is an important protection for the civil rights and interests of the fetus.

In the China Judicial Documents Network, with civil cases as the limited condition, the search keyword "fetal rights" found that 54 cases were directly related to the keyword "fetal rights" since 2013, among which 22 were accepted by the grassroots courts, 36 were accepted by the intermediate people's courts and 4 by the high courts. With the "capacity for civil rights" as the limit condition, it is found that the related cases involved in the three fields of "land requisition", "traffic accident" and "compensation liability" are the most common. The vast majority of these cases are related to the personal rights of the fetus and the liability for damages arising. When BaiDu's information retrieval mode was used to search the keywords "fetus" and "civil rights capacity", 177 entries were found, which are the introduction of the protection of fetal rights and interests. Relevant data show that the General Provisions of the Civil Law and the Civil Code of the protection of fetal interests have gradually affected people's lives, the people's awareness of the protection of fetal civil rights and interests has been continuously improved, and the awareness of the protection of fetal civil rights has been continuously improved.

### 1.2 The necessity of the nonexistence of fetal capacity for civil rights

With "civil case", "invalid", "ownership" and "return", 37,752 cases can be retrieved, adding "fetus" as the limit, there are 11 cases involved. Among the cases related to the types discussed in

this article are only "contract confirmation validity disputes between Huang Invention and Zhili Chen and Xuanfu Zhu "A case. Through the retrieval of the case judgment, it can be found that the fetal civil rights capacity to be discussed in this paper is not very rare in the judicial practice. It can be expected that the judicial organs have insufficient experience in dealing with this problem.

Through CNKI, 273 papers and documents can be searched as "fetus" and "rights ability", but they all discuss the protection of fetal rights ability, and no relevant articles discuss the issues mentioned in this article; it shows that the theoretical community generally pays more attention to the hot topic of "fetal rights protection", that is, more keen to discuss the first half of Article 16 of the Civil Code. This fully shows that the relevant content discussed in this article cuts into article 16 of the Civil Code from a new perspective, which can strengthen the understanding of the law to a certain extent.

## **2. Understanding of the relevant legal consequences caused by the fetus's "right competence from the beginning"**

In the expression of Article 16 of the Civil Code, the birth is The capacity for civil rights does not exist from the beginning, according to Article 157 of the Civil Code: "After a civil legal act is invalid, revoked or deemed invalid, the property acquired by the actor shall be returned; if it cannot be returned or is not necessary, compensation shall be made at a discount. The party at fault shall compensate the other party for the losses suffered thereby; if each party is at fault, it shall bear the corresponding liabilities respectively. If the law provides otherwise, such provisions shall apply."

[1] Here said "right ability does not exist from the beginning" is obviously the civil legal act "determined not effective" situation, so the relevant property should be returned; here the author discusses the relevant property return into two situations.

### **2.1 Understanding of property return in the general gift relationship**

In the general gift relationship, we can regard the "right ability from the beginning" caused by the dead body as a relatively invalid civil legal act related to the fetus during this period; there are two reasons. 1. When the fetus is born as a dead body, its capacity for civil rights does not exist from the beginning, so there is no subject status in civil legal relations, and civil legal acts cannot occur. 2. The relative invalidity of civil legal acts should be based on the principle of "autonomy of meaning" in the civil law; in the relationship mentioned in this paragraph, it is clearly clear that the donor intends to give the subject matter to the donee (the fetus), but the fetus has no civil right to accept the gift because of no birth or no vital signs after birth, which obviously violates the subjective will of the donor to issue the gift.

The author believes that in an invalid civil legal act, the part already paid by one party should be regarded as the unjust enrichment of the recipient. Internationally, only a few countries, such as France, Japan and China, are invalid for the final civil legal acts; most countries directly resort to the unjust enrichment law. [3] Professor Fu Guangyu believes that "in the case of loss of cause or loss of purpose, legal actions will produce the return of unjust enrichment claims." [4] However, if the problem discussed in this paper is regarded as a simple "unjust enrichment" debt, it seems to have the problem of inappropriate subject, so the author will discuss this situation is divided into two situations.

1. Take an example of "unjust enrichment" in the corresponding relationship: if Party A and Party B are a couple, Party A has a child C, and Party Ding will give the child C RMB 5000 in cash, which will be managed by Party A and Party B. After because of the change, C was born has not have vital signs, at this time C does not have civil rights capacity from the beginning, the beneficiary is A, B couple. It should be noted that the benefits of the A and B couple at this time are based on Ding's cash loss of 5,000 yuan. Therefore, a debt of unjust enrichment should be established between A, B couple and D. Some people put forward that the A and B couple only managed the 5000 yuan, rather than obtained it, and they did not get 5000 yuan of income, so they

do not constitute the relationship of "unjust enrichment" debt. Here, money, as a symbol of value, itself is a highly alternative and liquid legal consumption thing, so the cash belongs to the "possession is all" Special chattel. Zheng Yubo pointed out that "currency ownership and possession integrate, and the loss of currency ownership is consistent with the loss of possession." Thus a, b couple was 5000 yuan of cash, but its escrow of civil subject lost capacity for civil rights and a and b couple in the dominant position of cash, so the author thinks that a, b couple at this time actually for the 5000 yuan of cash can be regarded as the possession also should constitute "unjust enrichment". That is to say, if a and B couple will receive the donated property to invest in the benefits, or the bank has generated the interest, they should return the principal and interest according to the relevant provisions of the unjust enrichment debt.

2. If the C recipient is not highly alternative and negotiable legal consumption goods such as cash, but ordinary goods of certain value such as jade pei, then what should be viewed at this time? The author believes that the corresponding property relationship should be restored to the state before the civil act, and the return of the property should be regarded as the return of the donor's ownership of the property. Because Ding gave jade pei to C, C was not yet born but is regarded as a person with capacity for civil rights, so its legal agent can accept the gift on his behalf. However, when C was born, at this time, C's civil rights capacity did not exist from the beginning, and its parents based on the civil rights of C to accept the gift and the agency did not exist. Long Weiqu pointed out: "In an ordinary gift contract, the donor can revoke the gift before the right of the gift property is transferred." At this time, the civil right capacity of the recipient of the donor has been lost from the beginning, so the real right of the gift property has not undergone substantial transfer from the beginning. Therefore, C can be based on the real right to return the request, ask a couple to return the original gift to fetal C.

Some argue that the above two cases can be regarded as "unjust enrichment" debt. If so, the subject relationship will become blurred in the gift relationship, and then the creditor's rights and debt relationship of unjust enrichment exists between the fetus and the donor, and the fetus has not have the capacity for civil rights from the beginning, which will lead to the subject of the debt party uncomfortable. The gift of the money can not be regarded as the gift of the thing, because the money "possession is all", that is to say, once the loss of the money symbolizes the loss of the ownership, once the ownership of the money will be changed accordingly. Chen Huabin pointed out: "If the possession of money and all can be separated from it, in the acceptance of money, it is bound to investigate one by one whether the owner of the money has the ownership one by one, otherwise it is inevitable to suffer accidental damage. Everyone is afraid to accept money, and its circulation function is also lost." Thus the treatment of money and ordinary things cannot be equated.

## 2.2 Understanding of the property return relationship in the inheritance relationship

According to Article 1155 of the Civil Code: "When the body is divided, the inheritance share of the fetus shall be retained. When the fetus is delivered and is dead, the retained share shall be handled according to legal inheritance." [1] In the case of inheritance, the corresponding share shall be retained for the fetus, except when the fetus is born at death, which is essentially the specific embodiment of the general provisions in the inheritance section. Professor Wang Liming pointed out: "when the fetus is delivered to the dead body, it is regarded as the fetus does not have civil rights from the beginning, the fetus before the delivery because of inheritance, accept gifts and other reasons, also do not enjoy from the beginning." The situation occurs, according to the direct provisions of the civil code can be understood as, retain share by the fetal parents escrow, the fetus was born as stillbirth, namely as its no main body qualification to obtain the corresponding belongs to the decedent's property, so this part of the property should still be enjoyed by the decedent, and then in accordance with the principle of legal inheritance in the distribution of inheritance. At this time, the parents of the fetus to have obtained the corresponding property should also be divided into two ways to deal with. 1. The cash part already in possession shall be returned to the decedent according to the relationship of the "unjust enrichment" debt, and then distributed according to the

legal inheritance.2. For other subject matter, the ownership of the crop shall still belong to the decedent, and then be distributed according to legal inheritance, and the relevant reasons are similar to the above.

## References

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