

Our consideration of the term "person" here should take us to any standard dictionary. All of the definitions relate to the term "person" in terms of a human being. The word "birth" or anything relating to birth is never mentioned, either directly or indirectly, in any of the numerous definitions of "person" or "human being." See "The Right to an Abortion," Prof. John Gorby, *Southern Illinois Law Journal*, Vol. 1979 No. 1.

The civil law has long recognized that the unborn child is a "person." See *Bonbrest v. Kotz*, [65 F. Supp. 138](#) (D.C.Cir. 1946). The civil law and the law of property regard a child "en ventre sa mere," as a human being from the moment of conception.

42 Am.Jur.2d Infants § 2, states that biologically speaking, the life of a human being begins at the moment of conception in the mother's womb and as a general rule of construction in the law, a legal personality is imputed to an unborn child for all purposes which would be beneficial to the infant after its birth. An unborn child at the time of the death of its parent has also been considered a "child" of the decedent in determining beneficiaries of an award in a wrongful death action or in a worker's compensation case.

Prosser's 4th Edition, published in 1971, summarizes the criticism of various judicial denials of recovery to the child. Prosser maintained that medical authority has long recognized that the child is in existence from the moment of conception and for many persons its existence is recognized by the law. The criminal law regards it as a separate entity and the law of property considers it in being for all purposes which are to its benefit, such as taking by will or descent. Cf. W. Prosser, *Handbook of the Law of Torts* (4th Ed.1971) pp. 336. In 1984, Prosser and Keaton noted that viability does not affect the question of the legal existence of the unborn. Prosser and Keaton on Torts (5th Ed.) § 55, p. 369.

Kentucky case law has followed such developments. This Court in 1955 stated that, "The most cogent reason, we believe, for holding that a viable unborn child is an entity within the meaning of the general word 'person' is because, biologically speaking, such a child is, in fact, a presently existing person, a living human being." *Mitchell v. Couch*, Ky., [285 S.W.2d 901](#) (1955). Also see *Cox v. Cooper*, Ky., [510 S.W.2d 530](#) (1974); *Rice v. Rizk*, Ky., [453 S.W.2d 732](#) (1970).

The New Jersey Supreme Court not only recognized the personhood of the unborn child, but held that the right to life prevailed over constitutionally protected religious beliefs of the mother who had rejected *883 a blood transfusion. *Raleigh Fitkin-Paul Morgan Memorial Hospital v. Anderson*, 42 N.J. 421, [201 A.2d 537](#), cert. den. 377 U.S. 985, 84 S. Ct. 1894, 12 L. Ed. 2d 1032 (1964).

As observed by Dr. Seuss in the popular children's story *Horton Hears a Who*, it is abundantly clear that "A person is a person no matter how small."

The English common law of property has long recognized the unborn child as an autonomous human being. Accordingly, it simply mirrors the basic proposition that in law, as in ordinary affairs and language, the word "child" includes the conceived but as yet unborn child. In 1795 an English court interpreted the ordinary meaning of children in a Will to include a child in the womb. "En ventre sa mere who by the course and order of nature is then living, comes clearly within the description of children living at the time of the decease." *Doe v. Clark*, 2H Bl. 399, 126 Eng.Rep. 617 (1795). Thereafter,