Constitutional Rights and Legislation

- Express rights
- Implied rights
- Legislative limitation of rights
- Courts’ role in assessing legislative limitations
The Right to Life of the Unborn

• Pre-1983 position
• Judicial statements and binding case law
• Prior to the adoption of the Eighth Amendment, there was a body of opinion that the right to life of the unborn was protected by the Constitution, even though not expressly stated there.
Possible Options

• Retain Article 40.3.3 in its present form
• Repeal Article 40.3.3
• Amend Article 40.3.3
Constitutional Implications of Repeal

• Form of abortion legislation exclusively a matter for the Oireachtas, or
• Pre-1983 position revives, or
• A right to choose to have an abortion.
Amendment Options (I)

• Amend so as to increase constitutional protection given to the unborn

• Amend so as to allow more freedom to the Oireachtas to permit abortion but only in defined circumstances
Amendment Options (II)

• Amend so as to expressly remove the right to life of the unborn
• State that the Oireachtas shall have full power to decide on the scope of permissible abortion
• Repeal but provide in Constitution for law which could not be amended without Referendum