Summary

• “the unborn”
• Unresolved issues
• *Roche v Roche*
• Rights other than life
Judicial statements

• Not everything a judge says in a decision is binding on later judges

• Key issue: did what was said make a difference to the outcome, on the facts in that case?

• Everything else is an expression of opinion (but perhaps a persuasive one)
“the unborn”

• When does human life begin?
• When does it start to be “the unborn”?
• Fertilisation? (if so, where?)
• Implantation? (if so, how?)
• Some later point? (unlikely)
Day 2 - 4 or Day 5 - 6
Roche v Roche

• **Decision:** an embryo created outside a woman’s body is not one of “the unborn”
• Murray CJ: a judge can’t say whether human life has begun at that point
• Other judges: “the unborn” exists only after implantation in the womb has occurred
Significance

• If “the unborn” exists within a woman’s body before implantation then the legality of “the morning after pill” or IUDs could be in doubt

• Both are authorised for sale in Ireland

• 2013 Act is limited to “a life ... after implantation in the womb”
What other rights for “the unborn”? 

• Many laws give a child rights by reference to what happened to her before birth 
• In addition to life, do the unborn have other constitutional rights? 
• Family rights, for example. Two cases say “yes”; one case says “no”
Summary

• Spectrum of views of what Art 40.3.3° does, from
  – merely “copper fastens” ss 58 and 59 of the 1861 Act as they were in 1983 to
  – acknowledges a broad right to life with much wider implications

• *Roche* and other cases do not decide which is the correct general view of Art 40.3.3°