

Summary

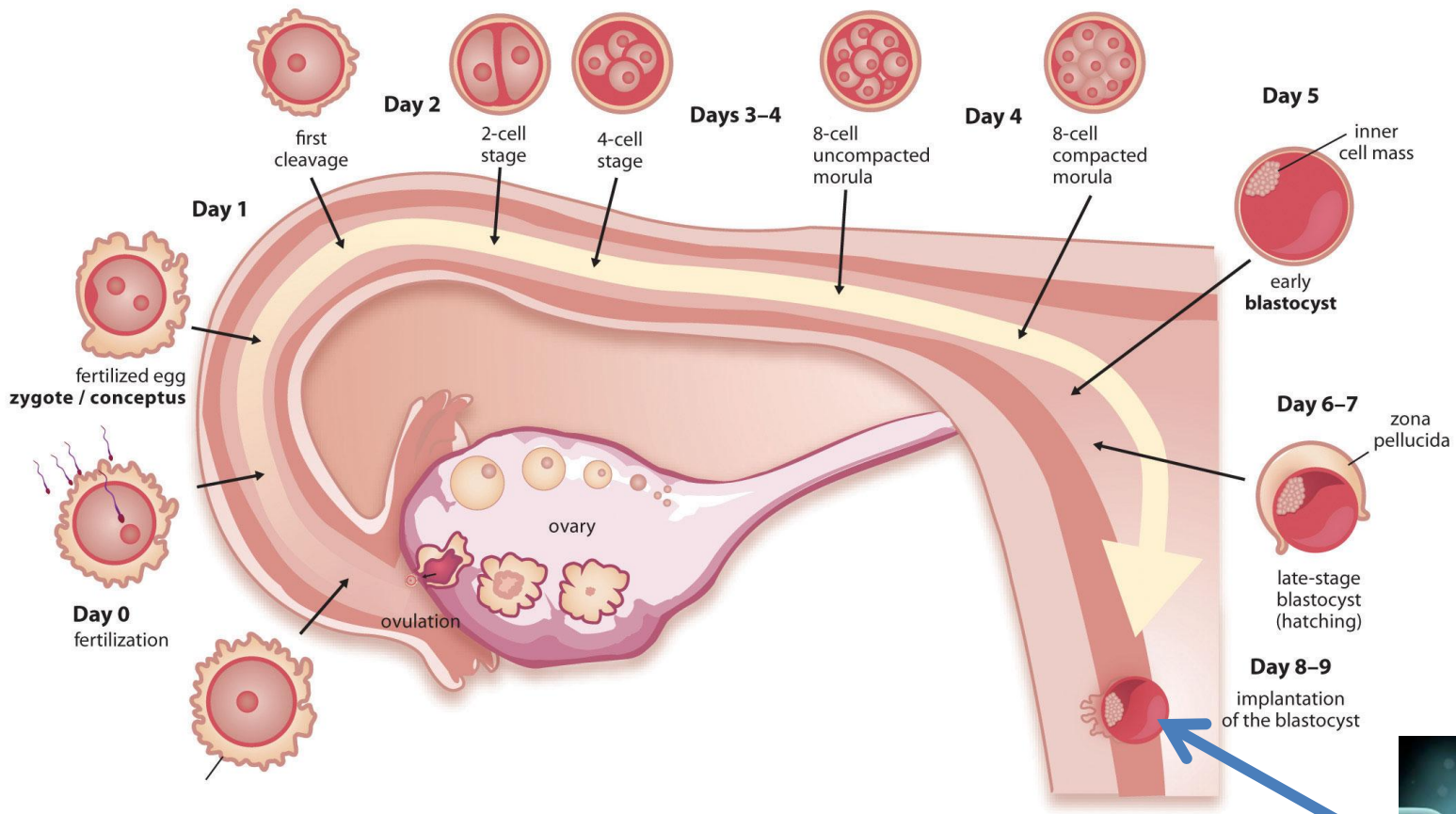
- “the unborn”
- Unresolved issues
- *Roche v Roche*
- Rights other than life

Judicial statements

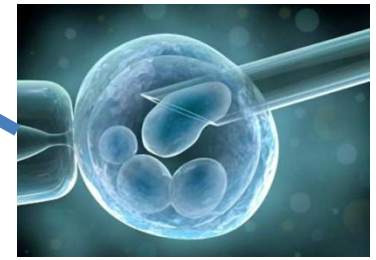
- Not everything a judge says in a decision is binding on later judges
- Key issue: did what was said make a difference to the outcome, on the facts in that case?
- Everything else is an expression of opinion (but perhaps a persuasive one)

“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°