Aims
This Activity Pack aims to support students to gain a better understanding of:

- human cloning and its related research,
- how ethical considerations are relevant to science and the work of scientists,
- the role of the courts in interpreting and applying legislation in the UK and
- the issues surrounding making law in times of rapid scientific and technological change.

Target audience: post-16 students

Time needed: 2–3 one hour lessons, plus private study time

This pack has two main activities.

- The first is a **science preparation activity**, which allows students to review and expand their knowledge of fertilisation and cloning, and prepare for the second activity.
- The second is a **mock court case**, brought by Pro-Life, who consider the Government to have been legally wrong to have claimed that the Reproduction and Embryology Act 1990 regulates the use of the ‘Dolly’ cloning technique on human cells. The document for this second activity includes: allocation of roles; student preparation for the allocated roles and the running of the mock court case.
The two activities could either run over a sequence of 2–3 lessons of approximately one hour each, with interim private study/homework, or as an extended enrichment activity, such as a cross-curricular day.

Note that: students should be informed that this is an exercise in detailed analysis and critical thinking, rather than wider research skills, therefore preparation should focus on reading and discussing the materials provided in the pack.

Suggested timings

- Understanding the science of fertilisation and cloning (30 minutes)
- Preparation for the mock court case:
  - time for scene setting, initial reading, allocation of roles and beginning to develop arguments (up to 1 hour).
  - private study/home learning to allow individuals/small groups to prepare. Depending on local circumstances you may wish students to communicate via a virtual learning environment to allow both sides in the case to liaise with their teams to prepare their side of the argument.
  - time for the two parties to finalise their presentations prior to the court case (up to half an hour).
- Court hearing (1 hour 15 minutes). Timings may need to be adjusted for those running this within timetabled lessons, please see below for detailed time allocations.

The activity is supported by a number of videos on YouTube:

- Lecture on Human Cloning and Mitochondrial Donation given by Professor Mary Herbert: https://www.youtube.com/watch?v=yoJFb7P1yiA#action=share

Teachers and students may find Professor Mary Herbert’s explanation of cloning and mitochondrial donation useful as an enrichment and extension activity. Several of the students who attended the original lecture also appreciated the chance to experience a university style lecture and gain an insight into what one aspect of university might be like.

Teacher support on running the science and court activities can be found in:

- Video of Science Activity on Understanding Human Cloning and Mitochondrial Donation led by Dr Vanessa Kind and Mary Howell: https://www.youtube.com/watch?v=4YPMaoyjICE#action=share
- Video of Mock Court Case (we apologise for the sound quality of this video): https://www.youtube.com/watch?v=oVaeFE0BMk8#action=share
Acknowledgements and Authorship

- This Activity Pack was produced as part of a three-year project (2014–2017) funded by a Wellcome Trust People Award. This funding was awarded to Professor Shaun Pattinson (principal investigator), Dr Vanessa Kind (co-investigator) and Dr Benedict Douglas (co-investigator). Additional support was provided by Mary Howell (science education consultant) and Professor Mary Herbert (expert on cloning and mitochondrial DNA).

This document should be cited as:

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- The pictures for fertilisation and human cloning were drawn by Mahdi Lamb with guidance from Professor Mary Herbert.


- The court judgments below are edited and modified versions of those in The Queen (on application of Bruno Quintavalle on behalf of Pro-Life Alliance) v Secretary of State for Health [2002] EWCA Civ 2 and [2001] EWHC 918 (Admin).
Preparatory Science Activity on Human Cloning

Contents

1. Instructions for Teachers on Running the Science Activity
2. Reading on Human Cloning and the Science of Reproduction
3. Diagrams
1. Running the Science Activity

**Aim:** to allow students to review and develop their knowledge of fertilisation and cloning in preparation for the mock court case on human cloning.

**Time needed:** up to 30 minutes

**Resources:**
- Reading (below)
- Diagrams (below)
- Optional activity:*  
  - 4 colours of plasticine or play dough (such as ‘Play-doh’)
  - Plastic mat or newspaper to protect tables
  - Large sheets of plain paper to set out the models

**Activity sequence:**
- **Set the scene.** Explain that this science activity supports a mock court case brought by Pro-Life. They think the Government was legally wrong to claim that the Reproduction and Embryology Act 1990 regulates the use of the Dolly technique on human cells. In order to argue the case effectively for either side students need to rehearse and understand the science, so that they can explain it in court without the aid of diagrams.

(a) Put students into pairs.
(b) Nominate one student per pair as student A and the other as student B.
(c) Student A will study and then describe fertilisation and embryo splitting to their partner. Student B will study and describe cloning.
(d) Distribute the reading and diagrams (below).
(e) Allow 4 minutes for students to familiarise themselves with the reading and diagrams.
(f) After 4 minutes, students take turns to explain the process they have been allocated using the diagram. Allow about 3 minutes for each explanation.
(g) Allow time for pairs to discuss the explanations and for whole class discussion to clarify any points about which they are unsure.
(h) Emphasise that diagrams are not allowed in the court, so they will need to continue with this preparation and prepare well enough to explain the process without visual aids.

* If time allows an optional version of the activity can be run with students making play dough models and using these to model the process as they explain to their partner.
2. Cloning and the Science of Reproduction

You are the product of fertilisation. A sperm from your biological father and an egg from your biological mother joined together and developed into an embryo. Occasionally embryos split into two, producing identical twins. Identical twins are genetically identical to each other; they are naturally occurring clones. Embryos created outside the body could be artificially divided in this way to deliberately create human clones, which is known as embryo splitting. Dolly the sheep was created in a different way. Dolly was not the product of a sperm joining with an egg, but of part of an egg being joined with part of a body (somatic) cell. That somatic cell was taken from the mammary gland of a sheep—Dolly was named after Dolly Parton. The nucleus was removed from an egg and the resulting nucleus-free egg was then fused with the mammary gland cell by electrical stimulation. Chemical signals designed to mimic the sperm were used to trigger the onset of embryonic development.

The cloning technique used to produce Dolly the sheep will be referred to as the ‘Dolly technique’. It is often referred to as ‘somatic cell nuclear transfer’, but that label is misleading because it involves the transfer of a whole somatic cell (not just its nucleus) into an egg from which the nucleus has been removed.

A cloned embryo created by the Dolly technique could be implanted into a woman to develop into a child (reproductive cloning) or could be used for research, such as research on stem cells for future treatments (non-reproductive cloning).

<table>
<thead>
<tr>
<th>Key definitions</th>
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<tr>
<td><strong>cloned embryo</strong></td>
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<td><strong>Dolly technique</strong></td>
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<td><strong>embryo splitting</strong></td>
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<td><strong>gamete</strong></td>
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<td><strong>human cloning</strong></td>
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<td><strong>non-reproductive cloning</strong></td>
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<td><strong>primitive streak</strong></td>
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<td><strong>reproductive cloning</strong></td>
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<td><strong>somatic cell</strong></td>
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1 The paragraph above is a modified extract from Shaun D. Pattinson, Medical Law and Ethics (4th ed, Sweet & Maxwell, 2014), 346. It is has been corrected in the light of expert advice provided by Professor Mary Herbert.
Mock Court Case on Human Cloning

Contents

1. The Court Case
3. The Queen (on the application of Pro-Life) v Secretary of State for Health
4. Roles and Timetable
5. Guidance on Interpreting and Using Law
6. Guidance for Counsel
7. Guidance for Researchers
8. Guidance for Court Officials
1. The Court Case

This mock court case has been brought by Pro-Life. They think that the Government was legally wrong to claim that the Reproduction and Embryology Act 1990 regulates the use of the Dolly technique on human cells.

Pro-Life is an organisation committed to campaigning for absolute respect for innocent human life and is opposed to human cloning. It has gone to court to argue that using the Dolly technique on human cells falls outside of the Act. You might wonder why an organisation opposed to human cloning wanted to argue that human cloning using the Dolly technique is unregulated. Pro-Life wants to force cloning back on the Parliamentary agenda. It hopes that Parliament would then ban all forms of human cloning.

The Reproduction and Embryology Act 1990 does not mention the Dolly technique. It does make it a criminal offence to create a human embryo outside of the body or use it for any purpose, unless a licence has been granted. It also makes it a criminal offence to replace the nucleus of a human embryo.

Pro-Life’s argument:

(1) The Act defines ‘embryo’ using the word ‘fertilisation’. This means that the Act only applies to embryos created by fertilisation. Since the Dolly technique does not involve fertilisation, it is not covered by the Act.

(2) Alternatively, if embryos created by the Dolly technique do fall within the Act, the Dolly technique is prohibited by section 3(2)(b).

This case has been heard in two lower courts. In the Administrative Court, Pro-life won. Mr Justice Crane held that the Dolly technique fell outside the scope of the Act. The Secretary of State appealed to the Court of Appeal, which reversed the decision of Mr Justice Crane. The Court of Appeal held that the Dolly technique fell within the scope of the Act. They agreed with the judge on the second issue and held that section 3(2)(b) did not apply to the Dolly technique.

You are going to argue this case in the Supreme Court. Please explain the science to the Supreme Court Justices before arguing for your client’s point of view on the law.

Counsel for Pro-Life argue: (1) the Dolly technique falls outside of the Act and (2), if it does not, s.3(2)(b) prohibits the Dolly technique. They want to reverse the decision of the Court of Appeal.

Counsel for the Secretary of State argue: (1) the Dolly technique falls within the Act and (2) s.3(2)(b) does not prohibit the Dolly technique. They therefore want to uphold the decision of the Court of Appeal.
Reproduction and Embryology Act 1990

An Act to make provision in connection with human embryos and any subsequent development of such embryos; to prohibit certain practices in connection with embryos and gametes; and to establish a Licensing Authority.

1 Definitions
(1) In this Act,
(a) embryo means a live human embryo where fertilisation is complete, and
(b) references to an embryo include an egg in the process of fertilisation, and, for this purpose, fertilisation is not complete until the appearance of a two cell zygote.

(2) In this Act, ‘the Authority’ means the Reproduction and Embryology Authority established under section 2 of this Act.

2 The Reproduction and Embryology Authority
(1) There shall be a body called the Reproduction and Embryology Authority.

(2) The Authority may grant licences under this Act.

3 Offences in connection with embryos
(1) Unless in possession of a licence from the Authority, it is a criminal offence to
(a) bring about the creation of an embryo outside of the body, or
(b) keep or use an embryo created outside of the body.

(2) A licence cannot authorise
(a) keeping or using an embryo after the appearance of the primitive streak, which it taken to have appeared in an embryo not later than 14 days from when the gametes are mixed, or
(b) replacing a nucleus of a cell of an embryo with a nucleus taken from a cell of any person, embryo or subsequent development of an embryo.

Explanatory Notes
This is known as the ‘short title’ of the Act.

This is known as the ‘long title’. It tells us the purpose of the Act.

This is section 1 of the Act.

It defines ‘embryo’ and the ‘Authority’ for the purposes of the Act.

Section 2 sets up an authority to issue licences under the Act.

Section 3 has two subsections.

Subsection 1 requires a licence from the Authority before a person can create an embryo outside of the body, or store or use an embryo created outside of the body.

Subsection 2 creates two criminal offences.
Under s.2(2)(a), it is a criminal offence to store or use an embryo for longer than 14 days ‘after the gametes are mixed’.
Under s.2(2)(b), it is a criminal offence to replace the nucleus of a cell of an embryo with another cell.
4 Conditions of licences
(1) A person’s gametes must not be used to bring about the creation of any embryo outside of the body unless there is written consent from each person whose gametes were used to create the embryo.

(2) An embryo created outside of the body must not be used for any purpose, including the placing of that embryo into a woman, unless there is written consent to the use of the embryo for that purpose from each person whose gametes were used to create the embryo.

(3) The Authority may impose any other conditions it considers appropriate.

5 Regulations
(1) The Secretary of State may make regulations specifying the purposes for which a licence may be granted for research using embryos.

(2) The Secretary of State shall not make regulations under this Act unless a draft has been laid before and approved by resolution of the House of Commons.
4. The Queen (on the application of Pro-Life) v Secretary of State for Health

Judgment of Mr Justice Crane in the Administrative Court

1. The central issue in this judicial review application is whether the organism created by the Dolly technique falls within the definition of ‘embryo’ in section 1(1) of the Reproduction and Embryology Act 1990 (‘the Act’). This section reads:

   (1) In this Act,
   (a) embryo means a live human embryo where fertilisation is complete, and
   (b) references to an embryo include an egg in the process of fertilisation,
   (c) and, for this purpose, fertilisation is not complete until the appearance of a two cell zygote.

The history of these proceedings

2. The Government has published a report in which it concluded that research using embryos (whether created by in vitro fertilisation or the Dolly technique) could be licensed by the Licensing Authority, subject to the controls of the Act. It referred to organisms produced by the Dolly technique as ‘embryos created by cell nuclear replacement’.

3. Pro-Life describes itself as an association committed to campaigning for absolute respect for innocent human life and is opposed inter alia to human cloning. Pro-Life has been granted permission to apply for judicial review. It seeks a declaration that an organism created by the Dolly technique would not fall within the definition of ‘embryo’ in section 1(1), because it was not produced by fertilisation. This would mean that organisms created by the Dolly technique would not be regulated by the Act. Pro-Life argues, in the alternative, for a declaration that if the Dolly technique does fall within the Act, then section 3(2)(b) of the Act would render it unlawful.

4. The Secretary of State disagrees on both counts. Counsel on his behalf has argued for a ‘purposive construction’ of the Act. By this, they mean that the Act’s provisions should not be interpreted literally, but in accordance with the purpose that the Act was trying to achieve.

The history of the legislation

5. The story begins with the publication in 1984 of the Warnock Report. This Report recommended the setting up of a licensing authority to regulate both research and certain infertility services. It recommended that human embryos should be afforded some protection in law and that certain procedures should be prohibited by the criminal law.

6. In its discussion of cloning, the Report referred to the removal of the nucleus from a fertilised human egg. The Report’s conclusions were implemented in the Act.
7. On 27 February 1997 a paper entitled ‘Viable offspring derived from foetal and adult mammalian cells’ by Professor Wilmut and others, was published in *Nature*. The paper revealed the birth of the now famous Dolly the sheep. Not only did she achieve popular fame; her birth following the Dolly technique using an adult sheep cell represented a very significant scientific development.

**The central issue**

8. During the hearing there has been discussion about whether the organism produced by the Dolly technique is properly described as an ‘embryo’ as a matter of scientific language. The problem is, however, that the Act’s definition is very precise. Pro-Life relies on that wording and submits simply that an embryo that has not been produced by fertilisation cannot be an ‘embryo where fertilisation is complete’. The Secretary of State for Health argues for a purposive interpretation of section 1(1). He argues that the essential concept is ‘a live human embryo’. The subsection should be read as if the words were, in effect, ‘a live human embryo where [if it is produced by fertilisation] fertilisation is complete’.

9. Having heard the arguments for both sides, I am inclined to grant the application. In my judgment, an organism created by the Dolly technique does fall outside the definition of ‘embryo’ in section 1(1) of the Act. Counsel for the Secretary of State has argued that the reason for inserting in section 1(1)(a) the words ‘where fertilisation is complete’ and the following words in section 1(1)(b) was to define the moment at which the Act’s protection applied to the organism. Nevertheless the words are there. The question is whether to insert the additional words is permissible: ‘a live human embryo where [if it is produced by fertilisation] fertilisation is complete’. With some reluctance, since it would leave organisms produced by the Dolly technique outside the statutory and licensing framework, I have come to the conclusion that to insert these words would involve an impermissible rewriting and extension of the definition.

10. Pro-Life’s alternative argument about section 3(2)(b) of the Act does not arise. However, even if I had accepted the Secretary of State’s construction of section 1(1), I should not have interpreted section 3(2)(b) in the way claimed.
Judgment of the Court of Appeal

Lord Phillips, Master of the Rolls
Introduction

1. The first stage of reproduction of a human being involves the creation of an embryo. An embryo is a live organism containing a full set of 46 chromosomes that has the potential to develop into a foetus and subsequently into a person. In 1990 the only way in which an embryo had ever been created was by the fertilisation of the female egg by the male sperm. Such fertilisation takes place naturally as a result of sexual union between man and woman. Scientists have, however, developed other methods of fertilising a female egg with a male sperm so as to produce an embryo and can, in particular, achieve this outside the body.

2. In 1984 a Committee of Inquiry, chaired by Dame Mary Warnock, published a Report that made a large number of recommendations, including that the creation of embryos outside the body, and the use of these, should be regulated by a statutory licensing authority. Warnock recommendations were implemented by the Reproduction and Embryology Act 1990 (‘the Act’).

3. The Act contains a definition of an embryo, and a number of provisions, which reflect the fact that it was drafted at a time when the only known way of producing an embryo was by fertilisation.

4. The Warnock Report had identified the fact that it might prove possible to substitute the nucleus of a fertilised egg with the nucleus taken from an adult human, thereby producing an embryo that would develop into a carbon copy clone of that human. Because this would involve making use of an embryo that had been created by fertilisation, such a process would unquestionably be covered by the licensing requirement imposed by the Act. There has been included within the Act a clause which specifically prohibits the licensing of the creation of an embryo in this way.

5. Since the introduction of the Act, scientists have developed a method of creating an embryo that does not involve fertilisation. It bears a close resemblance to the nucleus substitution that the Warnock Report had identified as a possibility and has the same potential for producing a clone. The difference is that it involves introducing a nucleus taken from an adult human into an egg that has not been fertilised. This method of creating an embryo is known as somatic cell nuclear transfer or the Dolly technique. I have described the organism produced by the Dolly technique as an ‘embryo’ because the nature of that organism so resembles that of an embryo produced by fertilisation that it is appropriate to describe it by the same term.

6. The Government believed that creating an embryo by the Dolly technique was a process which was covered by the Act. They also believed that, while it would be abhorrent to use this process to produce a clone, it was desirable that the process be licensed for the purpose of certain types of research.
7. These developments were viewed with dismay by Pro-Life, which is opposed both to human cloning and to using human embryos for the purpose of research. They brought proceedings for judicial review, contending that the Act only applied to embryos created by fertilisation, so that embryos created by the Dolly technique were not subject to the provisions of the Act. This contention succeeded before Mr Justice Crane, sitting in the Administrative Court. His decision meant that the licensing Authority had no jurisdiction to license the creation of embryos by the Dolly technique. But more fundamentally, his decision meant that no licence was required for the creation or use of embryos created by the Dolly technique.

8. There is a subsidiary issue raised by Pro-Life as an alternative case. I have referred to the fact that a clause of the Act prohibits the licensing of nucleus substitution within a fertilised embryo. Pro-Life contends that, if the Act applies to embryos created by the Dolly technique in an unfertilised egg, the clause in question falls to be construed so as to extend this prohibition to the licensing of the creation of embryos by the Dolly technique. Mr Justice Crane indicated that he would not have accepted this submission and it is challenged by the Secretary of State.

The purpose of the legislation

9. In the field of science, developments after the enactment of a statute can raise problems as to its interpretation. Counsel for the Secretary of State wants to read words into the Act, which I consider correct provided that this is plainly necessary to give effect to Parliamentary intention. When considering that question the Court has to ask, not what would Parliament have enacted if it had foreseen the creation of embryos by the Dolly technique, but, do such embryos plainly fall within the genus covered by the legislation and will the clear purpose of the legislation be defeated if the extension is not made?

10. The Act brings the creation and use of embryos within a regulatory regime which very severely restricts the right to indulge in those activities. The reasons for legislating to impose those restrictions are essentially ethical. The Act accepts the basic principle underlying the Warnock Report recommendations, namely the need ‘to regulate and monitor practice in relation to those sensitive areas which raise fundamental ethical questions’. Broadly speaking it can be said that the legislative policy was that it was essential to bring the creation and use of embryos under strict regulatory control for ethical reasons.

11. To the question of whether it is necessary to bring embryos created by the Dolly technique within the regulatory regime created by the Act in order to give effect to the intention of Parliament, there can only be one answer. It is essential. There is no factor that takes embryos created by the Dolly technique outside the need, recognised by Parliament, to control the creation and use of human organisms. The consequence of Mr Justice Crane’s judgment is that anyone is free to create embryos by the Dolly technique and to experiment with these without limitation of time or any other restriction. It is clear that these results are wholly at odds with the intention of Parliament when introducing the Act.
12. I consider that a regulatory regime that does not cover embryos created by the Dolly technique is contrary to the intention of Parliament in introducing the Act. The prospect of such a regime is both startling and alarming. These considerations provide the most cogent reason to reach an interpretation of the Act which embraces embryos produced by the Dolly technique, subject to consideration of any countervailing considerations.

Countervailing considerations

13. I recognise that there are some provisions of the Act which cannot be applied to an embryo produced by the Dolly technique. This is not surprising, as such an embryo was not within the contemplation of those who drafted the Act.

14. The first point that arises in this context is that there is a degree of uncertainty as to whether an embryo created by the Dolly technique comes into existence at the single cell stage, or only when that cell divides, so as to resemble a two cell zygote. Section 1(b) resolves this problem in relation to an embryo created by fertilisation. It seems to me that, so far as an embryo produced by the Dolly technique is concerned, this problem is purely theoretical. I cannot conceive of any circumstance in which it would have any practical significance to the working of the Act.

15. It is then rightly said that section 3(2)(a) cannot operate in respect of an embryo created by the Dolly technique, for such an embryo is not created by the mixing of gametes. Once again it does not seem to me that this is a point of significance. A stage will be reached in relation to an embryo created by the Dolly technique when the primitive streak appears, and section 3(2)(a) is thus effective. Further, it is open to the Licensing Authority to stipulate a shorter period beyond which an embryo created by the Dolly technique cannot be kept or used.

16. Finally, the point is made that no provision requires the person from whom the nucleus that is used for the Dolly technique is taken to consent to the process for which it is used. This contrasts with the provisions for consent in relation to those providing gametes for the creation of an embryo by fertilisation, which are set out in section 4(1) and (2). This is an anomaly, but it is one that can be cured by a requirement imposed by the Authority.

17. In conclusion, I would reverse the decision reached by the judge and hold that an organism created by the Dolly technique falls within the definition of ‘embryo’ in section 1(1) of the Act. In my view, section 1(1) should be read as if the words were, in effect, ‘a live human embryo where [if it is produced by fertilisation] fertilisation is complete’.

The second issue

18. My conclusion makes it necessary to consider the alternative case advanced by Pro-Life.

19. Pro-Life point out that section 3(2)(b) provides that a licence cannot authorise
replacing a nucleus of a cell of an embryo with a nucleus taken from a cell of any person, embryo or subsequent development of an embryo’.

Pro-Life argue that if fertilisation is unimportant to the definition of an ‘embryo’ in section 1(1), it must follow that it is possible to substitute for ‘fertilisation’ any other similar process (such as the Dolly technique) by which the ‘embryo’ comes into being. The consequence is that, just as an egg in the process of fertilisation is an ‘embryo’, so is an egg in the process of the Dolly technique. Therefore, a licence cannot authorise the replacing of the nucleus of an egg with adult genetic material.

20. I disagree. You cannot compare an egg which the sperm has already started to fertilise with an egg which is about to receive, but has not yet received, a nucleus. I also see no basis for arguing that an unfertilised egg, prior to the insertion of the nucleus under the Dolly technique, is required to be treated under the Act as if it is an embryo. I agree with the judge that Pro-Life’s alternative case is unsound.

21. For these reasons I would allow the appeal and dismiss the cross-appeal.

Lord Justice Thorpe

22. I agree.

Lord Justice Buxton

23. I also agree.
5. Roles and Timetable

There will be two legal teams: counsel for the Secretary of State and counsel for Pro-Life.

Each legal team is to appoint:

- **3 researchers** (including lead researcher):
  - prepare skeletal argument & organise preparation
- **2 counsel** (senior and junior counsel)
  - present the arguments in court
- **3 court officials**
  - to become the 5 judges and 1 court usher

(16 roles in total)

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**Court Hearing Running Order**

- Senior Counsel for Pro-Life
- Junior Counsel for Pro-Life
  - (10 mins)
- Senior Counsel for Secretary of State for Health
- Junior Counsel for Secretary of State for Health
  - (10 mins)
- Counsel for Pro-Life’s Right to Reply
  - (5 mins)
- Supreme Court Justices retire for decision, and others participate in group work on the arguments put to the court
  - (20 mins)
- Announce decision and each presents their reasons
  - (15 mins)
- Debrief
  - (15 mins)

Some Key Definitions

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<tr>
<th>Term</th>
<th>Description</th>
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<tr>
<td>Act of Parliament</td>
<td>• An Act is a set of legal rules created by parliament. Acts are classified as ‘primary legislation’, because they have the highest authority amongst UK law. Acts of Parliament are also called ‘Statutes’.&lt;br&gt;• E.g. Reproduction and Embryology Act 1990</td>
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<tr>
<td>Parts of an Act of Parliament</td>
<td>Section: the parts of an Act are divided into sections dealing with different topics.&lt;br&gt;Sub-sections: within each section of a statute there may be sub-sections which set out the details of, or limitations on, the broader subject matter of a section.&lt;br&gt;E.g. The definition of ‘Authority’ under the Act can be found within section 1, subsection 2, which would be written as: s.1(2) Reproduction and Embryology Act 1990.</td>
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<td>Regulations</td>
<td>Regulations are a set of legal rules created by the government, the power to do so is given to them by an Act of Parliament. The text of Regulations created by the government must be approved by Parliament to become valid law.&lt;br&gt;• Regulations cannot override Acts of Parliament. For these reasons, they are known as ‘secondary legislation’.</td>
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<tr>
<td>Counsel</td>
<td>A barrister or other legal adviser conducting a case.</td>
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Guidance on Interpreting Laws

- To decide on the scope of a piece of legislation, the courts must decide what the words mean. As words can have different meanings (e.g. consider the words ‘bear’, ‘set’ or ‘play’) this is not as straightforward as it first appears.

- There are two key approaches to interpretation you should consider in constructing your arguments:

(1) The Literal Approach to Interpretation

- Under this approach, words are given their natural or ordinary meaning appropriate to the sentence in which they are found.

- This approach is generally applied where the words are precise and unambiguous.

(2) The Purposive Approach to Interpretation

- Under this approach, the courts will try to find what Parliament intended the Act or Section to achieve. The courts will consider factors including (but not limited to) the position of the law before the Act, and any problems with it that led to the creation of the Act.

- The courts will then give the words a meaning that enables the Act to achieve the purposes for which it was created. To do this, they may stretch the meaning of words or imply other new words into the statue.
The Court Structure

High Court

- Our case concerns a challenge to the scope of powers granted by an Act. These cases begin in the Administrative Division of the High Court.
- These cases are generally heard by one judge.

Court of Appeal

- Appeals from the High Court generally go to the Court of Appeal.
- These cases are generally heard by three judges.
- The case is won by whichever party’s argument is supported by two or more of the judges.
- Judges in the Court of Appeal are generally Lord Justices of Appeal (e.g. Lord Justice Thorpe), but the Head of the Court of Appeal is known as the Master of the Rolls (e.g. Lord Phillips).

Supreme Court

- Appeals from the Court of Appeal go to the Supreme Court.

- Cases are normally heard by a panel of five Justices (e.g. Lady Hale and Lord Hope).

- The judges can write separate judgments or simply agree with the judgment of another Justice. The case is won by whichever party at least three of the five justices agree with.
7. Guidance for Counsel

Necessary abilities

- Confident public speaker.
- Able to present arguments and ideas clearly.
- Able to argue persuasively.
- Able to think quickly in order to respond to questions from judges.

Your role

- To explain to the court the background, and key issues of the case as they are relevant to your client’s argument.
- To explain to the court the reasons why the law should be interpreted in the way your client wishes.
- To persuade the court, using the arguments your team have developed, to reach the decision your client wishes.
- You will need to wear formal clothing (such as a suit) during the mock court debate in Day 2.

Arguments to be made

- The case raises two key points of argument:
  
  (1) the definition of an embryo
  
  and
  
  (2) whether s.3(2)(b) of the Act prohibits the licencing of the Dolly technique.

- Each side, (Pro-Life and the Secretary of State for Health) will be represented by two barristers.
- Senior council on each side will present arguments on the first point (embryo definition) and junior council will present arguments on the second point (s.3(2)(b)).
- The arguments will be created and discussed beforehand by your team.

How to address the court and other barristers

- Do not speak in a first-person manner. The court does not care what the barristers personally think, they want you to tell them what issues are raised by the facts and what the law is that should be applied.

  Use phrases like: ‘It is the submitted that….’, ‘The decision in the Court of Appeal shows that / mistakenly applied...’

  Not: ‘I think you should decide this way...’ or ‘I think the court below was wrong because...’

  - Be extremely polite and courteous at all times.
• Address others in the following ways:

Judges: My Lord, My Lady, Your Lordships, depending on context.
E.g. ‘Your Lordships, it is submitted that...’

Colleagues: My learned junior/senior
E.g. ‘As my learned senior has said...’.

Opponents: My learned friend
E.g. ‘My learned friend inappropriately applies...’

Judges who have decided previous cases: in the same manner as they are mentioned in that court
E.g. ‘As Lord Phillips noted...’ or ‘As Mr Justice Crane stated...’

**Online Videos of Good and Bad Legal Debating:**

8. Guidance for Researchers

- Each side is to choose three researchers.

Necessary Abilities:
- Organised.
- Capable of expressing ideas clearly in writing.

Researchers’ Roles:

(1) Coordinate the team’s group discussions, including uploading documents to the university’s online system (DUO). The leader researcher has overall responsibility for DUO.

(2) Prepare the skeletal argument between the Student Preparation Day and the Workshop. The other two have responsibility for the draft skeletal argument.

- In preparing your arguments, you only need to use the materials that you have been provided in the packs.

Writing a Skeleton Argument

- A skeleton argument is a one page outline of the arguments your barristers will make in their submissions.
  - Skeleton arguments will be exchanged 25 mins before the moot (at 10.35), to enable each side to ensure that their own arguments will address the key points of their opponent’s case. These should also be given the judges at this point.

- The skeleton argument will very briefly set out what you claim the law is, list the arguments you will make about it, and their implications for the facts of the case.

- The researchers should prepare the skeleton argument using the matters discussed on Day 1, and ensure it is posted on DUO before Day 2.

Hints on constructing arguments

- Submissions should be ordered so that the strongest arguments are made first.

- Tell judges what conclusion you intend to reach.

- Refer to the law and facts to set the context. You must summarise the science for the judges who should be assumed to have no scientific background.

- Explain your comments and interpretation of the law.

- State clearly what you believe the legal outcome of your submission should be.
9. Guidance for Court Officials

There will be six court officials (three appointed by each legal team). They will become the one Court Usher and five Supreme Court Justices (including the President and Deputy President).

Judges’ Necessary Abilities:
- Ability to analyse and consider the strength of arguments.
- Ability to formulate questions which get to the heart to a matter.
- Decisiveness.

Judges’ Role
- To reach a decision based on the arguments presented to them.
- To test the strength of each parties’ case by asking questions.
  - But don’t ask so many questions that the barristers struggle to make their case.
- President announces the judgement and summarises the reasoning of the court.

Usher’s Abilities:
- Stage presence.
- Comfortable with public speaking.

Usher’s Role
- Open and close the court proceedings.
- Introduce all the justices (using their titles) and counsel to the court.