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## R. v Human Fertilisation and Embryology Authority Ex p. Blood

**Also known as:**

## R. v Human Fertilisation and Embryology Authority Ex p. DB

Queen's Bench Division

17 October 1996

### Case Analysis

#### Where Reported

[\[1996\] 3 W.L.R. 1176](#); [\[1996\] 3 C.M.L.R. 921](#); [1997] 1 F.C.R. 170; (1996) 93(40) L.S.G. 25; (1996) 146 N.L.J. 1542; (1996) 140 S.J.L.B. 227; Times, October 18, 1996; Independent, October 23, 1996

#### Case Digest

**Subject:** Health

**Keywords:** Artificial insemination; Consent; Discretion

**Summary:** Artificial insemination; written consent of donor required to store and use sperm; no discretion to allow treatment without written consent

**Abstract:** B sought judicial review of the H's decision to refuse to release sperm, taken from B's unconscious husband just before his death to enable B to become pregnant by artificial insemination, on the ground that the donor had not consented. The Human Fertilisation and Embryology Act 1990 Sch.3 required that, for B to have treatment in the UK, written consent had to be obtained from the donor or the couple must be treated together so that consent could be inferred from their conduct. B contended that, as she and her husband were trying to start a family when he died, there was a joint enterprise from which his consent could be inferred. In the alternative, B argued that H should have exercised its discretion under s.24 of the Act to enable the sperm to be exported to a country where written consent to treatment was not required. B also relied upon the freedom of an individual to obtain medical treatment in another Member State under EC law as authorising export of any resources required to have treatment in another Member State.

Held, dismissing the application, that (1) B and her husband had not actually started treatment together before he died as, being unconscious, he was not involved in the decision to take the sperm, which was in fact a unilateral decision by his wife. As such, consent could not be inferred from conduct and H had no discretion to derogate from the requirement of written consent; (2) H had acted within its discretion in refusing to allow the sperm to be exported as it had followed written guidelines stating that sperm could not be exported for a purpose that would be unlawful in the UK and, in any case, the donor's express consent to export would be required and (3) EC provisions could not override national law where public policy matters were in issue and it was clear that the intention of the 1990 Act was that written consent be obtained for storage and use of sperm.

**Judge:** Sir Stephen Brown (President)

**Counsel:** For B: Lord Lester of Herne Hill Q.C. and Michael Fordham. . For HF: David Pannick Q.C. and Dinah Rose.

**Solicitor:** For B: Leigh Day & Co. . For HF: Morgan Bruce (Cardiff).

## Appellate History & Status

### Queen's Bench Division

**R. v Human Fertilisation and Embryology Authority Ex p. Blood**  
[\[1996\] 3 W.L.R. 1176](#); [\[1996\] 3 C.M.L.R. 921](#); [\[1997\] 1 F.C.R. 170](#); [\(1996\) 93\(40\) L.S.G. 25](#); [\(1996\) 146 N.L.J. 1542](#); [\(1996\) 140 S.J.L.B. 227](#); [Times, October 18, 1996](#); [Independent, October 23, 1996](#)

Reversed

### Court of Appeal (Civil Division)

**R. v Human Fertilisation and Embryology Authority Ex p. Blood**  
[\[1999\] Fam. 151](#); [\[1997\] 2 W.L.R. 806](#); [\[1997\] 2 All E.R. 687](#); [\[1997\] 2 C.M.L.R. 591](#); [\[1997\] Eu. L.R. 370](#); [\[1997\] 2 F.L.R. 742](#); [\[1997\] 2 F.C.R. 501](#); [\(1997\) 35 B.M.L.R. 1](#); [\[1997\] C.O.D. 261](#); [\[1997\] Fam. Law 401](#); [\(1997\) 147 N.L.J. 253](#); [Times, February 7, 1997](#); [Independent, February 11, 1997](#)

## All Cases Cited

### B (Minors) (Parentage), Re

[\[1996\] 2 F.L.R. 15](#); [\[1996\] 3 F.C.R. 697](#); [\[1996\] Fam. Law 536](#); Fam Div; 1996-02-15

### Q (A Minor) (Parental Order), Re

[\[1996\] 1 F.L.R. 369](#); [\[1996\] 2 F.C.R. 345](#); [\[1996\] Fam. Law 206](#); Fam Div; 1995-11-23

### R. v Chief Constable of Sussex Ex p. International Trader's Ferry Ltd

[\[1996\] Q.B. 197](#); [\[1995\] 3 W.L.R. 802](#); [\[1995\] 4 All E.R. 364](#); [\[1995\] 3 C.M.L.R. 485](#); [\[1995\] C.O.D. 401](#); [\(1995\) 145 N.L.J. 1401](#); [Times, July 31, 1995](#); [Independent, July 28, 1995](#); QBD; 1995-07-26

### TV10 SA v Commissariaat Voor de Media (C-23/93)

[\[1994\] E.C.R. I-4795](#); [\[1995\] 3 C.M.L.R. 284](#); [\[1995\] E.M.L.R. 53](#); ECJ (5th Chamber); 1994-10-05

### Customs and Excise Commissioners v Schindler (C-275/92)

[\[1994\] Q.B. 610](#); [\[1994\] 3 W.L.R. 103](#); [\[1994\] 2 All E.R. 193](#); [\[1994\] E.C.R. I-1039](#); [\[1995\] 1 C.M.L.R. 4](#); [Times, March 30, 1994](#); [Financial Times, March 29, 1994](#); ECJ; 1994-03-24

### R. v Secretary of State for Employment Ex p. Equal Opportunities Commission

[\[1995\] 1 A.C. 1](#); [\[1994\] 2 W.L.R. 409](#); [\[1994\] 1 All E.R. 910](#); [\[1995\] 1 C.M.L.R. 391](#); [\[1994\] I.C.R. 317](#); [\[1994\] I.R.L.R. 176](#); [92 L.G.R. 360](#); [\[1994\] C.O.D. 301](#); [\(1994\) 91\(18\) L.S.G. 43](#); [\(1994\) 144 N.L.J. 358](#); [\(1994\) 138 S.J.L.B. 84](#); [Times, March 4, 1994](#); [Independent, March 9, 1994](#); [Guardian, March 7, 1994](#); HL; 1994-03-03

### Pepper (Inspector of Taxes) v Hart

[\[1993\] A.C. 593](#); [\[1992\] 3 W.L.R. 1032](#); [\[1993\] 1 All E.R. 42](#); [\[1992\]](#)

[S.T.C. 898; \[1993\] I.C.R. 291; \[1993\] I.R.L.R. 33; \[1993\] R.V.R. 127; \(1993\) 143 N.L.J. 17; \[1992\] N.P.C. 154; Times, November 30, 1992; Independent, November 26, 1992; HL; 1992-11-26](#)

**Open Door Counselling Ltd v Ireland (A/246)**

[\(1993\) 15 E.H.R.R. 244; Times, November 5, 1992; Independent, November 3, 1992; Guardian, November 3, 1992; ECHR; 1992-10-29](#)

**R. v Immigration Appeal Tribunal Ex p. Secretary of State for the Home Department (C370/90)**

[\[1992\] 3 All E.R. 798; \[1992\] E.C.R. I-4265; \[1992\] 3 C.M.L.R. 358; \[1993\] 1 F.L.R. 798; \[1992\] Imm. A.R. 565; \[1993\] Fam. Law 294; Times, August 31, 1992; Independent, July 17, 1992; Guardian, July 15, 1992; ECJ; 1992-07-07](#)

**Society for the Protection of Unborn Children (Ireland) Ltd (SPUC) v Grogan (C159/90)**

[\[1991\] E.C.R. I-4685; \[1991\] 3 C.M.L.R. 849; Times, October 7, 1991; Independent, October 15, 1991; Guardian, October 9, 1991; ECJ; 1991-10-04](#)

**Luisi v Ministero del Tesoro (286/82)**

[\[1984\] E.C.R. 377; \[1985\] 3 C.M.L.R. 52; ECJ; 1984-01-31](#)

**All Cases Citing**

**Mentioned by**

R (A Child) (IVF: Paternity of Child), Re

[\[2003\] EWCA Civ 182; \[2003\] Fam. 129; \[2003\] 2 W.L.R. 1485; \[2003\] 2 All E.R. 131; \[2003\] 1 F.L.R. 1183; \[2003\] 1 F.C.R. 481; \(2003\) 71 B.M.L.R. 157; \[2003\] Fam. Law 394; \(2003\) 100\(13\) L.S.G. 27; \(2003\) 153 N.L.J. 317; Times, February 20, 2003; Independent, February 25, 2003; CA \(Civ Div\); 2003-02-19](#)

**Mentioned by**

U v W (Attorney General Intervening) (No.2)

[\[1998\] Fam. 29; \[1997\] 3 W.L.R. 739; \[1997\] 2 C.M.L.R. 431; \[1997\] Eu. L.R. 350; \[1997\] 2 F.L.R. 282; \[1998\] 1 F.C.R. 526; \(1997\) 38 B.M.L.R. 54; \(1997\) 141 S.J.L.B. 57; Times, March 4, 1997; Independent, April 14, 1997; Fam Div; 1997-02-19](#)

**Significant Legislation Cited**

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.24](#)

Human Fertilisation and Embryology Act 1990 Sch.3

**Legislation Cited**

[Children Act 1989 \(c.41\)](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.1](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.12](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.23](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.24](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.24\(4\)](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.28\(6\)](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.28\(6\)\(b\)](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.4](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.4\(1\)](#)

[Human Fertilisation and Embryology Act 1990 \(c.37\) s.5](#)

Human Fertilisation and Embryology Act 1990 Sch.3

[Surrogacy Arrangements Act 1985 \(c.49\)](#)

## Journal Articles

### **Fragmenting fatherhood: the regulation of reproductive technologies.**

Assisted reproduction; Fathers; Parental rights.

[M.L.R. 2005, 68\(4\), 523-553](#)

### **Free movement of services: medical treatment.**

Artificial insemination; Consent; EC law; Freedom to provide services; Medical treatment.

[Euro. L.M. 1997, 5\(1\), 4-6](#)

### **The wife, the donor husband, fertilisation and the law.**

Artificial insemination; Consent; EC law; Freedom to provide services; Medical treatment.

[P.C.L.B. 1997, 10\(3\), 31-33](#)

### **Human fertilisation**

Artificial insemination; Consent; EC law; Freedom to provide services; Medical treatment; Medical treatment.

[P.L. 1997, Spr, 184.](#)

### **Human Fertilisation and Embryology Act 1990.**

Artificial insemination; Consent; Discretion.

[F.L.T. 1996, 5\(11\), 1](#)

### **Ex parte Blood.**

Artificial insemination; Consent; Discretion; Medical treatment.

[Fam. Law 1996, 26\(Dec\), 772-773](#)

### **Medical treatment.**

Artificial insemination; Consent; EC law; Freedom to provide services; Medical treatment.

[Fam. Law 1996, 26\(Dec\), 785-786](#)

### **Human Fertilisation and Embryology Act 1990.**

Artificial insemination; Consent; Discretion.

[Health Law 1996, Oct, 11-12](#)

### **High Court refuses permission to use dead husband's sperm.**

Artificial insemination; Consent; Discretion.

[Med. L. Mon. 1996, 3\(9\), 1-3](#)

### **Widow appeals over denial of right to husband's sperm.**

Artificial insemination; Consent; Discretion; Medical treatment.

[Med. Leg. J. 1996, 64\(4\), 195-197](#)

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