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QUESTION:

1. What are the grounds for a lawful termination of pregnancy?
2. Does the potential father have any legal rights in this decision?

Answer to Question A

The grounds on which a pregnancy can be legally terminated are stated in Section 37 of the Human Fertilization and Embryology Act, (HFEA) 1990 which states that a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if two medical practitioners are of the opinion, formed in good faith and they include:

* That the pregnancy has not exceeded 20 weeks and that the continuance of the pregnancy would invoke risk greater than if the pregnancy were terminated
* That the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman
* That the continuance of the pregnancy would invoke risk to the life of the pregnant woman greater than if the pregnancy were terminated
* That there is a substantial risk that if the child were born it would suffer from physical or mental abnormalities as to be seriously handicapped.

Answer to Question B

In my opinion I do not believe that the potential father has any legal right due to the legal position in almost all jurisdictions which states that the father consent is not legally required in the determination of whether or not the pregnant woman should terminate the unborn child. A good illustration of this statement mentioned above is seen in *Paton V Trustees of British Pregnancy Advising Services*[[1]](#footnote-2), where the court stated that the father cannot prevent a mother from seeking abortion. Also in *Planned Parenthood V Danforth*[[2]](#footnote-3), the court stated that the husband’s refusal to consent would in effect veto a woman’s choice to terminate a pregnancy. While both the prospective father and pregnant woman have an interest in the decision, when the two disagree, only one partner’s position can prevail. And the court is of the opinion since the woman actually carries the pregnancy; the balance weighs in her favour preventing the husband from going against her choice.

The legal reason for this conclusion is based on the fact that the foetus has no legal right until it is born because it constitutes an integral part of its mother.[[3]](#footnote-4) Secondly, it is based on the woman’s right to privacy in her medical decisions and the very fact that the mother is more directly affected by the pregnancy.[[4]](#footnote-5)

In conclusion, the no father right principle has been stretched out to include the decision that he can not in any way act on behalf of the unborn to enforce its rights.

REFERENCE

1. Festus O. Emiri, Medical Law and Ethics in Nigeria(Malthouse Press Ltd, Lagos 2012).
2. Find Law, ‘Father’s Rights and Abortion’ [2018] <<https://family.findlaw.com/paternity/fathers-rights-and-abortion.html>>

1. [1979] QB 276. [↑](#footnote-ref-2)
2. [1976] USSC 1151 [↑](#footnote-ref-3)
3. Festus O. Emiri, *Medical Law and Ethics in Nigeria* (Malthouse Press Ltd, Lagos 2012). [↑](#footnote-ref-4)
4. Find Law, ‘Father’s Rights and Abortion’ [2018] <<https://family.findlaw.com/paternity/fathers-rights-and-abortion.html>> accessed 18 April 2020 [↑](#footnote-ref-5)