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QUESTION:

Termination of pregnancy:

A 30-years-old lawyer, Charity, is happily married and has a good income. She has just discovered she is pregnant. She does want children at some point but has also been nominated for promotion at work. She knows she would not get the promotion if she told her boss she was pregnant.

She decides that at this time in her life, the promotion is more important to her than having a baby. She consults her general practitioner (GP) a few weeks later, having finally decided she will like to have an abortion. She asks the GP whether she has the right to an abortion.

1. What are the ground for a lawful termination of pregnancy?
2. Does the potential father has any legal rights on this decision?

The issues in this case are:

1. On what grounds Mrs. Charity can lawfully terminate her pregnancy
2. Whether her husband, the potential father, has any legal rights on the decision

**Introduction**

What is Abortion?

There are various definition of Abortion. Scholars have attempted to define abortion in their own different perspectives. Some of these various definitions will be stated below

According to Fagothey abortion is the expulsion of a non-viable foetus that is of one too young to live outside the womb.[[1]](#footnote-1) In the opinion of Callaham, it is the “ending of a pregnancy before the embryo or foetus can live outside the female body.”[[2]](#footnote-2) For Mathews, it is “the termination of pregnancy before independent viability of the foetus develops.”[[3]](#footnote-3)

The fight for an Abortion Law which will prevail is between the pro-choice and pro-life advocates. Areas of conflict include but not limited to: when does life begin? Which rights attach to man as moral subject? What is the criterion of personhood? Are the life and health of the mother of greater value to that of the foetus? What is the effect of the quality of fetal life and its viability on its right to life? Could abortion be justified by global population pressure?

Pro-choice (pro-abortion) advocates variously aver that life begins at viability, at birth, or until there is capacity for social interaction.[[4]](#footnote-4) A variant of the argument is that the “human being does not begin to exist until the embryo is fully implanted in the uterus…”[[5]](#footnote-5) In ***Paton v. British Pregnancy Advisory Service Trustees,***[[6]](#footnote-6) the court affirmed that “the fetus cannot, in English law have a right of its own at least until it is born and has separate existence from its mother.” This decision of the court in Paton’s case was brought before the European Commission on Human Rights. The Commission considered the decision vis-à-vis the provision of Article 2 of the European Commission of Human Rights which states that “Everyone’s” right to life shall be protected by law.” At the end of their considerations they felt that the term “Everyone” applied only to post-natal and that a pre-natal construction of the same will fail.[[7]](#footnote-7)

**Grounds for lawful termination of Pregnancy**

Generally, abortion is a crime in Nigeria. According to the Criminal Code Act,[[8]](#footnote-8) abortion is illegal. There is an exception to this law as to which abortion becomes legal which brings the grounds for a lawful termination of pregnancy;

Permitted in very limited circumstances such as:

* Where the continued pregnancy would endanger the life of the woman;[[9]](#footnote-9)
* When the child when born will be seriously handicapped
* Where the pregnancy is as a result of rape or incest
* Where a pregnancy is terminated by a registered medical practitioner
* When two registered medical practitioners are of the opinion formed in good faith:

1. **That the pregnancy has not exceeded its 20th week and**

* The continuing of pregnancy would invoke risk greater than if the pregnancy were terminated

1. **That the termination of pregnancy:**

* It is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman

1. **That the continuance of the pregnancy**

* Will involve risk to the life of the pregnant woman greater than if the pregnancy were terminated

1. **The risk is a substantial risk that if the child were born**

* It would suffer from physical abnormalities as to be seriously handicapped
* To those circumstances where the foetus or the unborn child is not capable of being born alive
* A person shall be liable of the crime of child destruction when an abortion involves destruction before birth of a child capable of being born alive
* Evidence that a woman had being pregnant for 28weeks or more raises a presumption that her child id capable of being born alive.[[10]](#footnote-10)

**Does the potential father have any legal right on this decision?**

The abortion issue is largely devoted to dealing with the rights of the foetus and the mother. The rights and concerns of the father are rarely discussed. The most common case concerning fathers and abortion is when the father wants the mother to have an abortion and she doesn’t.

Should male’s pregnant partner wish to seek an abortion, the male’s consent is not required by law. A woman may make the choice to terminate a pregnancy, even if the alleged father objects to the procedure. The reason behind this is twofold, based on the woman’s right to medical privacy and the part of female body being more directly affected by the pregnancy. During the Supreme Court case of *Planned Parenthood vs. Danforth*,[[11]](#footnote-11) the court ruled that requiring a father’s consent to having an abortion was unconstitutional since a male’s refusal would essentially veto the woman’s right to choose.

**Conclusion**

The protection and/or preservation of the mother’s life or health had been a major argument in the hands of the advocates of a legal abortion. Mother’s life and health are altogether referred to as maternal indications. These indications can be purely medical, physical, emotional and/or psychological. It may even relate to the mothers age. Thus, it then appears that the health of the mother including her psychosocial convenience is to be sufficient reasons for a legal abortion. The major assumption behind this position is that the foetus is a part of the maternal body and so abortion should be available to any woman without “insolent inquisitions, or ruinous financial charges….”[[12]](#footnote-12) Hence, The English Abortion Act provides that a person shall not be guilty of abortion where it is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman or where the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated.[[13]](#footnote-13) It gradually became a legal position that psychological inconvenience of the mother makes an abortion lawful. This was, for the first time in the English Law established in ***R. v. Bourne***.[[14]](#footnote-14) There it was declared that ‘preserving the life of the mother extended beyond acts to save her physical existence to ensuring her psychological balance.[[15]](#footnote-15) What this requires is that whenever the mother feels that the child is not prepared for life like in cases of rape, incest etc.; she may wish to assume responsibility for it or may not wish to. “And if assuming responsibility for it may require large sacrifices then (she) may refuse.”[[16]](#footnote-16)

1. A. Fagoth\ey, Right and Reason Collumbus, c.u. Moshby Co., 1959, p. 241. [↑](#footnote-ref-1)
2. D. Callaham, “Abortion” World Book Encyclopedia Chicago, Child-craft International inc., 1979, p. 149. [↑](#footnote-ref-2)
3. H.M. Leonard, “Abortion” Encyclopedia Britanica New York: William Benton Pub., 1972, p. 42. [↑](#footnote-ref-3)
4. Scientists for life, eds., The Positions of Modern Science on the Beginning of Human Life and Why A Human Embryo is Not A Parasite Virginia, Sunlife Grestone Pub., 1984, p. 5. [↑](#footnote-ref-4)
5. McSweeny, Sex and Conception, Ibadan, African University Press, 1979, p. 15 [↑](#footnote-ref-5)
6. (1979) QB 276; (1978) 2 ALLER 987 (QBD) [↑](#footnote-ref-6)
7. ***R v. Collins*** and others ex parte S (1998) The Times 8 May. [↑](#footnote-ref-7)
8. Criminal Code Act, ss. 228,229,230. [↑](#footnote-ref-8)
9. Ibid (ss. 297). [↑](#footnote-ref-9)
10. Presumption Act (1929) ss 1(1) and (2). [↑](#footnote-ref-10)
11. 428 U.S, 52 (1976). [↑](#footnote-ref-11)
12. B. Stella., “Review of Abortion problem”, Journal of American Medical Association, 128, 1945, p. 472; see also D. Callaham, Abortion Law Choice and Morality, in World Book Encyclopedia, Chicago, Child-Craft International Inc., 1979, p. 160. [↑](#footnote-ref-12)
13. Section 1, The English Abortion Act, 1967. [↑](#footnote-ref-13)
14. (1937) 1 KB 687. [↑](#footnote-ref-14)
15. A.S. Ogwuche, ed., Compendium of Medical Law, Lagos, Espee Printing & Advertising, 2006, p. 99. [↑](#footnote-ref-15)
16. J.J. Thomas, “A defence of Abortion” in Philosophy of Public Affairs, cited by A. Danagan, The Theory of Morality, Chicago, University of Chicago press, 1977, p. 169. [↑](#footnote-ref-16)