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COURSE: HEALTH LAW II (LPB 514)

QUESTION A:

As a general rule, abortion is a crime in Nigeria by the virtue of the Criminal Cod Act S. 228, 229, 230. It is illegal. However, there are certain instances whereby abortion can be considered lawful or instances where the law would permit abortion. These instances include:

* Where the continued pregnancy would endanger the life of the woman(Criminal Code Act s. 297)
* Where the child when born would be seriously handicapped
* Where the pregnancy is a result of rape or incest
* When 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
2. That the termination of pregnancy is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman
3. That the continuance of the pregnancy would involve risk to the life of the pregnant woman greater than if pregnancy were terminated
4. 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

From the above, charity cannot be permitted to abort her baby under the Nigerian law. This is because, as stated above, abortion is illegal in Nigeria and charity’s case does not fall within any of the exceptions listed above.

QUESTION B:

In jurisdictions where abortion is permitted, the question arises as to whether potential fathers have a legal right in an abortion decision. Most of these jurisdictions have made rulings that have proved that fathers do not have legal protection and rights in the abortion process.

One of the important cases on father’s rights and abortion is the case of *Conn v Conn[[1]](#footnote-2).* The case took place in November 1988 where the American Supreme Court affirmed a decision made by the Indiana Supreme Court. The decision made rejected the man’s effort to stop his estranged wife from carrying out an abortion. In this case, the court failed to grant a certiorari which would have led to consideration of the extent to which a father has an influence on the mother’s decision on carrying out abortion. Another important case is the *Planned Parenthood of Central Missouri v Danforth*.[[2]](#footnote-3) In this case, it was decided that the man could not exercise a unilateral veto on the wife decision to have an abortion.

The right of a woman to have an abortion is protected by the American constitution. This is based on the case of *Roe v Wade[[3]](#footnote-4)* where the Supreme Court argued that abortion is recognized as a fundamental right by the American constitution. In this case, the court did not address the issue of whether the consent of the father is required in abortion. This was later clarified in the *Danforth* case where the court argued that states are not required by the constitution to ask for the consent of the spouse.

In conclusion, with respect to jurisdictions that permit abortions, men have no say on the matters of abortion. This is based on the *Roe v. Wade[[4]](#footnote-5)* ruling which had an impact on how abortion is carried out by the states. Women are given a privacy provision based on the constitution which allows them to make own decisions when it comes to abortion. At the moment, women have been given rights to decide when to have abortions and they do not have to notify their partners. Laws which provide unnecessary restrictions and burden to women during an abortion have been struck down. The father has been left out in all abortion debates and laws. Prospective father has no legal rights to be notified on the impending abortion.

REFERENCES

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Black Blacksmith, Father’s say in Abortion, 2019

1. [1988] 526 N. E 2d [↑](#footnote-ref-2)
2. [1976] 428 U. S. 52 [↑](#footnote-ref-3)
3. [1973] 410 U.S. 113 [↑](#footnote-ref-4)
4. Ibid. [↑](#footnote-ref-5)