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**MATRIC NUMBER: 15/LAW01/203**

**COURSE: HEALTH LAW**

**COURSE CODE:**

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 just 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 that having a baby. She consults her general practitioner (GP) a few weeks later, having finally decided that she would like to have an abortion. She asks the GP about whether she has a right to an abortion.

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

INTRODUCTION

There is a great deal of public debate regarding abortion. The argument is between pro-lifers and pro-choice. Pro-life are of the view that fetuses are “pre-born children”, and consider that pregnant women have moral obligations to them. Some are of the view that abortions should be totally prohibited and illegal regardless is the circumstance while some believe that abortions should be illegal but allowed under certain circumstances for instance where the life of the mother is in danger or the pregnancy is as a result of rape or incest while the pro-choice faction believe that a fetus is not a human yet and it is the right of the woman to choose to keep or terminate the pregnancy.

An abortion, simply put, is the termination of a pregnancy. It is the removal of the fetus from the womb of the woman. In medicine, an abortion is a loss of pregnancy due to the premature exit of the products of conception (the fetus, fetal membranes, and placenta) from the uterus due to any cause. An abortion may occur spontaneously (termed a miscarriage) or may be medically induced. An abortion could be induced through artificial means[[1]](#footnote-1)

In Nigeria, abortion is a crime under the Nigerian Criminal Code Act in Section (228, 229, 230) it is illegal to commit an abortion in Nigeria. Abortion carries a very heavy jail sentence in Nigeria, from three to fourteen years.

Under the Nigerian criminal code any person who forces a woman whether pregnant or not to take any poison to procure a miscarriage is guilty of a felony and liable to fourteen years[[2]](#footnote-2) imprisonment, any woman who does the same to herself will be liable to seven years[[3]](#footnote-3) imprisonment. However, the police rarely prosecute women for this because her evidence will be required to convict the person who procured the abortion.[[4]](#footnote-4) It is also a crime to supply and procure anything knowing that it is intended to be used to unlawfully terminate a pregnancy such a person will be liable to three years imprisonment.[[5]](#footnote-5)

There are certain grounds where a woman can legally have an abortion in Nigeria. Termination of pregnancy will be permitted in certain circumstances such include:

1. **Where the continued pregnancy will endanger the life of the woman:**

Some complications can endanger the life of a pregnant woman during the term of her pregnancy. It could be a health complication worsened by the pregnancy or an ailment during the pregnancy for example, pre-eclampsia (high blood pressure)[[6]](#footnote-6). Section 297 Criminal Code Act states that a person is not liable if he carries out an abortion with reasonable care and skill to preserve the life of the mother with regard to the patients state at the time and the circumstance of the case.

1. **Where the child when born would be seriously handicapped**:

This is also commonly known as abortion of defective fetuses. Mothers of children with cystic fibrosis, cerebral palsy, myelodysplasia sometimes choose to abort the fetus to reduce complications that may arise when the child is born.[[7]](#footnote-7) This type of abortion raises ethical questions among advocates for the rights of disabled people who think it is wrong to abort a child because of a disability.

1. **Where the pregnancy is as a result of rape or incest:**

In some cases, a woman gets pregnant as a result of rape or incest and may want to terminate such pregnancy this is sometimes because of the lasting psychological effects that come with being a victim of rape or the age of the victims which is often very young girls. Women are allowed to get abortion in such situations.[[8]](#footnote-8)

In *Rex v. Bourne*[[9]](#footnote-9) a 15 year old girl was pregnant as a result of rape, a surgeon in hospital in London performed an abortion and was arrested and charged under Section 58 of Offences Against Persons Act 1861. It was argued that the surgeon did not carry out the operation with good faith or to preserve the life of the patient. He was however found not guilty.

1. **When a pregnancy is terminated by a registered medical practitioner**: Only a licensed medical practitioner authorized to carry out an abortion can perform abortion procedures legally. This is to prevent abuse and risks that are associated with illegal abortions. A medical practitioner is expected to act with reasonable care and skill when performing any abortion procedure so as protect the life of the woman
2. When two medical practitioners are of the opinion of that the pregnancy has not exceeded its 20th week and continuing the pregnancy would invoke greater risk on the mother than if it is continued.

For Ms. Charity to carry out an abortion she must prove that the child would endanger her health or will be born handicapped or was as a result of rape. In the scenario above the pregnancy does not pose a threat to her life or fall under any category permitted by the law in which an abortion will be legal.

Although Ms. Charity should have the right to determine if she should have child or not under Nigerian laws she cannot legally procure an abortion. If she does it will be illegal and she could be liable to a felony and face up to 7 years imprisonment.

2. The rights of the father: In Nigeria there is no particular law stating that father of an unborn child has the to determine if the pregnancy will be terminated or not. The situation may be different in practice as a husband or putative father of a child may influence the decision. The choice to carry or terminate a pregnancy rests on the woman. In other jurisdictions however the case may differ, some jurisdictions recognise spousal consent in abortion cases while others emphasize on maternal rights.

In the landmark American case of *Roe vs Wade*,[[10]](#footnote-10)the American Supreme Court ruled that State banned abortions was unconstitutional. This case established the rights of women to have abortion without state interference as abortion is a personal matter protected from undue interference granted by her constitutional right to privacy. This case also eliminated the right on anyone other than the mother of the child to determine is the child should be kept or not.

In Coe v. Gerstein[[11]](#footnote-11) and Jones v Smith[[12]](#footnote-12), in both cases the fathers sought to prevent abortions and lost since the court assumed an almost absolute right to privacy of the woman.

It argued that “granting a man the power to force someone to carry and care for his child despite her unwillingness is to use her life and body for that purpose. Would raise the spectre of the legally enforced physical and psychological domination of one group in society by another”.[[13]](#footnote-13)

CONCLUSION

An abortion is the termination of a pregnancy or the removal of a fetus from the body of a woman. There is debate about the legality of abortions in different countries. In Nigeria abortions are illegal except where the pregnancy puts the life of the mother in danger, where the child will be born handicapped or the pregnancy is a result of rape or incest. Also the father of the child does not have a right to determine an abortion or not because it dismisses the right to privacy of a woman and takes away her self-autonomy. Abortions should be legal in Nigeria regardless of the situation.

1. “Medical Definition of Abortion” William. C Shiel MedicineNet [↑](#footnote-ref-1)
2. Section 288. [↑](#footnote-ref-2)
3. Section 229. [↑](#footnote-ref-3)
4. Isabella Okagbue, ’Pregnancy Termination and the Law in Nigeria’, (1990) (21) (4) *Studies in Family Planning*, 197 <<https://www.jstor.org/stable/1966614>> accessed 18 April 2020. [↑](#footnote-ref-4)
5. Section 230. [↑](#footnote-ref-5)
6. “Why Do So Many Women Still Die in Pregnancy or Childbirth”, World Health Organisation <https://www.who.int/news-room/q-a/detail/why-do-so-many-women-still-die-in-pregnancy-or-childbirth> accessed 18th April 2020 [↑](#footnote-ref-6)
7. Naomi Breslau, “Abortion of Defective Fetuses: Attitudes of Mothers of Congenitally Impaired Children” (1987) (49) (2), *Journal of Marriage and Family*, 839 <https://www.jstor.org/stable/351977> accessed 18th April 2020. [↑](#footnote-ref-7)
8. Glenn Cohen, “Are All Abortions Equal? Should There Be Exceptions to The Criminalization of Abortion for Rape and Incest?” (2015) (43) (1) *Sage Journals*, 87 <https://doi.org/10.1111/jlme.12198> accessed 18 April 2020. [↑](#footnote-ref-8)
9. (1938) 3 All E.R. 615 [↑](#footnote-ref-9)
10. (1973) 410 U.S 113 [↑](#footnote-ref-10)
11. (1974) 376 F. Supp. 695 [↑](#footnote-ref-11)
12. (1973) 278 So. 2d 339 [↑](#footnote-ref-12)
13. Howard Shrerain, “The Rights of the Father” (1975) (50) (3) *Norte Dame Law Review*, 483, <https://scholarship.law.nd.edu/ndlr/vol50/iss3/5> accessed on 18th April 2020. [↑](#footnote-ref-13)