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**COURSE: HEALTH LAW**

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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 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 than 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.

Questions

a. What are the grounds for a lawful termination of pregnancy?

b. Does the potential father have any legal rights in this decision?

**ANSWER**

The legal issues in this case are:

1. Whether there are grounds for lawful termination of pregnancy.
2. Whether the potential father has any legal rights in the decision of abortion.

Abortion involves the conflict of many rights and social issues. The definition differs from state to state and it is a controversial issue upon which different schools of thoughts exist. In addition, the interference of public power from the government triggers a confrontation between public and private interest.[[1]](#footnote-1)

Etymologically speaking, the term abortion is derived from the Latin infinitive “*aboriri”*, which means “perish”, but literally translated as the loss of foetal life. In ethical discourse, abortion is understood as the deliberate choice to terminate a pregnancy through an action which either directly destroys the foetus or causes its expulsion from the uterus before viability.[[2]](#footnote-2)According to World Health Organization (WHO)[[3]](#footnote-3), abortion is defined ‘as pregnancy termination prior to 20 weeks gestation or a foetus born weighing less than 500 g’. According to Segen’s Medical Dictionary, abortion is defined as the premature expulsion of the products of conception from the uterus, of the embryo or a nonviable foetus.

It is pertinent to note that the word ‘miscarriage’ is very synonymous to abortion in its popular sense, but it is not defined in the Criminal code Act of Nigeria.[[4]](#footnote-4) Abortion could be in different kinds:

1. **Induced abortion**: This is also called *abortus provocatus.* [[5]](#footnote-5) For Niedermeyer, it is ‘abortion induced by external action’.[[6]](#footnote-6) This kind of abortion amounts to criminal abortion as it is willfully and by artificial means such as: Surgeries, medications or pills, drinking of a substance to terminate the pregnancy and so on. According to Higgins, an abortion is “induced when it is the result of intentional interference with the foetus. [[7]](#footnote-7)
2. **Spontaneous abortion or non-induced abortion:** Such an abortion is neither intended nor is it aided in any way at all. Unless due to culpable neglect, this would not be a human act and therefore would not attract moral sanctions. This type of abortion happens naturally.
3. **Sterilization**: This is a medical procedure by registered medical personnel to make a person incapable of having children. It is the termination by medical procedure of the ability to produce offspring.
4. **Therapeutic sterilization**: It is an intentional removal of the foetus from the uterus owing to some medical indications. Therapeutic sterilization is criminal, if it is procured outside the stipulations of the law-legal indications. It is however legal when it is carried out within confines of the law. This type of abortion concerns not only the mother’s health but also the feotus health. In most cases, it is undertaken to save the mother’s life.

It is important to note that abortion is a very controversial issue all around the world. Majorly, the stances on abortion are pro-abortion, anti-abortion and the middle ground that abortion is acceptable in some circumstances. In Nigeria, abortion is considered as illegal and actionable under criminal law as a crime under S228, s229 and s230 of the Criminal Code[[8]](#footnote-8). The Constitution of the Federal Republic of Nigeria is pro-life. This is because most of its provisions are life sensitive but more because in its section 36(3) the right to life is pre-eminent.

S228[[9]](#footnote-9) deals with attempt to procure abortion. It states that any person who, with intent to procure miscarriage of a woman whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a felony, and is liable to imprisonment for fourteen years.

Section 229[[10]](#footnote-10) deals with attempt to procure one’s miscarriage. It states that any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, is guilty of a felony, and is liable to imprisonment for seven years.

Section 230[[11]](#footnote-11) deals with person who supply drugs or instruments to procure abortion. It states that any person who unlawfully supplies to or procures for any person any thing whatever, knowing that it is intended to he unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a felony, and is liable to imprisonment for three years.

The Penal Code operates in northern states, with abortion laws contained in sections 232, 233, and 234. The Penal Code's punishments include imprisonment, fine, or both[[12]](#footnote-12)

There are however exceptions to the illegality of abortion in Nigeria. The Courts following the decision in the English case of ***Rex v. Bourne[[13]](#footnote-13)***have variously held that a lawful abortion is one procured for the purpose of saving the life of the mother. The exceptions shall be discussed below:

1. Section 297 of the Criminal Code Act[[14]](#footnote-14) strengthens the fact that the law of Abortion in Nigeria makes exception for purposes of preserving the life of the mother. There, it is stated that a person is not criminally responsible for performing in good faith and with reasonable care a surgical operation upon “an unborn child for the preservation of the mother’s life’. Therefore, Where the continued pregnancy would endanger the life of a woman, abortion can be carried out.
2. Where the pregnancy is a result of rape or incest.
3. Where the child when born would be seriously handicapped.
4. when a pregnancy is terminated by a registered practitioner if two registered practitioners are of the opinion formed in good faith:

* that the continuance of the pregnancy would involve risk to life of a pregnant woman or of injury to the physical or mental health of the pregnant woman or any existing children of the family, greater than if the pregnancy was terminated.
* that there is substantial risk that if the child was born it would suffer such physical or mental abnormalities as to be seriously handicapped.
* That the continuing of the pregnancy would invoke risk greater than if the pregnancy were terminated and it has not exceeded 20 weeks.

1. When a pregnancy is terminated by a registered medical practitioner.

In these exceptions listed above, a person shall not be guilty of an offence under the law relating to abortion.

In the case study given above, the first legal issue as to whether there are grounds for lawful termination of pregnancy for Charity shall be discussed. The exceptions to the illegality of abortion in Nigeria has been discussed by this writer and from the case study, it has been observed that charity just got nominated for a promotion at work and also found out she is pregnant. It has also been observed that the only reason she wants an abortion is because she wants to get promoted at work and having a baby would cancel such plans. As seen from the case study, the pregnancy is not endangering her life or the life of her child, there is no record that the child will suffer any abnormalities or that the abortion of the pregnancy would prevent a grave or permanent injury to her mental or physical health. Therefore, her situation does not fall under the lawful grounds for terminating her pregnancy. Termination of her pregnancy would therefore lead to a crime.

In the second case study as to whether the potential father has a legal right in her decision shall be discussed. In practically all jurisdictions, the legal position is that the potential father has no right whatsoever in the determination of whether or not a pregnant woman should have an abortion or not. In ***Paton v Trustees of British Pregnancy Advising Services[[15]](#footnote-15)****,* the court held that a father cannot prevent a mother (his wife) from seeking abortion. The place of the father might seem strange in traditional societies. The “no-father right” principle has been stretched to include the proposition that he cannot in any way act on behalf of the unborn child to enforce his rights. This is based on the premise that a foetus has no legal right until it is born. It constitutes an integral part of its mother.

Also, according to the European Commission of Human Rights, the reason for this principle is rooted in the fact that she is the one primarily concerned with the pregnancy, its contribution or termination. More so her right to private life is in issue. In the writer’s opinion, in discussing autonomy of will, the woman is the one vested with the autonomy of intention or decision and her bodily will because she is the one carrying the unborn child and bears most of the consequences of pregnancy.

In conclusion, abortion is regarded as a very controversial issue which has not one single standing or position yet. There are several stances on abortion which include pro-abortion, anti-abortion and the middle ground that abortion is acceptable in some circumstances. In Nigeria, abortion is considered as illegal and a crime according to s228- section 230 of the Criminal Code Act. There are however exceptions to the illegality of abortion in Nigeria in which a person shall not be guilty of an offence under the law relating to abortion.

**REFERENCES**

* Bongani Tshuma and Prof Clara Haruzivishe and Dr Shalote Chipamaunga, ‘Abortion: A Concept Analysis’ (2018) (7)(5*) IOSR Journal of Nursing and Health Science (IOSR-JNHS)*; 20
* Criminal Code Act, Laws of the Federation of Nigeria, 1990, cap. 77.
* Festus 0.E. ‘*Medical Law and Ethics in Nigeria’* (Malthouse Press limited, 2012)
* Quadri O.O, *‘Abortion and Abortion laws in Nigeria: who are we? where are we? where should we be? the search for a just law’* <<https://www.academia.edu/27956730/ABORTION_AND_ABORTION_LAWS_IN_NIGERIA_WHO_ARE_WE_WHERE_ARE_WE_WHERE_SHOULD_WE_BE_THE_SEARCH_FOR_A_JUST_LAW>> accessed 19 April 2020.
* World Health Organization*, ‘Abortion laws’* (1971) <<https://apps.who.int/iris/bitstream/handle/10665/41924/a53898_eng.pdf?sequence=1> >accessed 19 April 2020

1. Different government of the world which have legalized abortion always find a justification and the need for

   such. For example, china’s primary aim is to prevent over population while south Africa is for the exercise of the fundamental right of the people coupled with its political sovereignty. [↑](#footnote-ref-1)
2. P. Clarky, ‘Dictionary of ethics, theology and society’ (New York, 2011) [↑](#footnote-ref-2)
3. World Health Organization, ‘Abortion laws’ (1971) <<https://apps.who.int/iris/bitstream/handle/10665/41924/a53898_eng.pdf?sequence=1> >accessed 19 April 2020 [↑](#footnote-ref-3)
4. Criminal Code Act, <<http://lawsofnigeria.placng.org/laws/C38.pdf>> accessed 19 April 2020 [↑](#footnote-ref-4)
5. Induced abortion [↑](#footnote-ref-5)
6. A. Niedermeyer, ‘Compendium of Pastoral Medicine’, ( New York, Joseph F 1960); 211 [↑](#footnote-ref-6)
7. J.H, ‘*Man as Man’* (U.S.A, 1958) 70 [↑](#footnote-ref-7)
8. Criminal Code Act, Laws of the Federation of Nigeria, 1990, cap. 77. [↑](#footnote-ref-8)
9. Ibid [↑](#footnote-ref-9)
10. Ibid [↑](#footnote-ref-10)
11. Ibid [↑](#footnote-ref-11)
12. O. *Iyioha, ‘Comparative health law and policy: critical perspectives on Nigerian and global health law. Taylor and Francis (2015)* [↑](#footnote-ref-12)
13. *Rex V. Bourne* (1939) 1 KB 687 [↑](#footnote-ref-13)
14. Criminal Code Act, Laws of the Federation of Nigeria, 1990, cap. 77. [↑](#footnote-ref-14)
15. (1979) QB 276 [↑](#footnote-ref-15)