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 **ASSIGNMENT**

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

The legal issue of this scenario above is whether Mrs Charity who has just been given a promotion has legal rights to an abortion.

In order to give a definite answer to this legal issue, it is of utmost importance to define abortion. Abortion has many definitions that can differ from each other in significant ways. For the purpose of this assignment, Abortion is an artificially induced termination of a pregnancy for the purpose of destroying an embryo or fetus.[[1]](#footnote-1) It is the deliberate termination of a pregnancy, usually before the embryo or fetus is capable of independent life.[[2]](#footnote-2) In legal terminology, abortion denotes the intentional interruption of pregnancy by the removal of the embryo from the womb.[[3]](#footnote-3)

Abortion is illegal in Nigeria according to the provisions of s228, s229, 230 of the Criminal Code.[[4]](#footnote-4) Although Abortion is illegal in Nigeria, just like every general rule there is always an exception, therefore there are exceptions to Abortion. The exceptions are;

1. Where the continued pregnancy would endanger the life of the woman. This can see in s297 of the Criminal Code Act.
2. Where the child when born would be seriously handicapped.
3. Where the pregnancy is a result of rape or incest
4. When a pregnancy is terminated by a registered medical practitioner and when two registered medical practitioners are of the opinion formed in good faith that the pregnancy has not exceeded its 20th week and the continuance of such pregnancy would raise greater danger than if the pregnancy were terminated. As well that the termination of is necessary to prevent permanent injury to the pregnant woman, physically or mentally. In addition to, that there is a substantial risk that if the child were born, it would suffer from physical or mental abnormalities such as being handicapped. To those circumstances where the foetus or the unborn child is not capable of being born alive.

An example of where abortion was allowed is in the English case of *R v. Bourne[[5]](#footnote-5)*, which indicates that the preservation of the mother’s life should include safeguarding her physical and mental health. In *Pam-Tok v State[[6]](#footnote-6)* There, the appellant was convicted of causing miscarriage contrary to section 232 of the Penal Code.[[7]](#footnote-7)

In summary, It is only on these grounds provided above that abortion maybe permissible, otherwise abortion is illegal and anyone who attempts to procure an abortion is guilty of a felony and is liable to imprisonment for fourteen years according to s228 of the Criminal Code.

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

It is important to note that everyone has autonomy to make decisions that concerns their health. Procreative autonomy is a woman’s freedom to terminate a pregnancy. It is the control over one’s reproductive capabilities.

Every person also has the right to human dignity as provided for in the 1999 Constitution (as Amended)[[8]](#footnote-8). It provides that no person shall be subjected to torture or to inhuman or degrading treatment or held in slavery or servitude. People’s dignity also includes the right to bodily and psychological integrity, which includes the right to make decisions concerning reproduction. A woman’s ability to exercise her rights to control her body, to self-determination, and to health depends, in part, on her right to determine whether to carry a pregnancy to term.[[9]](#footnote-9) Spousal consent is not a legal requirement for abortion necessary to save a woman’s life, but it is commonly required by medical establishments in Nigeria.[[10]](#footnote-10) In Nigeria, it is the practice that doctors inform the putative father when an abortion is necessary in emergency situations.[[11]](#footnote-11) Also, while other jurisdictions recognize the bodily integrity of a woman and do not require the consent of the foetus’ father before an abortion, as was decided in the European Court of Justice in the case of *Paton v. United Kingdom*[[12]](#footnote-12)*.* In this case, a husband sought injunctive relief to restrain the defendants from terminating his estranged wife’s pregnancy. The court held that the husband has no legal right enforceable in law or in equity to stop his wife having this abortion or to stop the doctors from carrying out the abortion. Also in Kelly v Kelly[[13]](#footnote-13), a Scottish man sought an injunction to prevent his wife from having an abortion in 1997. A higher court however subsequently withdrew the injunction.

Consequently, the potential father has no legal right in the decision because it is the woman’s body and she has a legal right to make decisions concerning her body. A woman has the right to make decisions concerning reproduction and every competent adult has the right to decide whether to have a child or not. It of the writer’s view that the potential father has no legal right but it is only ethical and moral to inform the potential father of the decision.

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4. Cap C38 LFN 2004. [↑](#footnote-ref-4)
5. (1938) 3 All ER 615. [↑](#footnote-ref-5)
6. No. FCA/K78. [↑](#footnote-ref-6)
7. PC s232. [↑](#footnote-ref-7)
8. CFRN 1999 as amended (2011) CAP C23 LFN 2010. [↑](#footnote-ref-8)
9. Centre for Reproductive Rights, Safe and Legal Abortion is a Woman's Human Right, available at <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Safe%20and%20Legal%20Abortion%20is%20a%20Womans%20Human%20Right.pdf > accessed 18 April 2020. [↑](#footnote-ref-9)
10. Theresa Akumadu, Data on the Nigerian Chapter of the Anglophone Africa Report 9 (unpublished paper, on file with Center for Reproductive Law and Policy). [↑](#footnote-ref-10)
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