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**COURSE TITLE: HEALTH LAW II**

**COURSE CODE: LPB 514**

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**Question**

1. 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.

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

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

ANSWER’S

1. The legal issue for determination in the case scenario above is;

* If a promotion is good enough reason or allows her the right to procure an abortion.

It is from the above issue that it has become pertinent to discuss the grounds for a lawful termination of pregnancy. It is also important to note that use of the phrase “termination of pregnancy” translates to “abortion”.

Although abortion is not defined by the criminal or penal code, it can however be defined as the termination of a pregnancy after, accompanied by the death of the embryo or fetus induced usually by forceful expulsion of said fetus.[[1]](#footnote-1) It is important to note that in Nigeria, abortion is illegal and carries a stiff jail sentence of up to 14 years[[2]](#footnote-2). However to every general rule there always exists some exceptions.

Hence the grounds for a lawful termination of pregnancy include;

* Where the continued pregnancy would endanger the life of the woman[[3]](#footnote-3).
* Where the child when born would be seriously handicapped.
* Where the pregnancy was as a result of rape or incest.
* When two registered medical practitioners are of the opinion formed in good faith;
* That the pregnancy has not exceeded its 20th week and continuing the pregnancy would invoke risk greater than if the pregnancy were terminated.
* That the termination of the pregnancy is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman[[4]](#footnote-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.
* That the fetus or the unborn child is not capable of being born alive.

Therefore, it is evident that Charity does not have a right to an abortion as it does not fall within the exceptions in which abortion would have been lawful.

1. On the issue of whether a male has a legal right to advance his personal interest toward abortion over that of the female differs by region.

According to BBC News in 2011, it was reported that Indonesia, Malawi, Syria, United Arab Emirates, Equatorial Guinea, Kuwait, Maldives, Morocco, South Korea, Saudi Arabia, Japan, Taiwan and Turkey all had laws which required that an abortion first be authorized by the woman’s husband. However, in some countries, this stipulation could be bypassed or overridden if there is genuine concern for maternal health.

In most European countries and the United States of America the law does not give any rights to the father on the issue of an abortion. Quite simply, men have no legal rights when it comes to abortion. Legally an abortion is a private matter between a woman and her doctor, even if she is married.[[5]](#footnote-5) Furthermore, a woman may choose to terminate a pregnancy against the father’s objections. The legal reasoning for this is twofold, based on a woman’s right to privacy in her medical decisions, and the fact that the mother is more directly affected by pregnancy. In the United States, the Supreme Court has found laws requiring a spouse’s consent for an abortion to be unconstitutional. In *Planned Parenthood v Danforth[[6]](#footnote-6),* the Court reasoned that a husband’s refusal to consent would in effect veto a woman’s choice to terminate a pregnancy. While both prospective fathers and pregnant women have an interest in the decision, when the two disagree, only one partner’s position can prevail. According to the Court, since the woman actually carries the pregnancy, “the balance weighs in her favor”, preventing the husband from vetoing her choice.[[7]](#footnote-7)

Since *Roe v Wade[[8]](#footnote-8),* some states in the United States have attempted to enact laws requiring spousal consent. All of these laws have been ruled unconstitutional, spousal consent in the 1976 decision *Planned Parenthood v Danforth* [[9]](#footnote-9) and spousal awareness in the 1992 decision *Planned Parenthood v Casey[[10]](#footnote-10)*, where a Pennsylvania law that required spousal awareness prior to obtaining an abortion was invalid under the Fourteenth Amendment because it created an undue burden on married women seeking an abortion. The rationale being that a pregnant woman is autonomous, separate and distinct from the father of the unborn child (and from her parents if she is a minor), and insulated from the larger society which is not permitted even to try to dissuade her or ask her to wait to get counselling, information or assistance.[[11]](#footnote-11)

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 section 36(3) of the Constitution of the Federal Republic of Nigeria 1999 as amended,[[12]](#footnote-12) the right is pre-eminent. It is therefore not surprising that the relevant statutes relating to abortion in Nigeria are strict against any person, including the woman herself, who commits or attempts to commit abortion. The provision against abortion is generally found in the Criminal Code Act, sections 228-230, 297 and in the Penal Code Act section 232.[[13]](#footnote-13)

It is therefore safe to say that in Nigeria there is no particular law stating that the father of an unborn child has the legal rights to determine if the pregnancy will be terminated or not, as the woman does not have any legal rights of her own in terminating her pregnancy save in certain exception listed above. Although the situation may be different in practice as opposed to theory as a husband or putative father of a child may influence the decision. Hence in Nigeria the choice to carry or terminate pregnancy rests solely on the woman and her doctor where she falls under the safe haven of the exception which could enable her procure lawfully termination of pregnancy.

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2. I. Okagbue, ‘Pregnancy Termination and the Law in Nigeria’ [www.pubmed.ncbi.nlm.nih.gov](http://www.pubmed.ncbi.nlm.nih.gov) April 2020 [↑](#footnote-ref-2)
3. CCA 2004 S297 [↑](#footnote-ref-3)
4. R V Bourne (1938) 3 All ER 615 [↑](#footnote-ref-4)
5. *Ibid* [↑](#footnote-ref-5)
6. 1976 U.S. LEXIS 13 [↑](#footnote-ref-6)
7. FindLaw ‘Fathers Rights and Abortion’ October 03 2018, [www.family.findlaw.com](http://www.family.findlaw.com) April 2020 [↑](#footnote-ref-7)
8. 410 U.S. 113 (1973) [↑](#footnote-ref-8)
9. *Ibid* [↑](#footnote-ref-9)
10. 505 U.S. 833 [↑](#footnote-ref-10)
11. Quadri O. Olaniran, ‘Abortion and Abortion Laws in Nigeria: Who are we? Where are we? Where should we be? The search for a Just Law’ [www.academia.edu](http://www.academia.edu) April 2020 [↑](#footnote-ref-11)
12. CFRN 1999 [↑](#footnote-ref-12)
13. CCA, LFN 1990, CAP 77; PCA, LFN 1990, CAP 77. [↑](#footnote-ref-13)