**AFE BABALOLA UNIVERSITY,**

**ADO-EKITI, EKITI STATE.**

**COURSE CODE & COURSE TITLE**

**LPB 514- HEALTH LAW II**

**ASSIGNMENT TITLE**

**REPRODUCTIVE RIGHTS- ABORTION**

**BY**

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**SUBMITTED TO:**

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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 not 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.

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

**ISSUES:**

The legal issues are the grounds for lawful termination of pregnancy (abortion) and spousal consent in abortion.

**INTRODUCTION**

Termination of pregnancy or abortion is an intentional expulsion of the product of conception any moment of conception up till the birth of the child.

Abortion is the termination of pregnancy and or delivery before the attainment of the age of fetal viability.[[1]](#footnote-0)

Termination of pregnancy can be **induced** which is done by intervention or artificial means, **spontaneous** which happens naturally before the fetal is viable, by **sterilization** which is a medical procedure that terminates one’s ability to reproduce or by **therapeutic sterilization** which is a sterilization undertaken to save the mother’s life.

The central court decision that created current abortion law in the United States is ***Roe V Wade.*** The Supreme Court ruled in 1973 that women had a constitutional right to abortion and that this right was based on an implied right to personal privacy.

Before abortion is carried out by any medical practitioner, the women have rights to counselling which must be made available for them both before and after the termination of the pregnancy. The reasons for the abortion and the likely effects must be clearly explained and made clear to the women.

Termination of pregnancy can be linked to **right to human dignity**, one of the values on which the Nigerian Constitution is based.[[2]](#footnote-1) An essential part of people’s dignity is the right to decide what happens to their bodies- right to freedom and security of persons. People’s dignity also includes the right to bodily and psychological integrity which includes the right to make decisions concerning reproduction. It can also be linked to a person’s **right to autonomy** as every competent adult person has the right to decide whether to have children or not and therefore gives a woman freedom to terminate a pregnancy.

**ANSWERS**

1. Abortion is legal in various countries but generally, it is illegal and therefore a criminal act in Nigeria[[3]](#footnote-2) except where it is performed to save the life of the mother. In the South, the relevant provisions are sections 228, 229, 230, 297 and 328[[4]](#footnote-3) while in the North, the relevant provisions are sections 232, 233, 234, 235 and 236.[[5]](#footnote-4) There are however exceptions and limited circumstances where abortion is considered legal in Nigeria. The circumstances or grounds are;

1. Where the continued pregnancy would endanger the life of the woman[[6]](#footnote-5)
2. Where the child when born would be seriously handicapped
3. Where the pregnancy is as a result of rape or incest
4. When two registered medical practitioners in good faith formed the opinion that;
5. The pregnancy has not exceeded its twentieth week
6. The continuance of the pregnancy would invoke greater risk than if pregnancy were terminated to the life of the pregnant woman
7. The termination of pregnancy is is required to prevent grave permanent injury to the physical or mental health of the pregnant woman
8. There is a substantial risk that if the child were born it would suffer from physical or mental abnormalities as to be seriously handicapped.

In the leading case of ***Roe V Wade***,[[7]](#footnote-6) the court held that a fetus is not a person and thus has no constitutional right of its own and that a state may regulate or prohibit abortion to promote its interest in the potential life of the fetus, except where abortion is necessary to preserve the woman’s life or health.

The West African Court of Appeal(WACA) in the Nigerian case of ***R V Edgal***,[[8]](#footnote-7) where four people(appellants) were charged with supplying drugs to procure an abortion contrary to Section 230 of the Criminal Code on appeal in deciding when it is lawful to procure a miscarriage held that no abortion is unlawful when performed to save the life of the woman.[[9]](#footnote-8)

The English case of ***R V Bourne*** decided under similar provision that the preservation of the mother’s life should include safeguarding her physical and mental health.[[10]](#footnote-9).

2. Spousal consent is not a legal requirement for abortions necessary to save a woman’s life, but it is commonly required by medical establishments in Nigeria.[[11]](#footnote-10)

The potential father has no legal right in determining whether or not Charity can terminate the pregnancy. The writer is of this opinion because the unborn child or foetus constitutes an integral part of the mother which then gives the mother rights to human dignity and autonomy and in exercising it, she has the full right to decide whether or not to keep the child unless if the law provides otherwise. In the case of ***Paton V United Kingdom***,[[12]](#footnote-11) the husband sought an injunctive relief to restrain the defendants from terminating his estranged wife’s pregnancy but the court held that he has no legal right in law and in equity to stop his wife from having this abortion.

In the case of ***State V Njoku***, the first defendant wrote to A who was pregnant for him advising her to procure an abortion and also sent her some tablets, money and items to aid it, giving her directions for use. The second defendant arranged for a sum to be paid to the third defendant and took A to the third defendant’s house where the abortion process took place. The court held that the first defendant was guilty of felony under section 230 of the criminal code and the third defendant was guilty under of a felony under section 228 of the criminal code.

**CONCLUSION**

The writer has successfully explained the term abortion, its legality in other countries and its illegality in Nigeria providing the relevant statutory authorities and went further to state the exceptions to the general rule of illegality thereby stating the grounds for its legality and gave statutory and judicial backings.

The writer further explained the rights of a woman considering abortion and states further that spousal consent is not a legal requirement for abortion.

**REFRENCES**

1. Criminal Code Act (1961) Cap. (C38) Laws of the Federation of Nigeria 2004
2. Penal Code Act (1960) Cap. (532) Laws of the Federal Territory of Nigeria 2007
3. Olarinde E.S., Handout on ”Medical Law and Reproductive Rights” [2020]
4. Eastern African Journal of Public Health Volume 7 Number 4 December 2010
5. Constitution of the Federal Republic of Nigeria, 1999 (as amended)
6. <https://pubmed.ncbi.nlm.nih.gov/2219225/>
7. Theresa Akumadu, Data on the Nigerian Chapter of the Anglophone Africa Report 9 (unpublished paper, on filewith the Center for Reproductive Law and Policy)
8. Okagbue I. Pregnancy Termination and the Law in Nigeria. Stud Fam Plann. 1990; 21(4): 197-208

1. Eastern African Journal of Public Health Volume 7 Number 4 December 2010 [↑](#footnote-ref-0)
2. Constitution of the Federal Republic of Nigeria, 1999 (as amended) [↑](#footnote-ref-1)
3. Criminal Code Act (1961) Cap. (C38) Laws of the Federation of Nigeria 2004, Ss. 228, 229, 230 [↑](#footnote-ref-2)
4. Criminal Code Act (1961) Cap. (C38) Laws of the Federation of Nigeria 2004, ss 228-230, 297, 382 [↑](#footnote-ref-3)
5. Penal Code Act (1960) Cap. (532) Laws of the Federal Territory of Nigeria 2007, ss 232-236 [↑](#footnote-ref-4)
6. Criminal Code Act (1961) Cap. (C38) Laws of the Federation of Nigeria 2004, S 297 [↑](#footnote-ref-5)
7. Roe V Wade [1973] 410 U.S. 113 [↑](#footnote-ref-6)
8. R V Edgal [1938] 4 WACA 133 (Nigeria) [↑](#footnote-ref-7)
9. *Ibid* [↑](#footnote-ref-8)
10. R V Bourne [1938] 3 All ER 615 (Eng.). [↑](#footnote-ref-9)
11. Theresa Akumadu, Data on the Nigerian Chapter of the Anglophone Africa Report 9 (unpublished paper, on filewith the Center for Reproductive Law and Policy) [↑](#footnote-ref-10)
12. Paton V United Kingdom [1980] 3 EHRR 408 [↑](#footnote-ref-11)