MATRIC NO: 15/LAW01/185

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COURSE TITLE: HEALTH LAW II

COURSE CODE: LPB 514

LEVEL: 500

ASSIGNMENT

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.

Questions

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

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

**1a. GROUNDS FOR A LAWFUL TERMINATION OF PREGNANCY**

Abortion is unlawful and is seen as an offense in Nigeria. The statutory authority governing this is according to section 228 and 229 of the criminal code which states that:

”Any person who, with intent to procure the miscarriage of a woman whether she is or not with child, unlawfully administers to her or causes her to take any poison or other noixous thing, or uses force of any kind, or uses any other means whatever is guilty of a felony and is liable to imprisonment for 14 years”.

However, under the present law, the only circumstances under which an abortion is not unlawful is when it is performed to save the woman’s life. The relevant section is in section 297of the criminal code which states that:

“A person is not criminally responsible for performing in good faith and with reasonable skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time and to all the circumstances of the case”

**UNDER BRITISH LAW (statutory grounds)**

Abortion is legal in Great Britain if two doctors decide in good faith that in relation to a particular pregnancy one or more of the grounds specified in the Abortion Act are met:

a - the continuance of the pregnancy would involve risk to the life of the pregnant woman greater than if the pregnancy were terminated: Abortion Act 1967 as amended, Section 1(1)(c).

b - the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman: Section 1(1)(b).

c - the pregnancy has not exceeded its 24th week and the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman: Section 1(1)(a).

d - the pregnancy has not exceeded its 24th week and the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of any existing child(ren) of the family of the pregnant woman: Section 1(1)(a).16

e - there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped: Section 1(1)(d).

The Act also permits abortion to be performed in an emergency if a doctor is of the opinion formed in good faith that termination is immediately necessary:

f - to save the life of the pregnant woman: Section 1(4)

g - to prevent grave permanent injury to the physical or mental health of the pregnant woman: Section 1(4).

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**1b. DOES A FATHER HAVE LEGAL RIGHT IN THIS DECISION**

While discussions about abortion often focus on the rights of a mother or unborn child, there have been efforts to elevate fathers' rights in abortion decisions through notice requirements or "opt outs." After all, expectant fathers might oppose a pregnant mother's decision to terminate a pregnancy or, conversely, may not wish to assume the responsibilities of fatherhood and oppose the carrying of a pregnancy to term.

While courts have largely treated fathers' rights in abortion decisions as secondary to those of the mother, other means exist for fathers to influence the decision, namely, through private agreements.

**Fathers' Rights and Abortion: Consent**

If a man's pregnant partner seeks to have an abortion, the father's consent isn't legally required; 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.

The Supreme Court has found laws requiring a spouse's consent for an abortion to be unconstitutional. In Planned **Parenthood v. Danforth** , 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.

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