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**MATRIC NUMBER: 15/LAW01/170**

**COURSE CODE: LPB 514**

**COURSE TITLE: Health Law II**

**LECTURER: Professor E. S. Olarinde**

**ASSIGNMENT: Reproductive Rights – Abortion**

**QUESTION**

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?

**INTRODUCTION**Abortion is an intentional expulsion of the product of conception any moment from conception up till the birth of the child. There is also induced abortion which is the wilful expulsion of the foetus before birth, save for the exceptions, is unlawful and amounts to criminal abortion. Generally, abortion is a crime in Nigeria under *Section 228, 229 and 230 of the Criminal Code Act* and the person is guilty of a felony.

To answer **QUESTION A,** there are, however, certain circumstances in which abortion (that is the lawful termination of pregnancy) is legal and they are:

1. where the continued pregnancy would endanger the life of the woman according to *Section 297 Criminal Code Act;*
2. where the child when born would be seriously handicapped;
3. where the pregnancy is a result of rape or incest.

To carry out the abortion based on the above circumstances the pregnancy must be terminated by a registered medical practitioner following two registered medical practitioners who of the following opinion so long the opinion is formed in good faith that;

1. the pregnancy has not exceeded its 20thweek and the continuing of pregnancy would invoke risk greater than if the pregnancy were terminated
2. the termination of pregnancy is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman
3. the continuance of the pregnancy Would involve risk to the life of the pregnant woman greater than if pregnancy were terminated
4. 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 all the circumstances stated above, the foetus or the unborn child is not capable of being born alive.

However, a person shall be liable of the crime of child destruction when an abortion involves destruction before birth of a ‘child capable of being born alive’. Evidence that a woman had been pregnant for 28 weeks or more raises a presumption that her child is capable of being born alive *(English Infant Life (Presumption)Act 1929 ss. 1(1) and (2)).*

**QUESTION B**

The question as to whether or not the father has any legal right in this decision is a very tricky one considering that there is no law which expressly prohibits or states whether or not the intending father has any legal right in this decision. A woman has a right to bodily and procreative autonomy which means the right of a woman to terminate a pregnancy.

 In 2002, a new Chinese law puts a man’s rights to have a child on an equal footing with the right of his wife, and a man has sued his wife for infringing that right by having an abortion. In America, courts have consistently decided that a woman’s rights to an abortion cannot be vetoed by a husband, partner or ex-boyfriend, and that a woman does not have to notify the father that she intends to have an abortion. This same position has been taken by the United Kingdom. The position is not clear in Nigerian Law, but it is without doubt that the intending father of a foetus has a right also.

**CONCLUSION**

In conclusion, following the circumstances of the case, Charity does not have a right to abortion as her reason is not permitted under the *Criminal Code Act.* Also, the potential father has rights in the decision, but there is no law to this effect so it may not be classified as a legal right.