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**COURSE: HEALTH LAW II (LPB 514)**

**Answer**

The legal issue is whether Charity has an abortion right.

We need to understand the meaning of abortion and the principle of abortion before we can answer the question. Abortion is an intentional expulsion of the product of conception any moment from conception up till the birth of the child.

There are the forms of abortion, which are;

Induced abortion is the termination of pregnancy by intervention, artificial means such as oral medication, injection, surgical procedures.

Spontaneous abortion is the termination of pregnancy that occurs before the fetus is viable, it happens naturally.

Sterilization–is the medical procedure that results in terminating the ability to produce offspring.

Therapeutic sterilization is the sterilization undertaken to save the mother’s life.

Abortion is a crime in Nigeria (Criminal Cod Act ss. 228, 229, 230). Abortion is illegal in Nigeria.

1. The grounds and conditions for a legally terminated pregnancy are;

Where the continued pregnancy would endanger the life of the woman (297 Criminal Code Act)

Where the child when born would be seriously handicapped

Where the pregnancy is a result of rape or incest

When a pregnancy is terminated by a registered medical practitioner

When two registered medical practitioners are of the opinion formed in good faith;

1. **That the pregnancy has not exceeded its** 20thweek and the continuing of pregnancy would invoke risk greater than if the pregnancy were terminated.
2. **That the termination of pregnancy**is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman
3. **That the continuance of the pregnancy** Would involve risk to the life of the pregnant woman greater than if pregnancy were terminated
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.

Charity cannot be allowed to abort her baby under the Nigerian law as it relates to the answer in this case. This is because, abortion is illegal in Nigeria as mentioned above and the case of Charity does not fall under any of the exceptions listed and described above.

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

For jurisdictions where abortion is allowed, the question arises as to whether potential father in an abortion case have legal rights. Most of these jurisdictions have made rulings that have proved the fact that fathers do not have legal protection and abortion rights in the process.

*Conn v Conn[[1]](#footnote-2)* is one of the relevant cases about father’s rights and abortion*.* The case took place in November 1988 after a decision reached by the Indiana Supreme Court was upheld by the US Supreme Court. The decision made denied the man’s attempt to stop his estranged wife from carrying out an abortion. In this case, the court failed to grant a certiorari that would have led to consideration of the extent to which a father influenced the decision of the mother to perform the abortion.

Another important case is the *Planned Parenthood of Central Missouri v Danforth*.[[2]](#footnote-3) In this case, it was decided that the man could not exercise a unilateral veto on the wife decision to have an abortion.

The right of a woman to have an abortion is protected by the American constitution. This is based on the case of *Roe v Wade[[3]](#footnote-4)* where the Supreme Court argued that abortion is recognized as a fundamental right by the American constitution. In this case, the court did not address the issue of whether the consent of the father is required in abortion. This was later clarified in the *Danforth* case where the court argued that states are not required by the constitution to ask for the consent of the spouse.

In conclusion, men have no say on the abortion matters with respect to jurisdictions that allow abortions. This is based on the ruling of *Roe v. Wade[[4]](#footnote-5)* which influenced how abortion is carried out by the states. Women are granted a constitutional based privacy clause that requires them to make their own choices when it comes to abortion. Women have now been given the freedom to determine whether to have abortions, so they do not have to inform the potential father. Laws that impose undue limitations and pressures on woman during an abortion are repealed. The father has been left out of all controversies and laws surrounding abortion. Potential father does not have legal rights to be informed on the imminent abortion. Further let us take note that in China where abortion is legal, in 2002, a new Chinese law put a man’s right 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[[5]](#footnote-6) . In other words, the potential father have a say in the imminent abortion in China.

**REFERNCES**

Black Blacksmith, Father’s say in abortion

Professor E. Smaranda OLARINDE, FArb.,FCAI, notes Medical Law and Reproductive Rights

1. [1988] 526 N. E 2d [↑](#footnote-ref-2)
2. [1976] 428 U. S. 52 [↑](#footnote-ref-3)
3. [1973] 410 U.S. 113 [↑](#footnote-ref-4)
4. Ibid. [↑](#footnote-ref-5)
5. http://www.bbc.co.uk/ethics/abortion/legal/fathers.shtml [↑](#footnote-ref-6)