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COURSE: HEALTH LAW

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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.

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

The issues in this case refers to

1. the right the pregnant woman has to an abortion
2. the grounds for lawful termination of pregnancy
3. Whether the potential father has any legal rights in this decision.

Abortion refers to the termination of pregnancy by intervention, artificial means such as oral medication, injection, and surgical procedures. It is the artificially induced expulsion of an embryo or foetus. Every adult person has a right to decide whether to have children or not. Procreative autonomy refers to a woman’s freedom to terminate a pregnancy. However, abortion generally is a crime in Nigeria by virtue of section 228, 229 and 230 of the criminal code. These sections provide respectively that

any person who, with intent to procure miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a felony and is liable to imprisonment for fourteen years.[[1]](#footnote-1)

any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her is guilty of a felony and is liable to imprisonment for seven years.[[2]](#footnote-2)

any person who unlawfully supplies to or procures for any person anything whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child is guilty of a felony and is liable to imprisonment for three years. The offender cannot be arrested without warrant.[[3]](#footnote-3)

Also, there are different arguments which do not support abortion such as: the argument that an embryo is a human being thus possessing the right to life from the moment of conception. The potentiality argument states that although an embryo is not a person, it should be treated as such because it has the potentials to become one.

In applying the above rule to the first issue, charity has a right to procreative autonomy which is a right to terminate her pregnancy. However, abortion is a crime in Nigeria therefore under the Nigerian jurisdiction she has no right to an abortion.

1. Section 297[[4]](#footnote-4) provides a defence and or protection to a person (medical practitioner) who with surgical instrument operates on any person for her benefit or upon an unborn child for the mother’s life, if the operation is reasonably performed in good faith and with reasonable care.

Section 1(1)[[5]](#footnote-5) states that a person shall not be guilty of the offence of abortion when termination is advised in good faith by two registered medical practitioners of the opinion that continuing pregnancy involves risk to life of the pregnant woman or injury to her physical or mental health, or any existing children in her family, greater than if the pregnancy were terminated, or 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. Also, where the pregnancy is as a result of rape or incest, abortion would be permitted.

1. The legal position in virtually all jurisdictions is that the expectant father has no right whatsoever in the determination of whether or not a pregnant woman should have an abortion. In *Paton v Trustees of British pregnancy advising services*,[[6]](#footnote-6) the court stated that a father cannot prevent a mother (his wife) from seeking an abortion. The Canadian position is no different. In *Tremblay v Diagle*,[[7]](#footnote-7) counsel for the applicant father argued that to the extent that a potential father contributes to conception to that extent he should be vested with an equal say in the destiny of the foetus. The court in reply to this argument said that there is no jurisprudential basis for this argument and the lack of legal basis is fatal to the argument about father’s right. In the state of Pennsylvania, sections 320-329,[[8]](#footnote-8) requires a woman seeking abortion to provide evidence that her husband has been consulted. The constitutionality of the provisions were considered in *Planned Parenthood of SE Pennsylvania v. Casey*,[[9]](#footnote-9) and struck down for being unconstitutional.

The ‘No-Father right’ principle has been stretched to include the proposition that he cannot in any way act on behalf of the unborn child to enforce its rights. The reason for this conclusion is based on the premise that a foetus has no legal right until it is born. It constitutes an integral part of its mother. In matters of abortion, the only relevant person to consult in determining whether to terminate is the mother. According to the European commission of human rights, the reason for the rule is rooted in the fact that she is the only one primarily concerned with the pregnancy, its continuation or termination. More so her right to private life is in issue.

In conclusion, Charity has no right to carry out an abortion if the jurisdiction in question is in Nigeria. There are however some exceptions to this rule which do not fit into Charity’s reason for abortion i.e. to secure her promotion. More so, her husband who is the potential father does not legally have a say in her right to have an abortion. This is because several laws have stated that only the pregnant woman is primarily concerned with the pregnancy and does not need the permission of the potential father to carry out an abortion.

**REFERENCES**

1. Emiri, O.F., *Medical Law and Ethics in Nigeria*, (Malthouse Press Limited 2012).
2. Olarinde E.S., *Medical Law and Reproductive Rights*, (Afe Babalola University Ado-Ekiti 2020).
1. Section 228 of the criminal code LFN 2004 [↑](#footnote-ref-1)
2. Section 229 of the criminal code LFN 2004 [↑](#footnote-ref-2)
3. Section 230 of the criminal code LFN 2004 [↑](#footnote-ref-3)
4. Criminal code LFN 2004 [↑](#footnote-ref-4)
5. Abortion Act 1967 [↑](#footnote-ref-5)
6. (1979) QB 276 [↑](#footnote-ref-6)
7. (1989) 62 DLR (4th ) 534 [↑](#footnote-ref-7)
8. Pennsylvania Abortion Control Act, 1982 [↑](#footnote-ref-8)
9. (1992) 122 5 Ct. 2791 [↑](#footnote-ref-9)