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COURSE TITLE: HEALTH LAW II

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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:*

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

ANSWER:

ISSUES:

* Whether Charity is married.
* Whether Charity planned on having an abortion
* Whether she needs her husband’s permission or not.

**RULE:**

Abortion is a controversial topic in Nigeria. Abortion in Nigeria is governed by two laws that differ depending on geographical location. Northern Nigeria is governed by the Criminal Code.[[1]](#footnote-1) The only way to have an abortion in Nigeria is if having the child is going to put the mother’s life in danger. Nigeria’s abortion laws make it one of the most restrictive countries regarding abortion.[[2]](#footnote-2) Nigeria’s criminal law system is divided between the northern and southern states of Nigeria.

The Criminal Code is currently enforced in Southern States. The abortion laws of the Criminal Code are expressed within sections 228, 229 and 230. Section 228 states that any person providing a miscarriage to a woman is guilty of a felony and up to 14 years of imprisonment. Section 229 states that any woman obtaining a miscarriage is guilty of a felony and up to imprisonment for 7 years. Section 230 states that anyone supplying anything intended for a woman’s miscarriage is also guilty of a felony and up to 3 years of imprisonment.[[3]](#footnote-3)

The Penal Code operates in Northern States, with abortion laws contained in sections 232, 233 and 234. The sections of the Penal Code parallel the Criminal Code, besides the exception for abortion with the purpose of saving the life of the mother. The Penal Code’s punishments include imprisonment, fine, or both. The offenses of these codes are punishable regardless of whether the miscarriage was successful.[[4]](#footnote-4) No provisions have been made to the Criminal Code making exceptions for the preservations of the mother’s life. However, the cases of Rex v. Edgar[[5]](#footnote-5) and Rex v. Bourne[[6]](#footnote-6) have made it generally accepted that abortion performed to preserve the mother’s life is not an appropriate transgression of the Criminal Code.

According to section 17 of the Child’s Rights Act,[[7]](#footnote-7) a child may bring an action for damages against a person for harm or injury caused to the child willfully, recklessly, negligently or through neglect before, during or after the birth of that child.

In State v. Linus Akpan,[[8]](#footnote-8) the accused persons were charged with killing a child in consequence of an omitted to be done during child birth contrary to section 247 of the Criminal code.[[9]](#footnote-9) It was held that since there was no proof that the child was born alive, the offence with which the accused persons were charged could not be sustained.

In R. V. Senior,[[10]](#footnote-10) it was held that the word willfully, when used in the context of an offence prohibiting cruelty to children, “means that the act is done deliberately and intentionally, not by accident or inadvertence, but so that the mind of the person who does the act goes with it.

In R. v. Castles,[[11]](#footnote-11) abortion was induced on a woman who was 22 weeks pregnant. The child was born alive but died 2 hours later. Accused was charged with manslaughter. On appeal decision reverted to the offence of abortion.

**APPLICATION:**

1. The circumstances in which an abortion is not unlawful is when it is performed to save the woman’s life. The relevant section of the Criminal Code is Section 297[[12]](#footnote-12) which states that a person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation, 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 all the circumstances of the case. This section is limited by its terms to those cases of abortion done by surgical operation.[[13]](#footnote-13) Another circumstance is where the child when born would be seriously handicapped. Another is where the pregnancy is a result of rape or incest. When a pregnancy is terminated by a registered medical practitioner, the person shall not be guilty of an offence under the law relating to abortion. Another exception is when two registered medical practitioners are of the opinion formed in good faith:

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

1. 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 exists for fathers to influence the decision, through private agreements.

* 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 unconditional. In Planned Parenthood v. Danforth,[[14]](#footnote-14) 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 partners position can prevail. According to the court, since the woman actually carries the pregnancy, the balance weighs in her favour, preventing the husband from vetoing her choice.

* If the father’s consent isn’t required to abort a fetus, does he have a legal right to be notified before it happens? What if state lawmakers pass a law that says a married woman must inform her husband before she has an abortion?

The Supreme Court addressed this question in Planned Parenthood v. Casey[[15]](#footnote-15) and found that such a law was unconstitutional. While most women discuss an abortion with their partners, those who don’t were much more likely to be in abusive relationships, according to the court. The Supreme Court saw spousal notification requirements as placing an undue burden on women who may fear for their safety, or that of their children.

* Another question that arises is whether a man should be obligated to financially support a child that his partner gives birth to, if the man would prefer to remain childless. After birth, the father generally will be responsible for child support payments despite his objections to carrying the pregnancy to term. This has led some fathers’ rights advocates to oppose what they see as a double standard in family planning.

A “financial abortion” right would require a woman to notify a prospective father when she’s allowed to refuse financial or legal responsibility for the baby if he doesn’t want to be a father. Should the child be born despite this, the biological father would not be legally or financially responsible for the child’s upbringing.

* A father may be able to come to agreement with his pregnant partner outside of the court system if he would like her to keep the baby. If a prospective mother seeks to abort a pregnancy against a father’s wishes, an attorney may be able to draft an agreement where the father agrees to pay the costs of pregnancy and obtain full custody after birth.

**CONCLUSION:**

Abortion is an intentional expulsion of the product of conception any moment from conception up till the birth of the child. It’s not a question of whether women will try to procure an abortion or not regardless of the law, whether we like it or not, it’s going to happen, no matter if it is safe or not. No woman should have to go to jail because they don’t want a pregnancy. A pregnancy which if carried to term would solely be her responsibility for a major part of her life. By the way, the government doesn’t care if the woman can’t afford to take care of the baby, but they are going to take care of that baby, but they are going to try and force the woman to keep the baby. No such thing as welfare/ aid for you if you are a poor mother in Nigeria. The closest a woman is going to get to welfare in this country is rice or money shared by political aspirants during election season. With the high cost of living and low income plaguing the country, raising an unwanted child is very expensive. It is time consuming, it drains one financially and emotionally. The onus is on the woman to bear the burden of taking care of the baby alone in majority of the cases of unwanted pregnancies. Is she’s lucky, the baby’s father or family members help out. It is the governments job to make sure women don’t die unnecessarily from unsafe abortion. The right way for the government to reduce abortion is to make it less necessary instead of less available. Programs should be made available to educate people on the use of various means of contraceptives. Another way is to make sure, women have the financial means and access to health care should they choose to keep the baby. This is by far, a better way of reducing unintended pregnancies. Women should also have access to safer abortion procedures. They can make sure of this by lifting the ban first and then training professionals who can carry out the procedure safely on a world class level.

1. Criminal Code. [↑](#footnote-ref-1)
2. O. I. Iyioha, “Comparative health law and policy: Critical perspectives on Nigerian and global health law”. [↑](#footnote-ref-2)
3. Criminal Code Act, chap.77. [↑](#footnote-ref-3)
4. C. Umeha, “Unsafe Abortion: Threat to Nigerian Women”. [↑](#footnote-ref-4)
5. Rex v. Edgar (2003) SCC 47. [↑](#footnote-ref-5)
6. Rex v. Bourne (1939) 3 ALL E. R. 615. [↑](#footnote-ref-6)
7. Child’s Right Act, s.17. [↑](#footnote-ref-7)
8. State v. Linus Akpan (1972) 2UILR 457. [↑](#footnote-ref-8)
9. Criminal Code, s.247. [↑](#footnote-ref-9)
10. R. v. Senior, (1832) Mood C. C. 346. [↑](#footnote-ref-10)
11. R. v. Castles, (1960) W. W. N. 36. [↑](#footnote-ref-11)
12. Criminal Code, s.297. [↑](#footnote-ref-12)
13. I. Okagbue, “Pregnancy Termination and the Law in Nigeria”. (1990) (21) (4) Family Law Journal. [↑](#footnote-ref-13)
14. Planned Parenthood v. Danforth (1976) 428 U. S. 52. [↑](#footnote-ref-14)
15. Planned Parenthood v. Casey (1992) 505 U.S. 833. [↑](#footnote-ref-15)