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**COURSE TITLE**

HEALTH LAW II

**COURSE CODE**

LPB 514

**LECTURER**

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**ASSIGNMENT TITLE:** REPRODUCTIVE RIGHTS-ABORTION.

**QUESTION:**

*A 30-year 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 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?*



**ANSWER:**

**PART 1**

Abortion is one of the most controversial issues in the world today. The legality or illegality of abortion has been and is still debated in several jurisdictions of the world. This debate has sprung up further debates on foundational principles of medical law such as the right to autonomy, the right to dignity and the right to life.

The right to autonomy, which is often at the fore of the argument as to the legality and illegality of abortion, deals with the right and capacity of humans to think, decide and act on the bases of such thought and decide freely and independently and without hindrances[[1]](#footnote-1). The concept of autonomy, as opposed to freedom deals with *“…doing what one wants to do but on the basis of thought or reasoning”*[[2]](#footnote-2). The concept of autonomy incorporates the exercise of what Aristotle called *‘man’s specific attribute’*.

In medical practice, autonomy is expressed as the right of competent adults (capacity) to make informed decisions about their medical care. In ***Schloendorff v Society of New York* Hospital[[3]](#footnote-3),** it was stated that every human being of adult years and sound mind has a right to determine what shall be done with his own body. The right to autonomy in this case instances that every adult has a right to decide whether to have children or not.

The attitudes to pregnancy are inextricably bound with how the society views sex, women, and the fertile woman in particular. It constitutes a major life event. Putting the woman on the centre-stage, we can ask why women want abortions. Some of the reasons include the following.

1. The Disruption of Education or Employment;[[4]](#footnote-4)
2. Lack of Support from the Father or relationship problems with husband or partner;[[5]](#footnote-5)
3. The Desire to Provide for Existing Children;[[6]](#footnote-6)
4. Poverty, Unemployment or inability to afford additional children;[[7]](#footnote-7) and
5. A woman’s perception that she is too young to have a child[[8]](#footnote-8).

Based on the arguments in support for abortion, using the ethical principles of autonomy, human dignity and life, some jurisdictions in the world have legalised abortion. However, it is important to note that in Nigeria, ABORTION IS A CRIME, IT IS ILLEGAL. This is legally backed by **Sections 228, 229 and 230** of the **Criminal Code of Nigeria** which states thus:

*228.*

*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.*

*229.*

*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.*

*230.*

*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.*

It is also important to note, however, that there are some exceptions to this general rule of illegality. Such include:

1. Where the continued pregnancy would endanger the life of the woman[[9]](#footnote-9).
2. Where the child, when born, would be seriously handicapped.
3. Where the pregnancy is a result of rape or incest.
4. Where a pregnancy is terminated by a registered medical practitioner.
5. When two registered medical practitioners are of the opinion, formed in good faith, that:
6. The pregnancy has not exceeded its 20th week.
7. The termination of the pregnancy is necessary to prevent grave or permanent injury to the physical or mental health of the pregnant woman.
8. The continuance of the pregnancy would involve risk to the life of the pregnant woman greater than if pregnancy were terminated.
9. There is a substantial risk that if the child were born, it would suffer from physical or mental abnormalities as to be seriously handicapped.

Also the Penal Code, which operates in the northern states, clearly states the illegality of abortion 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[[10]](#footnote-10).

The law limits the legality of abortion.

**PART II**

Several debates have also been thrown on whether the potential father has any right in the decision to abort.

According to Elizabeth Stanton, *“we come into the world alone, unlike all who have gone before us: we leave it alone, under circumstances peculiar to ourselves”*. She asserted that women had to assume responsibility for their own lives, as men did, because *“each soul must depend wholly on itself…no matter how much women prefer to lean, to be protected and supported, nor how much men desire to have them do so, they must make the voyage of life alone…who, I ask you, can take, dare take on himself the rights, the duties, the responsibilities of another human soul?”*[[11]](#footnote-11)

Furthermore, arguments based on the issues of the antagonistic relationship between the woman and her unborn child occurs. Hence, women should have more autonomy in the issue.

The question; is it selfish for women to demand full reproductive choice?

One of abortion’s many victims is the father of the child as often times discussions about abortion focuses on the rights of a mother or the unborn child. There have been efforts to extinguish a potential father’s right in abortion decisions through notice requirements or “opt outs”[[12]](#footnote-12). After all, an expectant father 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.

In most European countries and the United States, the law does not give any rights to the father on the issue of abortion. It is quite simple. Men have no legal rights when it comes to abortion. Legally, an abortion is a private matter between a woman and her doctor, even if she is married. American courts have consistently decided that a woman’s right to an abortion can’t be vetoed by a husband, partner or ex-boyfriend, and also that a woman doesn’t have to notify the father that she intends to have an abortion. Again, in 1987 and 2001, men attempted in the UK courts to prevent their former partners from having abortions, they failed.

However, it is in my opinion that the ‘selfish’ reproductive choice of a woman in her decision to have an abortion would be morally wrong because it would do more harm to the father. The statistics in most post-abortion counselling centres records an increasing number of men coming forward, grieving their aborted children. If the father has a morally legitimate interest in having a child, and the mother misleads the father into believing that she will give him a child if he does certain things, and the father does those things for the specific purpose of having a family, then it is wrong for the mother deliberately to prevent the father from having that child.

Some people have objected to this by stating that the wrong comes from the deliberate misconduct of the mother, rather than from any moral right of the father. However, this causes a further harm to the father in addition of the deception[[13]](#footnote-13).

In instances where the father does not want the child, some jurisdictions have made provisions that men have no rights to insist that a woman abort an embryo that they have fathered[[14]](#footnote-14). Most legal systems don’t allow a father to escape responsibility for his child and for paying to support that child; this applies even if the father had wanted the mother to have an abortion[[15]](#footnote-15).

In conclusion, Charity does not have a legal ground to terminate her pregnancy by the laws of the Nigeria as her reasons do not also fall under the exceptions to the general rule the illegality of abortion. Also, in cases of abortion (in most jurisdictions of the world), fathers do not have legal rights to the decision making process of abortion.

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1. Ranaan Gillion, Philisophical Medical Ethics, 1986. [↑](#footnote-ref-1)
2. Professor E. S Olarinde, Lesson Notes on Medical Law and Reproductive Rights, 2019/2020 Session. [↑](#footnote-ref-2)
3. (1914) 105 NE 92 (NY). [↑](#footnote-ref-3)
4. Reproductive Autonomy and The Ethics of Abortion; Journal of Medical Ethics, Vol. 27, Issue suppl 2, October 2001. [↑](#footnote-ref-4)
5. Ibid. [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
7. Ibid. [↑](#footnote-ref-7)
8. Ibid. [↑](#footnote-ref-8)
9. Section 297, Criminal Code.

   *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.* [↑](#footnote-ref-9)
10. Iyioha, Irehobhude O. (2 November 2015). *Comparative health law and policy : critical perspectives on Nigerian and global health law*. Taylor and Francis. [ISBN](https://en.wikipedia.org/wiki/ISBN_(identifier)) [978-1-4724-3675-7](https://en.wikipedia.org/wiki/Special:BookSources/978-1-4724-3675-7). [↑](#footnote-ref-10)
11. Wendy Kaminer; Abortion and Autonomy, December 19, 2001. [↑](#footnote-ref-11)
12. FindLaw’s Team; Fathers’ Rights and Abortion, October 03, 2018. [↑](#footnote-ref-12)
13. <http://www.bbc.co.uk/ethics/abortion/legal/fathers.shtml> [↑](#footnote-ref-13)
14. Ibid. [↑](#footnote-ref-14)
15. Ibid. [↑](#footnote-ref-15)