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MATRIC NUMBER: 15/LAW01/144

COURSE: HEALTH LAW

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DATE: 19TH APRIL 2020

QUESTION

A 30 year old lawyer, Charity, is happily married and has a good income. She has just discovered that 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 decided that, at this time in her life, the promotion is more important to her than having a baby. She consults her general practioner (GP) a few weeks later, having finally decided that she would like to have an abortion. She asks the GP about whether she has the right to an abortion

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

INTRODUCTION

Reproductive rights are rooted in basic human rights and are important to health, particularly for women. They came to be more clearly articulated in the late twentieth century, with sexual rights recently added to the mix. However, reproductive rights remain subject to powerful social, political, and other determinants. Signiﬁcant gains have been made in implementing the reproductive health and rights agenda, but aggregate gains mask glaring inequalities that entail much avoidable human suffering and lost opportunities for realizing better individual well-being and societal development. Achieving further progress requires continued advocacy for reproductive and sexual rights and sound public health programming.

What is Abortion?

Abortion is the ending of a pregnancy by removal or expulsion of an embryo or fetus before it can survive outside the uterus. An abortion that occurs without intervention is known as a miscarriage or spontaneous abortion. When deliberate steps are taken to end a pregnancy, it is called an induced abortion, or less frequently "induced miscarriage". The unmodified word abortion generally refers to an induced abortion. A similar procedure after the fetus has potential to survive outside the womb is known as a "late termination of pregnancy" or less accurately as a "late term abortion".

In Nigeria abortion is governed by two principal laws. In the Northern region of Nigeria, it is governed by the Penal Code, Law No. 18 of 1959, while in the Southern region of Nigeria, abortion is governed the Criminal Code of 1916. The relevant provisions are Section 228,229,230 and 328. Under these laws, abortion in Nigeria is illegal.

QUESTIONS.

1. The following are the various grounds for the lawful termination of a pregnancy;
2. When the pregnancy poses an endangerment to the life of the woman, this is provided for by section 297 of the Criminal Code Act.
3. When the child to be born would be seriously handicapped, that the child may suffer from a physical or mental abnormality.
4. When the pregnancy is as a result of rape or incest
5. When the pregnancy is terminated by a registered medical practioner’
6. When two registered medical practioner are of the opinion formed in good faith;

* .the pregnancy has not exceed its 20th week
* Continuation of the pregnancy would invoke a risk greater than if the pregnancy were to be terminated
* The termination of the pregnancy would prevent permanent damage to the physical and mental health of the pregnant woman

1. There are circumstances whereby the foetus or the unborn child is not capable of being born alive.

The following stated above are the various situations provided as exceptions to the law which states that abortion is a crime.

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

The right of autonomy shall be considered in answering this question.

Autonomy can be described as the capacity to think, decide and act on the bases of such thought and decision freely and independently, without hindrances. The focus here shall be that of procreative autonomy.

Procreative autonomy can be described as a freedom of a woman to terminate a pregnancy. It could be construed as a negative or positive right. As a negative right, it would be a right against coercive interference in decisions regarding procreation. As a positive right, it would be an entitlement to assistance in procreation.

Usually in most abortion cases, the woman and the foetus are the main focus, and the interest of the father, is usually not considered. As when a woman opts for the option to carry out an abortion, the consent of the father is not sought after. This is based on the on the principle that a woman has the right to make medical decisions as it concerns her body.

Whether a male has a legal right to advance his personal interest, whether it is toward abortion, fatherhood, or adoption, over that of the female, differs by region.

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.

In 1987 and 2001 men attempted in the UK courts to prevent their former partners having abortions; they failed.

In Roe v Wade a legal case in which the [U.S. Supreme Court](https://www.britannica.com/topic/Supreme-Court-of-the-United-States) on January 22, 1973, ruled (7–2) that unduly restrictive state regulation of [abortion](https://www.britannica.com/science/abortion-pregnancy) is unconstitutional. In a majority opinion written by [Justice](https://www.merriam-webster.com/dictionary/Justice) [Harry A. Blackmun](https://www.britannica.com/biography/Harry-A-Blackmun), the court held that a set of Texas statutes criminalizing abortion in most instances violated a woman’s [constitutional](https://www.merriam-webster.com/dictionary/constitutional) [right of privacy](https://www.britannica.com/topic/rights-of-privacy), which it found to be [implicit](https://www.merriam-webster.com/dictionary/implicit) in the liberty guarantee of the [due process](https://www.britannica.com/topic/due-process) clause of the [Fourteenth Amendment](https://www.britannica.com/topic/Fourteenth-Amendment) (“…nor shall any state deprive any person of life, liberty, or property, without due process of law”).[[1]](#footnote-2)

In Casey v. Planned Parenthood (1992), the Supreme Court affirmed the basic ruling of Roe v Wade that the state is prohibited from banning most abortions. Casey also ruled, however, that states may regulate abortions so as to protect the health of the mother and the life of the foetus, and may outlaw abortions of "viable" foetuses.[[2]](#footnote-3)

William Paton of Liverpool, United Kingdom attempted to stop his separated wife, Joan, from undergoing an abortion in the 1978 case Paton v. Trustees of British Pregnancy Advisory Service Trustees. A judge ruled in his wife's favour and Mr. Paton's later request for a hearing before the European Court of Human Rights was also denied.[[3]](#footnote-4)

Robert Carver of the United Kingdom tried to prevent an abortion in the 1987 case C v. S. He claimed that the Infant Life (Preservation) Act applied to the fetus, as, at the time, his ex-girlfriend was 21 weeks along. When the High Court of Justice and the Court of Appeal dismissed the case, it was brought before the House of Lords, where three Law Lords sided with the earlier decisions. The entire legal process took 36 hours, as the Health Authority refused to allow an abortion before a decision was reached, making it one of the fastest cases in the history of British law. Nonetheless, the woman involved chose to carry the pregnancy to term and gave the baby to Carver.[[4]](#footnote-5)

From the above stated cases it can be inferred that a father has no legal right in the descisonof a woman to terminate a pregnancy.

CONCLUSION

From the above stated, it can be seen that although under the Nigerian law, abortion is an illegality, provisions have been made for certain situations where by the illegality of an abortion can be waived, hereby absolving the patient and the physician of any illegality.

Also, it has been realized that a father has no right to determine if a pregnant wife can terminate her pregnancy.

1. < <https://www.britannica.com/event/Roe-v-Wade>> accessed on 20th April 2020 [↑](#footnote-ref-2)
2. < <https://www.thirteen.org/wnet/supremecourt/rights/landmark_casey.html>> accessed on 20th April 2020 [↑](#footnote-ref-3)
3. [https://web.archive.org/web/20041230224629/http://www.bpas. org/press-office/archive\_2001/30\_03\_2001.html](https://web.archive.org/web/20041230224629/http://www.bpas.%20org/press-office/archive_2001/30_03_2001.html) > accessed 20th April 2020 [↑](#footnote-ref-4)
4. Brahams D (March 1987). "An action by putative father and unborn foetus to prevent termination". Lancet. 1 (8532): 576–7 [↑](#footnote-ref-5)