

NAME : ECHO CHUKWUJIKE AYOMIKUN

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LECTURER : PROF SMARANDA OLARINDE

HEALTH LAW ASSIGNMENT

## 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.

## Questions

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

## Answer

### **Issue**

The legal issue for determination is whether ;

\*charity can lawfully abort her pregnancy

\*the potential father have any legal right in her decision.

### **Rule**

What is Abortion?

Abortion is defined as the discontinuation of a pregnancy before attainment of viability.

According to the Webster dictionary, abortion is the termination of a pregnancy after, accompanied by, resulting in, or closely followed by the death of the embryo or foetus: spontaneous expulsion of a human foetus during the first 12 weeks of gestation.

Under the Nigerian law, abortion is a controversial topic. It is a crime and it is illegal in Nigeria. Abortion in Nigeria is governed by two laws that differ depending on geographical location. Northern Nigeria is governed by The Penal Code and southern Nigeria is governed by The Criminal Code. However for the course of this paper, we would be making reference to the criminal code. The relevant section as pertaining to abortion in the criminal code is section 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.

The code is however clear on its stand as regards abortion however, they are exceptions to the rule on abortion. One recognized exception or legal way of abortion is ;

1) if having the child is going to put the mother's life in danger as seen the section 297 of the code.

In the event where keeping such pregnancy will be detrimental to the woman or mothers health or life, it is legal to abort the pregnancy.

2) where the child if born will be handicapped.

If it is seen that the foetus or unborn child has every likelihood to be handicapped or suffer physical or mental abnormalities. it is no crime to abort the baby.

3)where the child is a result of rape or incest.

Rape and incest are equally crimes under the criminal code. Any conception from such intercourse is permitted by law to b aborted.

4) when a pregnancy is terminated by a registered medical practitioner.

Such process should be carried out by a registered medical practitioner. Where it isn't, that alone constitute it as an illegal abortion.

## Question 2

As regards whether the potential father have a legal right to the woman decision.

The answer is that the man does not have any legal right to the woman decision. This is so because of the concept of **autonomy**. The woman is free as to what she wants or whether to keep the child or not. It is totally the decision of the woman as she is the carrier. In a US case, During the Supreme Court Case of *Planned Parenthood vs. Danforth*, the court ruled that requiring a father's consent to having an abortion was unconstitutional since a male's refusal would essentially veto the woman's right to choose.

**However, our local statutes and laws are silent on this matter** but there can be private agreements. In cases where the alleged father wishes to keep the child and the mother wants to terminate the pregnancy, it is possible for the couple to come to a private agreement outside of the court room. Should a pregnant woman wish to

terminate her pregnancy against the father's wishes, an attorney has the ability to draft an agreement where the alleged father agrees to pay the medical costs and other expenses of the pregnancy and then obtain full custody of the child after it is born. In some cases, these agreements are enough to help sway the pregnant woman from abortion and take the pregnancy to term.