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MATRIC NO: 15/Law01/121

COURSE: HEALTH LAW II

COURSE CODE: LPB 514

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?

**Abstract**

Abortion in Nigeria is illegal and carries a heavy jail sentence--up to 14 years imprisonment--unless it is performed to save the life of the pregnant woman. Nevertheless, a large number of clandestine abortions continue to be carried out regularly, often with dire consequences for the lives and health of the women involved.

**WHAT IS ABORTION?**

In spite of efforts by philosophers, bioethicists and other scholars to give a concise definition of abortion, complete success has not been achieved. The definition of abortion is replete with controversies. Etymologically speaking, the term abortion is derived from the Latin infinitive “aboriri”, which means “perish”, but literally translated as the loss of foetal life. Abortion, in its most common usage, refers to the voluntary or induced termination, generally through the use of surgical procedures or drugs and as a result of that, birth does not take place.

An abortion is the removal or expulsion of an embryo or foetus from the uterus, resulting in its death. This can occur spontaneously as a miscarriage, or be artificially induced by chemical, surgical or other means. Commonly, ‘abortion’ refers to an induced procedure at any point during pregnancy. Medically, it is defined as miscarriage or induced termination before twenty weeks of gestation, which is considered nonviable.

In ethical discourse, abortion is understood as the deliberate choice to terminate a pregnancy through an action which either directly destroys the foetus or causes its expulsion from the uterus before viability.

**TYPES OF ABORTION**

**Non-induced**

Abortion is non-induced when it occurs spontaneously, in such case as miscarriage. This may be affected by a disease or some defects or mal-functioning in the woman’s physiological system. Such an abortion is neither intended nor is it aided in any way at all. Unless due to culpable neglect, this would not be a human act and therefore would not attract moral sanctions.

**Induced Abortion**

This is also called “*abortus provocatus*”. It is abortion qua abortion, since it is here and only here that the question of end, intention, and the presence of human act can rightly be asked and where moral responsibility and social imputability, praise or blame, could be assigned. Abortion is induced when the act is intentionally carried out throughout the period of “gestation.” Further on induced Abortion, one purposely decides to interfere with the life of the conceptus. One does not only intend but takes effective measures to ensure the expulsion. The main pre-occupation will therefore be on induced abortion and it is pertinent to note at this juncture that when I use the term “abortion” in this section, what it means is induced abortion. Induced abortion is normally classified into two; therapeutic and non-therapeutic abortions.

***Therapeutic Abortion***

Abortion is therapeutic if “the purpose is the saving of the mother’s life or health.” In which case, it is an intentional removal of the foetus from the uterus owing to some medical indications. Further still, the issue of therapeutic abortion concerns not only the mother’s health but also the foetus. Jonas clarified this in the following statement “This is a case of legitimate pregnancy that is developing into a serious threat to life of the mother, the child or both.” But the question is, how therapeutic is that which takes away the fetal life?. We can further distinguish direct and indirect; criminal and legal therapeutic abortions. It is directly therapeutic if “the doctor intends the death of the child in order to cure the mother.” But it is indirectly therapeutic if the child accidentally dies, in the doctor’s process of saving the mother. In which case it is not directly willed, not a free act but simply permitted as an undesirable side effect. Therapeutic abortion is criminal, if it is procured outside the stipulations of the law-legal indications. It is however legal when it is carried out within confines of the law.

***Non-Therapeutic Abortions***.

This means an abortion that is performed or induced when the life of the mother would not be endangered if the foetus were carried to term or when the pregnancy of the mother was not the result of Rape or Incest reported to a law enforcement agency.

**ABORTION LAWS IN NIGERIA**

The Constitution of the Federal Republic of Nigeria is pro-life. This is because most of its provisions are life sensitive but more because in its section 36(3) the right to life is pre-eminent26 The law inhibited in the Criminal Code applies to the Southern States of Nigeria. The provisions of the Criminal Code on abortion contained in sections 228, 299, 230, 297,309, and 319(3).

It is important to point out that the provisions of the Penal Code is in pari-materia with that of the Criminal Code except for the fact that in the Penal Code, the punishment for procuring abortion is fourteen (14) years whether the woman herself or someone else is charged. However, the Penal Code does not appear to have provision for attempted abortion by anybody because the wordings of the law are clear to the effect that “whoever voluntarily causes a woman with child to miscarry…” What is more, the Penal Code allowed therapeutic abortion if caused in good faith for the purpose of saving the life of a pregnant woman. This exception as explicitly provided in the Penal Code is however latent in the Criminal Code Act. It is only implied therein, by the use of the word “unlawfully.” Hence “whoever administers abortion “unlawfully” is guilty of an offence.” The question then remains as to what constitutes a “lawful” administration of abortion under the Criminal Code operated in the Southern Nigeria? The Courts following the decision in the English case of ***Rex v. Bourne*** have variously held that *a lawful abortion is one procured for the purpose of saving the life of the mother*. Thus, “…since the case of *Rex v. Bourne*, the whole Nigeria in practice has allowed therapeutic abortion in order to save a woman’s life or her physical and mental health.” Also ***sec. 297 of the Criminal Code Act*** further appears to strengthen the fact that the law of Abortion in Nigeria makes exception for purposes of preserving the life of the mother. There, it is stated that *a person is not criminally responsible for performing in good faith and with reasonable care a surgical operation upon “an unborn child for the preservation of the mother’s life…*”.

A. What Are The Grounds For A Lawful Termination Of Pregnancy?

Note how the word ‘unlawfully’ keeps reoccurring in the Criminal Code. This means there may be instances where abortion may be lawful. The Criminal Code expressly provides for such instances:

1. Where a person, in good faith and with reasonable care and skill performs a surgical operation on a person for his benefit, he is not criminally responsible. The important consideration here is that the performance of the operation is reasonable considering the patient’s state and all other circumstances of the particular case.
2. He is also not criminally responsible where he performs a surgical operation in good faith and with reasonable care and skill on an unborn child for the preservation of the mother’s life. The important consideration here is also that the performance of the operation is reasonable considering the patient’s state and all other circumstances of the particular case.
3. where the continued pregnancy would endanger the life of the woman(297 Criminal Code Act)
4. Where the child when born would be seriously handicapped
5. Where the pregnancy is a result of rape or incest

Also Medical Practitioner would not be Liable in the following circumstances;

1. That the pregnancy has not exceeded its 20th week and the continuing of pregnancy would invoke risk greater than if the pregnancy were terminated.
2. That the termination of pregnancy is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman.
3. That the continuance of the pregnancy would involve risk to the life of the pregnant woman greater than if pregnancy were terminated.
4. That there is a substantial risk that if the child were born
5. It would suffer from physical or mental abnormalities as to be seriously handicapped.
6. To those circumstances where the foetus or the unborn child is not capable of being born alive
   1. A person shall be liable of the crime of child destruction when an abortion involves destruction before birth of a ‘child capable of being born alive’
   2. Evidence that a woman had been pregnant for 28 weeks or more raises a presumption that her child ‘is capable of being born alive’ (English Infant Life (Presumption)Act 1929 ss. 1(1) and (2))

B. Does The Potential Father Have Any Legal Rights In This Decision?

The legal position in virtually all jurisdiction is that the expectant father has no right whatsoever in the determination of whether or not a pregnant woman should have an abortion. This position was upheld by the court in *Paton v Trustees of British Pregnancy Advising Services* where the court held that “ a father cannot prevent a mother ( his wife) from seeking an abortion.”

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 unconstitutional. In [***Planned Parenthood v. Danforth***](https://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=428&invol=52), 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 partner's 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.

Furthermore, if the father's consent isn't required to abort a foetus, does he have a legal right to be notified before it happens?. The Supreme Court addressed this question in [***Planned Parenthood v. Casey***](https://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=505&invol=833) and found that such a law was unconstitutional. While [most women discuss an abortion with their partners](https://www.guttmacher.org/pubs/journals/j.whi.2020.10.007.pdf), 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.

Finally, 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](https://family.findlaw.com/child-support.html) 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.

**CONCLUSION**

In conclusion, it is the view of this writer seeing as Abortion is Illegal in Nigeria except in certain circumstances (as listed above) there are no provisions for opinions. Men’s right as stated earlier are secondary to women’s right when it comes to abortion. Therefore, ideally since abortion is illegal in Nigeria, there is no room for information or opinions on the matter. However, in dealing with the exceptions, especially seeing as the women bear the risks, an expectant father’s objection to the termination cannot veto or override the woman’s intention to terminate that pregnancy.