Name- Kolade Excellence

Matric number- 15/Law01/111

Course-Health Law.

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Question-

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?

**Abortion**

**Introduction.**

Abortion as defined by the Black’s Law dictionary as the discontinuation of pregnancy before attainment of viability.[[1]](#footnote-1) This means the ending of the life of a fetus before it is birthed naturally by its mother. Abortion takes place for various reasons, some are voluntary/ intentional such as induced abortion while on the other hand it can be involuntary/ accidental such as a miscarriage.

Abortion is criminalized under Nigerian law. the relevant sections are Sections 228,229, 230, 297 and 328of the Criminal Code[[2]](#footnote-2) and Sections232, 233, 234, 235, 236 of the Penal Code[[3]](#footnote-3). The Criminal Code in Section 228 and 229 states that the penalty for unlawful abortion both for the mother and the practitioner that performs the abortion is 14 years’ imprisonment, and for the attempt to procure abortion the penalty is 7 years’ imprisonment.

**Question 1.**

Abortion is largely illegal; however certain circumstances would medically warrant an abortion thus making abortion legal. This is provided for in Section 297 of the Criminal Code[[4]](#footnote-4) which states that any person is not criminally responsible for performing in good faith and with reasonable care and 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.

Thus in the following circumstances, abortion would be legal.

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 to all the circumstances of the case.
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 it would suffer from physical or mental abnormalities as to be seriously handicapped

In the case of R v. Bourne, it is important to note that when discussing the preservation of the mother’s life, it is important to note that the mother’s life includes her physical and mental wellbeing[[5]](#footnote-5), thus where the mental or physical health of the mother will be affected, abortion can be carried out.

**Question 2**

A potential father does not have any legal rights in this decision for abortion. A woman has a right to autonomy to make rational decisions after considering all the facts presented to her. A child that is not yet born is considered a part of the mother, thus she alone has autonomy over her body. However, exceptions occur, such as,

1. Where the woman is unable to make medical decisions for herself. The father being the husband and not in any other capacity can have a say.
2. In a surrogacy agreement, the contracting father has a right over the child, but not over the mother thus creating a clash in interests.
1. A. Bryan Garner, *Black’s Law dictionary,* (8th ed. 2004). [↑](#footnote-ref-1)
2. Criminal Code Act (1916) Cap. C38Laws of the Federal Republic of Nigeria 2004. [↑](#footnote-ref-2)
3. Penal Code Act (1960) Cap. 532 Laws of the Federal Capital Territory of Nigeria 2007. [↑](#footnote-ref-3)
4. CCA (1916) CAP C38 LFN 2004. [↑](#footnote-ref-4)
5. R v. Bourne, [1938] 3 All ER 615 [↑](#footnote-ref-5)