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COURSE: HEALTH LAW

DEPARTMENT: LAW

QUESTION

1. A 30-years-old lawyer, Charity, is happily married and 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 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?

ANSWERS

1a) The law limits the legality of abortion. Abortion is defined as an intentional expulsion of the product of conception any moment from conception till the birth of the child. As relates to abortion, the law is expressed in sections 228, 229 and 230 of the criminal code as well as sections 232, 233 and 234 of the Penal code. The relevant provisions of the criminal code are based substantially upon Section 58 of the offences Against the Person Act, 1861 (of England), while those of the Penal code are based upon Scottish common law. The difference between the two is that, whereas the former applies to anyone acting with the intent of procuring the miscarriage of a woman “whether or not she is with child”, the latter applies to those cases where a woman is in fact “with child”. Section 228 and 229 provide that the mere intent of procuring a miscarriage of a woman is guilty of a felony and liable to fourteen and seven years imprisonment respectively. However the police rarely prosecute the woman concerned, mainly because evidence is required to convict the professional abortionist. Section 230 provides that anyone who aids by procurement of materials in abortion is guilty of a felony and liable to three years imprisonment. Currently there are some grounds for lawful termination of pregnancy in Nigeria is if the mother’s life would be endangered by having the child[[1]](#footnote-2). Abortion becomes legal where the continued pregnancy would endanger the life of the woman as seen in Section 297 of the criminal code, where the child when born would be seriously handicapped and where the pregnancy is a result of rape or insect. In situations where a pregnancy is terminated by a registered medical practitioner and two registered practitioners are of the opinion formed in good faith. These sections contained in the criminal code and penal code states stringent punishments to those who violate the law by aborting which include the payment of fines and imprisonment. Another note of worth is that in the criminal code, there is no provision for the exception for abortion with the purpose of saving the mother’s life. An offence against any of these codes is punishable whether or not the abortion was successful. An important issue is the meaning of “preservation of the mother’s life” in Nigerian abortion legislation. In R v Bourne[[2]](#footnote-3) went further to define “life” as inclusive of physical and mental health, thus going beyond a “strict necessity” indication for abortion to embrace a therapeutic indication. It remains unclear in the north and south on abortion to preserve the mental and physical health of the woman. In the only reported decision from northern Nigeria is Commissioner of Police v Modebe[[3]](#footnote-4), the accused, a medical practitioner was charged under Section 233 of the Penal code with having caused the death of a woman in the process of procuring an abortion. In the doctor’s defense he only assisted to treat an incomplete abortion. Although the accused had treated the deceased in his own home instead of referring her to a hospital, the court found no proof that he had acted with the criminal intention to procure a miscarriage, and entered a verdict of acquittal. In the case of State v Njoku[[4]](#footnote-5), the court focused on the meaning of the words “poison or other noxious thing” contained in Section 238 of the Criminal code. It was held that any harmful substance having a harmful effect, whether or not it is in actual fact an abortifacient, is a “noxious thing”. In cases where the pregnant woman concerned had survived the procedure, she is in fact served as a prosecution witness (State v Njoku).

Both public prosecutors and the courts have traditionally been reluctant to prosecute and convict members of the medical profession for acts performed as part of their professional functions.

1b) In Nigeria, there is no law that provides that a father of an unborn child has the right to determine if the pregnancy will be terminated or not. The situation may be different in practice as a husband or potential father of a child may influence the decision. The choice to carry or terminate a pregnancy rests on the woman. Some countries like Malawi, Syria, Kuwait and Turkey had laws which required that an abortion first be authorized by the woman’s husband

1. < <https://en.m.wikipedia.org/wiki/Abortion_in_Nigeria>> accessed 20 April 2020 [↑](#footnote-ref-2)
2. (1939) 1 K.B.687 [↑](#footnote-ref-3)
3. 1980 (1) N.C.R, 367 [↑](#footnote-ref-4)
4. (1973) E.C.S.L.R 638 [↑](#footnote-ref-5)