

**AFE BABALOLA UNIVERSITY ADO
EKITI, EKITI NIGERIA**

College of Law

2019/20 session

Course Title:

LPB 514 Health Law II

Topic:

**Medical Law and Reproductive
Rights**

Lecturer:

Professor E. Smaranda OLARINDE, FArb., FCAI

Date:

8th April, 2020

LOGISTICS

Wednesday 11.00 am

Tuesday 8.00am

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➤ **1st class Wednesday 8.04.2020**

CONTENT

Medical Law and Reproductive Rights

- **Section 1.** Introduction
- **Section 2.** Abortion
- **Section 3.** Advanced Directives/Decisions (AD)
- **Section 4.** Assisted Reproduction /Conception

OUTCOME

At the
end of
this
module
you will
be able
to:

- Explain the main **reproductive rights (RR)** and guide doctors/patients on RR application.
- Examine **Abortion** as the conflict between the moral status of an embryo and a woman's right to procreative autonomy.
- Understand **Advanced Directives** (AD) and discuss the circumstances when AD are valid and applicable.
- Explain and discuss **Assisted conception**

MAIN REFERENCES

1. Olomojobi, Yinka 2019 Medical and Health Law: the Right to Health Lagos, Princeton & Associates Publishing Co. Ltd. (Chapters 8, 11 & 13)
2. Emiri, F. O. 2012 Medical Law and Ethics in Nigeria Malthouse Press Ltd. Lagos (Chapters 2, 3, 4,6 & 12)
3. Olopade, O. 2008 Law of Abortion in Nigeria Ibadan, College Press and Publishers Lid. Lead City University
4. Gillon, R. 2003 Philosophical Medical Ethics UK John Wiley & Sons (chapters 9, 10,11, 12, 29& 20)

Section 1. INTRODUCTION

What are human rights? (Various definitions)

- *“...something of which no one may be deprived without a great affront to justice. There are certain deeds which should never be done, certain freedoms which should never be invaded, some things which are suppressively sacred.”*
(Cranston M. 1967 Human Rights: Real and Supposed Blooming 52)
- *...claims, which are invariably supported by law, made on society...they are rights which every individual claims or aspires to enjoy irrespective of his colour, race, religion or status in life.”*(Umozuruike U O 1979 The African Charter on Human and people's Rights Martinus Nijhoff Publishers 4)

Section 1. INTRODUCTION- Positive and Negative Rights

There are differences between negative and positive Rights:

- A negative right implies a right to non-interference - **not to be killed**
- A positive right imposes positive duties of support or help on others - A positive right to life imposes a duty on the health care providers that proper health care is provided to ensure life is saved.

NOTE:

- It is only the person involved who can request that the duty is performed or who can waive that right
- There are few absolute rights that can not be justifiable in any circumstances such as the right to life

Reproductive Rights

- What rights are important to medical law?
- What are the most important rights to human reproduction?

Section 1. INTRODUCTION Contd.

Many rights are important to medical law

The most important rights to human reproduction are:

- 1. Right to autonomy
- 2. Right to dignity
- 3. Right to life

**What is the meaning of -
“Right to Autonomy”?**

**Freedom vis-a-vis
Acting autonomously**

Autonomy- meaning

Autonomy- is the capacity to think, decide and act on the bases of such thought and decision freely and independently and without hindrance.

It is important to distinguish between freedom and acting autonomously

- **Freedom** , liberty, license, or simply doing what one wants to do; and on the other hand
- **Acting autonomously**, which may also be doing what one wants to do but on the basis of thought or reasoning

Animals are not said to have autonomy but they may be perfectly free, at liberty , if they are not constrained

Autonomy- meaning contd.

- Autonomy- is a subclass of freedom or liberty
- **But not all freedom and liberty is Autonomy**
- The concept of autonomy incorporates the exercise of what Aristotle called ‘ man’s specific attribute’

“rationality”

Autonomy- Types

Autonomy- is sometime subdivided into:

- **Autonomy of Thought-** includes a wide range of intellectual activities that are called ‘thinking for oneself’
- **Autonomy of will-** Autonomy of intention or decision- freedom to do things on the basis of one’s deliberations
- **Autonomy of action-** The patient whose voluntary muscles are paralyzed but is conscious because he was subjected to a spinal cord anesthesia. He has the autonomy of thought and he is “active” but his Autonomy of action is temporarily absent.

Remember
we are
discussing
Patients

Respect for AUTONOMY

- Autonomy must be distinguished from what is often known as the principle of autonomy
- It is essentially the **moral requirement to respect other peoples autonomy**

REPRODUCTION: RIGHT TO AUTONOMY

1. Sterilization

2. Procreative autonomy-

a) Personhood argument

b) The argument that an embryo is a human being

c) The potentiality argument

RIGHT TO AUTONOMY

**WHAT IS
STERILIZATION?**

1.1. Right to autonomy: instances

A. Sterilization

- Every adult person has a right to decide whether to have children or not
- Sterilization is a medical procedure to make a person incapable of having children

1.1. Right to autonomy: instances

■ *General principles*

- A person must be 18 years or older to consent to sterilization(different law apply in different jurisdictions)
- The law allows for the sterilization of a person with severe mental disability provided their parents, spouse, guardian or a close relative and the hospital also agrees

1.1. Right to autonomy-instances contd.

WHAT IS

Procreative autonomy?

1.1. Right to autonomy-instances contd.

2. Procreative autonomy-

- Is a woman's freedom to terminate a pregnancy
 - Issues to consider:
 - At what point of development would a foetus gain a right to life?

1.1. Right to autonomy- instances contd.

a. Personhood argument

b. The argument that an embryo is a human being

c. The potentiality argument

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1.1. Right to autonomy- instances contd.

a) *Personhood argument*- definition of person is crucial

❖ If a Person is someone *who can make choices, is self aware, understands the consequences, etc.* then a foetus is clearly not a person and has no claim to right to life

NOTE:

- according to this definition persons in a persistent vegetative state will not count as 'persons' and lack a right to life
- *surely it is exactly those who lack autonomy who need protection*

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1.1. Right to autonomy-instances contd.

2. Procreative autonomy- contd.

b)The argument that an embryo is a human being

- ❖ If an embryo is a human being then:
 - Has full moral status;
 - Has a right to life from the moment of conception (or development);
 - Hence accords moral status and right to life to a mass of cells by virtue of being a member of human species.

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1.1. Right to autonomy-instances contd.

3. Procreative autonomy- contd.

c) The potentiality argument states :

- Although an embryo is not a person should be treated as such because it has the **potentials** to become one
- If the fertilized egg is **potentially** a human being (provided it implants and don't spontaneously abort) then the unfertilized egg and sperm also have the potentials to become human beings (**provided they meet and do not encounter a contraceptive!!!**)

Harris J. *The value of Life*, London, Routledge, 1985

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1.1. Right to autonomy

SELF ASSESSMENT QUESTIONS

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1.1. Right to autonomy-Assessment questions.

- 1) At what point then would a foetus gain a right to life?
- 2) If foetus are accorded full moral rights from conception does this justify harm to the woman whose life or health is at risk?
- 3) Should not a woman's right to determine what happens to her body override any rights of the foetus even where there is no harm to her?

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**What is the meaning of
‘Right to human dignity’?**

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1.2. Right to human dignity

□ Discuss the following Scenario:

Abdul: ‘There goes Ramona. I have not seen her
in a long time’

John: ‘She is not looking very well. She has lost
a lot of weight ‘

Bad Gossip: ‘Have you guys not heard Ramona has
won the ‘lotto’ You know what I mean
she is ‘4x4’.

In some parts of South Africa :

➤ ***‘Won the lotto’ means infected with HIV***

➤ ***4x4’ means the person has full blown AIDS***

1.2. Right to human dignity

□ Meaning

- People should not insult or hurt the **feeling** of one another.
- One essential part of people's dignity is the right to decide what happens to their bodies-right to **freedom and security of the person**.
- people's dignity also includes the right to **bodily and psychological integrity**
- the right to bodily and psychological integrity includes **the right to make decisions concerning reproduction**

1.2. Right to human dignity

- ❑ The right to human dignity is also one of the values on which the 1999 Constitution (as Amended) of the FRN is based
- ❑ Human dignity requires us to accept that every person is of the same value and is a worthy member of our society
- ❑ This means that every person is **entitled to be treated with respect**
- ❑ If one person defames another person's good name the first person will also infringe the second person's human dignity

1.2. Right to human dignity

If one person defames
another person's good
name the first person will
also infringed the second
person's
human dignity

**What is the meaning of
'Right to life'**

When does life begin?

The beginning of life

❑ Social and legal uncertainty about the status of a foetus:

‘Part of that uncertainty results from the complexity of the whole biological process.

Part results from the diversity of views, past and present, about that status.

Part results from the lack of agreement as to how to reach consensus on the problem’

(Law Reform Commission Canada)

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Understanding Foetal Development

A discourse of Foetal development in the womb and the beginning of life.

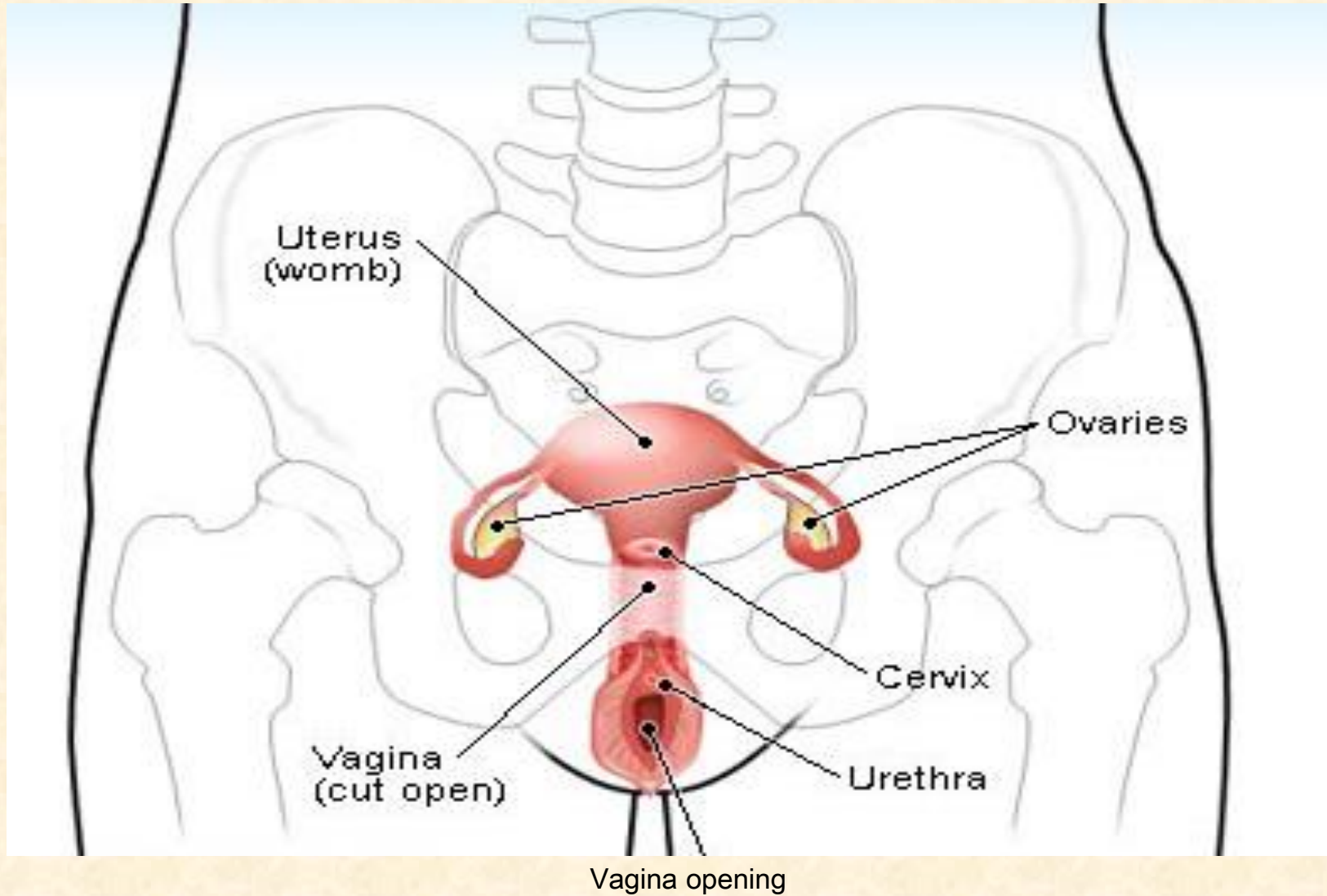
*(Olapade, O. 2008 Law of Abortion in Nigeria College Press &Publishers Ltd.
Lead City University, Ibadan, Nigeria 103-108)*

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Understanding Foetal Development- main concepts

- **Embryo**- term used for an “unborn child” between the 2nd and 12th weeks after conception.
- **Fetus**- an unborn child from the 3rd month after conception until birth
- **Gestation** period-time period before birth during which the fetus is developing

Understanding Foetal Development



When does life begin

- Life begins when there is a union of an ovun and a spermatozoon.
- It usually takes place at the ampulla of the fallopian tube
- About 36-38 hours post ovulation
- **The ovum**
 - is approx. 0.2 millimeters in diameter
 - Has a protective covering over, the yolk
 - The nucleus is at the center
 - Is incapable of moving on its own

When does life begin contd.

- The spermatozoon:
 - Is very small
 - Has a head, neck, body and tail
 - Is mobile
- During the sexual intercourse on the average a male ejaculates @ 400 million sperm cells into the vagina (most of them however die shortly)
- The sperm moves into the uterus and down the fallopian tubes

When does life begin contd.

- If a living ovum is met the sperm is chemically attracted to it and enters leaving behind the body and tail
- The nucleus passes into the yolk where both nuclei unite
- As soon as a spermatozoon enters a membrane forms around the egg
- It is impossible for a sperm to enter while another has done so
- **The zygote** is then formed

When does life begin contd.

The **zygote** is formed and moves towards the uterus

For the first few days derives its food from the ovum

After a period of 3 days it segregates into a new form known as **morula**

About the 5th day reaches the uterus

On the 6th day the development of the product conception begins

During the second week internal organs begin to develop

During the 6th week the embryo has arms and legs

When does life begin? contd.

This question has initiated diverse and multiple arguments:

1.The moment of conception-

This connotes that if there is any interference with this process this will amount to the **wrongful taking of another's life.**

2. Life begins after the egg and sperm unite to form an embryo-

(considered to be 14 days after conception)The embryo form is the stage of development between the 2nd and the 12th weeks

3. Life begins when the fetus starts to develop organs and has a pronounced heartbeat and a functioning brain.

This occurs approximately 24 weeks after conception

4. Life begins for the fetus when birth takes place

Note:

- The arguments surrounding the various dimensions to the question When does life begin? has also created ethical dilemmas for many health care providers
- Remember birth, life and death are specially difficult because they all reflect the personal values acquired by each individual over years
- **There is no universally accepted agreement on when life begins.**

Right of an unborn child

□Right of an unborn child to protect against harm etc.

**WHAT ARE THE PROVISIONS
OF THE NIGERIA Child's
Rights Act, 2003, the various
Child's Rights Laws and other
legislations?**

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Right of an unborn child

□ *Right of an unborn child to protect against harm etc.*

‘(1)A child may bring an action for damages against a person for harm or injury caused to the child wilfully, recklessly, negligently or through neglect **before, during or after the birth of that child**’. (17 Child’s Rights Act, 203)

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Right of an unborn child Contd.

‘(2) Where the father of an unborn child dies intestate, the unborn child is entitled, if he was conceived during the lifetime of his father, to be considered in the distribution of the estate of the deceased father.’^(17 Child’s Rights Act, 203)

‘(3) Where the mother of an unborn child dies intestate, the unborn child is entitled, if he was conceived during the lifetime of his mother, to be considered in the distribution of the estate of the deceased mother’.^(17 Child’s Rights Act, 203)

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When does a child become a human being?

□ “A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not”

(section 307 Criminal Code Act Cap C38 LFN 2004; and 220 Criminal Penal Code)

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When does a child become a human being? Contd.

❑ Before an unborn child could be regarded as a *person capable of being killed* two conditions must be present:

- The child must be completely extruded from his mother's womb
- The child must have an independent existence from that of the mother

NOTE:

- It is not essential that the umbilical cord and that after birth be detached from the mother, or removed from the mother or extricated from the child
- **It is essential to prove that the child is born alive failing this a charge for murder or homicide cannot be sustained**

When does a child become a human being? Contd.

❑ ***STATE v. Linus Akpan*** (1972) 2UILR 457

Facts:

The accused persons were charged with killing a child in consequence of an act omitted to be done during child birth contrary to section 247 of the Criminal Code Act.

Held:

Since there was no proof that the child was born alive, the offence with which the accused persons were charged could not be sustained

Compare with:

R v Senior (1832) Mood C.C.346 (English case of medical negligence; during delivery the compression of the skull of a child by the midwife, led to his death)

R v Castles (1960) W.W.N. 36 (Queensland case: abortion was induced on an woman who was @22 weeks pregnant. Child was born alive but died 2 hours later. Accused was charged with manslaughter . On appeal decision reverted to the offence of abortion)

What is Abortion?

ABORTION- MAIN CONCEPTS

- **INDUCED ABORTION** - termination of pregnancy by intervention, artificial means such as oral medication, injection, surgical procedures.
- **SPONTANEOUS ABORTION** – termination of pregnancy that occurs before the fetus is viable, it happens naturally.
- **STERILIZATION** – is the medical procedure that results in terminating the ability to produce offspring.
- **THERAPEUTIC STERILIZATION** – sterilization undertaken to save the mother's life.

2. Abortion: and the law

Induced Abortion- legal context

- is the **artificially induced** expulsion of an embryo or fetus

Miscarriage

- is not defined in criminal/penal law
- In its popular sense it is synonymous with abortion
- Consists in the *expulsion* of the embryo or fetus
- **Expulsion of the immature product of conception**

2. Abortion: and the law Contd.

Abortion is a
controversial
issue

- **Meaning**- generally
 - abortion is a crime in Nigeria (Criminal Cod Act ss. 228, 229, 230)
 - abortion is illegal
- **Exception** – (Abortion becomes legal)
- Permitted in very limited circumstances such as:
 - where the continued pregnancy would endanger the life of the woman(297 Criminal Code Act)
 - Where the child when born would be seriously handicapped
 - Where the pregnancy is a result of rape or incest

2. Abortion: and the law-*Exception* Contd.

Exception

-A person shall not be guilty of an offence under the law relating to abortion:

- When a pregnancy is terminated by a registered medical practitioner
- When two registered medical practitioners are of the opinion formed in good faith:
 - ***a. 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. Abortion: and the law-*Exception* Contd.

Exception

-A person shall not be guilty of an offence under the law relating to abortion:

- ***b. That the termination of pregnancy***
 - is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman
- ***c. That the continuance of the pregnancy***
 - Would involve risk to the life of the pregnant woman greater than if pregnancy were terminated
- ***d. 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

Abortion: and the law Contd.

It is
important
to note that
**the law
limits the
legality of
abortion:**

- To those circumstances where the foetus or the unborn child is not capable of being born alive
- 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**'
- 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))

Abortion: and the law Contd.

Summary

Abortion is an intentional expulsion of the product of conception any moment from conception up till the birth of the child

Induced abortion is the wilful expulsion of the foetus before birth, save for the exceptions, is unlawful and amounts to criminal abortion

2. Abortion Contd.

□ Right of women to Counselling

- Counselling must be made available for the woman both before and after the termination of the pregnancy
- The reason(s) for abortion must be clearly explained
- The likely effects must also be made clear

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Assessment

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?

Assessment Contd.

2. Do you agree with the provisions of the Nigerian law which makes abortion an offence? Give reasons for your answer.

3. Discuss Abortion and the right to make decisions concerning reproduction in Nigeria.

4. What reforms do you proffer in this area of the law in Nigeria?

a. Give reasons and substantiate your answer with lessons learned from other jurisdictions.

b. Considering the socio cultural peculiarities of Nigeria proffer ways for the implementation of the suggested reforms.

Assessment Contd.

5. *‘Having a ‘right to life’ is not indicative of jeopardizing the life, welfare and wishes of the carrier of the pregnancy. It is not only unjust but also morally wrong to exercise a right over the chattel or on the land that belongs to another’* (Olopade, O. 2008 *Law of Abortion in Nigeria* Ibadan, College Press and Publishers Ltd. 31)

Examine the above statement in the light of the conflict between the moral status of an embryo and a women’s right to procreative autonomy.

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Advanced Directives/Decisions (AD)

**What do you understand
by:**

**Advanced
Directives/decisions**

UNDERSTANDING AD

❑ An advance decision (AD) is

- a statement (decision)
- made by an adult
- with capacity

About a treatment he/she would wish **to refuse** in the event of loss of capacity.

❑ An AD cannot dictate that treatments are given

❑ A request for specific forms of treatment should be taken into account in deciding what treatment would be in that ***person's best interest***.

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Conditions for a valid AD

When will an AD be effective?

Conditions for a valid AD

□ ***AD is effective only if the patient was:***

1. Over 18 or 21 years and competent at the time when the decision was made.
2. AD is relevant only when the patient lacks capacity to consent to the treatment (if a patient has signed an AD refusing to consent to blood transfusion, but at the time he is competent and consents, then the AD should be ignored)
3. The AD only allows '***negative***' ***decisions***- decision to refuse treatment -**an AD cannot be use to compel a physician to provide treatment.**
4. If the AD rejects life-saving treatment it must be in writing, signed and witnessed by a third party

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WHAT FORM SHOULD AN AD
TAKE?

Conditions for a valid AD Contd.

- ❑ ***Generally*** there is no particular format for an AD.
- ❑ ***Exception-*** where it refers to refusal to life-sustaining treatment the AD must be in writing and witnessed
- ❑ The treatment to be refused must be specified.

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Conditions for a valid AD Contd.

If the doctor does not consider the request in a valid AD to be in the patient's best interest could he ignore it?

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Conditions for a valid AD Contd.

- ❑ If a person makes a valid AD, then it must be followed even though the doctor may not consider the course of action to be in the patient's best interest

(otherwise the doctor could be liable for battery)

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**WHAT ARE THE
CONDITIONS FOR A VALID
AD?**

Conditions for a valid AD Contd.

- ❑ An AD to refuse treatment must state **precisely** what treatment to be refused
- ❑ A statement given a general desire not to be treated is not enough
- ❑ It could guide the clinician about what the person wants especially when this is supported by the views of the family

AD- ETHICAL ISSUES

- ❑ People's attitudes towards death is marked by their ethical or religious believes
- ❑ ***One of the ethical dilemmas*** is that personal identity, and therefore values, may change with the onset of diagnoses of terminal disease, life-threatening illness, dementia and similar health conditions

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3. AD - Assessment

4. Bimbo is 75 years old. She was diagnosed with multiple infarct-dementia 7 years ago. She was once a professional, successful woman of repute but over the past 7 years her memory has declined to the extent that she no longer recognises members of her family. Seven months ago she had a stroke and, consequently, she is now bed bound, doubly incontinent and has difficulty in swallowing.

Over the past 3 months there has been minimal improvement in her condition and now she developed bronchopneumonia.

You, as a qualified physician in charge with Bimbo, decide that it would be best to start intravenous antibiotics and fluids. You discuss with Bimbo's family and they are adamant that Bimbo would not wish to continue living in her current state. Her daughter says that her mother has felt so strongly about this that she has left an AD

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AD – Assessment Cond.

She gives you a piece of paper which states '*If as a result of my illness, I become unable to perform my any basic task myself, then I will not wish to receive any form of life-sustaining treatment.*' It is signed Bimbo and dated 5 years ago.

You tell the family that antibiotic treatment is likely to cure Bimbo's pneumonia but she is likely to die without it.

They all say that you should respect their mother's wishes and that all treatment should be withdrawn Except from pain relief.

Identify the legal issues and discuss making reference to AD.

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Terms: explained

- ❑ **Dementia**- is a medical condition which might involve an impairment or disturbance of the functioning of the brain.
- ❑ A person is unable to make a decision for self if is:
 - **Unable to understand** the info relevant to the decision (lack of sufficient comprehension)
 - **Retain** that info
 - **Use/weigh that info** as part of the process of making the decision (*Bolton Hospital NHS Trust v. O 2003 1FLR 824*)
 - **Unable to communicate** his/her decision

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ETHICS

□ Definition-

- From the Greek word ‘*ethos*’
- Cannot unequivocally be defined
- ‘**a system of accepted believes which control behaviour**’
- Moral principles of conduct
- Rules of conduct distinguishing what is right from what is wrong
- Rules of conduct that are not product of legislation
- Ethics is:

...’***a code of behaviour accepted voluntarily within the profession, as opposed to statutes and regulations imposed by legislations***’

(Knigh, B. 1982 *Legal Aspects of Medical Practice*, New York Church Hill Livingstone 1.)

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MEDICAL ETHICS

❑ In reference to medical practice

- Is the code of conduct guiding and regulating the practice of medicine

❑ Functions, Essence and main aim of ethics

The 3 Rs:

- **Restrict**
 - **Rule**
 - **Regulate**
- **Restrict-** ethics restrict practitioners by limiting them
 - **Rule-** stipulate what can be done
 - **Regulate-** specify standards which must be observed by practitioners

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ETHICAL ISSUES AND ADVANCED DIRECTIVES

- 'A competent person, fearing incompetence, might, quite properly, seek to determine how she or he will be treated in the future when incompetent.'
(Gremmen et. al 2008)
- They want their deaths, if possible, to express and confirm the values they believe are most important.

ETHICAL ISSUES AND AD Contd.

- ❑ In case of Alzheimer's patients, although their body remains the same the loss of memory or connection with relatives/friends means that a '***new person has come into being***'.
- ❑ There has been such a change of personality and personhood that the competent person is no longer empowered to speak on behalf of the incompetent. (Buchanan, A. and Brock, C. 1990 *Deciding for Others: The Ethics of Surrogate Decision Making*, Cambridge University Press 152-189)

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SUMMARY: ETHICAL ISSUES AND AD

- ❑ There are many and varied debates over ADs
- ❑ In reality very few people do try and make ADs
 - Perhaps because they do not want to think about death or illness;
 - Many are happy for decisions concerning their medical treatment to be made by their physicians and their families, should they become incompetent
- ❑ ***Authorities on ADs have sought, however, to develop an approach towards ADs based on an ethic of care.***

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4. Assisted Reproduction (conception)

OUTCOME:

At the end of interaction students shall be able to

1. Explain and
2. discuss assisted conception

WHAT IS ASSISTED REPRODUCTION

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ASSISTED REPRODUCTION

□ Introduction

- The days when there was only one way of having children are long gone.
- Technology and medical advancement have provided a wide range of alternatives for producing children
- The first '***test tube baby***' was born in 1978 in UK
- One in 80 children born in UK are as a result of medically assisted conception (Jackson, E. 2001 *Regulating Reproduction*, London Heart 161)

ASSISTED REPRODUCTION: INTRODUCTION Contd.

❑ Infertility broad definition:

- couples' inability to conceive after 12 months of unprotected sexual intercourse
- Couple has suffered 3 or more miscarriages
- Couple has suffered 3 or more stillbirths

❑ The exact cause of infertility is unknown

- 29.7% of cases the medical cause of the infertility rests in the man
- 28.5% with the woman
- 10.3% with both
- 23.9% the cause is unknown (The Human Fertilisation and Embryology Authority(HFEA) 2011 UK)

THE CONCEPT OF REPRODUCTIVE AUTONOMY

What is
Reproductive Autonomy?

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THE CONCEPT OF REPRODUCTIVE AUTONOMY

- ❑ The meaning of **Reproductive
Autonomy** is not clearly defined
- ❑ Distinguishing Reproductive liberty and
Reproductive Autonomy

Reproductive Liberty and Reproductive Autonomy

□ Reproductive liberty

- Is essentially a negative concept- it prevents the state from interfering with peoples' reproductive choices
- Ones reproductive choice should be a private matter in which the state should not interfere.

□ Reproductive autonomy

- Contains all ideas in reproductive liberty but goes further
- *Places positive obligation on the state to provide treatment for infertile couples*
- To assist couples to have children- *infertility in this sense is analogous with disease, which the state has an obligation to treat*

COVERAGE OF REPRODUCTIVE LIBERTY/AUTONOMY

- *There is dispute of what reproduction means in this sense*
- *Is it the right to produce a child or to rear a child*
 - From contraception to abortion
 - From cloning to sex selection of the embryo for implantation
- There are as many arguments in favour of, as criticism of assisted reproductions are.

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ASSISTED REPRODUCTION

Main Lawful Techniques For Assisted Reproduction

- Cryopreservation
- Donor insemination (DI)
- Egg (oocyte) donation
- In vitro fertilization (IVF)
- Gamete intra-fallopian transfer (GIFT)
- Intra-cytoplasmic sperm injection (ICSI) and sub-zonal insemination (SUZI)
- In vitro maturation (IVM)

Main Lawful Techniques for Assisted Reproduction

1. Cryopreservation

- Sperm, eggs and embryos can be frozen
- Implanted at the optimum time in a woman's cycle
- It is used for individuals who are about to undergo treatment/surgery which will render them infertile
- Affords a way to retain the option of reproduction in the future

Note

- The freezing of eggs carries serious risks of failure

Main Lawful Techniques for Assisted Reproduction

2. Donor insemination (DI)

- Is used when
 - the woman has no partner or
 - The partner is infertile
- It involves the insemination of sperm from a donor into the woman, via her vagina, into the cervical canal or into the uterus
- It is normally used as a last resort

Main Lawful Techniques for Assisted Reproduction

3. Egg (oocyte) donation

- Egg donation is necessary where the woman has no healthy eggs
- A woman willing to donate eggs will have hormonal treatment and then eggs will be surgically removed from her.

Note

- This is an uncomfortable and invasive procedure
- The donated eggs can be fertilized with the sperms of the woman's partner or donated sperm and thereafter inserted into her uterus

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Main Lawful Techniques for Assisted Reproduction

4. In vitro fertilization (IVF)

- Hormonal treatment is used to stimulate the over-production of eggs.
- The eggs are removed from the ovarian follicles and placed in a culture which matures them further.
- They are then fertilized with sperm.
- The resulting zygotes are either frozen or placed back into the woman's uterus.

Main Lawful Techniques for Assisted Reproduction

5. Gamete intra-fallopian transfer (GIFT)

- Eggs are retrieved as in IVF
- The eggs are mixed with the sperm and returned to the fallopian tubes
- The fertilization is intended to take place there

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Main Lawful Techniques for Assisted Reproduction

6. Intra-cytoplasmic sperm injection (ICSI) and sub-zonal insemination (SUZI)

- This involves the injection of a single sperm into an egg with a very fine needle.
- If fertilisation is successful the fertilized egg is then transferred to the woman's uterus in the same way as in IVF
- ICSI is particularly useful where the sperm cannot naturally penetrate the egg or where it is of poor mobility
- SUZI is a very similar procedure but involves micro injections of a small number of sperm

Main Lawful Techniques for Assisted Reproduction

7. In vitro maturation (IVM)

- This is a relatively new form of treatment
- It involves removing an immature egg from a woman's ovaries and then maturing it in a laboratory before being fertilized
- Then it is returned into the woman's womb

ARTs REGULATIONS

- We are guided by the Human Fertilization and Embryology Act (HFE Act) 1990 of England which created the Human Fertilization and Embryology Authority (HFEA)
- **HFEA**
 - issues guidelines on ARTs and
 - Licences their use

The advantage of regulations is that it provides a flexible approach to the many controversial areas of ARTs

ARTs -Case study

**Evans v. Amicus health care
Ltd. [2004]3 All ER 1025**

ARTs and The welfare of the child

‘A woman shall not be provided with treatment services unless account has been taken of the welfare of any child who may be born as a result of the treatment (including the need of that child for **supporting parenting**, and of any other child who may be affected by the birth).’

[HFE Act s. 13(5)]

NOTE:

The rules **for supporting parenting** do not operate satisfactorily in the context of assisted reproduction as they are not as straightforward as in the cases of a genetic husband, partner/ father

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Advanced Directives/decisions



ARTs -Case study

OUTCOME

- ❑ At the end of this module you will be able to:
1. Explain the main reproductive rights.
 2. Examine **A**bstortion as the conflict between the moral status of an embryo and a woman's right to procreative autonomy.
 3. Understand **A**dvanced **D**irectives (AD) and discuss the circumstances when AD are valid and applicable.
 4. Explain and discuss **A**ssisted conception

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1. INRODUCTION

❑ Many rights are important to medical law

❑ The most important rights to human reproduction are:

1.1 Right to autonomy

1.2 Right to dignity

1.3 Right to life

Autonomy- Types

- Remember we are discussing Patients
- Autonomy- is sometime subdivided into:
 1. **Autonomy of Thought-** includes a wide range of intellectual activities that are called '**thinking for oneself**'
 2. **Autonomy of will-** Autonomy of intention or decision- freedom to do things on the basis of one's deliberations
 3. **Autonomy of action-** The patient whose voluntary muscles are paralyzed but is conscious because he was subjected to a spinal cord anesthesia. He has the autonomy of thought and will active but his Autonomy of action is temporarily absent.

Autonomy- meaning

- Autonomy- is the capacity to think, decide and act on the bases of such thought and decision freely and independently and without hindrance.
- It is important to distinguish between, on the one hand,
 - **Freedom** , liberty, license, or simply doing what one wants to do; and on the other hand
 - **Acting autonomously**, which may also be doing what one wants to do but on the basis of thought or reasoning
- **Animals are not said to have autonomy but they may be perfectly free, at liberty , if they are not constrained**

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When does life begin contd.

- **The zygote** is formed and moves towards the uterus
- For the first few days derives its food from the ovum
- After a period of 3 days it segregates into a new form known as **morula**
- About the 5th day reaches the uterus
- On the 6th the development of the product conception begins
- During the second week internal organs begin to develop
- During the 6th week the embryo has arms and legs

2. Abortion: and the law Contd.

□ Abortion is a controversial issue

- ***Meaning***- generally

- abortion is a crime in Nigeria (Criminal Cod Act ss. 228, 229, 230)
- abortion is illegal

- ***Exception*** – (Abortion becomes legal)

- Permitted in very limited circumstances such as
 - ❖ where the continued pregnancy would endanger the life of the woman(297 Criminal Code Act)
 - ❖ Where the child when born would be seriously handicapped
 - ❖ Where the pregnancy is a result of rape or incest

2. Abortion: and the law-*Exception* Contd.

❑ *Exception -A person shall not be guilty of an offence under the law relating to abortion:*

- When a pregnancy is terminated by a registered medical practitioner
- When two registered medical practitioners are of the opinion formed in good faith:

a. That the pregnancy has not exceeded its 20th week and

- ❖ The continuing of pregnancy would invoke risk greater than if the pregnancy were terminated

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Abortion: and the law-*Exception* Contd.

b. That the termination of pregnancy

- ❖ is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman

c. That the continuance of the pregnancy

- ❖ Would involve risk to the life of the pregnant woman greater than if pregnancy were terminated

d. 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

Abortion: and the law Contd.

❑ It is important to note that the law limits the legality of abortion:

- To those circumstances where the foetus or the unborn child is not capable of being born alive
- 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*'
- 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))

Abortion: and the law Contd.

➤ *Summary*

- **Abortion is an intentional expulsion of the product of conception any moment from conception up till the birth of the child**
- **Induced abortion** is the wilful expulsion of the foetus before birth, save for the exceptions, **is unlawful** and amounts to **criminal abortion**

ASSISTED SUICIDE:

1. Distinction between the legality of ending or attempting to end one's own life and the legality of helping another individual end his or her life.
2. Is there any statutory right to physician-assisted suicide?
3. Assisted suicide cannot be judge to be an acceptable medical practice based on abstractions and general legal principles.

DISCUSS