

**AN EXAMINATION OF THE NATURE AND IMPLICATION OF THE
MEDICAL CONCEPT OF DEATH IN RELATION TO LAW**

Toluwani Mercy Francis*

Abstract

For a very long time, the absence of an established uniform definition of death created uncertainty and put physicians, including relatives and friends of patients and the society at large, in acute dilemma. This paper examined the nature and implication of the medical concept of death in relation to law. This research is doctrinal, both primary and secondary sources of law were relied on. The former includes statutes and cases while the latter consist of books, journal articles, news articles and other materials from the internet. This study found that the American Bar Association, the American Medical Association and the National Conference of Commissioners endorsed definition of death on Uniform State Laws has not been totally effective in addressing matters arising from recent developments in medical treatments such as artificial support systems, organ donation and transplantation, human medical research, euthanasia, genetic engineering, living wills, death certification rules, the maintenance of life support beyond brain death for pregnant women/organ donors, protection of corpses etc. as each has its own distinct ethical and legal considerations. This study also found that there is a beautiful and dutiful interconnection between Medicine and Law on the subject of death. This study concluded that there exist certain legal, medical and ethical issues which should be considered in the process of determining death. Medical practitioners must be aware of these considerations to prevent the continuous violation of the constitutional right to life of patients.

Keywords: Death, Medical Law, Definition of Death, Medical Practice, Ethics.

1. Introduction

During the Christmas period in 2024, Nigeria experienced a series of avoidable and preventable tragic events that led to the loss of at about Sixty-Seven people

¹ The first was at the Children Funfair organized for five thousand children in Ibadan, Oyo State.² It was in the news that more than Ten Thousand children and adults turned out for this event because it had been announced on the Radio that they were going to give Five Thousand Naira (#5000:00) to each child. There was a stampede and at least thirty-five children were reported to have died. While Nigeria was still mourning this incident, another stampede that claimed about ten lives happened at a Christmas event organized by a Catholic Church in Abuja as they were trying to distribute welfare/relief materials to the hungry masses.³ Shortly after, a third stampede occurred in Okija, Anambra state during a Foundation's annual end of the year event where rice was being shared to people and claimed about twenty-two lives.⁴

These events are tragic and there are many ways to look at them and many lessons that can be learnt from them especially on Crowd/Safety control measures during public events, the abject poverty in Nigeria that could make people endanger their lives for such a small amount of money or food etc. But as a medical law researcher, I could not help but wonder if the victims of the stampedes actually died on the spot. There was no security or emergency response team present at any of the scenes.⁵ Nigeria does not have an adequate and highly effective medical emergency response program. We do not have

*McPherson University, Seriki Sotayo Ogun State, francism@mcu.edu.ng 08133354407

¹ Associated Press, US News and World Report, Why Did at Least 67 People Die in Christmas Charity Stampedes in Struggling Nigeria, US News and World Report. Available at Why Did at Least 67 People Die in Christmas Charity Stampedes in Struggling Nigeria? Last accessed on the 20th of November, 2025.

² Femi Akinyemi, "Ibadan stampede: Help free my daughter, Naomis mother cries out", Nigerian Tribune, 25th December, 2024 Available at Ibadan stampede: 'Help free my daughter ', Naomi's mother cries out - Tribune Online last accessed on the 26th of December, 2024.

³ **Nathaniel Shaibu, Solomon Odeniyi**, 10 killed, others injured in Abuja food distribution stampede, Punch Newspapers, available at 10 killed, others injured in Abuja food distribution stampede, Last accessed on the 26th of December, 2024.

⁴ Stampede: MURIC faults police sledgehammer on Ibadan organisers, ignoring Abuja, Anambra, Vanguard Newspapers, 25th December, 2024, available at Stampede: MURIC faults police 'sledgehammer' on Ibadan organisers, ignoring Abuja, Anambra - Vanguard News Last accessed on 26th December, 2024.

⁵ Mathrubumi English, At least 67 deaths in Nigeria's Christmas Charity, Available at <https://english.mathrubumi.com/news/world/67-deaths-in-nigeria-christmas-charity-stampedes-43101fe1> Last accessed on 20th November, 2025.

adequate and well-equipped first responders enough to cater for the whole country as in developed nations, our health care sector is short-staffed and underfunded.⁶ Some of our health care professionals are not well trained enough in rapid emergency response, many of our hospitals do not have adequate working ambulances and resuscitation equipment like defibrillators, machines that monitor brain activity, EKG machines etc. Even when we have those machines, we do not have constant electricity supply to power them.⁷

I could not but wonder what ifs; what if some of those victims were given CPR? What if resuscitation attempts were made? What if some of them were not really dead and just passed out and could have been brought back? News has it that some of them were even taken straight from the venue to the mortuary. But even if they had been taken to hospitals, who ensures that the health care professional on duty do not pronounce them dead on arrival (DOA) without following the appropriate medico-legal procedure?⁸ All these have prompted this research, an examination of the nature and implication of the medical concept of death in relation to law.

The concept of death is a boundless one that has been looked into from every angle imaginable. Philosophers, Biologists, Religionists, Physicians and very interestingly, even lawyers have probed into the subject of death. The absence of an established uniform standard for defining death has over the years created uncertainty and put physicians (including relatives and friends of patients and the society at large) in acute dilemma.⁹ The Physician wants to know the exact point his patient transforms from an individual in need of medical attention into a dead body. The relative or friend wonders if they are caring for the living or if they should be grieving the loss of a loved one. The

⁶ Onyedika, Ugoeze. Coalition raises concern over dwindling health sector fortunes, The Guardian Newspaper, 20th November, 2025. Available at Coalition raises concern over dwindling health sector fortunes Last accessed on 20th November, 2025.

⁷ Sola Ogundipe, Japa, underfunding, inefficiency undermining Nigeria's public hospitals, Vanguard Newspaper. Available at Japa, underfunding, inefficiency undermining Nigeria's public hospitals - Vanguard News Last accessed on 20th November, 2025.

⁸ Scribd, available at Brought Dead Protocol | PDF | Death | Cardiopulmonary Resuscitation last accessed on 20th November, 2025.

⁹ New York State, The Determination of Death, New York State Task Forces Report on Life and the Law, July 1986, pp 3.

society asks if this expensive and advanced technology is being used to sustain the living or to treat the dead? This work considers the subject of death in relation to law.

In Elementary school, in the subject that was called Integrated Science in Nigeria (now called Basic Science), the characteristics of living things is taught. This is codified in the acronym MR NIGER D which transformed later in High School Biology into MR NIGER CAD. These characteristics are actually Movement, Respiration, Nutrition, Irritability, Growth, Excretion, Reproduction, Cell, Adaptability and ultimately Death.¹⁰

Death is the ultimate, the leveler. Whether a human is rich or poor, unknown or famous, godly or godless etc. everyone will die someday. Death signifies an end to all the activities of every living thing on planet earth. In conversations, it is called the only constant. To show how important death is to humans, people do different things to prepare for it. Legally, wills and codicils are written. People who believe in God, heaven, hell and life after this life, engage in activities they believe will secure them a space in eternity. In the African tradition, when a king or an important person dies, it is such a big deal. Several rites and protocols are performed and observed respectively to ease the safe passage of the nobility from this life into the afterlife. In some cultures, death is even worshipped.¹¹

Maybe one thing that makes death so mysterious is the fact that oftentimes it is unpredictable. The most important fun fact about death actually is that most people do

¹⁰ Scholars help. Available at Biology: Characteristics of Living Things - MR NIGER D - WELCOME TO SCHOLARS HELP last accessed on 20th of November, 2025.

¹¹ Thanatos, in ancient Greek mythology and religion is considered the personification of death. Other than Thanatos, there are about twenty other known deities considered gods or goddesses of death. The list includes; Anubis- the Egyptian God of Death, Yama- the Hindu God of Death, Freyja- the Norse Goddess of Death, Hecate- the Greek Goddess of Death, Meng Po- the Chinese Goddess of Death, Hades- the Greek God of the Underworld, Hel- the Norse Goddess of Death, Morrighan- the Celtic Goddess of Death, Osiris- Egyptian God of Death, Mot- the Canaanite God of Death and the Underworld, Whiro- the Maori God of Death, Pluto- the Roman God of Death, Chernobog- the Slavic God of Misfortune, Coatlicue- the Aztech Goddess of Death, Sekhmet- Egyptian Goddess of Death, Elrik- Siberian Ruler of the underworld, Ahriman- the Persian God of Death and Destruction, Batara Kala- Javanese and Balinese God of Underworld, Sedna- Inuit Goddess of Destruction and the Underworld and Adro- the African God of Death. Rupesh Chhabra, "21 Gods & Goddesses of Destruction, Death & Underworld", Still Unfold.com, <https://stillunfold.com/miscellaneous/gods-of-destruction-death-underworld> last seen on the 24th of August, 2021.

not want to die. Morally, many people also frown at people ending their own lives (suicide) or physicians assisting their patients to end their lives.¹²

At the crux of the European Convention on Human Rights is the right to life, it is the most basic of all human rights. The right to life values life and is focused on individual life.¹³ Right to life is popularly considered as right to not be killed, and now also (with suicide and assisted suicide) it includes the right to choose to live or not to live. However, whether right to life implies (or not) the right to die or the right that others shall assist with death or the right against non-interference if others are willing to help, it does not in any way suggest a diminishing of the value of life.¹⁴

Therefore, if life is very important and valuable, its ending (death) and everything it entails is also very important and noteworthy; and should be regulated by the Law, hence a study of the nature and implication of the medical concept of death in relation to law.

1. Death and the Law

Generally, an individual is said to have died when there has been a permanent stop to both respiration and circulation or there has been a permanent stop to all functions of the brain as well as the brain stem.¹⁵

However, this definition¹⁶ has not been totally effective in addressing matters arising from recent developments in medical treatments such as Artificial support systems, Organ donation and transplantation, Human Medical Research, Physician Aid in Dying (Euthanasia), Genetic Engineering, Wills, Dignifying Death, Death Certification rules,

¹²At the European Human Rights Court in 2002, Diane Pretty in 2002 argued that right to life implied that a human has the right to choose death. Chetwynd SB, Right to Life, Right to Die and Assisted Suicide, J Appl Philos. 2004, 21(2), Advanced National Library of Medicine, National Center for Biotechnology Information. Available at <https://pubmed.ncbi.nlm.nih.gov/15462028/>, last accessed on the 24th of August, 2021.

¹³ Paul Tiensuu, Whose Right to What Life? Assisted Suicide and the Right to Life as a Fundamental Right, Human Rights Law Review, 15(2) June 2015, Pp 251-281. Available at <https://doi.org/10.1093/hrlr/ngv006> last viewed on the 24th of August, 2021.

¹⁴ Chetwynd SB, Right to Life, Right to Die and Assisted Suicide, J Appl Philos. 2004, 21(2), Advanced National Library of Medicine, National Center for Biotechnology Information. Available at <https://pubmed.ncbi.nlm.nih.gov/15462028/>, last accessed on the 24th of August, 2021.

¹⁵ Jalan, M. What Are The 4 Post-mortem Stages of Death? Science ABC, 2024. Available at Stages Of Death: Different Stages The Body Goes Through After Death Last accessed on the 20th November, 2025.

¹⁶ At the time of the proposition of the Act for Uniform Determination of Death in July, 1981.

Keeping brain dead Pregnant Women or Organ Donors on life support machines, and Corpse Protection etc. each of these matters has its own distinct ethical and legal considerations.¹⁷

The occurrence of new and innovative technology that saves lives have necessitated the need for law to regulate death determination.¹⁸

*Death can be defined as an irreversible loss of the capacity to be conscious as well as the loss of all functions of the brainstem. Death can be caused by an irreversible cessation of circulatory functions after or along with a fatal injury of the brain. That these losses are irreversible means that they cannot spontaneously resume or be restored by intervention.*¹⁹

“Brain Death”²⁰ or “Cardiac Death”²¹ are common parlance in medical circles, these anatomically based terms however refer to the death of particular organ. These terms may give a false interpretation of death. Death is an end of both functions of the brain and circulatory system; an evaluation of brain function trumps any other consideration in death determination.²²

Moreover, with advancement in technology that saves lives, it has become possible for respiration and Circulation to continue with artificial assistance despite brain death.²³ Also, it is now possible to determine brain death in between the administration of cardio respiratory support.

Common Laws way of defining death, however, does not guarantee the recognition of all these medical advances. According to Common Law, death is the termination of every

¹⁷ Ibid.

¹⁸ R.M Vetch, *Death, Dying and the Biological Revolution*, Yale University Press, 1972.

¹⁹ Montreal Forum Report, *International Guidelines for the Determination of Death — Phase I*, May 2012, released October 2012, Canadas Blood Services, World Health Organization.

²⁰ Determination of death founded on the permanent discontinuance of brain functions. The Montreal forum Reports of May, 2012 is in favour of a permanent discontinuance of neurological function over the cultural and vague former death indicators.

²¹ Sudden end of blood circulation because of the hearts inability to effectively contract, Montreal Forum Report, *International Guidelines for the Determination of Death — Phase I*, May 2012, released October 2012, Canadas Blood Services, World Health Organization.

²² Ibid

²³ Ibid

vital function. Common Law determines death by the nonexistence of self-generated breathing and heart activities.²⁴ Obviously, the definition common law gives death is yet to catch up with current medical advances in the field of death determination.

2. Challenges in the Study of the Medical Concept of Death

For a very long time, the absence of an established unvarying measure to define dying caused excruciating doubt and put medical practitioners (including relatives and friends of patients and the society at large) in acute dilemma.²⁵ Some scholars believe that deciding on the accurate way of defining death is not an exclusive right of doctors, they believe that the general public ought to be carried along. Both medical and legal practitioners have the rights and obligations, along with other relevant disciplines, to propound definitions for the subject of death.²⁶

The study of the subject of death poses a number of challenges;

1. Death meaning different things due to varying philosophies, religions, and cultures.
2. How difficult it is to research on death and the lack of data on many important aspects of the process of death.
3. Conflicting ideas on the authenticity of the practice of determining death.
4. Inadequate know-how and/or sensitization on the part of medical practitioners.
5. The emotions involved in the subject of death²⁷

Uniformity or scientific exactness are not exactly characteristics of the law and medicines way of defining death. Also, what constitute death legally is not automatically similar to what constitutes death medically.²⁸ This contradiction or inconsistency between the definitions of death in law and medicine often breeds conflict. The medical and legal definitions of death are considered respectively below.

²⁴ R.M Vetch, *Death, Dying and the Biological Revolution*, Yale University Press, 1972.

²⁵ New York State Task Force Report on life and the law, *The Determination of Death*, July 1986, pp 3.

²⁶ W.C Charron, *Death: A Philosophical Perspective on The Legal Definitions*, 1975 WASH. U. L. Q. 0979 (1975). Available at https://openscholarship.wustl.edu/law_lawreview/vol1975/iss4/3

²⁷ Ibid

²⁸ M.M Halley, W.F. Harvey, *Medical vs Legal Definitions of Death*, JAMA. 1968, 204(6), pp 423-425. Published on May 6, 1968. <https://jamanetwork.com/journals/jama/fullarticle/339061> last viewed on the 26th of August, 2021.

6. Defining death (Medical Definitions of Death).

The May 2012 Montreal Forum Report²⁹ established that medically, there are three main categories of the definitions of death.

The first category, named the whole brain definitions, focuses on a permanent activity loss of the whole organism, not the entirety of the organism; this includes definitions of death such as;

1. The permanent loss of the cumulative functions of a whole organism or
2. The irreversible loss of the essential functions of a whole organism.

Category two focuses on the permanent cessation of the capacity to be conscious. Definitions in this category are often cited as *the higher brain definitions*. They include definitions such as;

1. losing the one thing considered to be fundamental to the human nature, the capacity for consciousness or
2. The permanent cessation of the ability to socially interact or
3. The permanent end to the capacity to be conscious and sensual, this includes a cessation of a human's distinct personality or
4. permanent cessation of the ability for awareness, this signifies the end of a human being and connotes death.

The third category is a combination of the first and second categories, it includes definitions of death such as;

7. A human being is considered dead when such person has experienced a permanent cessation of the capacity to express and sustain all the physical and mental bodily functions.
8. Permanent cessation of the capacity to remain conscious and a permanent cessation of breathing or respiratory abilities.

²⁹ Montreal Forum Report, International Guidelines for the Determination of Death — Phase I, May 2012, released October 2012, Canadas Blood Services, World Health Organization.

9. Permanent cessation of the ability to incorporating major human characteristics with full bodily functions.
10. Irreversible cessation of the ability to respond to stimuli and signals, the will and desire to act and the capacity to carry out the act.

1. Legal definitions of death.

Having an appropriate way of defining death in law is very essential. Consider this example, transplant surgeons working in jurisdictions where the appropriate legal definition of death has not been adopted may be civilly liable peradventure, they choose people who have not experienced total heart or cardiac failure to be donors³⁰ Also, legislating a specific way of defining death in law will determine if certain persons get to continually enjoy certain legal coverings and if other persons gets to be continually liable, or not, for certain actions.³¹

The legislature of every state ought to be preoccupied with an enacted legal definition of death because the legislature unlike the judiciary has the power and the means to consult the general public before coming to a decision. They are able to make decisions that are in line with what the public wants.³²

Legal definitions of death recognize the end of every important ability, loss of breathing, loss of circulatory functions and the irreversibility of loss of consciousness.³³ There have been efforts to counter the semantic and practical difficulties that come with the traditional definitions of death through legislations and judicial decisions.³⁴

³⁰ W.C Charron, Death: A Philosophical Perspective on The Legal Definitions, 1975 WASH. U. L. Q. 0979 (1975). Available at https://openscholarship.wustl.edu/law_lawreview/vol1975/iss4/3

³¹ Ibid

³² Ibid. Capron & Kass, A Statutory Definition of Standards for Determining Human Death: An Appraisal and a Proposal, 121 U.P.A.L.Rey. 87, 95-101 (1972). Vol. 1975, 979-987.

³³ M.M Halley, W.F. Harvey, Medical vs Legal Definitions of Death, JAMA. 1968, 204(6), pp 423-425. Published on May 6, 1968. <https://jamanetwork.com/journals/jama/fullarticle/339061> last viewed on the 26th of August, 2021.

³⁴ Ibid

All the attempts which will be considered below and several other attempts not mentioned in this work to redefine death can be broadly divided into six categories;³⁵

1. The alternative definitions approach: This adopts the cultural way of describing death and then include another that accepts the cessation of brain activity as death.
2. The refined criteria approach: Instead of a meaning, modern methods and tests are gathered to determine the ranking of the cases that fall within the purview of the ambiguous areas in-between living and dying in the traditional definition.
3. The single total definition of brain death: Here, death is determined only when there is a sustenance of a permanent cessation of every brain function.
4. The open-ended definition of brain death: This approach recognizes brain death as a prerequisite for death without discountenancing other acceptable definitions that exist presently and may come to be in the future.
5. The cortical or cerebral death definition: This approach extends the boundaries of death to mean a patient whose brain cortex or cerebrum no longer functions permanently.
6. The Psychological definition of death: This approach describes dying as the irreversible cessation of human consciousness. Some of the above are considered briefly;

According to the Uniform Death Determination Act;

*An individual who has sustain either (1) irreversible cessation of circulator and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, are dead. A determination of death must be made in accordance with accepted medical standards.*³⁶

³⁵ W.C Charron, Death: A Philosophical Perspective on The Legal Definitions, 1975 WASH. U. L. Q. 0979 (1975). Available at https://openscholarship.wustl.edu/law_lawreview/vol1975/iss4/3

³⁶ Act for the Uniform Determination of Death enacted together by the American Medical Association, the National Conference of Commissioners of Uniform State Law, and the American Bar Association, got approval on October 19, 1980 and February 10, 1981.

A number of attempts have been made in the United States' legislature for the determination of death³⁷ and each one is not without its own legal implication. These will be briefly considered below.

11. Missouri

An act that establishes methods for figuring out when someone died and whether they are dead, as well as the uses for which those methods will be applied. This Act makes provision for the procedure for determination of death and time of death and the goal of the procedure.

Be it passed by the Missouri General Assembly in the manner described below:

Section 1.

1. *If a doctor declares that a patient has suffered an irreversible stoppage of spontaneous respiratory and circulatory functions, based on conventional medical practice, that patient is deemed dead. A person will be deemed dead if, in the declared opinion of a physician, based on standard medical practice, he has experienced an irreversible cessation of spontaneous brain functions, even if artificial means of support prevent a determination that these functions have ceased. When the pertinent functions halted, death must have occurred.*
2. *In this state, the methods for determining death in subsection 1 must be used to all proceedings, including civil and criminal trials.*

12. New York State

An act to change the meaning of death in the public health law. The following is what the people of the State of New York, represented in the Senate and Assembly, do:

Section 1. By adding a new section, section 4140-a, to the public health law, it is hereby altered to read as follows:

³⁷Report of the National Conference of Commissioners on Uniform State Laws, Legal Definitions of Death, 1981. Available at <https://www.qcc.cuny.edu/pdf> last downloaded on the 26th of August, 2021.

4140-a. Deaths- The meaning of death. According to the declared opinion of a properly licensed doctor based on accepted medical practice standards, a person is declared dead if their spontaneous respiratory and circulatory functions have irreversibly stopped. A person will be declared dead if, in the opinion of a duly licensed physician based on accepted medical practice standards, they have experienced a complete and irreversible cessation of brain function, unless the physician receives written notice from the patient's parent, spouse, or next of kin that the declaration goes against their beliefs. This is especially true if the use of artificial means of support precludes a determination that these functions have ceased. This act takes effect right away.

13. Kansas.³⁸

A person will be deemed medically and legally dead if a doctor determines, in accordance with standard medical practice, that there is no spontaneous respiratory or cardiac function and that attempts at resuscitation are futile due to the disease or condition that caused these functions to stop, either directly or indirectly, or because of the amount of time that has passed since these functions stopped. In this case, death will have occurred at the moment these functions stopped;

or A person will be deemed medically and legally dead if a doctor believes that spontaneous brain function is absent based on standard medical practice; if, according to standard medical practice, it seems that additional attempts at resuscitation or supportive maintenance will not be successful during reasonable attempts to maintain or restore spontaneous circulatory or respiratory function in the absence of aforementioned brain function, then death will have occurred at the time these conditions first coincide. Prior to the removal of any important organs for transplantation or the termination of artificial methods of supporting respiratory and circulatory function, death must be declared.

Regardless of any regulations to the contrary, these alternate definitions of death must be applied for all purposes in this state, including the trials of civil and criminal proceedings.³⁹

³⁸ Ibid

This is an example of the “alternative definitions” approach. These alternate definitions technique has been criticized for making death multivocal. According to the first definition, if resuscitation is deemed medically impossible, then a person who has lost their spontaneous cardiac and respiratory functions is dead. However, according to the second definition, if it seems that supportive maintenance and resuscitation won't be effective, a person who has lost spontaneous brain function will be deemed dead.

Nowhere in the definitions is it stated that the second definition applies in situations where artificial support of cardiac and respiratory functions is present, while the first definition only applies in situations where it is not. Accordingly, a patient is deemed dead by the first definition if he loses his spontaneous respiratory and cardiac functions but is still conscious thanks to artificial support; however, by the second definition, the patient is still alive as long as the part of the brain that controls consciousness is still functioning.⁴⁰

14. Robert M. Vetch.⁴¹

In accordance with established medical practice, a person will be deemed dead if a doctor declares that their spontaneous respiratory and circulatory functions have irreversibly stopped. A person will be deemed dead if, in the declared opinion of a physician, based on standard medical practice, he has experienced an irreversible cessation of spontaneous cerebral functions, even if artificial means of support prevent a determination that these functions have ceased. When the pertinent functions halted, death will have taken place.

However, if a person, who is competent to make such a decision, explicitly rejects the use of this standard, or if he has not made such an explicit statement while competent, his legal guardian or next of kin does, then no one shall be deemed dead even with the announced opinion of a physical based solely on an irreversible cessation of spontaneous cerebral functions.

³⁹ The Kansas statute was adopted in 1970. Upon it, the Maryland Statute of 1971, the New Mexico Statute of 1973 and the Virginia Statute of 1973 were built.

³² W.C Charron, Death: A Philosophical Perspective on The Legal Definitions, 1975 WASH. U. L. Q. 0979 (1975). Available at https://openscholarship.wustl.edu/law_lawreview/vol1975/iss4/3

⁴¹ R.M Vetch, Death, Dying and the Biological Revolution, Yale University Press, 1972.

Additionally, it states that no doctor may declare someone dead if there is a substantial conflict of interest with his duty to care for the patient, such as a commitment to other patients, research, or educational initiatives that could directly profit from declaring the patient dead.

15. A. M Capron & L. R Kass.⁴²

In accordance with established medical practice, a person will be deemed dead if a doctor declares that their spontaneous respiratory and circulatory functions have irreversibly stopped. A person will be deemed dead if, in the declared opinion of a physician, based on standard medical practice, he has experienced an irreversible cessation of spontaneous brain functions, unless artificial means of support prevent a determination that these functions have ceased. When the pertinent functions halted, death will have taken place.

This above is an example of the Refined Criteria Approach. They saw no need for a redefinition, believing that disputes over death could be settled at the level of criteria. The American Medical Association, Michigan, West Virginia, the Task Force on Death and Dying, and Capron and Kass' criteria are all comparable to a single definition of death, which is the irreversible loss of brain functioning. This is a criticism of this method.⁴³

16. California:

If a doctor concludes that a patient has had a complete and irreversible loss of brain function, the patient will be declared dead. Another medical professional must independently confirm the death. This chapter does not forbid a doctor from using other standard and accepted methods to determine a patient's death as the sole reason for declaring them dead.

The definition above is an example of the “open-ended” approach.

New legal definitions of death that emphasize brain death are naive in spite of all these attempts. Treating brain death as human death can have harsh emotional and financial

⁴² Capron, A. M. and Kass, L. R. A Statutory Definition of Standards for Determining Human Death: An Appraisal and a Proposal, 121 U.P.A.L.Rey. 87, 95-101 (1972). Vol. 1975, 979-987.

⁴³ W.C Charron, Death: A Philosophical Perspective on The Legal Definitions, 1975 WASH. U. L. Q. 0979 (1975). Available at https://openscholarship.wustl.edu/law_lawreview/vol1975/iss4/3

repercussions for friends, family, doctors, and hospitals that provide care for people who are chronically unconscious.

According to both the old and the new definitions of death, people in permanent and irreversible comas are not dead because their lower brain centers that control breathing continue to function.⁴⁴

1. The Death Certificate.

When death is declared and certified, social arrangements are impacted by the legal concept of "death."⁴⁵ Since it allows the deceased's family to register death, an accurate and timely certification of death is crucial. A death certificate serves as a permanent legal record of the deceased's passing, allowing the family to arrange for the body's disposal and settle the deceased's estate.⁴⁶

Proclamation and certification of death, when done correctly, initiate legal processes that change rights, obligations, and responsibilities in relation to ownership, transplantation, autopsy, burial, and even criminal and civil culpability. The extent to which these legal methods can be applied depends on the concept of "death" as defined by law. The work of establishing a definition of the term "death" for legal purposes has an ethical force because of the relationship between the semantics of the term and the impact of a correctly performed pronouncement and certification of death.⁴⁷

Although it is the responsibility of the physician who treated the deceased during his final illness, another physician may fill out the death certificate in an emergency. According to English and Welsh law, unless there will be an inquest or a coroner's post mortem, a death must be reported within five days of the incident.⁴⁸ Unless the coroner decides to

⁴⁴ Ibid.

⁴⁵ Ibid

⁴⁶ Advice for physicians filling up Medical Certificates of Cause of Death in England and Wales (Covid-19), Intended Only for Use in Emergencies. F66 Guidance, Office for National Statistics, HM Passport Office.

⁴⁷ W.C Charron, Death: A Philosophical Perspective on The Legal Definitions, 1975 WASH. U. L. Q. 979 (1975). Available at https://openscholarship.wustl.edu/law_lawreview/vol1975/iss4/3

⁴⁸ Advice for physicians filling up Medical Certificates of Cause of Death in England and Wales (Covid-19), Intended Only for Use in Emergencies. F66 Guidance, Office for National Statistics, HM Passport Office..

launch an inquiry and requests that the death certificate not be made, the death certificate can still be completed even after a death has been reported to them.

The cause of death is listed on the front of the death certificate, which provides the surviving family with an explanation of how and why the dead passed away. Since the death certificate also acts as a permanent record of the family's medical history, it is crucial that it includes precise and unambiguous information regarding the cause of death as well as a brief explanation of the disease's cause. This information may also be extremely helpful to the deceased's surviving family members.

The relative contributions of various diseases to mortality are calculated using data from death certificates. Statistics on deaths by underlying cause are crucial for population health monitoring, public health intervention design and evaluation, medical research and health service priorities, health service planning, and health service effectiveness evaluation. Research on the health effects of exposure to a variety of risk factors through the workplace, the environment, medical and surgical care, and other sources heavily relies on death certificate data.⁴⁹

2.3 Cause of Death

If the cause of death cannot be determined, death cannot be certified.

- a) the disease or injury which initiated the train of morbid events leading directly to death, or
- b) the circumstances of the accident or violence which produced the fatal injury" are the two ways the World Health Organization defines an underlying cause of death. The biggest health benefit, from the perspective of public health, will come from averting this initial illness or damage. When it is impossible to determine the cause of death, the deceased must be sent straight to the coroner, along with any useful information that may be available, so that the cause of death can be investigated. To the best of his knowledge and belief, a medical professional has an obligation to identify the cause of death.

⁴⁹ Ibid

Senility or old age should not be used as a cause of death very often. It is limited to situations in which the physician has been caring for the deceased for a considerable amount of time, has observed a general deterioration in the patient's health over time, and identifies no specific illness as the cause of the decline. However, when the actual cause of death is not a condition that is often lethal, such as old age or the fragility of old age, it may be stated as a contributing cause of death. For example, COVID-19.

It's also best to avoid using organ failure or natural causes alone as the reason of death. The death should be reported to a coroner if the physician is unable to provide a precise cause of death. The coroner must also be notified of any death caused by poisoning, injury, or reliance on and abuse of substances other than alcohol and tobacco⁵⁰

17. The Ethical, Legal and Medical Issues related to the Determination of Death

With new developments in medicine, doctors may now extend their patients' lives and improve their quality of life. But advances in medical technology have also forced us to make difficult choices, which has caused us to reevaluate things like determining death.⁵¹

The idea of determining death has significant implications for ethics, law, and medicine. Three key questions are typically embodied in the idea of defining death;

18. What is that essential thing in a human life that when lost that individual is considered dead? This question is considered very philosophical and theological or in a simpler term, **ethical**.
19. When should a person be legally considered dead? This second question is obviously **legal**.
20. What tests and procedures are used in determining that the physiological standards used by the medical profession in determining that a person has died have been met? this last question is **medical** in nature

⁵⁰ Ibid

⁵¹ Act for the Uniform Determination of Death enacted together by the American Medical Association, the National Conference of Commissioners of Uniform State Law, and the American Bar Association, got approval on October 19, 1980 and February 10, 1981.

Every time there is a halt in breathing and heartbeat, death has been accurately determined since the late nineteenth century until the late 1960s. The Black's Law Dictionary, which accurately captures the moral and theological beliefs of a pluralistic American society, offers a definition of death that is similar to this one. a set of beliefs that aligned with the state of science and medicine at the time. Only when it resulted in the heart and lungs ceasing to function permanently was the stoppage of other organ systems deemed significant in determining death.⁵²

The aforementioned conventional notion of death has been called into question, nevertheless, by the advancements in resuscitation methods and artificial respirators. In the past, when the heart stops pumping, the blood that supplies the other essential organs with oxygen and nourishment stops flowing, which causes all of those organs to stop functioning as well. Nowadays, even in cases when the brain, and particularly the stem, has permanently stopped working, the artificial respirator can continue to perform breathing and circulatory duties. This medical ambiguity is exacerbated by the idea of organ donation and transplantation, as certain organs, such as the liver and heart, are best transferred from a donor who continues to breathe and circulate until the organs are removed. The idea of brain death is presented and exposed to us in this way.⁵³

Determination of death refers to the procedures and examinations required to diagnose death in compliance with accepted norms. The Brain Death Standard is a significant criterion for determining death in American hospitals, particularly in the state of New York. Irreversible loss of brain function was suggested as an independent criterion to establish death in a 1968 report prepared by a committee at the Hazard Medical School.

⁵² Ibid

⁵³ When the entire brain, including the brain stem, stops working, it is referred to as "brain death." Both the cessation of brain function and the conclusion of an individual's death as evidenced by the cessation of brain function are possible interpretations of "brain death," according to commentators. According to the first interpretation, brain death is a diagnosis of medical function rather than a sign of death. As used in this Report, "brain death" refers to the second interpretation; it is not just a diagnosis but also a legal criterion for determining death, The Determination of Death. A Report of the Task Force on Life and the Law in New York State, July 1986.

The moment that a patient's brain irrevocably and permanently stops functioning, as determined by observation or testing, is the official time of death. Before the patient is taken off of a respirator, the family has a right to know that the patient has died.

21. The Characteristics of an adequate definition of Death

A definition of death must fulfill the following conditions in order to be deemed sufficient and lawful:

a. Determination of a state that is highly verifiable by the public: Any definition of death that is effective must specify a state that is verifiable by the public. Prescriptions for the condition's persistence or irreversibility are insufficient because irreversibility and permanence are not physically observable. The definition must also prescribe an observable physical criterion or connect with some other phenomenon from which reliable inferences of the irreversibility and permanence of the state can be drawn. This reliable indicator or phenomenon must be such that has proven over time without fail to be genuinely connected with the occurrence of death. If the criterion fails once, then it should be reexamined.

The full recovery of a boy who was kept on a respirator for two weeks after exhibiting a "flat" EEG (isoelectric electroencephalogram), loss of reflexes and environmental responsiveness, a drop in arterial blood pressure, and a loss of spontaneous respiration, for instance, should raise significant concerns regarding the suitability of these phenomena as markers of death. A criterion of death may need to be made up of a number of components in order to meet the reliability requirement; for example, a complex of behavioral and neurological indications may be employed. The addition of new criteria and improvements to established ones should result from new research and technology advancements. Therefore, the criteria of death should not be listed in statutes;

Only the definition ought to be decided in this way. The medical community can experimentally ascertain the directly observable occurrences that are trustworthy

predictors of the incidence of death as defined by the legislation once it has established a definition.⁵⁴

Loss of awareness or the stoppage of breathing, isoelectric EEG, muscle movements and reflexes, heartbeat, etc. are examples of physical manifestations.

22. It must describe an event or occurrence that is instantaneous: Death cannot be given a definition that connotes a process happening over a period of time, it is a state; it is a state in which one has permanently lost the ability to perform certain duties.⁵⁵ Dying is a process but not death. There is no middle ground between death and its opposite, a person is either dead or not dead.
23. A description of an occurrence that is irreversible: it is not acceptable for a definition of death to describe an occurrence that is temporary. This may also crease a confusion of legal rights in matters of inheritance, even in criminal litigations. How will a person be rightfully charged for murder or manslaughter when the victim has not actually died or can still be medically resuscitated? An adequate definition of death will describe a state that is irreversible by ordinary medical procedures.⁵⁶
24. Not Vague: an acceptable definition of death must not be vague. It must as much as possible describe a state that is clear and actually verifiable.
25. It should be simple: an adequate definition of death in the process of avoiding vagueness also ought not to be complicated. The definition though medical, must be something the general public can relate with. The practice of legislating alternative definitions should also be avoided because it can lead to inequality and unfairness. If a person by one definition adopted in a jurisdiction is pronounced dead and another person with the exact symptoms of the first person in another jurisdiction (like in cases of permanently comatose bodies on artificial life support systems) is declared to be alive. “Vicious multivocity” should be totally avoided.⁵⁷

⁵⁴ W.C Charron, Death: A Philosophical Perspective on The Legal Definitions, 1975 WASH. U. L. Q. 0979 (1975). Available at https://openscholarship.wustl.edu/law_lawreview/vol1975/iss4/3

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ Ibid

26. Acceptability by the Public: The ethical standards of a pluralistic and democratic society must be met by a suitable definition of death. It should be morally acceptable to the general people.

The rule of action must be one that the majority of people are willing to follow. Every citizen should ask themselves the following questions if they are to participate, as they ought to: Which type of permanent disability would allow me to lose the rights and protections that come with being a living person, as well as (ii) the obligations placed on me for the people I look after? Will I only consent to have these removed if I suffer an irreparable loss of all important functions? Or am I prepared to have these taken away if I experience irreparable unconsciousness despite my heart continuing to beat on its own? There may be further inquiries of this nature.⁵⁸

27. The Nigerian Situation

The Medical and Dental Council of Nigeria establishes the benchmark for medical care in Nigeria.⁵⁹ The Medical and Dental Consultants Association of Nigeria and the Nigerian Medical Association are further medical organizations. The World Health Organizations' criteria for determining death state that death is a common medical occurrence and that different nations have extremely different standards for certifying death.⁶⁰ The National Population Commission is in charge of registering people and issuing death certificates in Nigeria. Anyone who passes away in Nigeria can be registered; the death certificate is the State's official and permanent record of the deceased.⁶¹ A death certificate must be obtained from the medical facility where the death took place; however, if the death happens outside of a medical facility, a hospital application must be made. This

⁵⁸ W.C Charron, Death: A Philosophical Perspective on The Legal Definitions, 1975 WASH. U. L. Q. 0979 (1975). Available at https://openscholarship.wustl.edu/law_lawreview/vol1975/iss4/3

⁵⁹ Medical and Dental Council of Nigeria. Available at MEDICAL AND DENTAL COUNCIL OF NIGERIA Last accessed on 20th November, 2025.

⁶⁰ World Health Organization, Reporting Cause of Death, August 7, 2024. Available at Cause of death last accessed on 20th November, 2025.

⁶¹ <https://nigerianfinder.com/how-to-get-a-death-certificate-in-nigeria/>

certificate is then taken to the Registrar of Birth and Death with the following information;⁶²

1. the name of the person who reported the death
2. the name of the deceased
3. the deceased's date and place of birth
4. the deceased's age, sex, and marital status prior to death
5. the time and date of the death
6. the place of death
7. the cause of death
8. the details of the dependents left behind (spouse and children)
9. the applicant's identification documents
10. a copy of the deceased's identification documents
11. the hospital's death certificate and
12. evidence that the deceased is a blood relative.

However, a number of requirements must be fulfilled before a death in Nigeria can be recorded, including the following:

- In the locality where the death occurred, the registrar of births and deaths must record the death.
- Evidence of death is required.
- The applicant needs to be the deceased's blood relative.
- Within seven days of the death, the death must be reported.
- Deaths recorded within 12 months after the date of death but after 30 days may be registered for a price that the commission will decide.
- Only with the Deputy Chief Registrar's written consent may a death that is reported more than a year after the date of death be registered.

Out of all the above listed conditions, the most relevant to this topic is the second condition; that the applicant must have proof of death. Before death can be registered, it must be proved and before death can be proved, it must be determined. Many Nigerians will not find it strange to discover that there have been many wrong determinations of

⁶² Sections 17-22, Births, Deaths etc. (Compulsory Registration) Act, Cap B9, LFN, 2004.

death in the country; people who were not really dead being pronounced dead by Medical Practitioners, not because of any malicious intent but because the Physicians did not have access to adequate or modern medical equipment like their counterparts in developed countries.

The fact that Nigeria still primarily uses the antiquated traditional definition of death, which links it to the irreversible cessation of spontaneous respiratory and circulatory functions, is still very evident. Our doctors typically pronounce death after using a stethoscope. A reversible halt of spontaneous respiration and circulatory functions frequently becomes an irreversible event because many public hospitals, which the majority of Nigerians can afford, lack resuscitation facilities.

6.0 Some Ethical and Legal Implications

Since medical professionals are acknowledged as expert witnesses in court, it is crucial and pertinent that they can use the standards established by their profession to provide exact and correct answers to queries about the cause and timing of death in specific situations. Additionally, without a correct and accurate definition of "death," a real criterion for determining death cannot be appropriately attained.⁶³

The right of survivorship and inheritance are also impacted by the cause of death. When an owner passes away, their property is transferred to one or more heirs through inheritance, also known as succession. The law strictly regulates this process.

In instances of brain death or people in vegetative state, their family members are usually at a loss. In most countries, like Nigeria, such persons in vegetative state are not considered dead and as such their death cannot be registered. And without a certificate of death, wills cannot be executed, even Letters of Administration cannot be applied for.

28. Conclusion

In conclusion, the ethical, medical and legal issues discussed in this work must always be considered during the process of determining death. Medical practitioners must keep

⁶³ W.C Charron, Death: A Philosophical Perspective on The Legal Definitions, 1975 WASH. U. L. Q. 0979 (1975). Available at https://openscholarship.wustl.edu/law_lawreview/vol1975/iss4/3

themselves abreast of these considerations or else the constitutional right to life⁶⁴ of patients will continue to be violated and this is highly unacceptable.

Furthermore, the process of determining the criteria for death should be factual and unaffected by pragmatic factors like facilitating transplantation, keeping pregnant women on life support past brain death, safeguarding the deceased, and other associated issues. A pure scientific investigation into the empirically sufficient conditions for the conclusion of death should provide the medical notion of death. The criteria must come after the definition of death.

7.1 Recommendations

- The United Nations should look into an adequate definition of death, acceptable to all or most states, that will end all definitions.
- Also, the general public should be carried along during the legislative process in each state. Medical practitioners should always take into consideration all the necessary criteria before a determination of death is made.
- The sanctity of life should be the guiding force in the process of death determination.
- Lastly, Medical Practitioners should be properly trained in the use of the new methods and tests made necessary by advancements in medical technology, for the proper determination of death.

⁶⁴ Section 33 of the constitution of the Federal Republic of Nigeria, 1999 (as amended).