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**ANSWER**

**What is sentencing?**

The term sentence in law refers to punishment that was actually ordered or could be ordered by a trial court in a criminal procedure.A sentence forms the final explicit act of a judge-ruled process as well as the symbolic principal act connected to their function. The sentence can generally involve a decree of imprisonment, a fine, and/or punishments against a defendant convicted of a crime.

Also the term ‘sentence’ or ‘Judgment’ may denote the action of a court ofcriminal jurisdiction formally declaring an accused the legal consequencesof guilt to which he has confessed or of which he has been convicted.Generally therefore, a sentence is the punishment inflicted upon a convictat the end of trial .

 The quantum or degree of sentences is specified in the offence-creating laws and this is done with or without judicial discretion. For example, certain sentences can be made mandatory by law, leaving no discretion to the courts as is the case of death penalty for all the offences for which it is stipulated as the sentence or punishable with specified single terms of imprisonment. On the other hand, certain sentences are provided with specification of a range in each instance of a minimum term and a maximum term of imprisonment, while others just specify a statutory minimum punishment or a statutory maximum punishment.

Sentencing generally aims at the protection of the society through prevention of crime or reform of the offender which may be achieved by the means of deterrence, elimination or reformation/rehabilitation of the offender. The justification is that imposing the penalty will reduce the future incidence of such offences by preventing the offender from re-offending or correcting the offender so that the criminal motivation or inclination is removed or by discouraging or educating other potential offenders. These are known as reductive justification. As such, the key purpose of sentencing includes:

* Punishment
* Deterrence (general and specific)
* Rehabilitation
* Denunciation and
* Protection of the community.

These purposes overlap and none can be considered in isolation from the others when determining what an appropriate sentence is in a particular case. They are guide posts to the appropriate sentence but sometimes they point in different directions.

Sentencing guidelines are designed to indicate to judges the expected sanction for particular types of offences. They are intended to limit the sentencing discretion of judges and to reduce disparity among sentences given for similar offences. Although statutes provide a variety of sentencing options for particular crimes, guidelines attempt to direct the Judge to more specific actions that could be taken.

Here are some basic rules governing sentencing:

* Separate offences charged together must each receive a separate sentence but if they all form part of the same criminal action, the sentence will be concurrent;
* Where a term of imprisonment in default of fine is ordered, it cannot run concurrently with a sentence of imprisonment imposed at the same time or with default sentence in respect of another fine;
* A fine must not be too heavy for the offender to pay;
* Separate fines imposed on different counts at the same trial are to be cumulative. But the aggregate must be within the Court’s jurisdiction;
* While the age of the offender, being a first offender, pleading guilty to the charge, may all sustain a plea in mitigation of sentences. Conversely, the fact of previous conviction, the prevalence of the offence, the seriousness of the offence, the non repentant attitude of the offender and the adverse effect of the offence on the victim are all factors that aggravate sentence.

Penal statutes often provide for the maximum punishment for committing an offence; this maximum is not mandatory, the court has discretion to impose punishment that is less than the maximum, and the court is not bound to give reasons for doing so. The appellate court shall not interfere with the discretion of the court to impose punishment unless it is made a ground of appeal.

 **The type of Sentences that may be imposed on a convicted person includes:**

1. **Death penalty:** see Section 319 of the Criminal Code Act Cap. C38 Laws of the Federation of Nigeria, 2004; see also Section 220 of the Penal Law Cap 89 Laws of Northern Nigeria, 1963.
2. **Imprisonment**: this can be defined as a term of judicial sentence available for a convicted offender of adult age, involving incarceration in prison for either life or a specified period of time. A term of imprisonment may be imposed with or without hard labour. Where no specific order is made, it is deemed to be with hard labour. See Sections 377, 381 and 395 C.P.A. Concurrent and consecutive sentences are also considered where the accused had been previously convicted and sentenced, the new sentence may commence at the expiration of a current sentence previously imposed on the accused. In R v Savage 20 N.L.R. 55, it was held that in the situation above, the new term could not be ordered to commence at the expiration of more than one term of imprisonment. Where there are sentences in case of conviction of several offences at one trial and the sentence in respect of each offence is to run concurrently, the aggregate term of imprisonment shall not exceed 4 years or the limit of jurisdiction of the trial court whichever is greater. But under section 24(2) of the CPC, the court may impose a sentence twice its limit of jurisdiction to punish.
3. **Fines**: Sections 382 of the CPA and 23 of the CPC provide for the power of a court to impose fine in lieu of imprisonment. A fine is a payment of money ordered by a court from a person who has been found guilty of violating a law. It may be specified as the a punishment for an offence, usually a minor offence, but could also be specified and used as an option to imprisonment for major crimes or a complement to other punishments specified for such crimes. See section 129 Criminal Code, Section 389 C.P.A, Section.74. Penal code. In Price Control Board v Ezema (1982) 1 N.C.R. 7, it was held that even when the law creating an offence provides that the accused shall be ‘sentenced without option of fine’ the court still has discretion to impose a fine. But where the law provides for the minimum (not maximum) period of imprisonment to be imposed for the commission of an offence, the court cannot impose fine in lieu of imprisonment.

Assessment of fine- Section 382(2) & (3) of the CPA provides that:

 In the case of a high court, the amount of the fine shall be in the discretion of the court, and any term of imprisonment imposed in default of payment of the fine shall not exceed two years

In the case of magistrate courts, the amount of the fine shall not exceed the limit of the scale provided for by the relevant law establishing the court or any other law. See Section 13 to 18 CPC and Goke v Police (1957) W.R.N.L.R. 80

 Imprisonment in default of payment of fine- Section 392 of the C.P.A provides procedures a court must follow before an accused can be imprisoned in default of payment of fine:

* Issue a warrant of commitment
* Allow time (days of grace) for the payment of the fine
* Direct payment of the fine to be made by instalments
* Provide security either with or without sureties for the payment of the fine.

Under the C.P.C before an accused can be imprisoned in default of payment of fine, the court may order the attachment of his moveable and immovable properties. If the properties attached cannot satisfy the fine, the accused may be imprisoned subject to the limit contained in section 74 of the Penal Code.

**4. Caning or whipping:** Caning is another form of punishment which the courts are empowered to impose although it is important to note here that as a form of sentence, it has generally fallen into disuse. Caning may be considered for use as a punishment, or it may be in lieu of any punishment or it may be in addition to other punishment. The courts may pass a sentence of caning of up to twelve (12) strokes. Where a person is convicted of one or more offences at one trial, the total number of strokes awarded must not exceed 12.The number of strokes passed must be specified in the sentence. The following categories of persons cannot be subjected to caning:

Persons above the age of 45

Women

In eastern Nigeria, only a juvenile offender can be subjected to caning. See Section 386(1) C.P.A and Section 77 P.C.

 **In this case scenario, Evans has been found guilty of charges brought against him like kidnapping ,robbery, rape, defilement, ritual killing , extortion,and obtaining property by false pretense.**

1. **Kidnapping**: The present penalty for kidnapping ranges from one to 20 years in prison, with the possibility of life imprisonment for extreme cases involving, for instance, murder. Stricter measures, such as life imprisonment or the death penalty, may not be completely out of place in dealing with the kidnapping menace.

 **Section 273 of the Penal Code Act provides thus:**

 Whoever kidnaps or abducts a person shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.”

States in Nigeria;

 On January 5, 2017, the Lagos State House of Assembly passed the Law to Provide for the Prohibition of the Act of Kidnapping and for Other Connected Purposes.

In this law, the death sentence was stipulated for kidnappers whose victims die in their custody and life sentence for kidnappers whose victims do not die in their hands.

Life imprisonment was also stipulated for anyone who makes an attempt to kidnap another person. The law also prescribed a mammoth 25-year jail term for anyone found guilty of threatening to kidnap another person through phone call, email , text message or any other means of communication.

The law also prescribed a 14-year jail term for any person who knowingly or willfully allows or permits his premises ,building or a place or belonging to which he has control of, to be used for the purpose of keeping a person kidnapped.

 In 2013, the Edo state government also prescribed the death penalty for kidnapping. The current administration in Cross River state also passed a law prescribing the death penalty for kidnapping. Delta, Rivers, Anambra states also prescribe the death penalty for kidnapping.

 **Kidnapping considered in the case of Okashetu v. State (2016) All FWLR (Pt. 861) 1262 S C.**

In this case, the appellant was arraigned at the High Court of Delta state, Asaba , on a five-count charge of conspiracy to commit armed robbery, armed robbery, conspiracy to kidnap and illegal possession of fire arms.

The appellants and others at large allegedly conspired to kidnap one Mr. Galvagni Renzo. After the trial, the appellant was discharged and acquitted on the crimes of conspiracy to commit armed robbery and armed robbery, but convicted on the three counts of conspiracy to commit kidnapping, kidnapping and illegal possession of firearms.

He appealed to the Court of Appeal without success. A further appeal to the Supreme Court was also greeted with failure.

Dismissing the appeal, the Supreme Court held that in order for the prosecution to succeed under a count for the offence of kidnapping, it has to prove the following facts beyond reasonable doubt:

a. That the victim was seized and taken away by the accused person

b. That the victim was taken away without his consent.

c. That the victim was taken away without lawful excuse.

The offence of kidnapping is complete when the victim is carried away against his wish.

The Supreme Court then reaffirmed the seven-year sentence placed on the appellant by the High Court.

1. **Armed Robbery :** By virtue of the provisions of the Criminal Code Act, the applicable law in this instant case, Sections 401 and 402 state:

**401.**

Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is said to be guilty of robbery.

**402**.

(1) any person who commits the offence of robbery shall upon conviction be sentenced to imprisonment for not less than 21 years.

(2)If-

(a)any offender mentioned in subsection (1) of this section is armed with any firearms or any offensive weapon or any obnoxious or chemical materials or is in company with any person so armed; or

(b)at or immediately before or immediately after the time of robbery, the said offender wounds any person, the offender shall upon conviction be sentenced to death.

1. **Rape :**

See Section 357 and 358 of the Criminal Code Cap “C38”, Laws of the Federation, 2004)

In plain language, in Nigeria, a person has committed rape when he has sexual relations (carnal knowledge) with a woman against her will; or

a) without her consent or,

b) while putting her in fear of death or hurt or,

c) misrepresenting as the husband of the woman or,

d) having carnal knowledge of a girl under 14 years, with or without her consent or,

e) having carnal knowledge of a girl with unsound mind.

Under the Penal Code (applicable in Northern part of Nigeria), it goes further to say even where the girl is a wife of the person, such person will be guilty of rape if she has not attained puberty.

 Section 359 of the Criminal Code Act punishes any attempt to commit rape. It provides thus:

“Any person who attempts to commit the offence of rape is guilty of a felony,and is liable to imprisonment for fourteen years, with or without caning.”

On its part, the Penal Code Act criminalizes and penalizes the offence of rape. Section 282 of the Penal Code Act provides thus:

1. A man is said to commit rape,who except in the case referred to in subsection(2) of this section,has sexual intercourse with a woman in any of the following circumstances –

2. Against her will;

3. Without her consent

4. With her consent,when her consent has been obtained by putting her in fear of death or of hurt;

5. With her consent,when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she believes herself to be lawfully married;

6. With or without her consent, when she is under fourteen years of age or of unsound mind;

7. Sexual intercourse by a man with his own wife is not rape, if she has attained to puberty.

8. Explanation. Mere penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.”

Section 283 punishes rape. It provides thus:

“Whoever commits rape , shall be punished with imprisonment for life or for any less term and shall be liable to fine.

It is clear from the above that both the Criminal Code Act and the Penal Code Act punishes rape with life imprisonment. While the Penal Code Act makes allowances for a lesser term, the Criminal Code makes no such allowances.”

 The offence of rape and its punishment are found under the criminal laws of Nigeria mainly the Criminal(Southern) and Penal(Northern) Codes. Each state is then meant to domesticate these laws. Our focus here will be the Criminal Laws of Lagos State. In addition to these, is the Child Right Act promulgated for the protection of children and young persons and very recently the Violence Against Persons (Prohibition) Act applicable only in the Federal Capital Territory Abuja.

What constitutes the offence of rape? The traditional criminal laws (Criminal and Penal Codes and the various state versions) define rape as:

1. Unlawful carnal knowledge

2. Committed by a man on a woman

3. Without her consent or forcefully or fraudulently obtained consent or misrepresenting to be her husband.

1. Complete upon penetration

Violence Against Persons (Prohibition) Act 2015(VAPPA).

This law applicable only in Abuja is a breath of fresh air. It accommodates the changing nature of perverted and modern forms of unnatural intercourse. For one thing, it expands the definition of rape to include any person (male or female) as offenders, also widen intercourse to include oral and anal sex and any other form of intercourse.

Child Right Act 2003. This law promulgated for the protection of the Nigerian Child also expands the scope of the offence of rape. Under this law (already ratified by two-thirds of states in the country), the crime of rape accommodates both male and female offenders and on any child(male and female. Consent is also not a defence hence making liability for the crime very strict to protect innocent minors.

Punishment.

Under the Criminal Code, the VAPP and Child Right Act, the punishment for rape is life imprisonment but the under the Penal Code it is a maximum of 14years imprisonment.

Attempted rape under the Criminal Code is 14years imprisonment. Gross Indecency under the Penal Code is punishable with 7years imprisonment.

1. **Defilement**:

Section 218 of the Criminal Code, Cap 48 Vol.II Law of the Defunct Bendel State, 1976 under which the appellant was charged states:

"218. Any person who has unlawful carnal knowledge of a girl under the age of eleven years is guilty of a felony, and is liable to imprisonment for life, with or without caning.

Any person who attempts to have unlawful carnal knowledge of a girl under the age of eleven years is guilty of a felony, and is liable to imprisonment for fourteen years, with or without caning.

A prosecution for either of the offences defined in this section must be begun within two months after the offence is committed.

A person cannot be convicted of either of the offences defined in this section upon the uncorroborated testimony of one witness."

Now, the pith and substance of the above provision which is the kernel of this issue is that the prosecution of an accused who is alleged to have committed the offence of having unlawful carnal knowledge of a girl under the age of eleven years or an attempt to do so, must be begun within two months of the commission of the offence..

 In conclusion. The above listed and explained are the statutory provisions for crimes committed by Evans in law.

In Nigeria, those who have been previously convicted in criminal cases usually attract partial sentencing or punishment a like first timers.

The Supreme Court of Nigeria has laid down 6 basic principles or guidelines to aid courts in reaching reasonable, just, and fair sentencing. They are as follow;

1. Nature of offense
2. Character/Nature of the offender
3. The position of the offender among his confederates
4. The rampancy of the offense
5. Statutory limitations
6. Concurrency of the sentence.