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## QUESTION 1

It is suggested that of the five principles of punishment (restitution, deterrence, incapacitation, rehabilitation and retribution) given, only retribution can provide the basis for a theory of just punishment. The retribution principle is the most ancient method for dealing with offenders. This approach to punishment rests on the idea that a person whose conduct appears to have caused social harm should be held responsible. The retributist approach holds that punishment is just because it is deserved: punishment for disobeying a law helps assure obedience and reestablishes the balance between the benefits and burdens of obeying the law that was disturbed by the criminal act. The principle of 'just deserts' requires the punishment to be proportioned to the unfair advantage the offender has taken by committing a crime.

'Let the punishment fit the crime', this is the philosophy behind this principle. The principle represents the idea of a fair punishment equal to the severity of the crime. Throughout history, the idea of retribution for the commission of a crime can best be described by the saying 'an eye for an eye and a tooth for a tooth'. **According to this model of justice the punishment must be fairly and equally apportioned to all individuals who commit the same crimes.**

This can however be a problematic area of the principle, as the circumstances surrounding the commission of crimes vary; therefore, the equality of the punishment can be a tricky area.

The concept of 'just desert' has its derivatives from the Latin maxim *noxiae poena par esto*. The phrase 'just desert' comes from the 16th century. A clearer, modernised version would be that which is 'justly deserved'. Many believe the phrase refers to a dessert, as in a treat, and, therefore, refers to a just reward for a good deed. In fact, the term correctly applies to deeds both good and ill but, from the perspective of criminal justice discipline, it is most often applied with regard to negative behaviour. The principle of 'just desert' means to ensure that a punishment is both appropriate to a crime and that it is consistent. **This is the idea that the punishment should be equal to the crime. This theory is also known as the 'proportionalism principle' and it attempts to address the issue of how punishment should be inflicted and it provides that the measure of punishment given must be equal in proportion to the seriousness of the crime and it should be no more and no less.** For instance a person convicted of murder should either be sentenced to death or given a life sentence without the possibility of parole. It is also believed that should be consistent and determinate, therefore if the punishment for a given crime is eight years imprisonment then the judge is not authorized to give of five years or 12 years imprisonment. Using a scenario whereby a drug addict assaults a person and steals their money to buy more drugs as an

example, with the ‘just desert’ principle the criminal would be sentenced to a jail term within the jurisdiction of that crime and rehabilitation.

Most scholars agree that punishment in some form is necessary, they disagree on the underlying reason that makes punishment an appropriate and justified response to social norm violations. Some claim that punishment’s primary purpose is to pay back harm doers for their past crimes; others claim that its function is to prevent or reduce future crimes. As this debate suggests, there are two broad justifications for the use of punishment. One perspective holds that when an individual harms society by violating its rules in some normatively unallowable way, the scales of justice are out of balance, and sanction against the individual restores this balance. Under this perspective, the perpetrator deserves to be punished in proportion to the past harm he or she committed. The punishment is an end in itself and needs no further justification. This approach is typically referred to as a just desert perspective. Immanuel Kant (1952) argued that “punishment can never be administered merely as a means for promoting another good” and should be “pronounced over all criminals proportionate to their internal wickedness”.

An opposing perspective holds that social harmony is best served by the prevention of future harm and that the justification for punishment lies in its ability to minimize the likelihood of future transgressions. This rationale is outcome focused in that it seeks some particular future purpose by administering the punishment. This approach is referred to as utilitarian or consequentialist and is most often associated with Jeremy Bentham (1962), a contemporary of Kant. He argued that “general prevention ought to be the chief end of punishment, as it is its real justification”.

**The justification for this principle lies in righting a wrong, not in achieving some future benefit. The central precept of just deserts theory is that the punishment be proportionate to the harm. The task of a just deserts theorist, then, is to assess the magnitude of the harm and to devise a punishment that is proportionate in severity, if not in kind.** There are several core components of an offense that determine moral outrage and the magnitude of punishment according to just deserts theory. **It is these factors which include; the magnitude of harm intended and mitigating circumstances, then, that should trigger the motive to punish if people adhere to a just deserts theory of punishment.** This theory however has some shortcomings which include the following:

- The person having committed a crime does not necessarily mean he/she has a criminal mind.
- The victim of the crime may not be interested in getting vengeance.

- There is no standard method of determining those who are guilty therefore running the risk of punishing the innocent.

#### **QUESTION 2(a).**

Capital punishment, also known as the death penalty, is a government-sanctioned practice whereby a person is put to death by the state as a punishment for a crime. Therefore a capital offense is one that is punishable by death. According to the laws of the federation, offences which can be referred to as capital offenses include; murder, treason and robbery by virtue of *Section 319 of the Criminal Code and Section 1 of the Armed Robbery and Firearms Special Provisions Act(2004)*. There are five theories of punishment which include; retribution which is revengeful in nature, incapacitation which is founded on the assumption that the isolation of an offender renders him incapable of committing crimes and rids the society of evil, deterrence which provides that punishment prevents crimes from reoccurring and to also prevent future crimes, rehabilitation of which the ultimate goal is to restore a convicted criminal to a constructive place in society through some combination of treatment, education and training and finally restitution which involves the process of returning to their previous condition all parties involved in or affected by the original misconduct. The four theories support death sentences in the following ways; the retribution theory is of the belief that all guilty people deserve to be punished in proportion to the severity of their crimes therefore in the case of a murderer, what the crime deserves is death. The deterrent theory provides in relation to the given subject that by executing convicted murderers, other individuals would deter from killing. Under incapacitation theory it can be said that those who are executed cannot commit further crimes and will no longer be a threat or danger to society. However in the opinion of this writer, there are more effective ways of dealing with criminals who have committed such felonies. For instance the use of non- custodial sanctions as a means of dealing with offenders as provided for in Article 8.2 of the Tokyo's Rule which gives non conventional ways of disposing cases by sentencing authorities. Some of which are; the use of economic sanctions, house arrest and referral to an attendance or rehabilitation center. A combination of any of these three sanctions would suffice in a situation whereby the circumstances of the case show that the offender does not have a criminal intent or is a first time offender. This comment brings forth the opinion that rehabilitation methods are more effective than the use of death penalties due to the fact that death penalties are a morally dubious concept and some of those executed may not have been capable of being deterred because of a mental illness or the crime may have been committed in a state of emotion preventing the perpetrator of considering the possible consequences of their act ( for instance murder which is not premeditated). In cases where a

mentally unstable person is sentenced to life imprisonment he may not be a danger to the public anymore but becomes a danger to the prison staff and other inmates which makes this system counter productive. In conclusion in the opinion of this writer capital punishments should be replaced with rehabilitative methods or hefty economic sanctions or at the very least life imprisonment with the possibility of parole after serving 25 years of the prison term.

**QUESTION 2(b).**

The answer provided above by this writer would not stand in the case of a simple offence due to the fact that simple offenses are not as serious as felonies punishment by death and an offender who commits a simple offense cannot be sentenced to life imprisonment. However, the imposition of economic sanctions and fines could still be ordered. Also sentencing authorities could make use of punishments such as community service and verbal sanctions for juvenile first time offenders. Confiscation of property, house arrest and orders to attend rehabilitation meetings or centers, for instance anger management meetings or rehabilitation centers for drug users could also be imposed. Therefore, this writer is of the opinion that some but not all of the same methods could be used at different degrees for convicted felons and simple offenders for instance a convicted felon could be ordered a much higher economic sanction than a simple offender.