**AFE BABALOLA UNIVERSITY ADO-EKITI (ABUAD)**

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**COURSE TITLE:** CRIMINOLOGY II

**QUESTIONS:**

1. *What motivates the ‘just desert’ principle of punishment? Discuss*
2. *a) As a criminology student, what do you think is the most effective way of punishing and treating capital offenders. Give reason(s) for your answer*

 *b) Will your answer be the same if the accused was charged for a simple offence?*

**ANSWERS**

1. The general phrase ‘just desert’ has been in existence since the 16th century and applies to both good and ill deeds. The principle is also known as “proportionalism principle” of punishment, a concept under the retributive theory of punishment. It can be said to have it derivations from the Latin maxim ‘*noxiae poena par esto*’ which means “the public should learn to be less critical of judgments handed down”. The concept can be said to be motivated by the idea of a fair and appropriate punishment related to the severity of the crime that was committed.

This concept is founded under the retributive ideology of punishment which is different from the other ideologies of punishment. There are essentially five ideologies behind punishment of criminals; the Deterrence principle states that punishments are inflicted on offenders in order to prevent crime from reoccurring (i.e. putting pain on the offender prevents crime), Incapacitation principle stipulates that the isolation of an offender would render him incapable of committing crime and would reduce the possibility of future crimes by those convicted, Restitution principle is the returning of all victims of a crime to the state they were before the crime was committed and this can be by monetary payment or service provision, Rehabilitation principle involves the treatment of criminals which is aimed to restore the convict to a constructive place in the society (i.e. the reformation of criminals prevents crime) and lastly, Retribution principle which rests on the idea that a person whose conduct appears to have caused social harm should be held responsible (i.e. when the criminal feels a punishment proportional to the crime he had committed, he would not venture into the same crime).

Retribution principle of punishment states that when an individual commits a crime, the exact punishment prescribed by the law should be inflicted on him without the act of plea bargaining and also not inflict a greater punishment than the crime committed. Immanuel Kant, an early retributionist, stated that punishment can never be administered merely as a means for promoting another Good, either with regard to the criminal himself or to the Civil Society but must in all cases be imposed only because the individual on whom it is inflicted has committed a crime. The ‘just desert’ principle of punishment elaborates that the punishment should fit the crime as 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’s act. The bedrock of this ideology can be best seen in the Latin maxim, “*Lex talionis*” which is translated to mean ‘an eye for an eye and a tooth for a tooth’. The ‘just desert’ principle in criminal justice discipline mostly applies to unlawful acts with the idea that one should be punished simply because one committed a crime. It states that the severity of the punishment should be equal to the severity of the crime. Therefore, the punishment the offender is to receive should be proportional to the unfair advantage the offender had taken by disobeying the law. The courts are empowered to ensure that a punishment is both appropriate to a crime and consistent. This concept should not be viewed as a means for the redress of grievances by mutual degradation but as a means that ensures that the criminal gets exactly what he deserves.

The issues faced by the court in strictly administering a proportional punishment are; the fact an accused who committed a crime might not have a criminal mind, how one can decided a just punishment for an offender on the nature of the offence while maintaining a stand of fairness towards the offender as an individual and on the issue of judicial consistency without taking into account other actions and circumstances that apply to the participants in a specific case. In the Nigerian legal system, it can be said that this attribute of ‘just desert’ follow the guidelines given by the Supreme Court for reaching a suitable sentence in the case of *Mohammed V. Olawumi[[1]](#footnote-1)* which include the consideration of; the nature of the offence, nature of the offender, rampancy of the offense, among others.

In conclusion, from the discussion above, the principle of retribution is motivated by the idea that as the law views all as equal then all offenders of a crime are to considered as equal and as a result punishment given to an offender should be equal to the offense as stipulated by the law in place at that time. Therefore, ‘equals should be treated equally and those who are not equals unequally’. The ‘just desert’ principle of punishment however is motivated by the ideal that the state should only give punishment necessary to pay the price of the crime and no more or less.

1. **A.** As a criminology student, the most effective way of punishing and treating capital offenders is Death penalty. Capital offender can be defined as an individual who commits a capital offence (i.e. an unlawful act which is usually given the sentence of death penalty or capital punishment). The theories or justification of punishment are as follows; Retribution (which follows that an individual deserves the penalty he gets because of the crime he has committed), Deterrence (follows that punishment by inflicting physical pain on the offenders would reduce the tendency of that offence to reoccur by discouraging others from committing such crimes), Incapacitation (which is the idea that the restriction of an offenders movement would make the criminal in no position to commit the crime), Rehabilitation (where criminals are to treated as individuals with special needs and problems so as to reform them) and Restitution (where the offender is provide something to compensate the victim of his crime). To properly answer the question of which punishment and treatment is best for a capital offender, we should note that capital offender are individuals who are mostly given the sentences of death penalty, life imprisonment or in some cases rehabilitation (this is usually in cases where the offender is not mentally stable). Capital punishment can be simply referred as, the justified killing of a human being by the State, in accordance with its law for an offence for which it is prescribed by law and which the person is found guilty by a competent Court which has jurisdiction on that matter. Other forms of punishment and treatments includes; imprisonment, payment of fine, Probation, Haddi-lashes (canning), Community Service Order, Deportation, etc.

In Nigeria, **Section 33 Constitution of the Federal Republic of Nigeria 1999(as amended)** provides the fundamental right to life but also states that the capital punishments as a legal form of sentence passed by a court of competent jurisdiction on a person convicted of any of the capital offences. The examples of Capital offences prescribed by the Criminal Code and Penal Code are as follows; murder[[2]](#footnote-2), armed robbery[[3]](#footnote-3), treason[[4]](#footnote-4), treachery[[5]](#footnote-5), instigating invasion of Nigeria[[6]](#footnote-6), etc. Therefore, it can be said that Capital offences include specific felonies. The imposition of Death penalty for those offences has a greater deterrence effect than all other punishments which means that it discourages other individuals in the society from committing the office as they know there will be a chance that they would lose their life. The execution of the capital offender would prevent any repetition of the committed capital offense by the same person, as these offences are serious and grave offences to the state. The punishment of imprisonment is not sufficient has the offender might escape back into the society and continue to commit the heinous act. The punishment of imprisonment also as its limitations as in Nigeria prison officials would usually make the statement that the prison cells are filled up and also offenders with life imprisonment do not add to the State’s economy. On the contrary, the taxes paid to the government by the taxpayers are used to feed the inmates and this will give other individuals in society that are not able to feed themselves that idea that imprisonment would warrant free meals. The punishment of payment of fine will not be sufficient in Capital punishments as the offences can not be quantified into monetary form and if they could be quantified into monetary form, the offender mostly will be to great for him to pay. The punishment of Canning or Haddi-lashes won’t be sufficient has it only has the temporary infliction of physical pain on the offender and there is no assurance that after such he would not venture back into the crime.

In conclusion, I view the death penalty as the most appropriate punishment, from the different forms of punishment, for addressing Capital offenders with the ideology of deterring other members of the society from committing such act in the future. However, it should be noted that this punishment also comes with its own shortcomings. For example, where an individual is executed but later found to be innocent. This brings into light that the court, before the execution of the convict, should give time for any new information regarding the case to be brought forward (i.e. the sentence should not be carried out immediately after the offender is pronounced guilty of the capital offence). The court should also take into consideration the different guidelines put forth by the Supreme Court as to note the nature of the offender and if the offender is not mentally stable, the death penalty should not be imposed. The court should instead impose a rehabilitation procedure on the individual.

**B)** No, my answer will not be the same if the accused were charged for a simple offence. This is due to the fact that simple offences are not viewed to be grave in the eyes of the law. Simple offences are unlawful acts for which the offender is liable by law upon conviction to be given a punishment of imprisonment or fine or both. In Nigeria for the purpose of punishment by **Section 3 Criminal Code Act,** offences are classified into felony (which warrants death penalty or from 3 years imprisonment), misdemeanor (which warrants from 6 months but not up to 3 years imprisonment) and simple offences (punishable with less than 6 months imprisonment).

The reason for my answer, revolves round the fact that by nature simple offences and capital offences are not the same and therefore, the punishment given for them should not be the same. Also, no statute in Nigeria provide capital punishment as a punishment for simple offences. Being that courts are charged to give punishments as prescribed by the statute; simple offender cannot be given capital punishment for the commission of a simple offence. For simple offences, in my view, punishments like canning, probation, payment of fines, etc are sufficient.

**REFERENCES**

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* Constitution of the Federal Republic of Nigeria 1999 (as amended)
* Criminal Code Act CAP C38 Laws of the Federation, 2004
1. (1993) 4 NWLR (Pt.288) 384 [↑](#footnote-ref-1)
2. Section 319 Criminal Code Act [↑](#footnote-ref-2)
3. Section 402 (2)(a) Criminal Code Act [↑](#footnote-ref-3)
4. Section 37 Criminal Code Act [↑](#footnote-ref-4)
5. Section 49A Criminal Code Act [↑](#footnote-ref-5)
6. Section 38 Criminal Code Act [↑](#footnote-ref-6)