**AFE BABALOLA UNIVERSITY**

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QUESTION:

1. What motivates the ‘Just dessert’ 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 answers.

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

**ANSWERS:**

Societal reactions are usually in form of punishment. Punishment can be defined as one of the devices used for treating offenders in the society and to restore harmony or repair the damage done by the violation of the law. Punishment usually serves a lot of social control functions as it is based on various principles. In most modern societies, one of the main aims of the criminal justice system is to ensure the maintenance of law and order as certain rules have been codified to ensure that this purpose is achieved. Therefore, when these laws are violated, society will in response give certain reactions.

Therefore, punishment was seen to be based on the Latin maxim “lex talionis”[[1]](#footnote-2) which means “eye for an eye and a tooth for a tooth” This is an ancient method used to deal with offenders. It could comprise of banishments, whipping and various forms of torture or death. It is usually revengeful in nature as it usually allows the infliction of injury on the criminal. In earlier times, penal law permitted the infliction of greater injury on the victim.

This retributive theory posits that crimes or acts committed that are criminal in nature deserve punishment. Therefore, emphasis is usually based on the compensation of the criminal based on the past criminal behaviour of the criminal. Therefore, penologists called for more humane treatment of offenders and the older approaches were replaced by codes that advocated for this form of punishment.

Thereafter, the “proportionality principle” or the “Just deserts” rule came into being, and they advocated that punishment should fit the crime and therefore be in equal proportion to the seriousness of the crime. Therefore, when a punishment is committed, the exact punishment given by law is that which should be prescribed to the criminal. Therefore, the punishment of a crime is equated to the seriousness of the crime committed. This principle attempts to answer the question, how much punishment should be inflicted on a criminal?

The concept of “just desert” helps to provide a check on the state on the power of determining punishments to crime committed. Without these checks conducted on the state, it could lead to a state of anarchy or lawlessness in the state as instances could arise where society punishes the whole family of the offender rather than the criminal himself.

2a. Capital offenders are known as perpetuators of crime that commit capital crimes. These offencesare often termed as serious crimes in Nigeriaand could range from murder, treason, kidnapping and so on. In Nigeria, the punishment for them is usually death penalty[[2]](#footnote-3). This is premised on the penal theories of retribution, deterrence and incapacitation. The Nigerian constitution states that capital punishment is a legal form of sentence passed on by a judge on a person guilty of a capital offence[[3]](#footnote-4)and Nigeria is seen as one of its retentionist countries. [[4]](#footnote-5)

In my opinion, the punishment of death penalty supports the view stated in “just dessert” which states that the punishment should be proportionate to the crime committed. So, if a person should take someone’s life, his also ought to be taken. The Perpetrators of grave crimes such as murder, genocide, terrorism and mass murders and such other crimes as these deserve death penalty. This is on the basis of the theory that he who kills by the sword deserve to die by the sword.

In Nigeria, capital offences which includes murder, armed robbery, treason is punishable by death across the federation. As seen under the criminal code, section 319[[5]](#footnote-6) states the punishment for murder is death section 37(1) [[6]](#footnote-7)states the punishment for treason is death and also section 1[[7]](#footnote-8) also states the punishment for armed robbery is death.

This makes it impossible for another to commit the crime as others who witness the crime, won’t want to commit the crime again.

Death penalty can also be seen as having an incapacitating power to stop the re-occurrence of that crime by the offender or the development of new crimes as such offender will be taken away from the society. As opposed to imprisonment where the offender will eventually be released, the chances are high that the offender may constitute a threat to the society and even in cases of life imprisonment; such offender can be released on presidential pardon and as such constitute a threat to the society.

However, while death penalty is seen as an effective means of punishing capital offenders, I thereby recommend that the processes of sentencing and conviction be reviewed as it is contended that you cannot take life back once it is taken. Once execution is carried out a person wrongfully convicted cannot seek redress to restore his life back. There is no provision under our law for the review of conviction once it is confirmed by the Supreme Court unless through grant of pardon. This can be used to prevent grave and professional errors that will arise as they may lead to convictions of innocent persons.

On the other hand, one of the most effective ways these perpetuators of the law could be treated is **Rehabilitation.** This is seen as a great justification for punishment as it put for the restoration of the offender into a constructive place in the society. The rehabilitation process is usually a combination of treatment, education and training. It aims as reforming the criminal to a good and proper citizen of the society. Through rehabilitation, these prisoners could learn trades, go to learn handworks and get themselves involved in many meaningful activities so that upon their re-integration into the society, they will become useful. It therefore serves two purposes. One which is the provision of the state, the opportunity to reduce crime the other which is to refurbish the criminal to a good place in the society.

I thereby recommend that the Nigerian Prisons be refurbished as these Rehabilitation services can only be done in prison. The state of Nigerian prison’s otherwise known as the Nigerian Correctional service has to be conducive for reformation and as such serve the purpose of its existence.

**B.**  YES, my answer would be different as a person who commits a simple offence cannot be punished or treated in the same manner as person convicted for a capital offence. As it also follows the “just dessert” principle that advocates that punishment should fit the crime and should be in equal proportion to the seriousness of the crime. Therefore, for simple offences the way of punishing and treating the offender will differ. Section 3[[8]](#footnote-9)defines simple offences as “all offences, other than felonies and misdemeanours” therefore; capital punishment will not be applicable. Simple offences could range from contempt of court; section 133[[9]](#footnote-10), unlawful wearing of the uniform of armed forces; section 110[[10]](#footnote-11), selling the uniform of the armed forces; section 111[[11]](#footnote-12)

Therefore, Punishments like fine in lieu of punishment can be applicable, as section 390(3) of the ACJA[[12]](#footnote-13), posits that fines in Nigeria courts should be appropriate not only to the offence but also to the means of the offender to pay. Also, S382 0f the CPA[[13]](#footnote-14), S316 [[14]](#footnote-15)of the ACJL, S23 of the CPC[[15]](#footnote-16), S422 of ACJA[[16]](#footnote-17), provides for discretionary power of the court to impose fines in place of punishment. Probation can also be seen as a form of punishment as this is the period of supervision of an offender as ordered by the court in the place of a jail term. S453 –S459 of the ACJA[[17]](#footnote-18) and S435 (1) of the CPA[[18]](#footnote-19). Another form of punishment that will be applicable to simple offences is community service. Community service is a form of punishment where offenders are required to perform unpaid work for the community in which an offence has been committed. It is usually for a stipulated period of time. It could range from environmental sanitation, and usually any other service which the court deems it beneficial to have effect on the character of the offender. Community service has been introduced in Lagos state as can be seen in S347 (3) of ACJL[[19]](#footnote-20)

1. It also means the law of retaliation where a person who has injured another person is to be penalized to a similar degree, and the person inflicting such punishment should be the injured party. [↑](#footnote-ref-2)
2. Onuaha Kalu v. State (1998) 13NWLR (Pt583)532 and in Nnamah v. State. The Supreme Court stated that death sentence is constitutional. [↑](#footnote-ref-3)
3. Section 33 of The Constitution of the federal republic of Nigeria, 1999. [↑](#footnote-ref-4)
4. International prescriptions have been made that if the punishment of death penalty is used by a retentionist country, then it should be only for serious offences. See Article 6(2) of the international Covenant on Civil and Political Rights( hereinafter referred to as ICCPR) [↑](#footnote-ref-5)
5. Of the criminal code of Nigeria, 1990 [↑](#footnote-ref-6)
6. Of the criminal code of Nigeria, 1990 [↑](#footnote-ref-7)
7. Of the robbery and fire arms special provisions act, 1990 [↑](#footnote-ref-8)
8. Of the criminal code of Nigeria, 1990 [↑](#footnote-ref-9)
9. Of the criminal code of Nigeria,1990 [↑](#footnote-ref-10)
10. Of the criminal code of Nigeria, 1990 [↑](#footnote-ref-11)
11. Of the criminal code of Nigeria, 1990 [↑](#footnote-ref-12)
12. Administration of criminal justice act, 2015 [↑](#footnote-ref-13)
13. Criminal procedure act, CAP C41,LFN 2004 [↑](#footnote-ref-14)
14. Administration of criminal justice law, Lagos state, 2011 [↑](#footnote-ref-15)
15. Criminal procedure code,1960 [↑](#footnote-ref-16)
16. Administration of criminal justice act, 2015 [↑](#footnote-ref-17)
17. Administration of criminal justice act, 2015 [↑](#footnote-ref-18)
18. Criminal procedure Act, CAP C41, LFN 2004 [↑](#footnote-ref-19)
19. Administration of the criminal justice law Lagos state, 2011 [↑](#footnote-ref-20)