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MATRIC NO: 17/LAW01/271

DEPARTMENT: LAW

LEVEL: 300 LEVEL

COURSE TITLE: CRIMINOLOGY II

COURSE CODE: LPI 304

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ASSIGNMENT TITLE : PUNISHMENT.

#### QUESTION

1. What motivates the just desert principle of punishment
2. As a criminology student, what do you think is the most effective way of punishing and treating capital offenders. Give reasons for your answer.
3. Will your answers be the same if the accused was charged for a simple offence?

## 1. Definition of the Just Deserts

Have you ever heard the saying 'let the punishment fit the crime'? Well, this is the philosophy behind the just deserts model of justice. The phrase represents the idea of a fair and appropriate punishment related to the severity of the crime that was committed. The concept of 'just desert' is one poorly understood outside of legal circles. It has its derivatives from the Latin maxim "noxiae poena par esto". "The public should learn to be less critical of judgments handed down". This is a philosophy of justice whereby a criminal offence is viewed as lowering the victim or community's status or power relative to the offender, which requires a degradation of the offender to redress the moral balance

Just deserts is sometimes referred to as the 'retribution' type of sentencing. In other words, one should be punished simply because one committed a crime. Throughout history, the idea of retribution for the commission of a crime can best be explained in the Old Testament quote 'an eye for an eye, a tooth for a tooth'. Those punishment usually consists of whipping, branding, banishment and other various forms of torture.

However, 'just desert' means to ensure that a punishment is both appropriate to a crime and that it is consistent. Someone who steals a loaf certainly does not deserve life imprisonment. Neither does one convicted of willful homicide necessarily deserve such sentence. Given the confusion surrounding the topic, it seems that the bulk of the argument is over what the term means. If one considers 'just desert' to mean a redress of grievances by mutual degradation, it should be a matter of little difficulty to discredit and banish such a theory from the field of justice. However, if one considers the term to mean that criminals should get exactly what they deserve, no more, no less, then one would be hard-pressed to find a convincing argument to stand in opposition.

The concept of distributive justice has long been menaced by varying interpretations of the word 'fairness' and it seems that this word, which refuses to conform to a universalized definition, stands at the crux of this matter too. How can one strike a balance when deciding what is just for an offender based solely on the nature of a specific offence while maintaining any semblance of fairness toward that offender as an individual?

Furthermore, how can any single deed merit a single sentence, the essence of judicial consistency, without taking into account other actions and circumstances that apply to the participants in a specific case? There are all manner of unrelated issues drawn into the mix where justice is concerned. It seems experts in the field are unable to differentiate and delineate specific areas of focus and so try to tackle everything at once in a single subject. We all are aware morally that we should not cause suffering, and

punishment causes suffering, but this basic principle has nothing whatsoever to do with the notion of crime and punishment being in a causal relationship. If jurists have been, and still are, unable to stick to a single subject matter or area of thought with regard to the moral philosophy of justice, then it seems there can be no form of rational argument over the matter of any term, let alone one so poorly defined, where there are as many meanings as there are experts, and many of those mutually exclusive, as 'just desert'. It can be argued whether there should be an objective purview of justice, where the punishment of offences can be seen as a cause-effect relationship or whether justice should deal with each case as an individual occurrence, taking into account all individual traits of all players, and the circumstances of the case, while keeping a superiority of morality always foremost in mind. Yet, without any such clarity or focus in this field, such discussion is effectively impossible. Therefore, without consensus definition, and without the ability to keep any such discussion on any specific topic at hand, there can be no argument for or against this concept.

Thus, it is my opinion that 'just desert' is a necessary component of justice, if and when it is considered to be representative of the concept of punishment being a resultant effect of an offence having been committed. Unless the distributor of justice presiding over a trial participated in the offence, then his own moral qualms should be left out of the matter. Of course, care should be taken that the punishment does not exceed the guilt, nor that it falls conspicuously short of reflecting the guilt, and also that some men do not suffer for offences for which others are not even indicted. Experience has shown that punishment is the last and the least effective instrument in the hands of the legislator for the prevention of crime.

Even more important, the public, deeply ignorant of how the wheels of justice turn, should learn to be less critical of judgments handed down and respect any punishment meted out by learned and scrupulous judges, thus contributing to the restoration of public faith and trust in our justice mechanisms

2a.

Etymologically, the term capital (lit. "of the head", derived via the Latin capitalis from caput, "head") in this context alluded to execution by beheading. The term "capital offense" is used to describe a crime that is so serious that the death penalty may be considered an adequate punishment. One of the most common examples of a capital offense would be murder. Treason, or the betrayal of one's country, is also considered a capital offense, and it is punishable by death.

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. The

sentence ordering that someone be punished in such a manner is referred to as a death sentence, whereas the act of carrying out such a sentence is known as an execution. A prisoner who has been sentenced to death and is awaiting execution is referred to as condemned, and is said to be on death row. Crimes that are punishable by death are known as capital crimes, capital offences or capital felonies, and vary depending on the jurisdiction, but commonly include serious offences such as murder, mass murder, aggravated cases of rape, child rape, child sexual abuse, terrorism, treason, espionage, sedition, offences against the State, such as attempting to overthrow government, piracy, aircraft hijacking, drug trafficking, drug dealing, and drug possession, war crimes, crimes against humanity and genocide, and in some cases, the most serious acts of recidivism, aggravated robbery, and kidnapping

### Capital Offense vs. Felony

A felony is a severe criminal charge, but so is a capital offense. So why don't all felonies come with the potential for the death penalty as a sentence? There is one key difference between the two: the death of a person as the result of the defendant's actions. For example, a capital offense, rather than a felony, is charged if someone was killed directly by the defendant and/or if the defendant had an intent to kill that person. Felony charges are upgraded charges on a variety of different crimes. Typically, capital offenses only pertain to first-degree murder and treason. Capital punishment (the death penalty) can even be considered too severe a punishment in the states that currently practice it. The only time a defendant is more likely to be convicted of a capital offense is if his actions resulted in the death of another person (especially if he intended for that person to die, like shooting the person directly), or the betrayal of his country.

### Capital Offense Example Involving a Robbery and Murder

An example of a capital offense can be found in the matter of *Atkins v. Virginia*, which was decided in 2002. Here, Daryl Atkins and William Jones robbed and abducted Eric Nesbitt from a convenience store in Virginia in August 1996. After they were only able to get \$60 out of Nesbitt's wallet, the unsatisfied pair drove him to an ATM to withdraw more money. The men then took Nesbitt to another location, where one of the men shot Nesbitt eight times, killing him. With the evidence that was gathered from Nesbitt's car, coupled with video footage from the ATM, Atkins and Jones were found, arrested, and charged with Nesbitt's murder. At trial, each of the men accused the other of pulling the trigger. However, Atkins' account of the events that lead up to Nesbitt's death was inconsistent, and Jones testified that Atkins was the shooter. Additionally, Atkins' cellmate testified that Atkins had confessed to him that Atkins had committed the murder. The jury decided that Jones' account was more believable, and so Atkins was convicted of Nesbitt's murder.

As Atkins was being sentenced, he was tested by a clinical psychologist who discovered that Atkins only had an IQ of 59. His lawyer therefore argued that Atkins should not be sentenced to death, as he was "mildly mentally retarded." However, Atkins still received the death penalty. Atkins appealed, and the Virginia Supreme Court upheld his conviction, but ordered a re-trial on his sentence. The prosecution argued that the crime itself, coupled with Atkins' violent past was enough to warrant the death penalty and supersede his disability. The jury agreed, and the Virginia Supreme Court upheld his sentence. The U.S. Supreme Court agreed to hear the case in 2002. The question the Court had to answer here was whether the death penalty in this case was a violation of the Eighth Amendment's prohibition on cruel and unusual punishment. Specifically, could the same justifications used to issue such a sentencing be applied to mentally challenged individuals? While these individuals might know right from wrong, they may have difficulty understanding the consequences of their actions.

Ultimately, the Court concluded that the Eighth Amendment forbids states from executing defendants who are mentally challenged, and reversed the lower Court's ruling. Said the Court in its decision:

"Our independent evaluation of the issue reveals no reason to disagree with the judgment of 'the legislatures that have recently addressed the matter' and concluded that death is not a suitable punishment for a mentally retarded criminal. We are not persuaded that the execution of mentally retarded criminals will measurably advance the deterrent or the retributive purpose of the death penalty. Construing and applying the Eighth Amendment in the light of our 'evolving standards of decency,' we therefore conclude that such punishment is excessive and that the Constitution 'places a substantive restriction on the State's power to take the life' of a mentally retarded offender."

2b.

My answers will be different if the accused was charged with a simple offence.

According to section **17 of the criminal code, 2004**, forms of punishment includes death, imprisonment, canning, fines and forfeiture. Other forms of punishment includes probation, deportation and community service. Simple Offence means offence or act for which a person is liable by law, upon a finding of guilt before a Justice or Justices, to be imprisoned or fined or both or to be otherwise punished; but does not include an indictable offence which can only be heard and determined in a summary way as a minor indictable offence.

FINE: Section 316 Administration of criminal justice, This section provides for the discretionary power of a court to impose in lieu of punishment. Also, **section 390(3) CPA**, provides that the fine in Nigerian court must be appropriate not only to the offence but

also to the means of the offender today. In the case of *Goke v. Police*, a 1957 case where the fine imposed was to serve as deterrence to offenders but it still does not address restitution to the victim of the crime.

COMMUNITY SERVICES : Offenders are expected to perform unpaid work for the community on which the offence has been committed for a certain period of time. A community service order shall be in

1. Assisting with the care of children or old adult in government approved homes.
2. Environmental sanitation and any other type of service which will have a beneficiary effect on the character of the offender.

PROBATION: This is a period of supervision over an offender ordered by a court instead of serving time in prison. (*Section 453 to 459 Administration of criminal justice act*).