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**Question:**

- 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?

**ANSWER;**

**Question 1;**

In the course of this paper this writer will proceed to examine the just desert principle of punishment, and what motivates the theory of just desert.

The just desert principle of punishment is a theory which has been designed to promote equality and fairness of sentencing for the imposition of a sentencing, it is also known as the “**Deservingness Perspective**”. It was said by Immanuel Kant, in the late 18th century that punishment should be “pronounced over all criminals proportionate to their internal wickedness”. In essence, the basic belief of this principle of punishment is that the criminal offender that has committed the crime deserve the punishment that the law has ascribed unto them, and also that the punishment provided should also in essence be suitable in relation to the severity and form of crime committed, and this also serves to form the principle behind just deserts which provides that the punishment provided must fit the crime. Just desert, is a philosophy of punishment which provides and argues that criminal sanctions should be equivalent with the seriousness of the offence. It can also be seen that this also rests on the principle of “*les talionis*” or “*an eye for eye principle*” that provides that when an individual commits a crime, he must be given a punishment which is equivalent to the crime. This theory focuses on the past behaviour of an offender and attempts to find a punishment for it, because it believes that the perpetrator deserves to be punished in proportion to the past harm that he committed.

What motivates the theory of just desert is the fact that there must be fairness and equality in the imposition of a sentence and that the punishment should fit the crime, so when just desert is applied, it is applied in essence to ensure that the individual who has committed an offence would get a punishment which is equal in relation to the crime which such individual has committed. In clearer terms, the motive behind the principle of just desert is that in the scenario where an individual commits an offence, the punishment for the offence committed must fit the crime and also be equal to the crime that has been committed. The rationale behind this theory is that an offender deserves a punishment which is proportionate to the crime committed. This theory is retrospective rather than prospective, because the punisher is not concerned with the future outcomes, but rather he is concerned with providing a punishment suitable to the offence. Basically, the magnitude of the harm is evaluated and then a punishment proportionate in severity to the crime is devised. There are various elements of an offence which are used in determining the gravity of the punishment according to this theory, and it is these factors that should trigger the motive to punish an individual if the theory of just deserts is applied, and some are magnitude of the offence and extenuating circumstances.

In conclusion, the motive behind the theory of just desert is the fact that, when an individual commits an offence the punishment which would be imposed on him should be equivalent and proportionate to the crime that has been committed. For example, in the instance that an individual takes the life of another person, the punishment that would be imposed on him would be the death penalty since it is directly proportionate and equivalent to the offence committed.

### **Question 2 (a);**

In the course of this paper, this writer will proceed to explain who a capital offender is and what a capital crime is, and will also provide his opinion of what the most effective way of punishing and treating a capital offender may be.

A capital offender is an individual who has committed an offence which is classified as a capital crime, or in simpler terms it can be defined as a person who commits an offence that is punishable by death.

A capital crime includes any offence which is so severe that the punishment which will be provided to the capital offender will be the death penalty. Capital crimes are those crimes which are punishable by death<sup>1</sup>. In the understanding of this writer, a capital crime is an offence which is so severe in nature that the punishment most suitable and proportionate

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<sup>1</sup> The Main Classifications of Criminal Offences. (2019). Retrieved April 29, 2020, from <https://www.thoughtco.com/types-of-criminal-offenses-970835>

to it is the death penalty. What is considered as a capital offence may differ across various jurisdictions, in Nigeria some of the offences which may amount to a capital offence includes but are not limited to, murder, rape, robbery, kidnapping, incest, sodomy and much more.

As a student of criminology, I am of the legal viewpoint that the way which would be most effective in the punishment of a capital offender will be capital punishment. Capital punishment may also be referred to as the **death penalty**<sup>2</sup>. Capital punishment is the punishment given to an individual who has been found guilty of committing a capital offence, and the punishment which will be given to such individual is the death penalty.

The reasons why I believe that the death penalty also known as capital punishment, is the most effective means of punishing a capital offender include;

- a) Capital punishment is provided for by law, as the punishment of an individual who commits a capital offence. So, as the law has provided, wherever an individual has committed a capital offence the punishment which would be imposed on such individual is the death penalty. For example, **s.319 of the Criminal Code**, provides for the punishment of murder which is a capital offence, and the punishment provides that when an individual takes the life of another individual, that individual will be sentenced to the death penalty.
- b) Capital punishment may also serve as a deterrent, as the deterrent theory of punishment suggests the reason why punishment may be imposed is to deter either the individual (specific deterrence) or to deter the general public (general deterrence), so when capital punishment is strictly imposed on anyone who commits a capital offence, it would deter the individual from committing more crimes, and by extension it would help to deter other individuals from committing capital crimes, as they would be afraid of capital punishment being imposed on them.
- c) Capital punishment also serves as a form of incapacitation, in the sense that it is a permanent incapacitation of the individual who has committed the offence. Due to this fact, since the individual who has been perceived as a threat to society has been eliminated, that individual would no longer pose as a threat to society.
- d) The punishment must be proportionate with the crime, for instance, if an individual commits a capital offence, they should be punished by a capital punishment, as it is proportionate to the crime they committed.

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<sup>2</sup> Capital punishment. (2020). Retrieved April 29, 2020, from <https://www.britannica.com/topic/capital-punishment>.

In conclusion, the aforementioned reasons provided, are the reasons why this writer is of the viewpoint that capital punishment is the most effective way of punishing and treating a capital offender.

**Question 2 (b);**

No, my answer would be different if the individual was charged for a simple offence. This would be attributed to the fact that a simple offence in nature of offences is a lesser offence than a capital offence so capital punishment would be a highly disproportionate punishment for a simple offence. In **s.3 of the Criminal Code**, a classification of offences is provided and they are as follows; Felonies, Misdemeanors and Simple offences, in the hierarchy of the classification of these offences simple offences are the lowest in the seriousness of the offence it is the least serious among other classifications. Simple offences are offences which are in nature of seriousness lesser than felonies and misdemeanors, and they are punishable with imprisonment of less than six months or a payment of a fine or in some instances both. So, if the accused individual was charged with the commission of a simple offence there are other ways of punishment that will be availed to him, but capital punishment is not a form of punishment that would be given to him. Some offences which constitute simple offences include offences such as; contempt of the court, unauthorized selling and wearing of army uniform and the likes.

The punishments, that would be suitable for an individual who has been convicted of a simple offence includes;

- a) Imprisonment; This is a term of a judicial sentence which will be imposed on a convicted offender of an adult age, and this involves incarceration of such individual. Imprisonment is simply the restricting of another individual's personal liberty, and it is not always necessary that such individual's freedom is restricted in a prison facility, such individual may be put on house arrest.
- b) Payment of fines; Here, the individual is made to pay a fine as a punishment for a crime which he has committed. It is a money that a court of law or other authority decides has to be paid as punishment for a crime or other offence<sup>3</sup>
- c) Probation: Here, the activities of the offender would be monitored for a period of time, and within this period of time the offender would be supervised and have his liberty

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<sup>3</sup> Fine (penalty). (2020). Retrieved April 29, 2020, from [https://en.wikipedia.org/wiki/Fine\\_\(penalty\)](https://en.wikipedia.org/wiki/Fine_(penalty))

limited to an extent. In Nigeria it is provided for in **s.453–459 Administration of Criminal Justice Act (2015)**.

- d) Community service order: The criminal offender would be made to provide essential services to the community without being paid for the provided services. It can be through environmental sanitation, assisting in an orphanage etc.

There are also some ways which could be provided to assist in treating such an offender they include but are not limited to; provision of employment opportunities, when these are made available for offenders they would be provided with a legal means of earning a living so they would not employ illegal means of livelihood. Rehabilitation, this is one of the most important ways of treatment of an offender as in this way of treating an offender the offender is rehabilitated so as to return him to a productive place in society. The offender could also be re-educated, as the offender is being re-educated, he is learning the skills and gaining knowledge which would help him to be a productive member in society. Job opportunities can also be provided for the offender to ensure that since they are productive members of society they will not delve back into a life of criminal activities. The offender could also be treated by drug use rehabilitation, provision of counselling services, religious counselling, and much more.

In conclusion, as it was stated previously if the individual was charged with a simple offence, the punishment and treatment which would be provided to him will be different from the kind of punishment and treatment which will be provided to a capital offender.