

NAME : OMOBOGIE AISOSA O

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ANSWER

## QUESTION 1

1) The 'just desert' principle of punishment can be found under the Retribution theory of punishment. Therefore, for a clearer view the writer shall be considering the meaning of retribution.

Retribution is the most ancient method of dealing with offenders. It is revengeful in nature. It is Punishment inflicted in the spirit of moral outrage or personal vengeance. This approach to punishment rests on the idea that a person whose conduct appears to have caused social harm should be held responsible. It usually consists of banishing, whipping, death, torture, branding etc.

In earlier times, penal laws allowed the infliction of greater injury on an offender than that which he had inflicted on the victim. Penologists called for a more humane treatment and the older approach was replaced by codes that advocated for the Latin maxim of '*lex talionis*' which means 'an eye for an eye and a tooth for a tooth'.

The 'just desert' principle is also known as the proportionality principle. It is a theory which is designed to promote equality and fairness of sentencing for the imposition of a sentence. The principle behind just deserts is that the punishment should fit the crime. When such an instance occurs, it is said that the offender has received their 'just deserts'. The punishment given to a crime should not be more than such crime or less than such crime.

Therefore, the writer is of the opinion that what motivated the 'just desert' principle of punishment is the quest to balance out the crime and the punishment of an offender a crime should not be more than the punishment and a punishment should not be more than a crime as seen in the previous penal law cases before the introduction of the eye for an eye and tooth for a tooth principle. A person deserves punishment proportionate to the moral wrong committed.

To sum it up, the just desert principle seeks to make offenders sentence equal to the crime committed. Although this theory had a number of shortcomings, the most relating one is that there is no full proof method of determining those who are guilty thus revengeful punishment may be directed at the innocent. In the Ancient Greek time, it was regarded as a kind of trade where good had been exchanged for good and bad for bad.

## QUESTION 2

### INTRODUCTION

Offences has been generally categorised into three:

a) Simple offences

b) Misdemeanor

c) Felonies/ capital offences

Capital offences are crimes such as murder or betrayal of one's country that is treated so seriously that death may be considered an appropriate punishment. They are offences declared by the law creating to be a capital crime or capital felony punishable with death.

From the above definition deduce who a capital offender is. A capital offender is a

person who has committed a capital offences.

Punishment is known to serve numerous social control function. It is also known to preserve public order and decency as well as protect the citizens from what is offensive and injurious. In line with this, there are 5 types of punishment which are: **a) Retribution b) Deterrence c) Rehabilitation d) Restitution e) Incapacitation**

For the purpose of this context, the writer would be considering **Incapacitation**.

**Incapacitation** in the context of criminal sentencing is one of the forms of punishment. It involves capital punishment, sending an offender to prison, or possibly restricting their freedom in the community, to protect society and prevent that person from committing further crimes. This justification of punishment is founded on the assumption that the isolation of an offender renders him incapable of committing crimes. There are two types of incapacitation which are; **Permanent incapacitation** and **Temporary incapacitation**. Temporary incapacitation is when the criminal is kept in prison for a term and it is expected that the criminal cannot commit crimes during this term because his liberty is curtailed and he is on permanent supervision and surveillance.

Permanent incapacitation involves amputation of hands for thieves, castration for rapist, life imprisonment for chronic violent offenders and death penalties for capital offenders. In other words it involves the amputation of a body part of the offender or permanently restricting them for life or death in worst cases. The idea here is to completely eliminate such offender from the society.

**A)** The most common way of treating capital offender in our society is through **permanent incapacitation or capital punishment**. Capital punishment also called death sentence is the execution of an offender sentenced to death after conviction by a court of law.

It is believed that a person who kills should be killed. This is because murder is a capital offence (**SECTION 316 & 319 CRIMINAL CODE**) thus, any one found guilty of this offence is permanently incapacitated. However, the writer does not completely agree with the above statement.

For a person who killed someone for the first time and instantly regrets it or in a fit of anger or emotion or impulse, the writer believes such a person should be given a second chance to repent. Not all victim family likes to see the person who killed their family die. Some just want the satisfaction that such offender is being punished severely. For such a person the writer would recommend permanent incarceration with hard labour, services should be rendered to the victim's family for example if the victim was the breadwinner, the offender can be ordered to give the family certain amount every month or on an

agreeable basis.

In addition, a term often referred to as 25 years to life can be employed. This is technically a life sentence but such offender is up for parole after 25 years. If parole is granted, they will be on parole and monitored until they die, if at any point they violate their parole they will be returned to prison to continue their life sentence. However, since such offender has a life sentence that means they don't have to give the offender parole they can keep him for the rest of his life as there is no guaranteed change or repentance and also such a person should be rehabilitated.

Furthermore, not all offences that the penalty is death sentence is reasonable for example armed robbery, treason, fabrication of false evidence leading to the conviction to death of an innocent the person etc for such offences other method such as amputation of hands, incarceration or life imprisonment, community services and life without parole, long term probation should be used.

For a person like a serial killer, the writer does not believe that such a person should be spared because a serial killer is a person who has committed more than 2 murder cases. The guarantee that life imprisonment on such a person would work is zero. Also, the chances of repentance is low Rehabilitation on such a person might not work as most of them are either psychopaths or sociopaths.

Also if imprisoned there is a chance they could escape and commit more murder being extra careful not to be caught again. Such a person should be eradicated from the society although the eradication of such a person does not guarantee that there would be no reoccurring of such crime but it can provide a deterrent against violent crime. It eliminates the possibility of an escape and future victims for example Drug lord Joaquin Guzman, better known as "El Chapo," has a long history of being captured and escaping from maximum security prisons. In 2001, with the help of guards that he bribed, he escaped in a dirty laundry cart, and then into the trunk of a waiting Monte Carlo. He hid in tunnels for days when captured in Mazatlan in 2014. He then escaped through a tunnel in 2015 out of Mexico's top-security prison. Moreover, it

is agreeable that selective incapacitation should be used as it is a corrections strategy that seeks to protect society and save limited correction resources by incarcerating those offenders who pose greater threat to the society.

Threat is equated with quality and quantity of offenders offences and likelihood of reoccurrence.

**B)** A simple offence is an offence that is punishable with imprisonment of less than 6

months. These are offences are the mildest set of offences as they are not as grievous as capital offences. Examples include contempt, unlawful wearing of armed forces uniform, unlawful processions, defacing post office or letter box etc. These offences are not as serious as the offences in felony, therefore the punishment should not be more than what is stated by the law and should not be equal to the punishment given for felony thus the writer's answer would be No if the offender committed a simple offence.

For simple offenders the writer would recommend the Deterrence and temporary incapacitation mode of punishment.

Deterrence is when punishment is inflicted on the offender to prevent the crime from reoccurring. This can be of two categories; **General and specific Deterrence.**

General Deterrence is made to be swift and severe enough so that they would not want to commit such crime and that the pain of punishment outweigh the benefit of crime, while Specific Deterrence is severe enough to prevent the offender from committing future crimes. This means that when an offender has been released, he considers the advantages and disadvantages and he might not do it again because he has experienced the severity of punishment. So for simple offences short term imprisonment, community services, probation, restitution etc should be used.

In conclusion, capital offences which is thought to attract capital punishment should be reviewed and should only be employed in certain critical cases that pose as greater risk to the society and also other means of punishment should be involved like while in incarceration the offender can go through rehabilitation while for simple offences although they are not very serious offences, offenders should not be let off easy so they do not engage in such crimes or crimes in general in the future