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## QUESTION 1

The phrase 'Just desert' simply means to get what a person deserves with regard to reward or punishment. The just desert principle of punishment is motivated by the idea that a just and suitable punishment related to severity of the crime should be allocated to the offender. This can also be expressed as the punishment given should fit the crime committed. It is a retributive theory of criminal punishment that proposes reduced judicial discretion in sentencing and specific sentences for criminal acts without regard to the individual defendant. This can also be referred to as the retributive type of sentencing and it follows the *lex talionis* doctrine of 'eye for an eye; tooth for tooth'; the due recompense of a defendant's crime. If a person commits a crime, he must be given the strict penalty prescribed by law and he must not be given a lesser punishment than he deserves. It is pertinent to note that the penalty awarded to the offender depends on the nature of the offence. The concept of just desert also seeks to preserve human dignity through punishment. In the just desert theory, the punisher does not need to be concerned with the future outcomes his only aim is providing punishment appropriate with the given harm. There are several components of an offence that determine the degree of punishment given to the offender.

First and the most important is the magnitude of the harm, this is basically the type of crime and the degree of it which offends the victim. If the offender commits murder, he will be given capital punishment. If a simple offence is committed, the offender will either be issued a fine or let off with a warning. Secondly, the specific reasons that justify or excuse the offender's actions are taken into consideration. This includes the mitigating circumstances that often affect the magnitude of punishment given to the offender such as murder which is mitigated by provocation and thereby reduces the offence to provocation. Another example is a person who steals for the purpose of living a lavish lifestyle and a person who steals to help his poor and deprived family. Though the amount of harm is constant, the punishment given will not.

The main goals of the criminal justice system are retribution, incapacitation, rehabilitation and deterrence. However, the just desert theory only achieves retribution. Researchers have discovered that the just desert theory fails to deter the offender. They believe that it's better to determine the punishment not only according to the crime but also the person who committed the

crime. Also, people who have been previous offenders will be given punishment harsher than first time offenders.

## QUESTION 2A

A capital offence is a criminal offence for which one of the options at sentence is the imposition of capital punishment, the death penalty. I believe that the most effective for punishing and treating capital offenders is the capital punishment which is the death penalty. The Supreme Court of Nigeria upheld the constitutionality of the death sentence in the case of *Onuoha Kalu v. The State*. The capital offences in Nigeria include Murder as provided in *Section 319 of the Criminal Code*, Treason provided in *Section 37(1) of the Criminal Code*, treachery, Armed robbery provided in *Section 1 of the Robbery and Fire Arms Special Provision Act 2004*, etc. The death penalty can be traced back to the lex talionis doctrine; meaning that it is a retributive form of punishment. The retributive theory believes that crime given to the offender should be proportionate to the crime committed or harm inflicted. If a person kills another individual, the best punishment that could be given to him is the capital punishment which is death. Currently, the methods of execution include death by lethal injection, firing squad, electrocution and so on.

One argument in favour of the death penalty is that it can provide a deterrent against violent crime; it discourages crime by instilling doubt or fear of the consequences of crime in the individuals. When individuals of the society see that the convicted offender is not going to be given a second chance, they would not be willing to risk their lives.

Furthermore, the death penalty is the most appropriate punishment for a capital offence as a life imprisonment sentence is disproportionate to the capital crime. This follows the retributive theory as the punishment meted out must be equal to the crime committed. If a convicted criminal receives a life in prison for taking a life is not justice because the outcome is disproportionate to the action taken.

Capital punishment helps reduce cost and lower the population in prison. The prisons are becoming congested and it can be very expensive to provide, food, shelter and clothing for prisoners.

It is pertinent to note that there two sets of people exempted from the death penalty which include: Pregnant women; this is provided for in *Section 368(2) of the CPA* however, they can be sentenced to life imprisonment. In addition, young persons are exempted from the death penalty and it is provided for in *Section 368(3) of the CPA*. Also, the defence of provocation reduces the capital offence of murder to provocation thereby reducing the death penalty sentence to life imprisonment.

However, it has been argued that the death penalty is lacking in ethical purpose- that there is no evidence that it accomplishes anything other than the death of the person executed. Also, the death penalty can execute someone who is innocent and there is no going back.

## **QUESTION 2B**

If the offence committed was a simple offence, my answer would be different. Simple offences in Nigeria are those offences other than felonies and misdemeanors. Simple offences attract punishment like Fines, Community Service Order, Probation and so on.

- Fines: *Section 390(3) of the CPA* provides that the fine in Nigerian courts must be appropriate not only to the offence but also to the means of the offender to pay.
- Community Service Order: Offenders are required to perform unpaid work in the community for a period of time as specified by the courts. This is provided for in *Section 347(3) of ACJL 2011*.
- Probation: In criminal law, it is a period of supervision over an offender ordered by the court instead of serving time in prison. This is provided for in *Section 453-459 ACJA 2015* and *Section 435(1) of the CPA*.

Simple offences are not as grievous as capital offences so the punishment given to offenders are not as harsh.