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Centre Number: 15153

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**Baldrick has been charged with the theft of a large quantity of turnips.**

**(a) Explain and comment on the factors the court will take into account in**

**deciding whether or not to grant Baldrick bail.**

**(b) Theft is a triable either way offence.**

**(c) (i) Describe how the decision is made as to which court the case is tried in.**

**(ii) Discuss the advantages and disadvantages to Baldrick of being tried in each court.**

Bail means the release of an accused or an appellant upon security given to ensure that the accused will appear in court on an appointed date if released from jail or upon an undertaking given by sureties to produce the accused in Court on such a date.

A person accused on petition of a crime which is by law bailable shall be entitled immediately, on any occasion on which he is detained by the police officer without a warrant, to be brought to court and released on bail. Examples of these cases are defamation, forgery and cheating.

In bailable cases, the Court may impose conditions in granting bail. Example includes having the accused to surrender his passport. Failure to comply with any required condition may result in the accused being kept in remand until trial.

All crimes and offences except the un-bailable are bailable. Un-bailable cases include

- murder
- treason
- attempted murder
- culpable homicide
- rape
- attempted rape

Bail must be refused if there are reasonable grounds for believing that the accused has been guilty of an offence punishable by death or life imprisonment. Exception may be made for any person under 16 years of age or any woman or any sick or infirm person accused of such an offence.

An accused must observe a few standard conditions.

An accused must appear at the appointed time at every diet relating to the offence with which he is charged of and which he is given due notice.

While on bail, an accused must not commit an offence.

An accused is prohibited to interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person.

An accused must make him available for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence with which he is charged.

The discretion of the court on whether to grant or refuse bail depends primarily on the question of the probability of the accused absconding or the probability of repetition of the offence with which he is charged while on bail.

Factors, which are considered by the court in granting bail to Baldrick, include

- The seriousness and nature of the offence charged
- The apparent probability of conviction
- The likely sentence
- The ties of the accused to the community in which he lives
- The reputation of the accused and employment status
- The prior criminal record of the accused
- The financial conditions of the accused

The amount of bond placed upon Baldrick should be sufficient to secure the attendance of him arrested and must not be excessive.

Baldrick doesn't need be granted bails if the court is satisfied that there are substantial grounds for believing that, if granted bail, he would:

- i. Fail to surrender to custody **or**
  - ii. Commit an offence whilst on bail **or**
  - iii. Interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.
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- Baldrick need not be granted bail if the court is satisfied that he should be kept in custody for his or her own protection or, if he is a child or young person, for his or her own welfare.

- Baldrick need not be granted bail if he is serving a custodial sentence imposed by a court or a military tribunal.
- Baldrick need not be granted bail where the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of making a bail decision due to lack of time since the institution of proceedings.
- Baldrick need not be granted bail where he, having been released on bail in criminal proceedings, has been arrested for failing to surrender or for breach of bail.
- Baldrick need not be granted bail if he is charged with an indictable or either way offence and it appears to the court that he was on bail in criminal proceedings at the time of the offence.

(b)

(i) Under the plea before venue procedure set out in the criminal procedure and investigations act 1996, the defendant is first asked whether he pleads guilty or not guilty. If he pleads guilty, then he has no right to ask to go to the crown court although the magistrates may still decide to send him there for sentence.

If Baldrick pleads not guilty then the magistrates must carry out ‘mode of trial’ proceedings to establish where the case will be tried. In this the magistrates first decides if they think the case is suitable for trial in the magistrates court and whether they are prepared to accept jurisdiction.

Under section 19 of the magistrates' court Act 1980 they must consider the nature and seriousness of the case, their own powers of punishment and any representations of the prosecution and defence.

Cases involving complex questions of fact or law should be sent to the crown court.

Other relevant factors which may make a case more suitable for trial at the crown court include:

- Where there was breach of trust by a person
- Where the crime was committed by an organised gang
- Where the amount involved was more than twice the amount the magistrates can fine the defendant.

In rare cases where the attorney- general, solicitor- general or the director of public prosecutions is the prosecutor, the magistrates, under section 19(4) of the magistrates court Act 1980, must send the case to the crown court if that is what the prosecution wants. In other cases the prosecution's wishes are just part of the matters to be considered by the magistrates before they decide whether they are prepared to hear the case or whether it should be tried at the crown court.

(ii) The advantages for Baldrick being tried in the magistrates' court are;

- It is cheaper for Baldrick to get tried in the magistrates' court.
- If he pleads guilty, the maximum sentence in the magistrates is six months imprisonment and a fine of £5000.
- It will be easier to get bail at the magistrates' court before the proceedings.

The disadvantages for Baldrick being tried in the magistrates' court are;

- Only the judge can decide if he is guilty or not. The decision depends on 1 person where as in a crown court there would be the jury and different opinions.

The advantages for Baldrick being tried in a crown court are;

- If Baldrick is innocent and wants justice, he can plead at the crown court.
- A jury makes decision on guilt and innocence and this gives a better chance of an acquittal.

The disadvantages for Baldrick being tried in a crown court are;

- If Baldrick is guilty but he pleaded not guilty and this found out in the crown court, then he will get a longer sentence in prison than if he was tried in the magistrates' court.
- It will cost a lot of money, about £17500 for a crown court trial.
- Trials in a crown court can take a lot of time before a decision is made.
- If the defendant is represented this must be by a barrister or solicitor with a certificate of advocacy giving rights of audience at the crown court.
- It is harder to get bail in the crown court.