

## CRIMINAL COURTS

**Grant, aged 24, is going to be tried for committing rape. Havinder, aged 24, is to be tried for causing criminal damage of £1,000. Ian aged 15, is going to be tried for burglary.**

**a)**

A very important pre-trial decision has to be made by the authorities in a criminal case. Should the defendant stay in custody while awaiting the trial or whether bail should be granted. The granting of bail means that a person is released from detention until the next stage in the case. The question of bail arises twice; at the police station or when the defendant appears in court.

The granting of bail by the criminal court tends to differ from the police bail. This is because the criminal court bail is administrated by the **Bail Act 1976**. This Act was designed to place limitations on the wide discretion formerly held by the magistrates in the granting of bail and during so, increase the number of defendants released on bail before trial. In the **Bail Act** there is a general assumption that normally everyone should be granted bail. This comes under section 4. Looking at the three crimes above, they all come under different types of seriousness however; the general right to bail is still available to all three of them.

However, there are exceptions to this general rule. The custody officer must release a person, who has been charged with an offence, on bail unless the police cannot discover the person's name and address or reasonably think that the information given is false. They may also refuse bail if they feel detention is necessary for the individual's protection or to prevent the person from causing harm to someone else and property. If the police reasonably believe that the person while 'jump' bail, interfere with witnesses or otherwise obstruct the course of justice, they may decide upon refusing bail.

Ian may be refused bail as the court may believe that him remaining in custody is best for his own welfare. Other factors to be taken into account about whether granting bail may include the seriousness and nature of the offence, previous record, community ties i.e. family live locally, and the defendant's record of previously answering bail. Many offences are covered in the **Criminal Justice and Public Order Act 1994 (CJPOA)**, which has recently been amended by **Crime and Disorder Act 1998**. Grant had committed rape which comes under section 25 of **CJPOA**. Only extraordinary circumstances would now allow the courts to grant Grant bail.

When the courts do actually grant bail, it is either conditional or unconditional. If the courts feel it is necessary that the defendant surrenders at the right time, does not commit any more further offences or does not interfere with witnesses, they may proceed to make the bail conditional. There is no restriction to the number of conditions the court may impose. The most common conditions are that the defendant reports daily or weekly to the police station, stays at a particular address, does not communicate with certain people (other offenders) or is required to surrender their passport. If the bail is

unconditional, the police may simply ask the defendant to appear at the court at a certain date. If the defendant fails to do so, a maximum sentence of a year can be given along with a hefty fine. Along with these conditions, the police and court can gain surety for bail. This is when another person who is willing to promise to pay the court a certain sum of money if the defendant fails to be present at court. It is similar to compensation. In very rare cases, the defendant can also appeal against the conditions of the set bail. This is currently not used very often. If in some case the police believe that the defendant has broken any set conditions of bail, they have the right to arrest them without no warrant. For example, if a person's bail condition was to not visit house 'Y', and he does so, he can be arrested.

It is gradually getting very hard for the criminal justice system as it now has to look at balancing the presumed innocent before proven guilty and prerogative to liberty and the needs of incapacitation from possibly 'hazardous' criminals. This balance must be contemplated when a court grants bail. It is argued that too many people are being refused bail. Much of the British prisons consist of defendants who have not yet been tried, but who are remanded in custody. Many of these are given non-custodial sentences. These defendants are clearly not thought to be a danger to the public however, they have continued the stay in prison while awaiting their trial. To allow more and more people to be let out on bail, proposals for reform such as electronic tagging to check those who may commit further offences could be introduced. More public cameras and identity chips are also being thought of.

**b)**

There are two types of criminal courts in the UK. In these types of courts, individuals are tried for committing wrongs against the state. Criminal cases can be heard in either the Crown Court or the Magistrates' Court. In the Crown Court a judge and 12 jurors hear the case. The jurors decide the facts and verdict and the judge decides the sentence. In the Magistrates' Court the magistrates decide the facts, verdict and point of law. The form of trial is an adversarial one, with prosecution and defence presenting their cases and cross-examining each other's witnesses, while the role of the judge or magistrates is to oversee the trial and make sure that the legal rules are followed correctly.

Lay magistrates are employed to look over the Magistrates' Court cases. Unfortunately, for them, they tend not to be paid. They do not have any legal qualification. There tends to be a panel of three lay magistrates in every case. It is vital that there is at least one woman and one man. A legally qualified person, known as a clerk, assists the lay magistrates. The clerk informs them about the law. There is no jury in the Magistrates' Court. In some cities there tends to be a District Judge sitting in the case, rather than the three lay magistrates.

Crimes such as theft, possession of dangerous dogs and criminal damage are usually found to be tried in the Magistrates' Court as they are summary offences. This means that they are less serious than indictable offences which tend to include murder, rape and to some extent robbery. Criminal damage of up to £5,000 is a summary offence, therefore Havinder will be tried in the Magistrates' Court.

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LAW RESEARCHED QUESTION

The Magistrates' Court also acts as a Youth Court. Magistrates are drawn from a special panel to staff the Youth Court. Like the ordinary adult court, there are usually three magistrates, again to include at least one woman and one man. The magistrates must be under 65. The Youth Court is separate from the ordinary adult court and is less formal. The parents or guardian of any child under 16 are usually required to be present at court. In contrast with the Magistrates' Court and Crown Court, proceedings are usually private and there are strict controls on press reporting to shield the youngsters who appear before the court from unnecessary 'branding' as criminals.