Student Number: **16947**

Describe the Role and Power of Magistrates

There are exactly 30,374 lay magistrates in England and Wales, 15,858 men and 14,516 women (at the time of writing this essay), appointed by the Lord Chancellor or the Chancellor of the Duchy of Lancaster, in the name of the Crown (figures from the Lord Chancellor's Organization UK). Magistrates are ordinary members of the community who sit in the Magistrates' Courts and who dispense justice at the lowest level of the English court system. They are unpaid for what they do and therefore are not servants of the Crown. This supports their position of impartiality between the Crown and the public whom they serve.

English lay magistrates are not learned in the law - they do not hold legal qualifications, nor have they formally studied law to any level other than that which they may have done at school. There may be some exceptions - there are legal professionals who are also lay magistrates - but the vast majorities are just ordinary members of the public. They do, however, undergo a vast amount of training so that they can perform their judicial functions correctly and within the law. There are three Magistrates (also known as justices of peace) who make decisions in court. Only one magistrate has very limited powers e.g. warrants. Magistrates take part in summery trials, committal proceedings, and ancillary matters e.g. issuing warrants, bail applications, and youth court and family court. Cases heard in the Magistrates' Court are termed summary cases and are, supposedly, to be dealt with quickly with summary justice. These tend to be the simple, petty crimes of everyday existence. The Magistrates' Court used to be known as Petty Sessions. For more serious crimes the accused is charged on indictment and sent to the Crown Court to be tried there. In between summary and indictable offences there are a whole range of offences that are termed either-way offences. These are offences that vary in their seriousness. The best example of an either-way offence is theft. These offences can either be tried summarily by the magistrates or sent up to the Crown Court. The process of deciding where an either-way offence will be heard starts with what is known as Plea Before Venue. The accused is asked to indicate whether he will plead guilty or not guilty. If he indicates he will plead guilty, then the magistrates immediately accept the case and try it as if it were from the start a summary offence. There then follows what is becoming known as Mode of Sentence. The magistrates have to decide whether their maximum powers (5000 pounds and/or 6 months in prison) are sufficient to punish the offender or whether their powers are insufficient and they need to commit the defendant to the Crown Court for sentence. If they commit the defendant to the Crown Court for sentence, then the matter is dealt with by a judge and two lay magistrates. If he indicates a plea of not guilty, there then follows a process called Mode of Trial. Firstly, on the basic facts of the case as outlined by the prosecution, and with a prosecution recommendation and a defense recommendation, the magistrates decide whether they accept jurisdiction. If they decide the case is too serious for them to hear, then they will commit the accused to the Crown Court for trial. If they accept jurisdiction and are prepared to try the case summarily, then, secondly, the accused is asked where he would like to be tried - for he still has the right to be tried by a jury with a judge in the Crown Court. If he elects the Magistrates' Court then the case is tried summarily. If he elects for the Crown Court then the magistrates will commit him to the Crown Court for trial. Only then is the plea formally taken. By whichever route, if the magistrates, on hearing more detail and other factors about the case (and associated charges) including previous convictions, consider that their powers are insufficient then they can commit the defendant to the Crown Court for sentence at any stage in the proceedings between conviction and disposal. Many cases can only be tried in a

Magistrates' Court. These are the summary ones, the most serious of these carrying the maximum penalty of a Magistrates' Court of a fine of 5000 pounds or six months imprisonment. Bail procedures exist to enable an accused to stay out of jail and to insure that the accused will appear for trial. Magistrates decide the terms of bail by examining certain facts about the accused such as the nature and circumstances of the offense charged, weight of the evidence, character of the accused, the accused's family ties, employment, financial resources, length of residence in the community, involvement in education, and past record. If possible, the magistrate will release the accused on a written promise to appear in court with or without an unsecured bail bond. If, after examination of these facts, magistrates are not reasonably sure that the accused on a written promise to appear in court with or without an unsecured bail bond. If, after examination of these facts, magistrates are not reasonably sure that the accused will appear for trial, the magistrates, in their discretion, will require the execution of a bail bond with surety in a reasonable amount and may impose such other conditions deemed reasonably necessary to insure appearance at trial. The monetary sum of the bail bond can be forfeited as a penalty if the accused fails to appear in court or violates any condition of bail. When magistrates issue a search warrant, they are giving a law enforcement officer authority to conduct a search to aid an official investigation. The officer seeking the search warrant must make a complaint, under oath, stating the purpose of the search to the magistrate. The complaint must be supported by a written affidavit from the officer. In issuing the search warrant, the magistrate must describe he place to be searched, the property or person to be searched for, and state that the magistrate has found probable cause to believe that the property or person constitutes evidence of a crime or tends to show that a person has committed a crime. Before magistrates can issue an arrest warrant in a criminal case, they must use their discretion to decide if there is "probable cause" to issue a process. Probable cause is a reasonable belief, based on facts, that would cause a prudent person to feel that the accused committed the offense. To determine probable cause, magistrates must decide that there are facts logically indicating that the accused committed and offense and there must be some basis for determining that the facts are reliable. The facts are obtained form the complaint which consists of sworn statements of a citizen or a law enforcement officer relating the commission of an alleged offense. These statements are made under oath before a magistrate, and the magistrate may require the sworn statements to be reduced to writing and signed. If the magistrate decides that probable cause exists, an arrest warrant will be issued so that the accused may be brought to trial.

GCSE Law (Magistrates) – Michael Godfrey

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