



THOSE WHO PAID THE PRICE

■ Jonathan Veas, 30, murdered his ex-girlfriend Jane Gough for her rape. He was jailed for a minimum of 20 years for the July 2003 attack.

■ Marina Adan, 32, died after being stabbed 27 times by her boyfriend Zakaria Mohamed, 28, following a 30-minute rape. She was killed last month of murdering his girlfriend, Kirsty, 26, in east London. He had been previously arrested for dragging her along the street, but was bailed on condition that he did not contact her.

■ William McLeod, 36, murdered Rosalind Oganovska, 15, for his mobile phone in May 2007. Earlier that day, McLeod had been granted bail at Crampton

■ Youth Court, London, accused of attacking a gay man with a brick.

■ Father of three Garry Newlove, 47, was jailed to death in Warrington in 2007 after confessing to a 1991 attack with had damaged his wife's car. His killer, Adam Swellings, 19, had been released on bail for a separate assault that morning.

Bail & Pre-Trial Procedures

By the end of this unit, you will be able to [A01]:

- Describe what is meant by bail, and the powers of the police and the courts to grant or refuse bail.
- Explain what is meant by 'unconditional' and 'conditional' bail.
- Understand the recent changes made to the law on bail by the Legal Aid, Sentencing and Punishment of Offenders Act 2012
- Explain the purpose of mode of trial, and how the decision as to where a trial takes place is made.

You will also be able to [A02]:

- Discuss whether the current law on bail adequately balance the rights of the individual to be at liberty,
- Apply your understanding of the law on bail to determine whether D should be granted it or not.
- Evaluate the advantages and disadvantages of opting for the Magistrates or the Crown Court in the mode of trial procedure.

Homework:

Homework One: Revise stop and search, arrest and detention for a DRAG test in two weeks.

Homework Two: Plan and write up your response to the following question on the mode of trial procedure:

- Describe how it is decided in which court a criminal trial of an adult offender will be heard. Include all categories of offence. [18]
- Pedro is pleading not guilty to a charge of theft of a wallet from his colleague's desk at work. He has no previous convictions and theft is a triable either way offence.

Discuss the matters Pedro should consider when choosing in which court to be tried

[12]

End of Unit Assessment

At the end of this unit, you will complete a factual test. To assess your understanding of the topic of bail, you will plan and complete the following question:

6 (a) Describe how the **Bail Act 1976** (as amended) is applied to a suspect awaiting trial. [18]

(b)* Philip has been charged with the serious offence of causing grievous bodily harm. He has three previous convictions for minor assaults and always complied with his bail conditions. His family has just moved out of the area but he has a steady job as an electrician locally.

Explain which factors **and** conditions are likely to be considered when making a decision regarding bail for Philip. [12]

Total marks [30]

Key Terms:

Term	Means	Term	Means
Remand		Mode of trial	
Bail		Summary offence	
Conditional bail		Triable either way offence	
Surety		Indictable offences	

What is the law on Bail?



Student Task: The key case for this area is that of **Gary Weddell**. You need to read through the article below and complete this table, to give you an overview of the law on bail and the issues we're going to come across!

Who can deal with the issue of bail?	What happens if bail is refused?	What kind of conditions may be imposed?
Why might bail be refused?	Challenge: When can D reapply for bail?	

'Killer' policeman breached bail condition

bbc.co.uk Thursday, 31 January 2008

A judge released a senior police officer accused of murder on bail despite feeling it was a "very borderline decision", it was revealed today.

Judge John Bevan QC told Garry Weddell, 47, he would go "straight back into custody" if he breached any of his bail conditions, according to court transcripts made public for the first time.

Just over three months later, magistrates found Weddell had breached one of these conditions - but allowed him to remain on bail.

Detectives believe Weddell, an inspector with the Metropolitan Police, shot his mother-in-law dead and then killed himself earlier this month.

The Judicial Communications Office published transcripts of five court hearings today following an outcry over the fact that Weddell was released while awaiting trial for such a serious offence.

Weddell's wife, Sandra, 44, a London-born nurse, was found strangled at their family home in Lancot Avenue, Dunstable, Bedfordshire, on 31 January last year.

He was charged with her murder six months later and was due to stand trial at Luton Crown Court in May.

Judge Bevan twice refused Weddell bail before releasing him on July 27 after the policeman's barrister brother put up a £200,000 bond.

The judge told him at the time: "It is a very borderline decision that I have granted you bail at all, and you understand that if you breach any of these conditions, then you will be straight back into custody."

He noted that the prosecution had a "circumstantial case of reasonable strength", but also that Weddell was "undoubtedly a professional man with strong roots".

On November 2 the police officer was brought before Woking Magistrates' Court after allegedly breaching two of his bail conditions.

Weddell was accused of speaking to a prosecution witness he was banned from contacting - his children's guardian - and of going to a pub in Bedfordshire when he was prohibited from entering the county.

The magistrates found that the second breach was proved, but allowed him to remain on bail because it was "so minor", the transcripts show.

The bodies of Weddell and his mother-in-law, Traute Maxfield, 70, were found on 12 January.

Police believe Weddell shot Mrs Maxfield, a retired carer and widow, at her home in Gustard Wood, Hertfordshire.

He then appears to have committed suicide at Broomhills shooting club, about 10 miles away in Markyate.

The prosecution opposed bail being granted at every stage.

At the first hearing before Judge Bevan, at Luton Crown Court on July 3, counsel for the Crown argued that Weddell could abscond or interfere with witnesses.

The prosecutor also told the judge of fears the policeman could harm himself.

When he was interviewed by police, Weddell was found with the cable from a TV aerial hidden in his sock and told officers: "I just wanted to go to sleep", the court heard.

The Crown's case was that Weddell killed his wife in order to "retain control" because his "comfortable" life with his family was threatened when she decided to leave him.

The judge refused bail, noting: "As long as there is a prospect that if I were to grant him bail he might do something to himself, then where would we be?"

"I mean, the question only needs to be asked at this stage in the light of, 'what on earth was the judge doing... granting this man bail where he appears to have taken steps to try to end his life?'"

After this hearing a psychiatrist interviewed Weddell. He found no evidence of psychotic disorder and ruled he was not a suicide risk. The accused policeman told the expert he had only intended to use the TV aerial wire to make a ball to "occupy himself".

At the 27 July hearing, at Ipswich Crown Court, Judge Bevan granted Weddell bail on eight "stringent" conditions.

These included the £200,000 surety put up by his brother, Geoffrey Weddell; surrendering his passport; living with his brother in Woking, Surrey; not contacting any of his children without their consent; and only entering Bedfordshire to attend court or for approved meetings with his children.

It emerged after a Cambridge Crown Court hearing this week that Weddell's brother may be ordered to pay back his £200,000 bail bond.

An inquest into the deaths of Weddell, his wife and Mrs Maxfield was opened by Bedford and Luton Coroner David Morris on Tuesday.

A full hearing will be held in Dunstable on 18 March.

Conservative MP Mike Penning, in whose Hemel Hempstead constituency Weddell's body was found, called for a change in the law to make bail more difficult in such serious cases.

Mr Penning told BBC Radio 4's World At One that the judge's decision not to remand Weddell in custody was clearly "very marginal".

And he added: "The way the bail laws work in this country is that the judge must be minded to give bail, rather than hold you on remand.

"That law needs to be changed in serious cases like this, and the judge must remand (in custody) unless the judge can find very exceptional circumstances - which I can't think of at this moment - to release you, so you can't harm anybody else, you can't harm witnesses and you can't harm yourself."

Overview:

What is bail?

Definition: There is a presumption that D is entitled to remain at liberty until the next stage in the criminal process.
s.4 Bail Act 1976

Who decides on bail?	Why is this the presumption?	What is the next stage?	What sort of thing could rebut this presumption?	If it is denied what happens?

Police Bail

Whilst there are two types of bail – one of which is to return to the station in the future – we are only interested in one of them: the decision regarding bail **after** charging someone with them.

s.38 PACE 1984 (as amended) gives the power to the _____
_____ to decide whether or not to grant bail to a defendant.



How likely are the police to grant a defendant bail? Why do you think this is?

August 22, 2007

Doherty case thrown out

LONDON Police are conducting an internal investigation after a charge against Pete Doherty, 28, was dropped yesterday because of an error.

The Babyshambles singer appeared at West London Magistrates' Court after being held overnight for an alleged breach of residency bail orders. But District Judge Susan Williams threw out the case because he had not been brought before the court within 24 hours of his arrest.

Doherty was arrested after he was allegedly found in possession of drugs on Monday.

He is due in court next month for sentencing on other drug charges.

What happens if the police refuse bail?

D should appear at the Magistrates Court as soon as possible. This basically allows the courts to check that the continued detention of the defendant is justified.

If the Court cannot deal with the entire case there and then, they will look at bail again and decide whether to:

1. _____
2. _____
3. _____

Why might they refuse bail?

- If D's name and address cannot be discovered
- If there is doubt that the name and address are genuine
- If there are substantial grounds to believe D would not surrender to custody
- S is likely to commit further offences whilst on bail
- S would interfere with witnesses or otherwise obstruct the course of justice

But: if there is no real prospect of D receiving a custodial sentence for their offence, then bail must be granted. Legal Aid, Sentencing and Punishment of Offenders Act 2012



Statutory Rebuttals...

Although the presumption is that D should get bail, sometimes this can be rebutted. There are a number of statutory rebuttals, which mean that in some circumstances it is hard, if not impossible, for D to get bail. You need to be able to accurately describe a number of these.

Most of them have been amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012

Task: Can you match the rebuttal to the statute (after you've heard the explanations!!!)

Statute
s.114 <u>Coroners and Criminal Justice Act 2009</u>
s.25 <u>Criminal Justice & Public Order Act 1994</u> (as amended)
s.19 <u>Criminal Justice Act 2003</u>
s.14 <u>Criminal Justice Act 2003</u>

Rebuttal
No bail where D was convicted of homicide, rape previously and now charged with one of them again, unless of the opinion there are 'exceptional circumstances'.
D not granted bail if at the time of the offence D was on bail for an indictable or triable either way offence.
Restricts bail for adult class A drug users.
If there are substantial grounds to believe D would engage in conduct likely to cause physical or mental injury to a person and D has been charged with murder

Applying your learning:

Alex, aged 19, is charged with a robbery in which he threatened a shopkeeper with a gun and stole £2000. He has no previous convictions and lives at home with his mother. Explain which factors and conditions would be taken into account.

Further powers of the courts:

We are talking about two courts; Magistrates & Crown Court



When might the court consider the issue of bail for D?

s.115 Coroners & Justice Act 2009 says that only the Crown Court can deal with bail for murder.

Firstly, remember that they refuse if there are substantial reasons to believe D **if on bail** would:

Fail...	Commit...	Interfere...	D's own...
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What if the defendant is under 18?



What conditions can they impose?

What can they do to other decisions?

What if there was no chance they would be sentenced to custody?

What if someone wants to appeal?

Prosecution

Why would they want to appeal?

What are the powers?

Defence

Why would they want to appeal?

What are the powers?

Does bail work?

So that's what the law is, does it work? The big question when we are looking at bail is whether we have the balance between the two sides right...

The rights of the defendant to have liberty and the presumption of innocence.

Vs.

The public's right to be protected from repeat offenders, or those who abscond whilst on bail



So, using the information on the board, and what you think about the topic, answer the following question: Does bail work?

All of you need to explain three clear reasons for your opinion

Most of you need to support those opinions with reference to statutes, cases or statistics

Some of you will be able to discuss the question fully by addressing a counterargument for each point.

Marking and Improving an essay...

Describe how matters relating to the granting of bail to a person awaiting trial are decided. [18]

This is a **genuine** student's answer to the question above. Using your plan (the mark scheme) decide what mark it would be given and why.

Mark: _____ **Level:** _____

Level	Description	Marks
4	Good, well-developed knowledge with a clear understanding of the relevant concepts and principles.	15-18
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles.	11-14
2	Limited knowledge showing general understanding of the relevant concepts and principles	6-10
1	Very limited knowledge of the basic concepts and principles..	0-5

Bail is whether D should stay in custody or free. Under s.4 of the Bail Act 1976 D should be granted bail.

Both the police and the courts can grant bail. The police can give bail to a D who has been charged with an offence, to make sure they appear at court.

The police can also refuse bail and if D doesn't turn up the police can arrest him. If the police refuse bail they must bring the defendant in front of the Magistrates Court. If the Magistrate can't deal with the whole case then they will decide whether to remand or give bail.

Most people get unconditional bail. The courts and the police can also give him conditions to stick to, to make sure he turns up e.g. surety.

When deciding whether D gets bail, the court looks at the background of D and what he has done. But if he wouldn't be put in prison for it at the end, then he can only be locked up if he didn't stick to it before or the court has reason to think he won't this time.

To protect the public, D might not get bail if he committed the offence while on bail or if D is an adult and charged with a drugs offence

People who are repeat offender have a limited chance of getting bail, especially those who are charged with murder, attempted murder, manslaughter, rape or attempted rape and have already served a sentence for a similar offence. (s25 Criminal Justice and Public Act - which has been amended). After Gary Weddell it is also harder for a murderer to get bail if they think he might harm someone else.

D is still innocent until proven guilty and so should be given bail because it's fairer.

Improving your responses.

Remember, a teacher doesn't just give a mark – they also give a comment which aims to tell the student what they have done well, and what they can improve.

A

An absolutely great thing that they are doing....

B

Better if they would...

Example:

Extract from Essay	Improved response
To protect the public, D might not get bail if he committed the offence while on bail or if D is an adult and charged with a drugs offence	To protect the public, the presumption of bail may be rebutted under s.14 <u>Criminal Justice Act 2003</u> , which says that D's right may be revoked if he committed the current offence whilst on bail for another offence. s.19 also allows the court to rebut the presumption, where D is aged over 18 and charged with a drugs related offence. If D refuses treatment the court may rebut the presumption as pose a higher risk of reoffending.

Student Task:

Now, have a go at writing the following sections, aiming to improve the mark by at least one level.

Most people get unconditional bail	
The police can also refuse bail and if D doesn't turn up the police can arrest him	
The courts and the police can also give him conditions to stick to, to make sure he turns up e.g. surety.	
If the police refuse bail they must bring the defendant in front of the Magistrates Court. If the Magistrate can't deal with the whole case then they will decide whether to remand or give bail.	
When considering whether to grant bail, the court looks at the background of D and what he has done..	
People who are repeat offender have a limited chance of getting bail	
After Gary Weddell it is also harder for a murderer to get bail if they think he might harm someone else.	

Pre-Trial Procedure

Before we go any further, can you remember the different **types** of crime?



Type	Which Courts?	Example(s)

Unless you have been issued with a fixed penalty notice, then you will have to appear at court!

Basic differences between the courts....

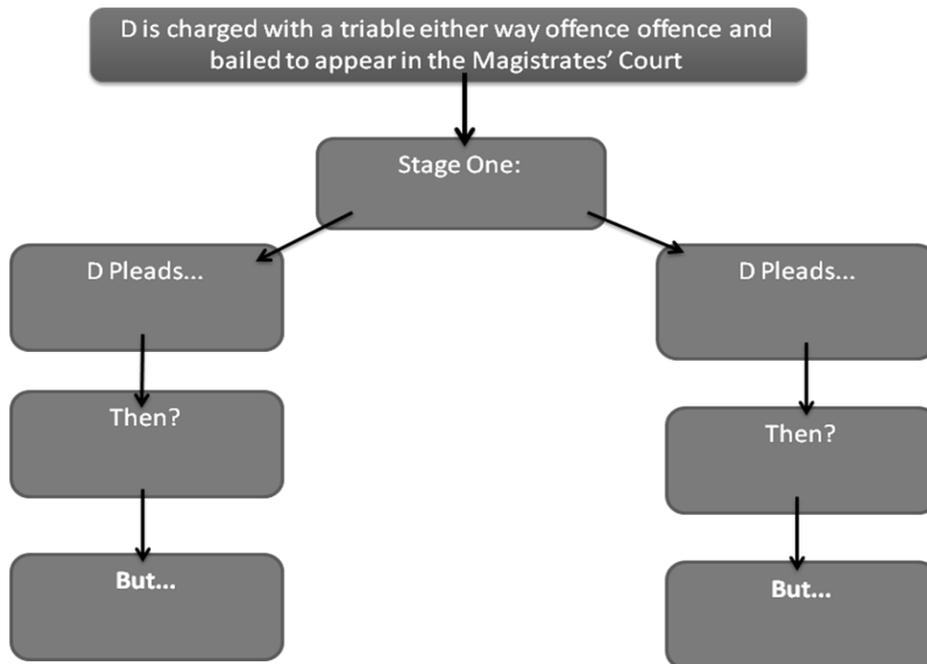
	Magistrates' Court	Crown Court
% of crimes heard there?		
Make up of Court? <i>Not what it looks like, but who's in charge... and what they do</i>		
Sentencing powers? <i>Custody and fines</i>		

Some basics...

Few cases end on their first appearance at the Magistrates' Court. The only sorts that are really 'ended' at this stage are minor offences where D has pleaded _____ and the question of legal representation has been taken care of.

Mind you, if it's a driving offence, you may not even need to show!

1. Triable either way offences



Stage one: Plea Before Venue

This does exactly what it says on the tin!
D pleads... and then they decide on the venue to hear the case

If D pleads **guilty**, then the Magistrates need to consider whether their powers are sufficient to sentence him.

If they think that the powers of the court are not sufficient, they can send it to the Crown Court for sentencing [*This also applies to trials heard in the Magistrates Court*]

If you plead guilty in the Magistrates, then you **cannot** ask for a Crown Court Trial

If D pleads **not guilty**, then they enter the mode of trial procedure. These two procedures can take place at the same time to speed up the process.

Stage Two: Mode Of Trial

If you are charged with a triable either way offence, and plead not guilty (or even if your plea is unclear or you don't enter one) then you may be subject to a mode of trial hearing in the Magistrates' Court. D will be asked in "ordinary language" what he wishes to plead, and which he wishes to opt for.



The purpose of this is to decide which court (either _____ or _____) you will be tried in front of.

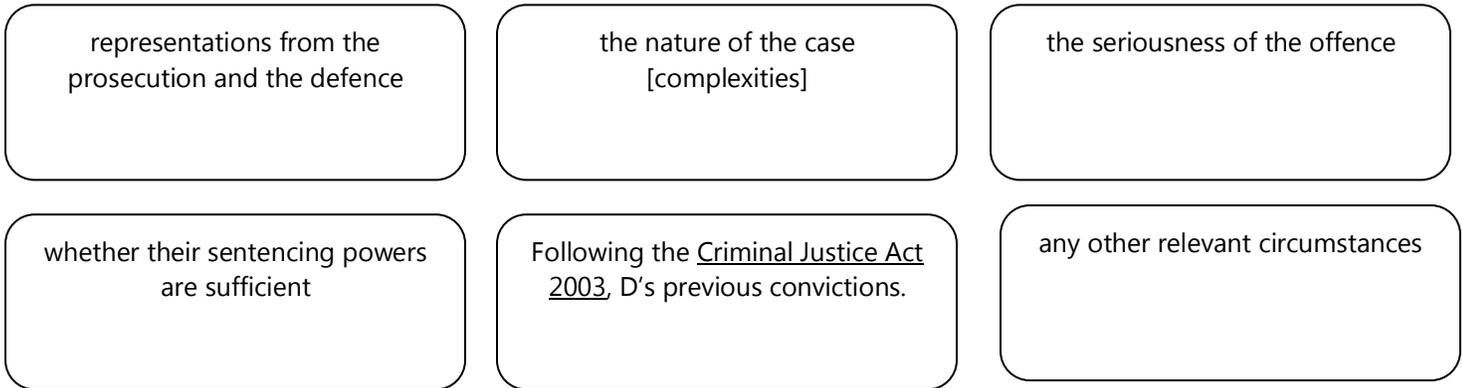
Although the Magistrates can refuse jurisdiction, and send the case to the Crown Court if they feel that would be more appropriate,

If they chose to keep the case, **you**, as the defendant have the last say, and must consent to the summary trial.

Likewise, if they decide to accept jurisdiction, you have the right to refuse.

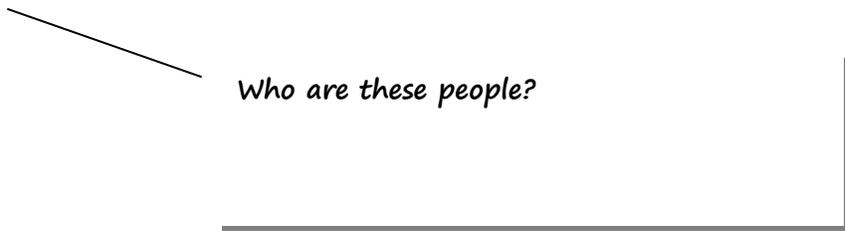
Decision Making One: How do the Magistrates decide?

In making a decision (s.19 Magistrates Court Act 1980), the Magistrates will take into account:



It may also be refused if it involves a breach of trust, gang organised crime or if the amount involved is more than twice what the Magistrates may fine.

If AG or DPP want the case sent to the Crown Court, then the Magistrates must refuse jurisdiction.



A-B Extension Work:

Using your own independent study skills. What part does plea-bargaining play in the English Legal System?
What are the advantages and disadvantages of the system?
Write a paragraph explaining your views.

