BAIL APPLICATIONS AND THE PLEA IN MITIGATION – FRIDAY 15th AUGUST 2025

PRESENTED BY COLIN BEAUMONT:

25 THINGS FOR CONSIDERATION regarding bail applications and pleas in mitigation – you may be starting out – you may be quite experienced – there's always something new to learn – have a look at the 25 points and see whether or not this is something for you – you know what they say, 'the good advocate steals everything!' – not every thought has to be an original one!

25 things for consideration

1 – Your client, charged with dwelling house burglary, was granted bail by the police (don't ask me why!) – he turns up at court and the prosecutor is not happy and wants to make an application for a remand into custody – what is the legal position?

2 – The prosecutor informs you that the application today will be not only for a remand into custody but also a remand into police cells in order that the police may question him about offences which have absolutely nothing to do with the offence for which he has been charged and appears in court today – what is the legal position?

3 – The prosecutor informs you that if your application for bail is successful, the prosecutor will appeal the decision under the Bail (Amendment) Act 1993? – what is the legal position?

4 – What important points concerning bail are contained in the Criminal Practice Directions 2023 as issued by the Lord Justice? – (The notes will contain the current Practice Directions)

5 – As you know, the exceptions to bail are to be found in the Schedule at the back of the Bail Act 1976 – this Schedule deals with different scenarios in terms of the offences which are before the court – indictable only/either way – summary-only (imprisonable) – non-imprisonable – what is the legal position for example if the client is charged with summary-only imprisonable offences and the objection to bail is the commission of further offences?

6 – What is the legal position concerning the 'no real prospect test'?

7 – The client is charged with rape and has a previous conviction for rape – can you make a bail application today? – what does Section 25 of the Criminal Justice and Public Order Act 1994 say about this?

8 – Your youth client has been charged with attempted murder and is appearing in the Youth Court – can you make a bail application? – what is the legal position?

9 – Your more senior colleague has informed you that you have the right to make a bail application on each and every occasion when your client appears in the Magistrates' Court – what is the legal position?

10 – The prosecutor is telling you that it is not a level playing field and that today the prosecution case must be taken at its highest as the prosecutor is applying for your client to be remanded in custody – what is the legal position?

11 – The application by the police today is that your client be made the subject of further detention by way of a Warrant of Further Detention in the Magistrates' Court – where does the Bail Act 1976 fit into all of this? – what is the legal position?

12 – What legal presumptions may operate in your clients favour today when you are making a bail application?

13 – You are not in a position to make a bail application for the client today – the legal adviser is telling you that, as this is the 1st appearance in the matter, if you do not make a bail application on your client's behalf you have lost one of your automatic '2 bites of the cherry' in terms of being able to make 2 bail applications in the Magistrates' Court – what is the legal position?

14 – Your client is not happy with the pre-charge bail conditions as imposed by the police and wants those conditions challenged in the Magistrates' Court – what is the legal position?

15 – Your client has been happily on bail for many weeks and has turned up at the Magistrates' Court on each and every occasion when required – the prosecutor today wants to make an application that your client be remanded into custody – what is the legal position?

16 – How might the fact that your client made full admissions in the police station interview/was co-operative/showed remorse assist you in your plea in mitigation?

17 – In your mitigation (following a guilty plea) you point out some material differences between the version as put forward by the prosecution and your client's instructions – what is the legal position?

18 – Your client was convicted after a trial – he instructs you that, as part of your mitigation, you should make representations which amount to challenges of the prosecution facts – what is the legal position?

19 – Your client is absolutely adamant that he did not commit the offence – he does, however, want to take the path of least resistance and enter a guilty plea in the matter in court today and wants you to put forward full mitigation on his behalf – what is the legal position?

20 – In what circumstances might you persuade the court in your mitigation that full credit be afforded to your client, albeit he did not indicate his intention to plead guilty/or plead guilty at the 1st listing of the case?

21 – Why is it important that you appreciate that, as part of your mitigation, you should not be quoting passages from a pre-sentence report in open court?

22 – How should you approach the position where you disagree with the contents of the pre-sentence report?

23 – Mitigating in order to achieve an absolute discharge – what are you going to say?

24 – Mitigating in order to achieve a conditional discharge – what are you going to say?

25 – The plea in mitigation where the client has effectively served the custodial sentence upon remand anyway – what are you going to say?