

# An assignment on doctrine of precedent law essay



The doctrine of precedent plays a crucial role in the English legal system because common law is an important source of law in the English legal system as opposed to the European legal system, which is based on legal models and theories. The English system of precedent is based on the Latin maxim: “*Stare Decisis et Non Queita Movere*”, stand by what has been decided and do not unsettle the established. The idea is that by following precedents, which are the previous decisions of judges, fairness and certainty will be provided. Precedents can only operate if the legal reasons for past decisions are known. Therefore, at the end of a case (civil) there will be a judgement in which the judge will give not only the decision but also the legal reasoning which lies behind it.

### Doctrine of Precedent

The doctrine of precedent in the context of the English legal system means the judges in the courts make the rules for a particular case before the courts given the facts of the case in a given area of law. If in the future, similar cases arises they use the same rules or reasons they use to make legal decisions. In the English legal system the precedents of the Higher courts are binding on lower courts and the court structure is hierarchical.

### Stare Decisis:

It is a fundamental principle that like cases should be treated alike. The latin maxim *stare Decisis* is the basis of the doctrine of precedent. Precedent as operated in English legal system, requires that in certain circumstances a decision on a legal point.

### Ratio Decidendi:

The Latin phrase “ratio decidendi,” often translated as “the reason for the decision,” is used in the legal community to refer to the rationale behind a court decision. Every case has a ratio decidendi, a basis which the court used for ruling in the way that it did. Sometimes it is evident and at other times a court may need to explain it, as when a court is setting a precedent and thus cannot rely on previously established rationales which formed the basis for other legal decisions.

### Obiter Dicta:

The word is derived from the Latin *obiter dictum*, “a statement made in passing.” When a judge makes a dictum, it is in a sense an editorial comment. It does not have direct bearing on the case and may not be backed up with legal precedent, it is simply a statement about some aspect of a case. Because the statement is not legally binding, people have the option of disregarding it, although dicta have been utilized in courts and legal opinions on the basis that because they were entered into the record, they had relevance.

Fig: Hierarchy of the Courts

### Operations of Doctrine of Precedent

These basic rules are essential if the doctrine of precedent is to operate at all. The other thing, which is essential, is that lower courts know all the legal reasoning behind decisions of the higher courts. They can only do this if

those reasons are properly reported. All decisions from the High Court upwards are properly reported through the system of Law Reporting.

Distinguishing; over ruling, reversing

Distinguishing

If a judge decides that the material facts of the case in front of him are sufficiently different from the material facts of the case containing the precedent then he is not bound by the precedent e. g. *Balfour v Balfour* (1919) and *Merritt v Merritt* (1990) Both the cases involved a wife making a claim against her husband for breach of contract. In *Balfour* it was decided that the claim could not succeed because there was no intention to create legal relations, there was merely a domestic arrangement between husband and wife so there was no contract. In *Merritt* the court distinguished the case from *Balfour* because although the parties were husband and wife, the agreement was made parties were husband and wife, the agreement was made after they had separated. Further more, it was in writing, so it was a legally enforceable contract. Sometimes ratios are wide – applicable to many further cases. Some ratios are narrow – maybe not applicable to any.

Wide ratios have less material facts to consider than narrow ratios. Wide ratios are more difficult to distinguish. *Donoghue v Stephenson* wide ratio and a rapid, extensive subsequent development of the law of negligence.

Over-ruling

This is where a court in a later case states that the legal rule decided in an earlier case has been strongly decided. This would normally happen when a

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court higher in the hierarchy over-rules a decision made by a lower court in a previous case. However both the ECJ and the House Of Lords can over-rule their own decisions made in previous cases.

Reversing:

This is where a court higher up the hierarchy over turns the decision of a lower court in the same case. E. g. the Court of Appeal reverses a decision of the High Court.

Following

Where a higher court agrees with the decision of the later court.

Advantages of Doctrine of Precedent

Certainty

The doctrine of precedent provides certainty as a result of judges using the precedent established in previous cases be applied if the case before the court is similar and the litigants can predict what will be the outcome of the case and their rights and liabilities. However any legal system must also have some degree of flexibility and balance the need for certainty against flexibility. In the English legal System the House of Lords must have this responsibility to balance the need for flexibility against certainty. In practice it is a very difficult task.

Possibility for Growth

The system provides new rules to be established and old rules to be adapted to new circumstances if those rules are valuable to be extended to new circumstances. This is because the system gives discretion to judges to make new rules or amend existing rules to fit new circumstances by the process of distinguishing.

### Practicality

The rules of English case law are not derived from particular theory of law or model and do not deal with hypothetical situations. It is derived from actual cases before the courts. In addition, English case Law has detailed rules compared to other European legal systems and no code of law will provide the wealth of information the English case law provides.

### Disadvantages of Doctrine of Precedent

#### Rigidity

Once a rule is established and it's binding even if the decision is thought to be wrong, an alteration, other than by distinguishing is less than satisfactory. However, this disadvantage is modified by the fact that the House of Lords need to follow its own previous precedent. But in practice due to costly litigation and the reluctance of the House of Lords to over rule its own precedent only in exceptional situations the doctrine of precedent is rigid to some extent.

### **Conflict with Constitution and Slowness of Growth**

As the judges have discretion to create new rules and in practice they have considerable power to do so this power of discretion of judges may be in

conflict with the separation of powers of enacting legislation by parliament and the court is to interpret the law and not to create laws. As well, it may be in conflict with European Community law and may be in conflict with Human Rights Act 1988. As the litigation is a slow process and it is expensive the case law cannot grow faster to meet modern demands and legislation is necessary to deal with these situations.