Judicial precedent in the united kingdom

University of London Common Law Reasoning and Institutions Essay Title: ‘ Judicial precedent is best understood as a practice of the courts and not as a set of binding rules. As a practice it could be refined or changed by the courts as they wish. ’ Discuss Judicial precedent is a judgment or decision of a court which is used as an authority for reaching the same decision in subsequent cases. In English law, judgment and decisions can represent authoritative precedent (which is generally binding and must be followed) or persuasive precedent (which need not be followed).

It is part of the judgment that represents the legal reasoning or ratio decidendi of a case that is binding, but only if the legal reasoning is from a superior court, and in general, from the same court in an earlier case. Accordingly, ratio decidendis of the House of Lords are binding upon the Court of Appeal and all lower courts and are normally followed by the House of Lords itself. The doctrine of judicial Precedent did not become fully established until the second half of the nineteenth century.

Until 1898 the House of Lords had the power to overrule it’s own previous decisions. One important and distinctive element of the English law is that the reasoning and decisions found in preceding cases were not simply considered as a guide. They could be considered binding on later courts. This is known as stare decisis (let the decision stand). This means that when a court makes a decision in a case, then any court, which is of equal or lower status to that court, must follow the previous decision if the case before them is similar to that of the earlier case.

Thus, once a court as decided on a matter other inferior courts are bound to follow the decision. Once a point of law has been decided in a particular case, that law must applied in all future cases containing the same material facts. For example, in the case of Donughue v Stevenson (1932) AC 562, the House of Lords held that a manufacturer owed a duty of care to the ultimate consumer of the product. This set a binding precedent which was followed in Grant v Knitting Mills (1936) AC 85.

The Supreme Court/House of Lords is the highest appeal court on civil and criminal matters, and all other courts are bound it, and up until 1966, the House of Lords regarded itself as bound by its previous decisions. The next court in line is the Court of Appeal which is bound by itself and the House of Lords. Following the Court of Appeal is the High Court. This court is bound by decisions of the Court of Appeal and the House of Lords. The decisions of this court are binding upon all inferior courts, but not upon other High Court judges, although in practice, they rarely go against each other’s decisions.

The fourth court in line is the Crown Court, which is bound by the decisions of the Court of Appeal and the House of Lords. Its decisions – at least those reported as of interest – are generally regarded as persuasive and worthy of being used in argument, particularly those made by High Court judges sitting in the crown Court. Magistrates’ Courts and County Courts is the lowest court in the hierarchy. These courts are not bound by their own decisions, neither do they bind any other court, although they are expected to exercise consistent decision-making.

The United Kingdom is now influenced by the European Convention on Human Rights (ECHR), and guidelines are provided by the European Court of Justice (ECJ). The ECJ is superior to the House of Lords, and its decisions are binding on all UK courts. Also, as a consequence of the Human Rights Act (HRA) 1998, the decisions of the ECtHR are now part of the jurisprudence of the UK courts. This latter factor means that it is possible that the superior courts will find it necessary to alter previous precedents where they have been generated without reference to the European Convention on Human Rights (ECHR).

There is also the possibility that as a consequence of s 3 of the European Communities Act 1972, the Court of Appeal can ignore a previous decision of its own which is inconsistent with EC law or with a later decision of the ECJ. In Kay v Lambeth LBC; Price v Leeds City Council [2006] UKHL 10, the House of Lords distinguished between decisions of the European Court of Justice and those of the European Court of Human Rights: the former are binding, while the latter are not.

As a consequence the House of Lords decided that the normal rules of precedent should apply, and lower courts should follow the House of Lords, even when their decisions have been overturned by the ECtHR. This does not apply, however, where the previous authority had been set without reference to the Human Rights Act. The doctrine of judicial precedent can best be understood as a practice of the courts, rather than a binding set of rules. As a practice of the court, it provides guidance to the judges when they apply case precedents.

It also provides certainty, consistency and clarity in the application of precedents. The rule is that judges should decide like cases in like manner. It is a decision of the court used as a source for future decision-making. This is known as stare decisis and by which precedents are authoritative and binding and must be followed. Decisions made by the House of Lords bind all lower Courts, and usually the House of Lords itself, although it should be noted that the European Court of Justice stands as the highest authority as far as matters over which the EU has authority are concerned.

The Court of Appeal is, apart from some exceptions which were set out in Young v Bristol Aeroplane Co Ltd (1944) AC 163, bound by itself and it also binds all lower courts. Moving down the hierarchy of courts the decisions of the High Court and Divisional Courts bind all lower courts, whereas the decisions of the lower courts are not binding, although they may be of persuasive authority. Adam Geary, Wayne Morrison and Robert Jago stated that '… precedent is not to be understood as a rule or a doctrine but as a judicial practice'.

They further argued that ' if lawyers hold to their precedents too closely and forget the fundamental principles of truth and justice which they should serve, they may find the while edifice come tumbling down about them'. They were in support of the ideology that the judicial precedent should be set as regularly as is necessary in ore to remain equitable and current. The old rule, whereby the House of Lords did bind itself, was set by London Tramways Co. v London County Council (1898) AC 375.

It was felt that decisions of the highest appeal court should be final in the public interest, creating certainty and discouraging unnecessary litigation, despite the possibility of individual hardship. Over the years the practice was criticized as it created inflexibility. In 1966 Lord Gardener the Lord Chancellor issued Practice Statement (Judicial Precedent) (1966) 1 WLR 1234, where the House of Lords said that though the doctrine of being bound had many commendable points: ‘ too rigid adherence to recedent may lead to injustices in a particular case and also unduly restrict the proper development of the law’. Thus the Lords decided that they could depart from their previous decisions; but would do so only in rare circumstances. These decisions may be overturned if societal or cultural norms, political or economic circumstances have changed over time and the previous decision is no longer applicable or rational in the circumstances.

Some of the cases in which the house of lords overturned its own decisions include British Railways Board v Herrington (1972) AC 877, which overruled R Addie & Sons (Collieries) Ltd v Dumbreck (1929) AC 358, R v Shivpuri (1987) 2 ALL ER 334, which overruled Anderton v Ryan (1985) AC 567, and in the case of Miliangos v George Frank (Textiles) Ltd (1976) AC 443, the House of Lords departed from a previous decision, arguing that changing the law would enable the courts to ‘ keep step with commercial needs’ and, furthermore, would not lead to ‘ practical and procedural difficulties’.

In examining the argument that the Judicial precedent is best understood as a binding set of rules, one needs to first highlight the hierarchical structure of the English legal system. Judicial precedents are applied by the House of Lords and are binding on all lower courts, and prior to the 1966 Practice

Statement, binding on itself. A lower court may not rule against a binding precedent, even if it feels that it is unjust; it may only express the hope that a higher court or the legislature will reform the rule in question.

If the court believes that developments or trends in legal reasoning render the precedent unhelpful, and wishes to evade it and help the law evolve, it may either hold that the precedent is inconsistent with subsequent authority, or that it should be distinguished by some material difference between the facts of the cases. If that judgment goes to appeal, the appellate court will have the opportunity to review both the precedent and the case under appeal, perhaps overruling the previous case law by setting a new precedent of higher authority.

This may happen several times as the case works its way through successive appeals. Lord Denning, first of the High Court of Justice, later of the Court of Appeal, provided a famous example of this evolutionary process in his development of the concept of estoppel starting in the case of Central London Property Trust Ltd v. High Trees House Ltd [1947] K. B. 130. Although the 1966 Practice Statement was introduced, it is clear that departing from precedent decisions would only take place in rare cases.

The binding nature of the judicial precedent was emphasized when the Court of Appeal refused to follow the decision of the House of Lords in Rookes v Barnard [1964] AC 1129, on the principles for the award of exemplary damages in tort. They based the refusal on the ground that Rookes v Barnard was wrong and decided per incuriam, in ignorance of two previous decisions of the House. When Broome v Cassell & co. Ltd (1971) 2 QB 354

reached the House of Lords, the Law Lords castigated the Court of Appeal for its disloyalty.

Lord Hailsham said “[I]t is not open to the Court of Appeal to give gratuitous advice to judges of first instance to ignore decisions of the House of Lords in this way and, if it were open to the Court of Appeal to do so, it would be highly undesirable .... The fact is, and I hope it will never be necessary to say so again, that, in the hierarchical system of courts which exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tiers. One can therefore conclude that judicial precedent can best be understood as a set of binding set of rules and not as a practice of the courts. Judicial precedent cannot be refined or changed by the courts as they wish. The decisions of the higher courts are binding on all lower courts, and are rarely overturned. Therefore bad decisions are perpetuated since lower courts must follow higher courts, as seen in the case of Anns v Merton London Borough Council (1978) AC 728; (1977) ALL ER 492.

Very few cases get to the House of Lords, which is the only court, which can overrule one of its own previous decisions. It was not until 1991, that rape was accepted as a crime in the case of R v R (1991) 3 WLR 767. BIBLIOGRAPHY Elliot, Catherine, Quinn Frances. English Legal System. London: Pearson Education Limited. 2010. Geary, Adam, Morrison, Wayne, Jago, Robert. The Politics of the Common Law: Perspective, Rights, Processes, Institutions. London: Routledge-Cavendish. 2009. Holland, James, Webb, Julian. Learning Legal Rules. Oxford: Oxford University Press. 2010.

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