

English and uk law

Law



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English and UK law is established on statute however its background as well as its continuous evolving rely upon the doctrine of binding precedent.

In order to agree with matters those aren't enclosed by statute as well as to assist progressive advancement of law. The Precedent remains a very significant source of UK and English law, its binding nature whilst not stopping development of law; it is significant in maintaining certainty within the law.

A Judicial precedent means law that has been made by judges after a judge has made the law, this case is recognised as a precedent. The principle the doctrine of binding precedent exists so that decision at the courts further up the hierarchy (of courts) are made binding on the subordinate courts . In the future the judges need to view and respect the decision; this is known as Stare Decisis. When cases decisions have been recorded then judges in the later cases will follow these and form a code of conduct.

The meaning of ' Ratio decidendi' translates to ' the reasons' for specific decisions, this statement of law is where the judge will base his final decision. As this is a share of the judgement capable of forming a binding precedent. It's essential to realise that ratio decidendi doesn't have anything to do in regard to the details of a case. It's a statement of law which gets carried onto later decisions. The case of Saloman v Saloman & Co Ltd (1897), the ratio decidendi provided that when an individual or individuals carry a business over a company that the debts are debts for the company but not of those individuals.

The meaning of 'Obiter Dicta' literally means "said in passing" it is an observation or remark that is made by a judge where, although it is included within the frame of the court's opinion, doesn't form a required part of the court's decision. Such statements can assist the judges in future when and where they are applicable and established on decent sense. They are as such persuasive authority. The case 'Candler v. Crane Christmas & Co' (1951), Lord Denning opinion differed with the common view of judges.

He thought that the accountant ought to owe them a duty of care to the individuals who had asked for it and relied upon the advice, who in due course suffered losses because the advice didn't become a measure of the reasoning for the conclusion. It is known as a dissenting judgement, Lord Denning's remarks were of significant relevance in the evolution of law of 'tort of negligent' misstatement as well as later being referred to, The case 'Hedley Byrne & Co v. Heller & Partners' (1963) the law was in due course altered to replicate Lord Denning's original perspective.

Where a decision of a lower court occurs a judge doesn't need to follow, however reflect the law set down within a case so to not discharge them. The process of the doctrine of binding precedent is reliant on the hierarchy system.

The House of Lords, is the top court within England & Wales, its judgements are binding to all other courts in the hierarchy.. Decisions pre-1966, were bound by previous decisions that was until 1966 where the practice Statement weren't completely bound by decisions if considered, in extraordinary circumstances where the ratio decidendi that is laid down isn't

followed. The House of Lords ruled in ‘ London Tramways v. London Country Council (1898)’ its own decisions bound it, the House of Lords can now depart from earlier decisions when it seems right to and even though the power isn’t frequently used, a useful illustration in use was provided in ‘ Miliangos v. George Frank (Textiles) Ltd’ (1976) over ruling the previous decision in ‘ Re United Railways of Havana and Regla Warehouses Ltd’ (1960).

The Court of Appeals, civil division is bound by decisions in the House of Lords as well as its earlier decisions the decisions made are binding in inferior courts. The exceptions in the principle that it’s bound by earlier decisions can arise, where a decision can conflict with a future decision where the earlier decision was given or by the House of Lords per incuriam (relevant statute was disregarded).

The High Court of Justice is bound by decisions of more senior courts, the House of Lords as well as the Court of Appeal. A High Court judge isn’t bound by decisions of other High Court judges.

With courts such as the Crown Courts, Magistrates Courts and Country Courts, then decisions aren’t usually reported because they’re bound by decisions of the higher courts. The Crown Court will deal primarily with criminal cases, the Magistrates Court will deal with a range of criminal cases as well as some civil cases and the Country Court deals with civil cases of all types. These courts don’t create precedents as decisions by the courts don’t bind any other courts.

There are benefits of precedents, are that reaching verdicts as the result of the doctrine of precedent will make the system constant. It develops an easier way to predict results of litigation as well as allowing the Legal System in England to be more flexible. The decisions can be revised and comprehensive to reflect any changes to society. The law system is clear because it's only the 'ratio decidendi' that's followed it's easier to realise which law is getting applied.

As precedents are there the certainty as to which law is applied also what the outcome would be in a given situation. Judges can develop law without having to delay Parliament to create new laws. The doctrine will allow flexibility in the logic that judges are able to depart from precedents if it's required.