

System of precedent



**ASSIGN
BUSTER**

The House of Lords has declared that the system of precedent is an indispensable foundation providing certainty in the law. Explain how the system of precedent operates to pursue the goal of certainty whilst ensuring that certainty does not result in rigidity. Judicial precedent: A judgment of a court of law cited as an authority for deciding a similar set of facts; a case which serves as authority for the legal principle embodied in its decision

A judicial precedent is a decision of the court used as a source for future decision making. This is known as stare decisis (to stand upon decisions) and by which precedents are authoritative and binding and must be followed. In giving judgment in a case, the judge will set out the facts of the case, state the law applicable to the facts and then provide his or her decision. It is only the ratio decidendi (the legal reasoning or ground for the judicial decision) which is binding on later courts under the system of judicial precedent.

Any observation made by the judge on a legal question suggested by the case before him or her but not arising in such a manner as requiring a decision is known as obiter dictum (a saying by the way). There may be several reasons for a decision provided by the judge in any given judgment and one must not assume that a reason can be regarded as 'obiter' because some other 'ratio' has been provided. Thus, it is not always easy to distinguish ratio decidendi from obiter dictum when evaluating the effects of a particular decision.

A single decision of a superior court is absolutely binding on subsequent inferior courts. However, certain of the superior courts regard themselves as bound by their own decisions whilst others do not: 1. Decisions of the House

of Lords bind all other courts but the House does not regard itself as strictly bound by its previous decisions, for example, in *Murphy v Brentwood District Council* (1990) the House elected to overrule its earlier decision in *Anns v London Borough of Merton* (1978) on the issue of a local authority's liability in negligence to future purchasers of property. . The Court of Appeal, Civil Division, holds itself bound by its previous decisions: *Young v Bristol Aeroplane Co Ltd* (1944) but in that case also identified three exceptional cases where it would disregard its own previous decision.

These are (i) where two Court of Appeal decisions conflict; (ii) if the decision although not expressly overruled conflicts with a later decision of the House of Lords; and (iii) if the earlier decision was given *per incuriam* (through want of care) however it cannot ignore a decision of the House of Lords on the same basis. . Divisional courts of the High Court have adopted the rule laid down in *Young's* case although judges sitting at first instance are not bound to follow the decisions of other High Court judges although they tend to do so for the sake of certainty Judicial precedent is an important source of English law as an original precedent is one which creates and applies a new rule. However, the later decisions, especially of the higher courts, can have a number of effects upon precedents.

In particular, they may be:

- **Reversed:** where on appeal in the same case the decision is reversed, the initial decision will cease to have any effect
- **Overruled:** where in a later case a higher court decides that the first case was wrongly decided
- **A refusal to follow:** this arises where a court, not bound by the decision, cannot overrule it but does not wish to follow it so it simply refuses to follow the earlier decision
- **Distinguished:** where an earlier

case is rejected as authority, either because the material facts differ or because the statement of law in the previous case is too narrow to be properly applied to the new set of facts • Explained: a judge may seek to interpret an earlier decision before applying it or distinguishing it, thus the effect of the earlier case is varied in the circumstances of the present case. Decisions under the principle of stare decisis, even if this created “ injustice” and “ unduly restrict(s) the proper development of the law” (London Tramways Co. v London City Council [1898] AC 375). The Practice Statement 1966 is authority for the House of Lords to depart from their previous decisions.

It does not affect the precedential value of cases in lower courts; all other courts that recognise the House of Lords as the court of last resort are still bound by House of Lords decisions. Before this, the only way a binding precedent could be avoided was to create new legislation on the matter Text from the Practice Statement ‘ Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules.

Their Lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose therefore, to modify their present practice and, while treating formal decisions of this house as normally binding, to depart from a previous decision when it appears to be right to do so. In this connection they will bear in mind the danger of disturbing

retrospectively the basis on which contracts, settlement of property, and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law.

This announcement is not intended to affect the use of precedent elsewhere than in this House. ' Lord Gardiner the House of Lords, July 26, 1966.) How do the Courts approach the task of the interpretation of Statutes and how far are the judicial approaches capable of achieving the correct interpretation? When judges are to make a decision over a case in court, it is their duty to interpret the statute that governs the issues raised in the case. The judge will reason with either the language used within the statute, and, or, the way in which the statute is applied to the facts of the case. Statutory interpretation is a matter of arguing how the words used within the statute affects the ratio decidendi of the case.

There are a numbers of aids that judges use to interpret legislations Internal or external: Internal aids are found within the Act itself. Each Statute has an interpretation section which attempts to define words that are found within the Act. In addition, the Act will have a long and a short title, chapter headings and marginal notes which assist in ascertaining particular meanings. • External aids include such things as Dictionaries, The Interpretation Act 1978 (which defines certain words and phrases generally), reports on the Law Commission and various Law Reform Committees, International conventions where the Act is based upon such a document, EC Directives where the legislation is intended to give effect to the Directive and other Acts of Parliament.

In their reasoning of the case, one would usually find three main approaches that have been adopted when interpreting the Statute: the Literal, Golden, Mischief & Eiusdem Generis rule. The Literal rule states that the judge should do what the actual legislation says, rather than trying to do what he interprets it to mean. The Golden rule, also known as the British rule, is a form of statutory interpretation that says the words of a statute should be understood in their ordinary sense. The Mischief rule is a rule of statutory interpretation that attempts to determine the legislator's intention. The Eiusdem Generis rule (Of the same kinds, class, or nature) It operates where a broad or open-ended term appears following a series of more restrictive terms in the text of a statute.