

# Distinguishing, overruling, reversing



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DISTINGUISHING, OVERRULING, REVERSING by In the encyclopedic dictionary the legal precedent (from lat. *praecedens*) is defined as behavior in a specific situation, which is regarded as a model, under the similar circumstances (Martin and Turner, 2005). Over time, the precedent does not lose its force, and passes from generation to generation. The reason is that the British rule of law is closely connected with the circumstances of the case and applied to resolve similar cases to the one on which this decision was made. Such a rule of law can not be made ?? more general and abstract. These rules are in fact a direct reflection of human values, time-tested. What is the meaning and limits of the rules of precedent in the UK? The answer to this gives a well-established practice: Distinguishing - decisions taken by the House of Lords are binding precedent for all courts and for most of the House of Lords; Overruling - decisions taken by the Court of Appeal are binding on all courts except the House of Lords; Reversing - High Court of Justice decisions are binding on lower courts and, if not strictly required, are very important and commonly used as a guide for the various offices of the High Court. In general, the position of the court in the hierarchy is of great importance, since the power of precedent depends on it, which makes the decision of this court. Seaforth (1962) stated that any court is obliged to follow the precedent of the Supreme Court, as well as it is bounded by their own decisions and decisions of courts by equal jurisdiction. Precedents of lower courts are persuasive. This is the essence of the principle of *stare decisis*. The only exception is the House of Lords as the highest court. According to its statement in 1966 according the practice, it considers itself no longer as bounded by its own previous decisions and allows ‘derogation from them in case of need’ (Wilson, 1973). Moreover, this statement does not affect the <https://assignbuster.com/distinguishing-overruling-reversing/>

execution of the precedent by other courts. In this section it is necessary to articulate what are the main advantages and disadvantages of the case law system that are distinguished. As the advantages of British case-law legal system researchers have noted its certainty, precision and flexibility. Certainty, in their view, occurs when the judge is confronted with issues that have already received a decision, must accept the decision. On the one hand, accuracy is achieved by huge number of cases in the court reports, which contain solutions for many specific situations. According to Keenan (2001), flexibility allows to reject the decision or turn aside from them if the case differed in substance, as well as select a wrong decision and limit its scope. On the other hand, a growing number of precedents is inconvenient. It is practically impossible to consider all related precedents when the case is discussed in the court. As a result, there are conflicting, contradictory precedents. It is difficult to avoid this, because time to be allowed for lawyer or judge in a separate case is very limited. Therefore, some of the precedents do not fall into their field of vision. The main advantage of a precedent, that there is no renunciation in the resolution of legal matters by courts which differ by the biggest novelty, and the main drawback - the uncertainty and unpredictability of a court decision. In conclusion, English doctrine of precedent is a middle way between excessive flexibility and excessive rigidity in order to maintain a stable set of principles, and flexibility in order to adapt to the changing needs of society. But the benefits of this 'flexibility' are used only by the higher courts: The House of Lords and to some extent the Court of Appeal. For all other courts the doctrine of precedent is certainly tough. Ordinary judge never reject a precedent of the high court, even if it seemed to him unreasonable. References: Keenan, D. J. <https://assignbuster.com/distinguishing-overruling-reversing/>

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