**Plan (i)**

**Introduction**

- Stand by what is decided
- Principle that decisions are to be followed
- Supports idea of fairness
- Provides certainly in law

**Binding precedent**

- Courts of lower status to that court according to the hierarchy of the courts must follow that previous decision if the case before them is similar to that earlier case.
- Inferior courts are bound to follow that decision.
- Judge has no choice but to follow that particular precedent.
- Created when facts of cases are fairly similar and the decision was made by a court which is higher in the hierarchy system to the court hearing the case.
- Highlights the doctrine of binding precedent as stare decisis.

**Original + Persuasive precedent**

- Point of law isn’t already been decided, judges make a new precedent.
- No past cases to base a decision on similar cases and therefore uses the similar ruling - reasoning by analogy.
- Binds a judge's decision to a decision made on a previous case.
- Persuasive precedent isn’t binding on the court.
- Examples of these are
  1. decisions of lower courts
  2. decisions by courts lower in the hierarchy
  3. decisions of the Judicial Privy Council
  4. a dissenting judgement
  5. decisions of courts in other countries.

**Court hierarchy**

- Court is bound to follow any decisions made by a court above it in the hierarchy system - part of the doctrine of stare decisis.
- The European Court of justice is at the top of the hierarchy - binding.
- The House of Lords, highest UK - bound by its own previous decisions until he Practice Statement.
- Court of Appeal - bound by decisions of the House of Lords *Young v Bristol Aeroplane* 1944, three exceptions.
- High Court is lower in the hierarchy system + bound by the Court of Appeal and the House of Lords.
- County and Magistrates courts which are also persuasive and not binding.
**Ratio Decidendi**

- Essential part of stare decisis as the binding part of a judicial decision.
- Principle of law on which a decision is based.
- Not the actual decision but is set by the rule of law used by the judge or judges

**Avoiding stare decisis**

- Use methods such as distinguishing, overruling and per incuriam.
- Overruling = a court higher up in the hierarchy sets aside a legal ruling established in a previous case.
- Distinguishing = court regards facts of the case before as different from the facts of an older binding precedent.

**Conclusions**

- Fairness +certainty
(i) The Source at line 13 refers to stare decisis. Describe the concept of stare decisis using the source and cases to illustrate your answer. [15]

Introduction

Stare decisis is Latin and when translated means "to stand by that which is decided." It's the principal that the precedent decisions are to be followed by the courts. The doctrine of stare decisis is important as it fully supports the idea of fairness and provides certainty in law which is vital.

Doctrine of binding precedent

When a court makes a decision in a case, any courts which are of equal or lower status to that court according to the hierarchy of the courts must follow that previous decision if the case before them is similar to that earlier case. Therefore once a matter has been decided, other inferior courts are bound to follow that decision. Although the judge may not agree to the legal principle, he/she has no choice but to follow that particular precedent. A binding precedent is only created when facts of cases are fairly similar and the decision was made by a court which is higher in the hierarchy system to the court now hearing the case. Stare decisis is the main principle that highlights the doctrine of binding precedent as stare decisis is to stand for what is decided and by following a binding precedent, courts are doing just that.

Original and persuasive precedent

When a point of law hasn’t already been decided, judges make a new precedent. Because there will be no past cases to base a decision on similar cases and therefore uses the similar ruling. This is known as reasoning by analogy. It binds a judge's decision to a decision made on a previous case, and even if he considers it to be unjust and therefore links in which the doctrine of stare decisis. Persuasive precedent on the other hand is a precedent which isn’t binding on the court. Examples of these are decisions of lower courts, decisions by courts lower in the hierarchy, decisions of the Judicial Privy Council, a dissenting judgement and decisions of courts in other countries.

Court hierarchy

In England and Wales, every court is bound to follow any decisions made by a court above it in the hierarchy system which is part of the doctrine of stare decisis. The European Court of justice is at the top of the hierarchy. Decisions of the ECJ are binding to all courts. The House of Lords is the highest UK was bound by its own previous decisions until the Practice Statement [1966] stated that although the House of Lords would treat its decisions as normally binding it would depart from these when it appeared right to do so. Decisions made in the House of Lords bind all lower courts. Next is the Court of Appeal which is bound by decisions of the House of Lords even if it considers them to be wrong. In Young v Bristol Aeroplane 1944, the Court of Appeal said that it was bound by its own previous decisions apart from three exceptions which are:

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1) Where its own previous decisions conflict, the Court of Appeal must decide which to follow and which to reject.
2) The Court of Appeal must follow a later decision of the House of Lords if its own previous decisions conflicts with it.
3) The Court of Appeal need not follow its own previous decisions if it were made *per incuriam* (in error).

Decisions of the Court of Appeal itself are binding on the High Court and the county courts. There is no difference in the application of stare decisis in the civil and criminal divisions of the Court of Appeal. The High Court is lower in the hierarchy system and is bound by the Court of Appeal and the House of Lords. Decisions of individual High Court judges are binding on the county courts. Decisions made on points of law by the Crown Court are not binding but only persuasive. Lastly are the County and Magistrates courts which are also persuasive and not binding.

**Ratio decidendi**

Ratio decidendi is an essential part of stare decisis as it’s the binding part of a judicial decision. The ratio decidendi of a case is the principle of law on which a decision is based. When a judge delivers a judgement in a case, he summaries the facts which he believes have been proved on the evidence. The ratio decidendi of a case is not the actual decision but is set by the rule of law used by the judge or judges in deciding the legal problem raised by the facts of the case. He then applies the law to those facts and arrives at a decision, for which he gives the reason (ratio decidendi). This rule is known as the Ratio Decidendi of the case.

**Avoiding stare decisis**

Stare decisis can be avoided using methods such as distinguishing, overruling and per incuriam. Overruling is where a court higher up in the hierarchy sets aside a legal ruling established in a previous case. It may occur when a higher court overrules a certain decision made by a court or when the European Court of Justice overrules its own past decisions. Overruling can also occur if the previous court did not correctly apply the law, or because the later court considers that the rule of law contained in the previous ratio decidendi is no longer desirable. As the ratio decidendi of a case is based upon the material facts of the case, a court may regard the facts of the case before it as significantly different from the facts of an older binding precedent. Because of this, it will not be bound to follow that precedent. Judges distinguish when they are unwilling to follow a particular precedent.

**Conclusion**

The doctrine of stare decisis supports the idea of fairness and provides certainty in law which is vital.

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Plan (ii)

Introduction

- Appellate court
- Bound by their past decisions + decisions made in the Supreme Court and the European Court of Justice.
- Split into a Criminal and Civil Division
- The following essay will...

Young v Bristol

- Involves a case which involved the compensation for a workman under the Workmen’s Compensation Acts.
- Exceptions are
  - 1) Own conflicting decisions
  - 2) Past conflicting decisions - HoL
  - 3) Per incuriam
- Added extra power onto the Court of Appeal

Past decisions

- Gave more powers to the CoA
- Starmark Enterprise Ltd v CPL Distribution Ltd 2001

House of Lords

- If the CoA’s earlier decision isn’t consistent with a later House of Lords’ decision, it’s overruled.
- Milliangos v George Frank Ltd
- Schorsch Meier case.
- Overruled their past decision.

Per incuriam

- CoA has power to reject a previous decision if was made in error.

Criminal division:

- Entirely appellate jurisdiction
- Power to vary a sentence by either extending or shortening a sentence
- More flexible
- R v Gould 1968

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Civil Division:
- Main appellate court for civil cases
- Hears appeals from 3 divisions

Conclusion:
- Proves that the Court of Appeal is already court which holds much power.
- Exception made in *Young v Bristol Aeroplane (194*.
- Not highest court
- Powers shouldn’t be extended
(ii) Discuss whether or not the powers of the Court of Appeal within the doctrine of precedent, should be extended. [15]

Introduction:
The Court of Appeal is an appellate court bound by their past decisions as well as decisions made in the Supreme Court and the European Court of Justice. The Court of Appeal is split into a Criminal and Civil Division with each division holding a certain amount of power. Although the Divisions are under the same court, Divisions made in one division aren’t binding to the other Division. The following essay will be discussing whether or not the powers of the Court of Appeal should be extended.

Young v Bristol Aeroplane (1944):
This involves a case which involved the compensation for a workman under the Workmen’s Compensation Acts. The case allowed the Court of Appeal to avoid their own precedent in particular circumstances. The Court of Appeal isn’t bound by its past decisions if:
1) Where its own previous decisions conflict, the Court of Appeal must decide which to follow and which to reject.
2) The Court of Appeal must follow a later decision of the House of Lords if its own previous decisions conflicts with it.
3) The Court of Appeal need not follow its own previous decisions if it were made per incuriam (in error).
This case in 1944 added extra power onto the Court of Appeal therefore as the 3rd highest court in the hierarchy system, does it need more?

Conflicting past decisions:
This gave the more powers as the Court would have to decide between both past decisions and pick one. This occurred in Starmark Enterprise Ltd v CPL Distribution Ltd 2001. In Starmark the landlord’s argument was that decision 2 was unsupportable and decision 1 should be preferred due to the fact that decision 2 was distinguishable on the facts from the present case. It should therefore be ignored and decision 1 should be followed.

Decision by House of Lords:
If the Court of Appeal’s earlier decision isn’t consistent with a later House of Lords’ decision, it’s overruled. This situation occurred in Milliangos v George Frank Ltd when a year after the Court of Appeal had ignored a decision by the House of Lords, the issue was again raised in the Court of Appeal during the Schorsch Meier case. In this case, the Court of Appeal followed its own previous decision and not the House of Lords. When the case was seen before the House of Lords their Lordships agreed that judgment could be given in a currency other than sterling. By doing this he then overruled their past decision.

Per incuriam:
The Court of Appeal also have the power to reject a previous decision if was made in error. An example of this is In the William v Fawcett 1986. As there was a misunderstanding of the County Court, the paperwork handed in failed to specify the breaches or to grant an adjournment. Sir John Donaldson MR says this case was exceptional as there were “material irregularities” for which order would be quashed.

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Criminal division:
The Criminal Division is an entirely appellate jurisdiction which already has the power to vary a sentence by either extending or shortening a sentence or simply ordering a new trial. Unlike the Civil Division, the Criminal division is more flexible where the point involves the liberty of the subject. Due to the *R v Gould 1968*, the Court of Appeal has certain extra powers.

Civil Division:
The Civil Division is the main appellate court for civil cases and is headed by the Master of the Rolls. It has appeals heard from three divisions of the high court, county Court for multi task cases, Immigration Appeal Tribunal and Lands Tribunal. The Civil Division already has the power to grant the permission of appeal where the court considers that an appeal would have a real chance of success or another compelling reason why the appeal should be heard. Considering it’s not the highest court in the hierarchy, shouldn’t this be considered as enough power?

Conclusion:
The analysis in the essay proves that the Court of Appeal is already court which holds much power. Including the exception made in *Young v Bristol Aeroplane (194*, there is no reason why the powers of the Court of Appeal should be extended further. The Court of Appeal is at present quite powerful as has the power to bind courts below it which are the High Court, County/Crown Court and the Magistrates. The Court of Appeal is not the highest court in the hierarchy system and adding any more power to the court with simply unbalance the ratio within the Court of Appeal and all the other UK courts.
Bibliography