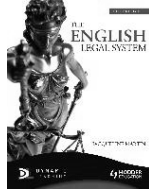


Doctrine of Judicial Precedent

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**Précis Notes
will be checked**

Prior to these lessons you should have read and précised chapter 3 of "The English Legal System" by Jacqueline Martin



Judicial Precedent

The source of law where past decisions of the judges create law for future judges to follow.

Doctrine of stare decisis

- Stand by your past decisions
- 'Stand by what has been decided and do not unsettle the established'
- Reflects the need for consistency and the conservatism of the law.

Ratio decidendi

- 'Reasons for the decision' (do not confuse this with motive)
- 'Legal principles of the case'
- **This is what creates, or establishes, the precedent that can bind future cases.**

Obiter dicta

- Obiter dicta are 'things said in passing' - thus words and expressions that are not part of the ratio decidendi of the case and are NOT binding.
- One major problem - when looking at a case judgement - is working out just what part is the ratio decidendi of a case and what is obiter dicta.

Case judgments

- It is worth noting that there can be various judgments in a case (How many?).
- (1) You need to work out the majority judgment and then examine the arguments of each judge.
- (2) Then you need to try to work out the legal principles upon which the Judges agree - that could then help determine the ratio decidendi of the case.

Original Precedent

- Stating/Creating new law
- Hunter v Canary Wharf Ltd
 - Complete the activity on p.24

- Contrast with binding precedent

Persuasive precedent

- Jacqueline Martin claims there are five examples of persuasive precedent - **list and then explain them.**

- **Can you think of a sixth type of persuasive precedent?** (Hint: think of courts outside of the UK system).

Hierarchy of the Courts

Produce a flow chart - from Figure 3.1 and Figure 3.2 which shows the principles of precedent related to the hierarchy of the courts.

What is a court of first instance?
What is an Appellate court?
What was the Supreme Court before 2009?

Supreme Court

- Since October 2009 the new Supreme Court has replaced the House of Lords...
- What are the powers of the Supreme Court?

Supreme Court

- London Street Tramways v London County Council [1898] - 'Certainty of the law is more important than the possibility of individual hardship being caused through having to follow past decisions.'
- The case of DPP v Smith [1961] signified that the House of Lords could not change a decision even if it was criticised.

Practice Statement

Between 1898 and 1966 the H of L was bound by its own past decisions. In 1966 came the Practice Statement and this established a major change.

From pages 28/30 – explain the Practice Statement in your own words.

What does it all mean?

Use of the Practice Statement

From your reading - and working in pairs - produce examples of how the House of Lords has used the Practice Statement in both civil and criminal law cases.

Will the Supreme Court follow the practice of the House of Lords? (p.31)

Activity

From the activity on page 30 - produce written answers to the four questions provided.

Break into Law Firms

- **Law Firm One** - Explain - using cases - the arguments for the Court of Appeal being bound by its own past decisions.
- **Law Firm Two** - Explain the arguments why the Court of Appeal should not be bound by its own past decisions.
- **Law Firm Three** - Explain the case of Young v Bristol Aeroplane [1944] and what that means for the C of A.

What is meant by ...

- Distinguishing - give an example?
- Overruling - give an example?
- Reversing - give an example?

Judicial precedent

- Break into Law firms to present the arguments - 'for' and 'against' the doctrine of judicial precedent.
- Also consider whether Judges make law or just state it?
- Write these down and then present your arguments to the class.
- Include examples and case law.

Exam Questions

IN SILENCE - Plan answers to the questions on page 41
