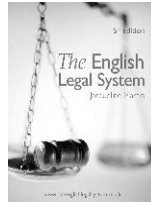


Doctrine of Judicial Precedent

Produced by Dr Peter Jepson applying 'The English Legal System' by J Martin (5th edition).

Précis NOTES
will be checked

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law@peterjepson.com



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.

Turn off your mobile

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 judgements

- 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

- Undertake the activity on page 24 of ELS.
- Answer the Q's on page 24.
- **What - if anything - is the ratio decidendi which stems from the case of Hunter and others v Canary Wharf Corporation [1995]?**
- **Is there a binding precedent?**

Persuasive precedent

- J Martin claims there are five examples of persuasive precedent - **list and then explain them.**
- **Can you work out a sixth from what we did under Machinery of Justice?**

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?**

House of Lords ...

- 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 page 28 of 'The ELS' - **write down the words of the practice statement - highlight key words. What does it all mean?**

Use of the practice statement

- From your reading - and working with the person next to you - produce a list of how the House of Lords have used the practice statement.
- How does it affect criminal law cases?

Activity - page 31

- From the activity on page 31 of 'The ELS' - 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 ...

- **Overruling** - give an example?
- **Reversing** - give an example?
- **Distinguishing** - give an example?
- **Do judges make the law? Or, does Parliament? Should judges make the law?**
- **Which takes priority judge make law or legislation?**

How are cases reported?

- **Students should provide some examples of how law cases are reported ...**

Judicial precedent

- **Break into Law firms to present the arguments - 'for' and 'against' the doctrine of judicial precedent.**
- **Write these down and then present each to class - giving examples etc.**

Exam Questions

- **In SILENCE - Plan answers to the questions on page 44 of 'The ELS'**