

What is judicial precedent? What are the main principles that are applied in judicial precedent? Are the different court structure being bound by the decision of others higher courts? To what extent binding precedent ensures the existence of both certainty and flexibility in common law? What are the other advantages and disadvantages that contribute to the doctrine of binding precedent?

The doctrine of binding precedent or stare decisis, refers to the fact that, the decision of a higher court will be binding on a court lower than its hierarchy. Judicial precedent can be applied on cases and to be treated similarly when the material facts of the cases are identical.

There are two main principles that are involved in judicial precedent, there are ratio decidendi and the obiter dictum. Ratio decidendi is a principle of law on which the court reaches its decision. The ratio decidendi of a case may be understood as the statement of the law applied in deciding the legal problem raised by the concrete facts of the case. The ratio of a case is binding on lower courts but may not be cited as persuasive authority in later cases.

The second principle is the obiter dictum. It is a statement made by the judge that is not an essential part of the ratio decidendi. It is most referred that something said by the way. Obiter dicta a statements do not form part of the binding precedent, but they are persuasive authority and can be taken into consideration in later cases, if the later case consider it is appropriate to do so.

Through judicial precedent, lower courts are bound by the decisions of higher courts, hence based on the statement it is accurate to say that the doctrine of binding precedent does ensure both certainty and flexibility in the common law. It creates certainty in the sense where like cases are treated alike if the material facts are identical, and this will enable the lawyers and their clients to predict what the likely outcome of a particular case through previous judicial decisions. It also creates flexibility, where this refers to the fact that judges can manipulate the common law provided, then with an opportunity to develop law in a particular areas without waiting for parliament to enact legislation. Judges can be subsequently overruled or distinguished the decision whether it is applicable or simply not applicable to the instant case.

Judicial precedent provides consistency, when like cases are decided on a like basis and are not apparently subject to the whim of the individual judge deciding the case in question. This aspect of formal justice is important in justifying the decisions taken in particular cases.

Besides the advantages, there are disadvantages for judicial precedent too. It creates uncertainty because the doctrine of stare decisis is undermined by absolute number of cases that have been reported. This uncertainty is increased by the ability of judiciary to select which authority to follow through use of distinguishing cases on their facts. It also creates fixity, where this refers to the possibility that the law in relation to any particular area may become rigid on the basis of an unjust precedent with the consequence that previous injustices are perpetuated. Other than that, judicial precedent also causes unconstitutionality. This is a fundamental question that refers to the fact that the judiciary are overstepping their role by making law rather than restricting themselves to the role of simply applying it, and if this happens then it's against the declaratory theory of law claims that judges do not make law, but they simply interpret what the law is.

Hence, although in judicial precedent, there are many advantages and disadvantages, I personally feel that the advantages outweigh the disadvantages and it is accurate to say that binding precedent ensures the existence of both certainty and flexibility in the common law.