

CHAPTER 10 - PRECEDENT: HOW DO JUDICIAL DECISIONS BECOME LAW?

Key terms:

1 Introduction to Precedent

What does 'precedent' mean?

- Previous case that's being used in present case to guide court
- 'precedents' – series of past cases relevant to particular legal issue
- *Stare decisis* – abide by or adhere to a decision
- common law principle – courts follow binding precedents – not upset settled points of law

Where did concept come from?

- 13th century England – royal judges visited counties – deciding matters on case-by-case basis
- Royal judges discussed with various feuds – formed opinions on which 'laws' were fair and reasonable – preferred to apply those
- As matter of courtesy – align decisions with one another

Advantages of precedent

- *Legal development* – having precedent facilitates development of coherent body of legal principles that can be used in future
- *Not arbitrary* – courts have to use reason and logic in applying law – so decisions not arbitrary
- *Fairness* – court decisions (precedents) freely available to everyone to read, understand – transparent
- *Flexibility* – some degree of flexibility in implementing and interpreting precedents
- *Certainty* – lawyers advise clients on law – if precedent, lawyers know will be followed by courts – then lawyer is able to advise client with some degree of certainty to what law is and result if went to court
- *Efficiency* – where both parties to dispute relatively certain about law on point in case – realistically, efficiently negotiate to settle dispute by weighing up what likely to get if went to court

Disadvantages of precedent

- *Injustice* – every case different – unjust to simply apply same reasoning of past case – difficult to fix because only superior court, faced with case that raises unjust precedent, can overrule
- *Manipulation* – judges who hear same type of cases have disproportionate role in development of area of law – may manipulate precedents in order to achieve outcomes considered appropriate
- *Uncertainty* – difficult to work out applicable precedent from any given case – how generally principle from case can be stated – don't know how case treated until used in future case
- *Multiple judgments* – cases heard before more than 1 judge – judges may issue single judgment together or issue one each – if judgments show different lines of reasoning to arrive at same outcome then what's precedent?