

## **Binding Precedent and Judicial Law-Making!**

When in doubt, go to the law library. In your thirst for knowledge be sure not to drown in all the information. The lawyer does well ... to lift his eyes ... and look out of the window. Neither law nor human nature is an exact science.

The leading rule for the lawyer ... is diligence. - Abraham Lincoln

But one type of book that practically no one likes to read is a book about the law. Books about the law are notorious for being very long, very dull, and very difficult to read. This is one reason many lawyers make heaps of money. The money is an incentive - the word "incentive" here means "an offered reward to persuade you to do something you don't want to do - to read long, dull, and difficult books. -Daniel Handler

With the law books filled with a great assortment of crimes, a prosecutor stands a fair chance of finding at least a technical violation of some act on the part of almost anyone. In such a case, it is not a question of discovering the commission of a crime and then looking for the man who has committed it, it is a question of picking the man and then searching the law books, or putting investigators to work, to pin some offense on him. -Robert H. Jackson Colton.

Interpretation of laws and its right application in its true spirit is the bedrock of any judicial mechanism and a legal system. There is a need to check the crevices of its precedents in the light of the laws at hand and the facts that have been dealt with. Though prima facie this may seem as a miniscule idea, it is wisdom to bear in mind that the purpose of the law is executing proper justice and executing order, and if this is ignored then, the purpose of the existence of such a mechanism of justice is itself thwarted. Thereby discussion on the principles of application of laws and its interpretation in administration of justice is called for.-Henrietta Newton Martin

In his search for justice, Lord Denning has been willing to sacrifice the certainty of stare decisis. At times, of course, the Court of Appeal has been able to 'distinguish' an earlier unsatisfactory decision and thereby effect a just result: as Lord Reid acknowledged with regard to all courts, 'it is notorious that where an existing decision is disapproved, but cannot be overruled courts tend to distinguish it on inadequate grounds'. Yet the Master of the Rolls would prefer to attack the strict application of stare decisis by more open and perhaps honest means. To avoid 'making confusion worse confounded' by distinguishing the undistinguishable he has stated his preference for a clean break with unsatisfactory precedent. In an attempt to achieve this result he has sometimes painted a liberal gloss over the orthodox exceptions to the application of stare decisis in the Court of Appeal and sometimes advocated a complete departure from the orthodox theory.

In my opinion, the fact that cases are judged based upon similar issues provides an element of consistency to the law. The results of a case or particular legal questions are likely to be predictable based on the outcomes of similar cases therefore demonstrating certainty within the doctrine. The system creates efficiency within the law by saving the time of the judiciary, professionals and their clients as cases generally do not have to be appealed. Judges can manipulate the common law in order to develop a particular area of law without the need for new legislation, highlighting the flexibility that the doctrine permits.

However, the ability of the judiciary to shape the common law through creating distinctions between the facts of cases can decrease the certainty of judicial precedent. The binding element of precedent can create fixity; if particular issues were to be incorrectly addressed. When judges develop or create laws, they could be acting outside the scope of their powers and therefore unconstitutionally.

Binding precedent and English judicial law-making: ... a doctrine which compels judges to synthesize present decisions (or at least articulate the reasons for such decisions) out of the accumulated wisdom (or folly) of their judicial forebears. -David Vong

The binding element of judicial precedent; ratio decidendi which incorporates material facts of the case provides a degree of certainty by binding the lower courts to the decision reached in a case, whilst the ability of the judiciary to use mechanisms such as overruling and distinguishing between cases and the capacity of superior courts to change the law allows for development of the common law and therefore provides flexibility within the doctrine of judicial precedent.