



UNIVERSITY
OF LONDON

INTERNATIONAL
PROGRAMMES

Undergraduate
Laws Programme

**English Common Law: Structure and Principles Week Four :
Judicial Precedent and the role of Judges Additional Notes, Quotes, Case
Citations and Web Links for Week Four Lectures**

London Tramways v London City Council (1898) AC 375

“Of course, I do not deny that cases of individual hardship may arise, and there may be a current of opinion in the profession that such and such a judgment was erroneous; but what is that occasional interference with what is perhaps abstract justice, as compared with the inconvenience...of having each question subject to being rearguarded and the dealings of mankind rendered doubtful by reason of different decisions, so that in truth there is no final court of appeal. My Lords, “interest rei publicae” is that there should be “*finis litium*” sometime and there can be no *finis litium* if it were possible to suggest in each case that it might be rearguarded because it is “not an ordinary case” whatever that may meant.”

“Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for the development of legal rules.”

“the danger of disturbing the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law.”

Practice Statement (Judicial Precedent) [1966]1 WLR 1234, at 1234.

Miliangos v. George Frank Miliangos v. George Frank [1975] 3 W.L.R. 758.

“The law on this topic is judge-made: it has been built up over the years from case to case. It is entirely within this House’s duty, in the course of administering justice, to give the law a new direction in a particular case where, on principle and in reason, it appears right to do so. I cannot accept the suggestion that because a rule is long established only legislation can change it - that may be so when the rule is so deeply entrenched that it has infected the whole legal system, or the choice of a new rule involves more far-reaching research than courts can carry out. Indeed, from some experience in the matter, I am led to doubt whether legislative reform, at least prompt and comprehensive reform, in this field of foreign currency obligation, is practicable. Questions as to the recovery of debts or of damages depend so much upon individual mixtures of facts and merits as to make them more suitable for progressive solutions in the courts. I think that we have an

opportunity to reach such a solution here. I would accordingly depart from the Havana Railways case and dismiss this appeal.”

Can the Court of Appeal Depart from its previous decisions?

Young v Bristol Aeroplane Co., [1944] K.B. 718

the Court of Appeal (CA) is bound by its own decisions unless:

- it is a Court of Appeal decision given *per incuriam* (i.e. with the omission of a very important component which subsequently flaws the decision)
- it involves an earlier conflicting decision by the Court of Appeal, when the CA may then choose which case to follow
- the earlier Court of Appeal decision has been expressly or impliedly overruled by the Supreme Court.

Davis v Johnson [1974] A.C.264.

“In order to avoid all the delay -- and the injustice consequent upon it -- it seems to me that this court, being convinced that the two previous decisions were wrong, should have the power to correct them and give these women the protection which Parliament intended they should have.”

Lord Denning

Hutton v Bright (1852) 3 HL Case 341

“[E]very court of justice possesses an inherent power to correct an error in which it had fallen.”

“[A] rule as to precedent (which any court lays down for itself) is not a rule of law at all. It is simply a practice or usage laid down by the court itself for its own guidance: and, as such, the successors of that court can alter that practice or amend it or set up other guide lines, just as the House of Lords did in 1966.”

Lord Denning

Davis v Johnson House of Lords

Lord Diplock preferred that the House of Lords should “re-affirm expressly, unequivocally and unanimously” the rule in Bristol Aeroplane Co.

Judicial Law Making

McLoughlin Appellant v. O'Brian [1983] 1 A.C. 410

“Here lies the true role of the two law-making institutions in our constitution.

By concentrating on principle the judges can keep the common law alive,

flexible and consistent, and can keep the legal system clear of policy problems

which neither they, nor the forensic process which it is their duty to operate,

are equipped to resolve. If principle leads to results which are thought to be

socially unacceptable, Parliament can legislate to draw a line or map out a new

path.”

“The real risk to the common law is not its movement to cover new situations

and new knowledge but lest it should stand still, halted by a conservative

judicial approach. If that should happen, and since the 1966 practice direction

of the House it has become less likely, there would be a danger of the law

becoming irrelevant to the consideration, and inept in its treatment, of

modern social problems. Justice would be defeated. The common law has,

however, avoided this catastrophe by the flexibility given it by generations of

judges.”

Judicial Law Making and the Human Rights Act

Venables and Thompson v Newsgroup Newspapers [2001] 2 WLR 1038.

“the ECtHR applied in this case via the obligation on the courts in the Human Rights Act, even though the defendant newspapers were not a public authority and the dispute was one between private parties. The claimants' rights under Articles 2, 3 and 8 of the ECtHR were at risk, and had to be balanced against Article 10.”

Douglas v Hello [2001] QB 967.

“The reasons are twofold. First, equity and the common law are today in a position to respond to an increasingly invasive social environment by affirming that everybody has a right to some private space. Secondly, and in any event, the Human Rights Act 1998 requires the courts of this country to give appropriate effect to the right to respect for private and family life as set out in Article 8 of the European Convention on Human Rights and Fundamental Freedoms.”

Precedent and the Human Rights Act

Leeds City Council v Price/ Kay v London Borough of Lambeth [2006] UKHL 10.

“[The issue is] whether a court which would ordinarily be bound to follow the decisions of another court higher in the domestic curial hierarchy is, or should be, no longer bound to follow that decision if it appears to be inconsistent with a later ruling of the court in Strasbourg.”