The Essence Of The Law Of Precedent

The Law of Precedent is a principle arising from stare decisis, Latin for “let the decision stand”. The basic concept is that a ruling reached in a previous case is to be considered as binding law to all proceeding cases with the same ratio decidendi. This essay will differentiate persuasive and binding precedents. It will evaluate the advantages and disadvantages of the Law of Precedence and then explore how the hierarchy of courts affects the doctrine.

There can be two types of precedent: binding and persuasive. A binding precedent acts as a law and therefore has to be applied to all proceeding cases that have the same case facts. A persuasive precedent is simply one that may be applied to proceeding cases however there is no legal obligation on the courts to do so. Determining whether a precedent is binding or persuasive depends on multiple factors. Firstly, to be binding, the case on trial must have the same set of basic facts upon which the judgement for the original case was based. These facts are the ratio decidendi. The ratio decidendi of a case is the prevailing fact on which the final ruling is given or the “reasoning behind the decision”. If the isolated ratios of both cases are the same, then the precedent would be binding. Case facts that are not the ratio decidendi may also be relevant when determining the nature of a precedent. Obiter dicta are the “things said in passing” but not the reasoning for a judicial decision. The obiter dicta of cases may be compared for a persuasive precedent however having the same obiter dictum as a preceding case does not make the previous judgement binding on the latter case. A precedent can only be persuasive if it is not binding. A binding precedent only constricts courts that are lower than or equal to the court where the judgement was passed.

Some limitations may apply to the doctrine. For each case there may be multiple previous cases that are cited, which can complicate and exhaust the Law of Precedent. This, however, can be regulated by orders such as those in R v Erskine, which stated that the referencing of cases should “avoid excessive citation of authorities” and the only authorities that could be cited were those that established a “principle rather than merely illustrating or restating it”. By following this order the number of judgements can be confined to a more manageable amount. Judicial precedent can also help avoid discrepancies and unfairness due to judge interpretation. It can, however, be difficult to determine what the ratio decidendi of a case is and therefore establishing the core principles might become subjective. The precedent may be ambiguous and assessing the original purpose for a ruling may be unclear. The thought process behind the judgement makes the precedent however if this is obscure, it may lead to a wrongful decision which can be slow and expensive to appeal and overturn by a court higher up in the hierarchy of courts.

The supreme court is the highest court, unless the case is concerning European Law, in which case the Court of Justice of the European Union has priority. Any judgements passed by the supreme court binds all lower courts. Although previously the Supreme Court (the House of Lords pre-2009) was bound by its own judgements, in 1966 a statement was issued saying that the House of Lords were no longer restricted by their own judgements. Judicial precedent has to be flexible to adapt to changing social conditions and public expectations. In R v Caldwell, the defendant committed arson while under the influence of alcohol. He was charged with being reckless under the ruling of an objective test. An objective test concludes that a person has

intention for a crime if the risk can be perceived by a reasonable person. The judgement was backed in R v Reid however was later overruled, as it was concluded that a person has the intention of a crime if he is able to perceive the risk himself (subjective test). The House of Lords stated that, in “hindsight”, the case law from Caldwell did not perform well in the “real word” and that “Jurors found it difficult to understand; it also sometimes offended their sense of justice”. This case is an example of how the Law of Precedent was yielded “exceptionally to changing public expectations”. In exceptional circumstances, such as this, it may be necessary to overrule a previous decision to maintain a fair system of justice, however, usually precedent helps maintenance of consistency across cases and fairness for all parties involved.

The Law of precedent helps to maintain a standard of the law. It minimises variance in the interpretation of the law by a judge and therefore enforces consistency in the system. This allows fair rulings as the same crimes are being punished in the same way. Another advantage of this is that the outcome of a trial may be predictable. This may allow the courts to save time as the relevant principles have already been established previously. Predictability of the outcome of a crime may also act as a deterrent as the likely punishment is explicit. Judgements based on precedent are more likely to be logical and the chance of a wrongful verdict is less likely to occur.