

PRECEDENT LECTURE

Last lecture – doctrine of precedent in the House of Lords.

London Tramways case. 1966 *Practice Statement*, Lord Gardiner – HL would depart from its own previous decisions. Key phrase – ‘where it appears right to do so’.

Precedent in the Court of Appeal (Civil Division)

Key case: *Young v. Bristol Aeroplane*

CA considered situations in which it would not be bound by its own previous decisions. Decided that it was normally bound, subject to three exceptions:

1. Own previous decisions conflict.

CA can choose which of the earlier decisions to follow.

Status of previous decisions is not affected. CA is not overruling its previous decisions – just attempting to reconciling by choosing which one to follow.

Can happen when CA is unaware of development in law or recent case.

Quite rare - e.g. on handout *NatWest v. Powney*.

2. Previous decision of CA has been implicitly overruled by HL

e.g. *Family Housing Association v. Jones* – CA refused to follow one of its own previous decisions because it was inconsistent with HL decision in *Street v. Mountford* – even though HL had not explicitly overruled previous CA authority, CA considered that it was bound by HL.

Can also happen when ‘leapfrog procedure’ comes into play – appeal directly from High Court to HL – quite an unusual circumstance.

3. Previous decision was made *per incuriam*

Per incuriam = Latin phrase meaning ‘through carelessness’

In *Morelle v. Wakeling* – decision made in ignorance or forgetfulness – i.e. without due regard for the law (CA made a mistake in coming to its previous decision)

Criminal Division

CA governed by the same exceptions as *Young v. Bristol Aeroplane*.

But following *R v. Gould* – CA has more flexibility in criminal cases because liberty of the individual is at stake. The court has due regard to ensure that individual’s rights are not adversely affected by its own previous decisions.