

Judicial precedent

Latin Maxim stare decisis	Stand by what has been decided and not unsettle the established
ratio decidendi	binding- reason for decision— keeps law accountable
obiter dicta	influences law— not binding “other things said”
Binding Precedent	decision from higher court binding lower court
persuasive precedent (weaker form of precedent)	Suggest court can be persuaded to a decision
application	
original precedent	no previous decision— judge may apply new rule - create new precedent
distinguishing precedent	existing precedent but does not apply in particular case— creating new case
overruling precedent	precedent before-INCORRECT

Statutory interpretation

literal rule	interpretation Of statute as it is. Doesn't matter if undesirable outcome. No consideration of intent of parliament
	strict application— fisher v bell (offering for sale offensive weapon, just displayed knife- not necessarily offer “invitation to treat”— Whitely v Chappell- person not guilty if impersonation to vote if man dead
advantage- legal certainty and predictability	disadvantage- absurd and impractical results. Ignores intent of parliament.

Statutory interpretation (cont)

Golden Rule	depart literal meaning if result absurd or unjust. Judges get flexibility
	narrow and broad interpretation
narrow	Adler v George— charged under Official Secrets act (amended later) “in vicinity” also interpreted in the area too
Broad	Re Sigsworth— murder mom as next in kin to inherit property. Exclude murderers from benefit
advantages— more flexible than literal rule. Keep in mind parliamentary intent	disadvantages— inconsistent and objective. Absurd is also not defined
Mischief Rule	determine what the “ mischief “ the law is trying to remedy
smith v Hughes	— soliciting towards street from window when statute said no soliciting “on street”- charged for offence using mischief approach keeping parliamentary intent
Advantage— flexible parliamentary intent	disadvantage— judicial law making, uncertain limited to context

Purposive approach

legislative intent	interpret laws to reflect purpose of parliament- why was it passed?- sense of broad interpretation- beyond precise wording. Look at objective
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Purposive approach (cont)

legislative history	Consider materials- parliamentary debate-committee reports- intent. Helped judges to understand mischief
broader context	Interpreting law in light of societal conditions
practical application	depart from strict literal meaning if fail to achieve legislative purpose
use of extrinsic aid	Hansard-Explanatory notes-- common law- law reform proposals
	material outside statute
intrinsic aids	inside statute- preambular language-headings-titles
the role of judges	more active- not just law enforcers- participants shaping law
compare with literal approach	
R v Secretary of state	human fertilisation and embryology act 1990-f cloning of embryos permitted? Emerged after passage of cloning technology
Ex parte Smith	1991 prisoner act- prisoner access to fam into
advantage-avoid absurd outcomes and justice better aligns with parliamentary intent-flexible and adaptable	disadvantage—n activist judiciary, their own views- democratic laws making

Statutory Interpretation

why is interpretation needed??	
ambiguity	words have multiple meanings
Broad terms	E.g. vehicles could be car or bike
drafting errors	esp is rushed legislature

Statutory Interpretation (cont)

technological changes	
changing use of language	Word meaning evolved e.g. "marriage"

Parliamentary law making

Bills

Drafting	done by MPs and govt dept.s or HOL members
Govt bills	drafted by Govt Dept.s
Private members bills	intro by MPs or Lords
Public bill	apply to whole country
private bill	Specific group or org
Hybrid bill	both private and public characteristics

Actual drafting

first reading	introduced to members of house. Bil's title and main objectives read out.
Second reading	debate and purpose. Main ideas. Support or oppose
	voted upon
committee stage	examine bill in detail—by public bill committee
	MPs can suggest amendments
report stage	amendments reviewed
	more detail, refinement
Third reading	final I version of bill— discussion and vote on final form
	bill passed t other house
review stage	Other house— possible ping pong
royal assent	both houses approve bill-formality



Advantages of parliamentary law making

Democratic legitimacy	laws in parliament democratically legit- MPs elected by public. Public has indirect input. Representative democracy Govt bills presented by ruling party
Debate	multiple times of debate and review-both houses structured process-reduce poorly drafted laws. Committee stage-detailed examination by experts
Accountability and parliamentary expertise	Parliamentary proceedings available to public-online- hold MPs accountable to constituents

Disadvantages of Parliamentary Law Making

process	cumbersome- time consuming-esp in emergencies-e.g covid legislature controversial law takes longer
Partisanship and Political Influence	ruling govt prioritised-tyranny of the majority-whip system
house of Lords	criticism of lack of democracy- unelected nature- to further limit power
private member bills	very limited parliamentary time- very likely to succeed due to lack of support and debate
ping pong effect	back and forth- delays-dilution of effectiveness

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Influences on parliament

political parties	Manifesto commitments have significant impact on ruling party typically controls legislative agenda- whip MPs into voting
Public opinion	MPs represent constituents- influence healthcare, crime, education-MPs pay attention to keep seat-media effects parliament
Pressure groups	groups seek to influence groups
role of media	powerful in setting public agenda. Raise awareness to issues. In-depth investigations
Law Commission	independent body that reviews and recommends reforms to the law—identifies outdated law-propose changes often done through parliament select committees-using evidence based recommendations



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Aids to statutory interpretation

Internal aids to interpretation

preamble legislative intent

section headings and marginal notes

interpretation ensure consistency
clauses

statutory definitions The Companies Act - uses terms director and company specifically defined

the context of the statute e.g. Pepper v Hart 1993 (hol used contextual debates to clear text statute)

External Aids

parliamentary materials e.g. Hansard -what was said during debate- not used as parliamentary intent should be derived from law

Explanatory notes docs intro into parliament may include insight and summary of bill- help understand mischief of statute

Law Reform Reports (white papers) typically published before enactment of legislation- importance context e.g. law commissions report of rape- helped shape sexual offences law

treaties and international law influence e.g. r v milleruksc interpreted euro communities act to take into account uks clpianc

textbooks and legal commentaries Provide judges with influential context- vital source of context

Delegated legislation con't

Advantages

saves parliamentary time

expertise— ministers with specific knowledge e.g. bylaws for transport, health, and safety

flexibility and speed—DL can quickly pass e.g. covid

easily updated—orders in council or SLS can replace existing legislature without fully going through parliamentary process

Democratic to extent-e.g. local authority elected by people

CONTROLS ON DL

parliamentary controls

enabling act

sets limit for delegated power - parliament can revoke in case of misuse of

Affirmative resolution

some SIs must be approved by parliament within 40 days

negative resolution

SI become law unless rejected within 40 days

preamble

legislative intent

Judicial controls over DL

procedural Ultra Vires

DL not following correct procedure
e.g. Aylesbury Mushroom Case

Substantive ultra Vires

Content of DL goes beyond given power
e.g. R v Home Secretary re Fir Brigade Union

wednesbury unreasonable

DL is plain irrational or unfair

