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Judicial Precedent: The first major use

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the doctrine of judicial precedent

Judicial precedent also called case

law. ‘ It is the system adopted by

judges where the judges follow

previous decisions. ’ 1It simply

means that the previous decision

made by judges in similar cases are

binding upon future cases depending

on the hierarchy of the court.

THE DOCTRINE OF JUDICIAL

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The doctrine of judicial precedent

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means that judges can refer back to previous decisions to help decide similar cases where the law and facts are alike. This doctrine is concerned with the influence and value of past decisions of case law and the judge's prior legal experience.

Advertisement. For the doctrine of judicial precedent to work, a hierarchy of courts is needed.

## What Is the Doctrine of Judicial Precedent?

Here, In 2010, Mr. Justice Peter, a higher court judge sitting alone in deciding a case which has similar material facts to one decided by the Court of Appeal in 2009. Based on the explanation of doctrine of judicial precedent and the example of cases above, therefore, he is bound to the decision made by the Court of

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have been told that there are similar  
materials facts to one decided by the  
Court of Appeal in year 2009. In year  
2010, similar case occurs and Mr.  
Justice Peter as the high court judge.  
Whether the decision decided by  
Court of Appeal is bounded or not,  
first of all we must understand the  
hierarchy of court structure in  
Malaysia and the theory of doctrine of  
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The doctrine of judicial precedent comes from the principle of stare decisis which means 'stand by decisions already made' and requires that like cases are treated alike. And in doing so provides consistency and continuity in the application of the law. There are two types of precedent: binding precedent and persuasive precedent.

## Understanding the Doctrine of Judicial Precedent

The doctrine of judicial precedent is based on stare decisis. That is the standing by of previous decisions. Once a point of law has been decided in a particular case, that law must be applied in all future cases containing the same material facts.

Judicial precedent - e-



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The doctrine of precedent means that the following of the legal principles made by the higher courts and the court of appeal in prior cases. Once judges in the higher court, normally means the House of Lords or the Court of Appeal make a decision to a case, it is come to binding precedent that the lower courts have to follow in the future cases as regards to share similar facts.

How the Doctrine of Precedent Operates - LawTeacher.net

Doctrine of ‘ Per Incuriam ’ : Critical Analysis based on Precedents.

Meaning: According to the Black ’ s Law Dictionary (Fourth Edition, 1891) per incuriam means through inadvertence. The word ‘ incuria ’ literally means ‘ carelessness ’ . [1]

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The purport of the doctrine of per incuriam is that, a decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute, or of a rule having the force of a statute. [2] ‘ .

Doctrine of ‘ Per Incuriam ’ : Critical Analysis based on ...

Judicial precedent means the process whereby judges follow previously decided cases where the facts are of sufficient similarity. The doctrine of judicial precedent involves an application of the principle of stare decisis ie, to stand by the decided. In practice, this means that inferior courts are bound to apply the legal principles set down by superior courts in earlier cases.

The Doctrine of Judicial Precedent

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The modern doctrine of

‘ Precedent ’ is subject to a series of presumptions; Cases with the same or similar material facts should be decided in the same way; Decisions made in higher level courts carry

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greater weight than those lower in the hierarchy. Therefore, a court is normally bound by courts which are higher or equal to them;

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INDEPENDENCE • According to  
section 212 of the Government of  
India Act, 1919, the Law laid down by

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the Federal Court and the judgment of the Privy Council was binding on all courts of the British India. Hence, Privy Council was supreme judicial authority. 5.

## Precedents

The doctrine of Judicial Precedent is founded on the principle of ‘ stare decisis ’ , meaning to stand by the decision. Essentially it refers to the idea that once a court makes a decision, both they and other courts beneath them are bound by that decision, except for in certain, limited circumstances.

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precedent Stare decisis The basic principle that a court is bound to follow decisions in former cases, both those from a court of higher authority and (usually) its own. For England see Practice Note (Judicial Precedent) 3 All ER 77

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What is the justification for following precedents? Are judicial pronouncements on precedent rules, or just conventions? Contributors to this book address these and other intriguing questions vital to the understanding and interpretation of precedent and the workings of law.

Examines the legal bases of slavery and the long-term effects of the case on the American political, legal and judicial systems

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This book charts the history of civil litigation in America from the 17th century to today, using key cases that illustrate the central theme of lawsuits in different periods of U.S. history, and enabling readers to explore and understand key questions in American life and culture through the changing nature of how and why we sue one another.

This fourth edition of Precedent in English Law presents a basic guide to the current doctrine of precedent in England, set in the wider context of the jurisprudential problems which any treatment of this topic involves. Such problems include the nature of *ratio decidendi* of a precedent and of its binding force, the



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significance of precedents alongside other sources of law, their role in legal reasoning, and the account which must be taken of them by any general theory of law. Considerable re-writing has been undertaken to update case-law and take account of the possible implications for the doctrine of precedent of the impact of European Community law, making it an indispensable work of reference for readers interested in the past history, present state, and future developments of English rules of precedent.

This article seeks to displace the traditional concept of precedent as based upon textual reasoning with a concept of *imago decidendi* or the binding image of a prior decision.

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Hong Kong has a curious mixture of laws old and new, written and unwritten, home-grown and imported. Made by various bodies in various ways with various results, these laws constitute a reasonably coherent body of rules, principles, practices, procedures, assumptions, and attitudes. How are these differing sources of law best described and explained? How are they mobilized and employed? How do they achieve the coherence they seem to display,

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and can that coherence be maintained? Such are the questions which this book seeks to illuminate. They are vital questions for a legal system undergoing significant change at a crucial time in the political development of Hong Kong.

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