

Flashcards: Judicial precedent

<p>Donoghue v Stevenson (1932) (Original precedent)</p>	<ul style="list-style-type: none"> • Mrs Donoghue went to a café with a friend, who bought her ginger beer • Beer was in a dark glass => no visibility • There was a decomposing snail in the beer => physical and psychological injuries • Café couldn't be sued for negligence; manufacturer was sued for owing duty of care to the consumer
<p>Grant v Australian Knitting Mills (1936) (Binding precedent)</p>	<ul style="list-style-type: none"> • Dr Grant purchased two sets of woollen pants • Due to chemicals in the pants he got a skin disease called dermatitis • Based on Donoghue v Stevenson; manufacturer owes a duty to the customer
<p>R v R (1991) (Persuasive precedent)</p>	<ul style="list-style-type: none"> • A husband and a wife were married; the husband raped her under the law couldn't be guilty of rape • It was assumed that under the act of a marriage rape was a legal sexual intercourse; HofL ruled that due to social change of moral; wife didn't consent to intercourse => husband was guilty
<p>Austin v London Borough of Southwark (2010) (Agreed that the Practice Statement should still be used in the Supreme Court)</p>	<ul style="list-style-type: none"> • The appellant (A) was the brother of D who was a secure tenant • In 1986 the Council had brought a claim against the tenant for possession on the basis of unpaid rent • The deceased tenant did not pay the arrears and thus on 4 March 1997 the order became enforceable • A suffered from a chronic illness and had moved into his brother's property and became his full time carer => A died in 2005 • Following the death of the brother, the Council served a notice to quit on the appellant, and then issued County Court proceedings which were stayed pending this appeal
<p>Conway v Rimmer (1968) (First use of the Practice Statement; concerned a technical point after discovery of documents)</p>	<ul style="list-style-type: none"> • D became a police constable in 1963 • In 1964 a colleague of his lost his torch; the torch was found in D's locker • D was urged to resign, but refused to

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<p>Herrington v British Railway Board (1972) (Original precedent; challenged the 'Addie v Dumbreck' case)</p>	<ul style="list-style-type: none"> • A 6 year old boy was electrocuted and suffered severe burns when he wandered from a play park onto a live railway line • The railway line was surrounded by a fence however, part of the fence had been pushed down and there was a gap • D was aware of the gap in the fence, but had failed to do anything about it • House of Lords departed from their previous decision using the 1966 Practice Statement and held that D railway company did owe a duty of common humanity to trespassers
<p>Jones v Secretary of State for Social Services (1972) (Certainty of Practice Statement is more important)</p>	<ul style="list-style-type: none"> • Concerned National Insurance contributions • Case involved the interpretation of the National Insurance Act 1946 • 4 out of 7 judges hearing the case regarded the earlier decision in <i>Re Dowling</i> 1967 as being wrong
<p>Pepper v Hart (1993) (allowed the use of Hansard)</p>	<ul style="list-style-type: none"> • The House of Lords had to decide whether a teacher at a private school had to pay tax on the perk he received in the form of reduced school fees • The teacher relied upon a statement in Hansard made at the time the Finance Act was passed in which the minister gave his exact circumstance as being where tax would not be payable • Challenged the 'Davis v Johnson' case; concerned the use of extrinsic aids in statutory interpretation
<p>R v Shivpuri (1986) (first use of Practice Statement in a criminal case)</p>	<ul style="list-style-type: none"> • D was persuaded to act as a drugs courier • D collected a suitcase which contained several packages of white powder which he admitted in police interview that he believed to be either heroin or cannabis but was in fact legal snuff (the white powder = not drugs) • D was convicted of attempting to be knowingly concerned in dealing with and harbouring the controlled drug of heroin • Challenged the 'Anderton v Ryan' case • Concerned attempts to do the impossible
<p>R v G and R (2003)</p>	<ul style="list-style-type: none"> • The two Ds went camping for a night without their parents' permission => Ds found some old newspapers outside the Co-op which they lit with a lighter and then threw them under a wheelie bin • They then left without putting them out assuming they would naturally burn out, BUT the burning newspapers set light to the wheelie bin and the fire spread to the Co-op shop and caused over £1m of damage • Challenged 'Caldwell' case; right to use the Practice statement • Concerned recklessness in criminal law and objective recklessness

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<p style="text-align: center;">Young v Bristol aeroplane Co Ltd (1944)</p> <p>(Governs the position of the Court of Appeal in relation to the use of its precedents)</p>	<ul style="list-style-type: none"> • The plaintiff, who was employed at the defendants' workshops, received injury in an accident arising out of and in the course of his employment and received compensation under the Workmen's Compensation Acts • He then sought to obtain damages in respect of the same accident, alleging that the defendants, in breach of their statutory duty, had failed to fence one of their machines which he was using • The plaintiff is thereby barred from recovering damages in respect of the said accident
<p style="text-align: center;">R v Taylor (1950)</p> <p>('misapplied/misunderstood' Court of Appeal Divisions)</p>	<ul style="list-style-type: none"> • D's liberty was at stake • Court of Appeal refused to follow its past decisions
<p style="text-align: center;">Balfour v Balfour (1919)</p> <p>(Distinguishing of cases)</p>	<ul style="list-style-type: none"> • A husband worked overseas and agreed to send maintenance payments to his wife • At the time of the agreement the couple were happily married • The relationship later soured and the husband stopped making the payments • The wife sought to enforce the agreement
<p style="text-align: center;">Merritt v Merritt (1971)</p> <p>(first use of Practice Statement in a criminal case)</p>	<ul style="list-style-type: none"> • A husband left his wife and went to live with another woman • There was £180 left owing on the house which was jointly owned by the couple • The husband signed an agreement whereby he would pay the wife £40 per month to enable her to meet the mortgage payments and if she paid all the charges in connection with the mortgage until it was paid off he would transfer his share of the house to her • When the mortgage was fully paid she brought an action for a declaration that the house belonged to her
<p style="text-align: center;">Miliangos v George Frank Textiles LTD (1976)</p> <p>(Challenged the 'Caldwell' case; right to use the Practice statement; concerned recklessness in criminal law and objective recklessness)</p>	<ul style="list-style-type: none"> • Miliangos was a Swiss textile producer who sold and delivered textiles to George Frank Ltd, textile trade located in England • George Frank refused to pay for the textiles Miliangos sued George Frank in England for the amount of the debt in the currency of the contract which was Swiss francs • Over the time of the litigation the exchange rate between the Swiss franc and the pound had dropped dramatically • The traditional rule required that the debt in Swiss francs be converted to pounds on the date of breach => Miliangos would lose a significant amount of the value of the money owed if paid in pounds due to the exchange rate

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<p>R v Gould (1968)</p>	<ul style="list-style-type: none">• D pleaded guilty to bigamy, then sought to withdraw the guilty plea on taking advice from Counsel on the grounds that at the time of his second marriage he held an honest and reasonable mistaken belief that a decree absolute had been granted dissolving his first marriage• Court refused him to withdraw his guilty plea on the grounds that according to the case of R v Wheat (1921) an honest and reasonable mistaken belief that the marriage had been dissolved was no defence
<p>R v Spencer (1985)</p>	<ul style="list-style-type: none">• The judges said that there should not in general be any difference in the way that precedent was followed in both divisions of the Court of Appeal• 'we must remember that we may be dealing with the liberty of the subject and if a departure from authority is necessary in the interests of justice to an appellant, then this court should not shrink from so acting'