

Government ministers such as the Home secretary may have the power provided to him by an Act of parliament to make substantial changes, such as regulating immigration criteria or the category of a narcotic.

The procedure from Bill to Statute

Either the Government or an individual member of parliament can introduce a Bill into the House of Commons. It might be a Bill to reintroduce hanging for certain types of offences.

First stage of passage. Called the first reading.

The Bill is entered and read to the house, and is printed and published.

Second stage of passage. Called the second reading.

The parliamentary representatives debate the Bill in the house.

Third stage. Called the committee stage. The Bill may be examined by a committee representing the house or examined by separate committee's representing the various political parties of the house. The purpose is to present to the house detail and possible amendments to the proposed Bill.

Fourth stage. Called the report stage.

The house debates and votes on any amendments to the Bill.

Fifth stage. Called the third reading.

The House debates the Bill as amended and votes to accept or reject.

Sixth stage. The Bill goes to the House of Lords where it is debated and follows a similar procedure as in the House of Commons. The House of Lords may propose amendments to the Bill, in which case it must go back to the House of Commons for approval. The house may approve or disapprove, and the House of Lords will either finally accept the Bill as from the House of Commons, or exercise its option to reject it. In practise the house of lords nearly always accepts the final Bill from the House of Commons, after which the Bill will be given the Royal assent and become Law.

The Courts

Acts of parliament and secondary regulations can be complicated and open to different interpretation, often resulting in a practise or official decision which may appear to be contrary to the intended purpose of the Act. We often hear of an individual or minority group challenging such a decision in the courts. Where this occurs, the courts may decide that an Act of parliament has been interpreted in such a way that it does not reflect the intention of the Act, or that it does not lie in the public interest to be interpreted in the particular set of circumstances in question.

As our society constantly evolves, the importance of some Laws diminish, whilst the importance of others becomes enhanced. The courts reflect this by means of sentencing, and also by their mirroring of growing public concerns such as pornography, child abuse, and public disorder. In recent years, media pressure has influenced the courts towards increased awareness of public concern regarding certain crimes, bringing both these crimes and the punishments thereof into focus.

A point of Law is a phrase often heard; we have all heard of cases where a defendant has walked free, due to incompetence in the carrying out of police procedures, or the gathering and/or presentation of evidence to the court. The courts must ultimately decide whether a case can be continued in the given circumstances. The courts are bound by their own rules, and must ensure that these rules are scrupulously followed, as a defendant may appeal against a decision to a higher court to have the case reviewed.

Where a decision is contested, it will go to a higher court of appeal, and that higher court will then be asked to reach a more binding decision. If, following this appeal, the defendant remains dissatisfied, there may be further appeals to a higher court, and even perhaps to the highest court in the UK, the House of Lords, who's final and binding decision must be recognised by all lower courts.

Whenever a higher court (that being a court higher than the magistrate/crown and county courts) makes a decision regarding a point of law, that decision becomes what is known as a PRECEDENT (**stare decisis**) and other courts who are later to deal with a similar case will be bound by that decision. Stare decisis is defined as, "let the decision stand", and will apply only to the relevant facts of the case that are similar to the case which provided the precedent. The cases may differ; the part of the case that is bound by the precedent is called the (**ratio decidendi**).

Example: the defendant has been charged with the possession of an illegal firearm, and is being prosecuted in the Crown court. Some component parts of this Firearm were missing. The Judge had accepted from the prosecution that this implement nonetheless constituted a firearm. The defence disagreed, offering evidence in support of its claim from the Armed forces, who stated that according to their manuals a firearm was not a firearm if these component parts had been removed. The defendant was found guilty and duly sentenced to five years.

An appeal was lodged on the ground that the judge had interpreted the law of what constitutes a firearm incorrectly.

The higher court of appeal would have heard complex argument from the prosecution and defence, debating the matter in depth, and then might have decided that the firearm was indeed a firearm. On the other hand, the higher court might have found that, absent these vital components, the object in question was not a firearm in that it had been rendered incapable of inflicting grievous bodily harm. Whatever the court's decision, it will be recorded in great detail as to what constitutes a firearm, and all lower courts of the land will then be bound to define a firearm according to this decision, the precedent. The defence could still appeal to a yet-higher court, but this appeal would in all likelihood fail to be heard, as having been dealt with previously and conclusively.

Sometimes a Judgement may be theoretical, the judge speculating as to what his decision would have been had certain facts been different. This is called (*obiter dictum*) "by the way".

It does not create a precedent, but other courts might follow the *obiter dictum* of a previous case, especially if made in a superior court or by an eminent judge.

There are occasions where a court may not wish to be bound by a precedent set by a higher court, in which case the court will have to show that the facts of the present case are substantially different, to the extent that the precedent (**ratio**) is in fact only (**obiter dictum**) and therefore not binding.

This is called distinguishing the precedent. As you can imagine, to distinguish a precedent can result in lengthy debate and court time.

There are occasions where the court decides that a precedent from a higher court will not be binding because the precedent had been made through lack of care, i.e. the court may not have accounted for earlier precedents, or had misinterpreted an Act of parliament.

This is called (**per incuriam**); as the student might well surmise, this is a rare event, and reflects on the quality of prior judicial findings.

The courts must interpret Acts of Parliament, ascertaining the intentions underlying these Acts where applicable to cases before them.

Judges must reach these decisions; ideally, all Acts of parliament would be entirely clear and unambiguous, dealing with all events, but unfortunately society finds new and untested situations for the courts, and although the judge has the Act, and ratio and obiter before him, it may not suffice, compelling the judge to use his knowledge and experience to interpret the underlying intentions of the Act. Recent examples of this have been cases involving human embryology and fertilisation.

How does the Judge apply interpretation and intention?

Generally judges follow three rules to interpret an Act of parliament and ascertain intention.

They are: The Literal rule. The Golden Rule. The Mischief Rule.

The Literal Rule

The words used in the Act are intended to have their own ordinary and natural meaning.

Example: If the Act stated “Only men standing over six feet tall can purchase Tobacco,”

Could a man wearing heeled boots to achieve this height purchase tobacco?

Literally, it would appear he can.

The Golden Rule

The words used do not by their own ordinary and natural meaning create an absurd or totally repugnant meaning, the result being contrary to the public good.

Absurd. In the above Example: The judge would in all likelihood conclude that the interpretation is absurd and may decide that six feet tall can only include a heel up to 1 inch in depth.



STUDENT NOTE: If this had been a case decided on appeal in a higher court, then a precedent would have been created, and any similar cases would thenceforth be bound by it. However, if a man were being prosecuted for purchasing tobacco, having been under six feet tall wearing 3 inch heels, but who recently suffered a curvature of the spine following a road accident reducing his height, then there would be reason to distinguish the use of the earlier precedent. This man’s legal representative would argue that The Act did not apply to him, as he met the statutory height requirements prior to his accident.

Repugnant:

Example: The case of a man who hires an assassin to shoot his wife, in order to benefit from her Will, and theoretically after a term of imprisonment, starting life anew with a sizeable nest egg. Although the Law states that the husband is absolutely entitled to inherit under his spouse’s Will, and this is indeed the literal interpretation of the Administration of estates Act 1925, the court decided that this was totally repugnant, and the husband would not inherit.

The Mischief Rule

This rule applies when an Act has been passed to deal with a specific problem in the community.

The courts are then expected to interpret the act for the good of the community as a whole.

An example might be an Act passed to stop soliciting on the pavement.

If then, the soliciting took place in the front gardens directly abutting pavements, the literal rule places this conduct within the law, the golden rule may not deem it absurd, but the mischief rule would take account of the overriding problem which the statute was enacted in order to overcome. One solution might be to redefine the word “pavement”, defining it for the purposes of this Act to encompass that area of a public right of way from which solicitation must not be seen or heard or advocated in any form. Hence creating a precedent.

European Community

European Community Law is becoming an increasing influence on English Law.

In 1972, European Law was incorporated into the legal system of the United Kingdom.

Thus, all courts in the UK are bound by EC law, meaning that when parliament makes new laws it must take account and interpret our laws to abide by EC law.

The European Court of Justice binds all UK courts on matters relating to EC law.

The European Court of Human rights and the treaty has been incorporated into our law under the Human Rights Act 1998 and gives the right to uphold ones rights under this treaty, in our own courts and legal procedures.

Consequently, appeals on matters relating to EC Law can now move a step further than the house of lords, to be dealt with by the European Court of Justice who’s decision will be binding on all English courts.

Let us summarise the court structure regarding Precedent

A precedent is a decision made by a court that will bind all courts of a lower level.
(there are some exceptions, the complexities of which lie beyond the scope of this course).

The courts are bound by a precedent unless the facts of the case currently being heard before it can be distinguished.