The literal rule

According to this rule, the working of the Act must be construed according to its literal and grammatical meaning whatever the result may be. The same word must normally be construed throughout the Act in the same sense, and in the case of old statutes regard must be had to its contemporary meaning if there has been a change with the passage of time.

The Law Commission, in an instructive and provocative report on the subject of interpretation (Law Com 21), said of this rule that 'to place undue emphasis on the literal meaning of the words of a provision is to assume an unattainable perfection in draftsmanship'.

The rule, when in operation, does not always achieve the obvious object and purpose of the statute. A classic example is *Whiteley* v *Chappell* (1868–9) 4 LRQB 147. In that case a statute concerned with electoral malpractices made it an offence to personate 'any person entitled to vote' at an election. The defendant was accused of personating a deceased voter and the court, using the literal rule, found that there was no offence. The personation was not of a person entitled to vote. A dead person was not entitled to vote, or do anything else for that matter. A deceased person did not exist and could therefore have no rights. It will be seen, however, that the literal rule produced in that case a result which was clearly contrary to the object of Parliament.

The golden rule

This rule is to some extent an extension of the literal rule and under it the words of a statute will as far as possible be construed according to their ordinary plain and natural meaning, unless this leads to an absurd result. It is used by the courts where a statutory provision is capable of more than one literal meaning and leads the judge to select the one which avoids absurdity, or where a study of the statute as a whole reveals that the conclusion reached by applying the literal rule is contrary to the intentions of Parliament.

Thus, in *Re Sigsworth* [1935] Ch 89 the court decided that the Administration of Estates Act 1925, which provides for the distribution of the property of an intestate amongst his next of kin, did not confer a benefit upon the person (a son) who had murdered the intestate (his mother), even though the murderer was the intestate's next of kin, for it is a general principle of law that no one can profit from his own wrong.

The ejusdem generis *rule*

This is a rule covering things of the same genus, species or type. Under it, where general words follow particular words, the general words are construed as being limited to persons or things within the class outlined by the particular words. So in a reference to 'dogs, cats, and other animals', the last three words would be limited in their application to animals of the domestic type, and would not be extended to cover animals such as elephants and camels which are not domestic animals in the UK.

Expressio unius est exclusio alterius

(The expression of one thing implies the exclusion of another.) Under this rule, where specific words are used and are not followed by general words, the Act applies only to the instances mentioned. For example, where a statute contains an express statement that certain statutes are repealed, there is a presumption that other relevant statutes not mentioned are not repealed.

Noscitur a sociis

(The meaning of a word can be gathered from its context.) Under this rule words of doubtful meaning may be better understood from the nature of the words and phrases with which they are associated.

Gardiner v *Sevenoaks RDC*, 1950 – The mischief rule (**25**)
Keene v *Muncaster*, 1980 – The golden rule (**26**)
Lane v *London Electricity Board*, 1955 – The *ejusdem generis* rule (**27**)
R v *Immigration Appeals Adjudicator, ex parte Crew*, 1982 – The rule of *expressio unius* (**28**)
Muir v *Keay*, 1875 – The rule of *noscitur a sociis* (**29**)

Compatibility with Convention on Human Rights

As we have seen in the overview of the Human Rights Act 1998, in Chapter 3, s 3 of that Act provides that, as far as it is possible to do so, both primary and subordinate legislation must be read and given effect in a way which is compatible with Convention rights. The section applies to past as well as future legislation and the court is not bound by previous interpretations of past legislation in terms of Convention rights. This has implications for the rule of precedent (see Chapter 7) under which judges generally follow previous decisions. It may be that a Crown Court will be obliged to refuse to follow a previous ruling of the Court of Appeal or the House of Lords where this is required in order to give effect to Convention rights. It is expected that the courts will in almost all cases be able to interpret UK legislation compatibly with Convention rights.

Other considerations and presumptions

In addition to the major rules of interpretation, there are also several other considerations which the court will have in mind.

Use of *Hansard*

In general terms, the court will concern itself only with the wording of the Act and will not go to *Hansard* to look at the reports of debates during the passage of the Act.

There is here some conflict with the mischief rule, since it might be thought there is no better way to ascertain what mischief the Act was designed to prevent than by reference to the Parliamentary debates in *Hansard*. Nevertheless, the Law Commission in their deliberations on the matter of statutory interpretation had decided against the use of *Hansard* since they doubted the reliability of statements made in Parliamentary debates.

The general rule that *Hansard* should not be referred to as an aid to interpretation was relaxed in *Pepper* v *Hart* [1993] 1 All ER 42. The House of Lords held that reference to *Hansard* should be allowed where:

(*a*) the legislation is ambiguous or obscure or where a literal interpretation would lead to an absurdity. The House of Lords subsequently made it clear that this condition must exist before reference to *Hansard* can be made and that the judiciary has no general power to refer (see *R* v *Secretary of State for the Environment, ex parte Spath Holme Ltd* [2001] 1 All ER 195);
(*b*) the material which is referred to consists of statements by a Minister or other promoter of the Bill together with such other Parliamentary material as is necessary to understand the statements and the effects of them;
(*c*) the statements relied upon are clear.

Their Lordships held that the above references would not contravene parliamentary privilege.

The House of Lords decided in *Davis* v *Johnson* [1978] 1 All ER 1132 that it is now permissible for the court to refer to reports by such bodies as the Law Commission and committees or commissions appointed by the government or by either House of Parliament from which the reform of the law stems.

However, according to the judgments, e.g. that of Lord Diplock, 'Where legislation follows on a published report of this kind the report may be used as an aid to identify the mischief which the legislation is intended to remedy but not for the purpose of construing the enacting words . . .'. In other words, the relevant report can assist in terms of what the legislation was designed to do but not whether the words it uses achieve it.

Of course, it may be the case that a reference to *Hansard* will not clarify the position. For example, in *R* v *Deegan (Desmond Garcia)* [1998] 1 CLY 966 the defendant appealed against his conviction for possessing a bladed knife in a public place. The issue was whether the type of knife he was carrying came within the scope of s 139 of the Criminal Justice Act 1988 under which he was charged. On referring to *Hansard*, it was discovered that ministerial statements were not consistent and of no assistance, so knives of a type described in earlier case law relating to bladed articles were followed, and the defendant's appeal to the Court of Appeal failed.

No retrospective effect or alteration of existing law

A statute is presumed not to alter the existing law unless it expressly states that it does. There is also a presumption against the repeal of other statutes and that is why statutes which are repealed are repealed by specific reference.

In the absence of any express indication to the contrary, a construction which would exclude retrospective effect is to be preferred to a construction which would not. Thus in *Alexander* v *Mercouris* [1979] 3 All ER 305, where the claimant sued the defendant for alleged defective workmanship in the conversion of two flats, the claimant tried to bring his case under the Defective Premises Act 1972 (see further Chapter 21) which came into force on 1 January 1974. However, it appeared that the defendant commenced the work in November 1972 and it was held by the Court of Appeal that no claim could be brought under the Act as the Act could not be construed as having retrospective effect. Some Finance Acts do have retrospective effect in terms of taxation.

Miscellaneous rules

When a statute deprives a person of property, there is a presumption that compensation will be paid. Unless so stated it is presumed that an Act does not interfere with rights over private property. There is a rebuttable presumption against alteration of the common law. Any Act which presumes to restrict private liberty will be very strictly interpreted, though the strictness may be tempered in times of emergency. It is presumed that an Act does not bind the Crown on the ground that the law, made by the Crown on the advice of the Lords and Commons, is made for subjects and not for the Crown. Furthermore, as we have seen, the courts lack the power to examine proceedings in Parliament in order to determine whether the passing of an Act has been obtained by means of any irregularity or fraud (see *British Railways Board* v *Pickin* (1974)).

Purposive interpretation

However, the Law Commissioners have recommended that more emphasis should be placed on the importance of interpreting a statute in the light of the *general purposes behind it and the intentions of Parliament*. This is referred to as a purposive interpretation. Thus in *Fletcher* v

Budgen [1974] 2 All ER 1243 the Divisional Court of Queen's Bench decided that under the Trade Descriptions Act 1968 a buyer of goods, in this case a car dealer, could be guilty of the offence of falsely describing goods when he told a private seller that his car was almost worthless, bought it, repaired it and sold it at a considerable profit. Lord Widgery, CJ said that although he had never thought of the Act as applying to buyers of goods, it was necessary in the public interest that it should, at least in the case of expert buyers, and that in his view such decision 'is not in any sense illogical and is not likely to run counter to any intention which Parliament may have had'.

In *Knowles* v *Liverpool City Council* [1993] 1 WLR 1428 a council employee was injured while handling a defective flagstone. He was awarded damages under the Employers' Liability (Defective Equipment) Act 1969. The council appealed on the grounds that a flagstone was not 'equipment' under the Act; the matter reached the House of Lords which said that it was equipment. The purpose of the Act was to protect employees from exposure to dangerous materials.

Again, in *Inco Europe Ltd* v *First Choice Distribution* [2000] 1 WLR 586 the House of Lords discovered a drafting error in the Arbitration Act 1996 which prevented a right of appeal from a decision of the High Court. The House of Lords ruled that the Act should be interpreted as allowing the appeal since this was the intended purpose of the legislature.

However, as Lord Scarman said in *Shah* v *Barnet London Borough Council* [1983] 1 All ER 226 at p 238: 'Judges may not interpret statutes in the light of their own views as to policy. They may, of course, adopt a purposive interpretation if they can find in the statute read as a whole or in material to which they are permitted by law to refer as aids to interpretation an expression of Parliament's purpose or policy.'

Rules of interpretation tend to some extent to cancel each other. Thus by using one or other of these rules judges can be narrow, reformist, or conservative. In fact Pollock, in his *Essays in Jurisprudence and Ethics*, suggests:

> English judges have often tended to interpret statutes on the theory that Parliament generally changes the law for the worse and that the business of the judges is to keep the mischief of its interference within the narrowest possible bounds.

It must be said that this comment applies particularly to judicial interpretation of welfare law where they have sometimes been reluctant to fill in gaps in order to make the law work, whereas if the Act is in the field of 'lawyers' law, then they have been prepared to do precisely this in order, for example, to convict a guilty person of a crime. This is, however, not surprising since judges are the product of a legalistic training and are clearly ill-equipped to pronounce upon welfare law, whereas in crime, for example, they are dealing with rules which they better understand so that they feel less reluctant to fill in gaps. There is now, of course, a much wider training of the judiciary that may overcome this problem.

Explanatory Notes

The Department of State sponsoring the Bill now produces Explanatory Notes at least for major Bills. These are available for purchase through the Stationery Office and state clause by clause and in ordinary language the provisions of the Bill. However, the Notes are prefaced with the warning that they are not part of the Bill and have not been endorsed by Parliament. They are not judgemental and are in no sense binding on a court in terms of the interpretation of the Bill once it becomes law. Nevertheless, they are useful to professionals and those in business as a means of understanding quickly the aims and intentions of the legislation.

7

THE LAW-MAKING PROCESS II: CASE LAW AND THE LEGISLATIVE ORGANS OF THE EUROPEAN UNION

We are concerned in this chapter to explain the methods by which the judiciary become involved in the law-making process and the effect of European Union legislation – how it is made and interpreted, together with the official bodies involved in law reform.

Case law or judicial precedent

Case law still provides the bulk of the law of the country, although Parliament is becoming much more active in making new laws and statute law may come to dominate the common law. This trend is, of course, encouraged by the existence of the Law Commission which is constantly putting forward proposals to codify the law by statute. Some case law states the law itself, and some is concerned as we have seen with the interpretation of statutes. We will examine here case law which is law in its own right. Case law is built up out of precedents, and a precedent is a previous decision of a court which may, in certain circumstances, be binding on another court in deciding a similar case. This practice of following previous decisions is derived from custom, but it is a practice which is generally observed. As Park, CJ said in *Mirehouse* v *Rennell* (1833) 1 Cl & Fin 527, 'Precedent must be adhered to for the sake of developing the law as a science.' In more modern times attention to precedent is essential because without it no lawyer could safely advise his client and every quarrel would lead to a law suit. Even in early times the itinerant judges adopted the doctrine of *stare decisis* (abiding by precedent), and this doctrine has been developed in modern times so that it means that a precedent binds, and must be followed in similar cases, subject mainly to the power to distinguish cases in certain circumstances, though there are other exceptions listed later in this chapter.

The modern doctrine of the binding force of judicial precedent only fully emerged when there was (*a*) good law reporting, and (*b*) a settled judicial hierarchy. By the middle of the nineteenth century law reporting was much more efficient, and the Judicature Acts 1873–75 created a proper pyramid of authority which was completed when the Appellate Jurisdiction Act 1876 made the House of Lords the final Court of Appeal. Judicial precedents may be divided into two kinds:

- binding precedents;
- persuasive precedents.

Before we explain the precise meaning of these terms, we have still to find out where these precedents are to be found. The answer is in the law reports, and, as we have seen, the doctrine of judicial precedent depends upon an accurate record being kept of previous decisions.

Law reports

Since 1865 law reports have been published under the control of what is now called the Incorporated Council of Law Reporting for England and Wales, which is a joint committee of the Inns of Court, the Law Society and the Bar Council. They are known simply as the Law Reports, and they have priority in the courts because the judge who heard the case sees and revises the report before publication. Nevertheless, private reports still exist, and of these the All England Reports, published weekly and started in 1936, are the only *general* reports existing in the private sector. These reports are now revised by the judge concerned with the case. The All England series now includes specialist reports entitled *Commercial Cases*, also *European Cases*, together with the *All England Direct* online service. The citation of the first reports is, e.g. [2000] 1 All ER 10 (Comm), the second is cited, e.g. [2000] All ER (EC) 10, and the online reports are cited, e.g. [2000] All ER (D) 10.

In 1953 the Incorporated Council began to publish reports on a weekly basis and these are known as the Weekly Law Reports. *The Times* newspaper publishes summarised reports of certain cases of importance and interest on the day following the hearing, as do other newspapers, e.g. the *Financial Times*, the *Independent* and the *Guardian*, and there are also certain specialised series of reports covering, for example, the fields of taxation, shipping, company law and employment law. In a Practice Direction in 1990 (see *The Times*, 7 December 1990) the Master of the Rolls stated that in the House of Lords and the Court of Appeal the general rule was that the Law Reports published by the Incorporated Council of Law Reporting should be cited in preference to other reports where there was a choice. It is not absolutely essential that a case should have been reported in order that it may be cited as a precedent, and very occasionally oral evidence of the decision by a barrister who was in court when the judgment was delivered may be brought.

Citation of unreported cases

The issue of the citation of unreported cases was raised by Lord Diplock in the House of Lords in *Roberts Petroleum* v *Bernard Kenny* [1983] 1 All ER 564, and Sir John Donaldson, MR in *Stanley* v *International Harvester* (1983) *The Times*, 7 February. These have become readily available since the Lexis Computer Retrieval System, among others, came into use. Lexis records, for example, 3,000 Court of Appeal decisions a year. Of these only some 350 are reported in any of the major series such as All England, and Weekly Law Reports. These, as we have seen, are edited by the judge(s). Both judges seemed determined to discourage the growing resort by counsel to unreported cases. Indeed, in the *Stanley* case the view was that counsel should beware of citing to the courts cases which are of no great novelty or authority, but which are supplied in unnecessary profusion by computers.

Also relevant is a Practice Statement issued in May 1996 by the Master of the Rolls. It states that leave to cite unreported cases before the Court of Appeal will not usually be granted unless counsel can assure the court that the trial transcript in question contains a relevant statement of legal principle not found in reported authority and that among other things the unreported authority is not being cited as an illustration of an established legal principle.

In this connection, the case of *Hamblin* v *Field* (2000) *The Times*, 26 April is instructive. In hearing a bankruptcy case, the judge had been given a summary of what was a recent case. There was later an appeal to the Court of Appeal which commented on the citing of such

summaries. The one in question was a Lawtel summary. Lord Justice Peter Gibson said that the object of these summaries was merely to give practitioners notice via computer that a particular case in a particular area of law had been decided. It did not appear from the summary whether the judgment was summarised by a professional lawyer still less a member of the Bar (as is usual). The intention was that Lawtel should be contacted to obtain a copy of the complete judgment. The practice of using such summaries should not be tolerated.

Reference to decided cases

Decided cases are usually referred to as follows: *Smith* v *Jones*, 1959. This means that, in a court of first instance, Smith was the claimant, Jones the defendant, and that the case was published in the set of reports of 1959, though it may have been heard at the end of 1958. This is called the 'short citation'. A longer citation is required if the report is to be referred to, and might read as follows: *Smith* v *Jones* [1959] 1 QB 67 at p 76. The additional information means that the case is to be found in the first volume of the Reports of the Queen's Bench Division, the report commencing on page 67, the number 76 being used to indicate the page on which an important statement is to be found. Where the date is cited in square brackets, it means that the date is an essential part of the reference, and without the date it is very difficult to find the report in question. For many years now the Incorporated Council's reports have been written up in a certain number of volumes each year. It will be seen that a mere reference to Vol 1 of the Queen's Bench Division will not be sufficient unless the year is also quoted. The same procedures are followed in the All England Reports.

The early reports by the Incorporated Council and other collections did not use the year as a basic item of the citation, but continued to extend the number of volumes regardless of the year. So a case may be cited as follows: *Smith* v *Jones*, 17 Ch D 230. It can be found by referring to Vol 17 of the Chancery Division reports, and it is not necessary to know the year in which the report was published, though this will be ascertained when the report is referred to. Where the date is not an essential part of the citation, it is quoted in round brackets. The abbreviations used in the Official Reports for the various divisions are: QB for Queen's Bench, Ch for Chancery, Fam for Family, and AC for the House of Lords and Privy Council (Appeal Cases). The reports of decisions of the Court of Appeal appear under the reference of the division in which they were first heard. As regards the case title petitions for leave to appeal and appeals to the Court of Appeal carry the same title as that which obtained in the court of first instance. This results in the claimant being shown first in the title whether he or she be the petitioner/appellant or respondent in the Court of Appeal. Since a Practice Note of 1974 ([1974] 1 All ER 752), this is now true of the House of Lords so that appeals to the House of Lords now carry the same title as that which obtained in the court of first instance, though in the Official Reports the reference AC is still used in House of Lords and Privy Council cases.

Media-neutral citations

Decided cases in the High Court and above are now given what are called media-neutral reference numbers. Examples are EWHC (QB) or (Ch) or (Fam) 103, say. These numbers cover the three divisions of the High Court in England and Wales and sometimes (Admin) may be found to indicate the Administrative Court. For the Court of Appeal the references are EWCA Civ 289, say, for the Civil Division and Crim for the Criminal Division. For the House of Lords the citation is EWHL 421, say. In all cases the year of the case is in square brackets, i.e. [2007].

The numbers are media neutral because they do not relate to a publication such as *The Times* or the *All England Law Reports* and so on. However, if the case is reported in a publication

such as *The Times* or the *All England Law Reports* that reference appears after the media-neutral one. These numbers do not relate in any way to a computer or other report of the case but would assist in identifying a case in court records or for identifying a transcript. It is an advance on the citation '(unreported)'.

A practitioners' text would be expected to include these media-neutral citations. However, since they are of no assistance in ascertaining the facts of the case in themselves and will assist only those who wish to purchase expensive transcripts, they are not included in this text.

Precedent – generally

We are now in a position to refer to a decided case but we still have to find out where the precedent is to be found, since the whole of the case is reported, and the judge may have said things which are not strictly relevant to the final judgment. We must know what to take as precedent, and what to ignore, so that we can find what is called the *ratio decidendi*. The doctrine of precedent declares that cases must be decided in the same way when their *material* facts are the same. The *ratio* is therefore defined as the *principle* of law used by the judge to arrive at his *decision* together with his *reasons* for doing so. To take an example from contract law, in *Household Fire Insurance Company* v *Grant* (1879) (see Chapter 9) the court *decided* that a letter of acceptance took effect when it was posted, the *reason* behind this *principle* being that the Post Office was the common agent of the parties.

The *ratio decidendi* of a decision may be narrowed or widened by a subsequent judge before whom the case is cited as an authority. Although a judge will give reasons for his ruling, he is neither concerned nor obliged to formulate *all* the possibilities which may stem from it. Thus, the eventual and accepted *ratio decidendi* of a case may not be the *ratio decidendi* that the judge who decided the case would himself have chosen, but the one which has been approved by subsequent judges. This is inevitable, because a judge, when deciding a case, will give his reasons but will not usually distinguish in his remarks, in any rigid or unchangeable way, between what we have called the *ratio decidendi* and what are called *obiter dicta*. The latter are things said in passing, and they do not have binding force. Such statements of legal principle are, however, of some persuasive power, particularly the *dicta* of cases heard in the House of Lords.

The reason why *obiter dicta* are merely persuasive is because the prerogative of judges is not to make the law by formulating it and declaring it (this is for the legislature) but to make the law by applying it to cases coming before them. A judicial decision, unaccompanied by judicial application, is not of binding authority but is *obiter*. A judge does sometimes indicate which of his statements are *obiter dicta*. For example he may say: 'If it were necessary to decide the further point, I should be inclined to say that . . .'. What follows is said in passing.

It may, therefore, be said that the *ratio decidendi* of any given case is an abstraction of the legal *principle* from the *material* facts of the case and the *decision* which the judge made thereon, together with his *reasons* for so doing. Of course, the higher the level of abstraction, the more circumstances the *ratio decidendi* will fit. Let us take the following fact situation: 'At 12 noon on a Saturday A, a woman aged 30, drove a car through the centre of Manchester at 80 mph. She mounted the pavement and injured B, an old man of 90. B sued A and the judge found that she was liable.' If a subsequent judge thinks that the principle in *B* v *A* should be restricted he will tend to retain many of the facts of the case as material. If he thinks that the principle should be extended, he will not regard many of the facts of the situation as material and so produce a broad principle of wide application. Thus, a very narrow *ratio* would be as follows: 'If a woman aged 30 by the negligent driving of a car injures an old man of 90, she is liable to compensate him in damages.' However, the law of negligence is a much wider principle and the *ratio* is: 'If A, by negligence injures B, A is liable to compensate B in damages.'

The same principles of abstraction apply when a judge chooses to follow *obiter dicta*. This is well illustrated by the way in which the decision of the House of Lords in *Donoghue* v *Stevenson*, 1932 was developed to produce the modern doctrine of negligence (see further Chapter 21).

Binding force – generally

It is now necessary to examine which precedents are binding, and this depends also upon the level of the court in which the decision was reached. It would be useful to consider again at this point the diagrams in Chapter 2 which deal with the structure of the civil and criminal courts.

The House of Lords

The Supreme Court will take over from the House of Lords as the final court of appeal in 2009. The rules regarding precedent that apply to the House of Lords will apply to the Supreme Court. The House of Lords was bound by its own decisions (*London Street Tramways* v *London County Council* [1898] AC 375), except, for example, where the previous decision had been made *per incuriam*, i.e. where an important case or statute was not brought to the attention of the court when the previous decision was made. However, in July 1966, the House of Lords abolished the rule that its own decisions on points of law were absolutely binding upon itself. The Lord Chancellor announced the change on behalf of himself and the Lords of Appeal in Ordinary in the following statement:

> Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules.
>
> Their Lordships nevertheless recognize that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose therefore to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so.
>
> In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the special need for certainty as to the criminal law.
>
> This announcement is not intended to affect the use of precedent elsewhere than in this House.

A Practice Direction issued in March 1971 by the Appeal Committee of the House of Lords requires lawyers concerned with the preparation of cases of appeal to state clearly in a separate paragraph of the case any intention to invite the House to depart from one of its own decisions.

The declaration was not used for over 20 years to overrule decisions in the field of criminal law. It has now been used in the context of crime. For example, in *R* v *Howe* [1987] 2 WLR 568, the House of Lords overruled its previous decision in *DPP for Northern Ireland* v *Lynch* [1975] 1 All ER 913 which had decided that duress could be a defence in a prosecution for murder. *R* v *Howe* removes the defence of duress from the law relating to murder altogether so that the defence is now never available to any participant in murder.

Schorsch Meier Gmbh v ***Hennin***, 1975 – A case leading to the use of the 1966 declaration (**30**)

Miliangos v ***George Frank (Textiles) Ltd***, 1975 – The declaration applied (**31**)

The Court of Appeal

On the next rung of the hierarchy there is the Court of Appeal (Civil Division), and this court is bound by its own previous decisions, as well as by those of the House of Lords (*Young* v *Bristol Aeroplane Co* [1944] 2 All ER 293). There are, however, two main exceptions to the above rule.

(*a*) If there are two conflicting decisions of its own on the case before it the court may choose which one to follow.

The court may follow the most recent decision but this is not necessarily the rule. Where the *ratio* of an earlier decision is directly applicable to the circumstances of the case currently before the court but that decision has been wrongly distinguished in a later decision of the Court of Appeal, it is in principle open to the Court of Appeal to apply the ratio of the earlier decision and to decline to follow the later one (see *Starmark Enterprises Ltd* v *CPL Distribution Ltd* [2001] All ER (D) 472. A case concerned with whether a notice required to be served under a rent review clause in a lease had been served in sufficient time to make the rent review valid).

(*b*) The court will not follow a decision of its own if that decision is inconsistent with a decision of the House of Lords or the Judicial Committee of the Privy Council. Thus, *Re Polemis* [1921] 3 KB 560, a Court of Appeal decision which said that in negligence all *direct* harm was actionable even if not foreseeable, was disapproved of by the Privy Council in *The Wagon Mound* (1961) (see Chapter 20) and was not subsequently followed by the Court of Appeal.

The decisions of the Court of Appeal (Civil Division) are binding on the lower civil courts, i.e. the High Court and the county court.

On the criminal side, the Court of Appeal (Criminal Division) is bound by the decisions of the House of Lords and normally by its own decisions and those of the former Court of Criminal Appeal and the earlier Court for Crown Cases Reserved. However, an ordinary court of three judges in the Criminal Division may deviate from previous decisions more easily than the Civil Division because different considerations apply in a criminal appeal where the liberty of the accused is at stake and in any case a full court of the Criminal Division can overrule its own previous decisions.

In this connection, a court of five judges including the Lord Chief Justice declined to follow and overruled a previous decision of the Court of Appeal Criminal Division stating in particular that the decision could create problems if allowed to stand and bind the Criminal Division because in criminal cases there were many situations where in practice there was little prospect of an appeal to the House of Lords (see *R* v *Simpson* (2003) *The Times*, 26 May).

A full court generally consists of five judges instead of three as is usual in an ordinary sitting. A decision of the Civil Division is not binding on the Criminal Division and vice versa. Decisions of the Criminal Division are binding on lower criminal courts, i.e. the Crown Court and magistrates' courts.

It is perhaps worth noting that Lord Denning in *Davis* v *Johnson* [1978] 1 All ER 841 took the view that the Court of Appeal should take for itself guidelines similar to those taken by the House of Lords in 1966 to depart from a previous decision of its own where that decision was clearly wrong. However, Lord Denning does not appear to have received sufficient support for this view and a declaration on the lines he suggested has not been made.

However, it was decided in *Williams* v *Fawcett* [1985] 1 All ER 787 that the Court of Appeal could depart from one of its own previous decisions where that decision was felt to be wrong in law and there was unlikely to be an appeal to the House of Lords by a person whose liberty was at stake.

R v *Gould*, 1968 – Precedent in criminal appeals (32) 

Divisional Courts

Divisional Courts are, in civil cases, bound by the decisions of the House of Lords, the Court of Appeal (Civil Division) and generally by their own previous decisions. However, a Divisional Court of Queen's Bench decided in *R* v *Greater Manchester Coroner, ex parte Tal* [1984] 3 All ER 240 that a Divisional Court would normally follow a previous decision of another Divisional Court but could in rare cases exercise its power to refuse to follow a previous Divisional Court decision if the court was convinced that the previous decision was wrong. In criminal cases there is, under ss 12–15 of the Administration of Justice Act 1960, an appeal from the Divisional Court of the Queen's Bench Division straight to the House of Lords, and the Divisional Court is not bound by the decisions of the Criminal Division of the Court of Appeal. The decisions of Divisional Courts are binding on judges of the High Court sitting alone and on magistrates' courts but not on Crown Courts (see below).

The High Court

At the next lower stage, a High Court judge, although bound by the decisions of the Court of Appeal and the House of Lords is not bound by the decisions of another High Court judge sitting at first instance (*Huddersfield Police Authority* v *Watson* [1947] 2 All ER 193). Nevertheless, such a judge will treat previous decisions as of strong persuasive authority. If a judge of the High Court refuses to follow a previous decision on a similar point of law, the Law Reports will contain two decisions by judges of equal authority and the cases will remain in conflict until the same point of law is taken to appeal before a higher tribunal whose decision will resolve the position (and see the statement of Nourse, J in the *Colchester Estates* case considered later in this chapter).

The Crown Court

A judge sitting in the Crown Court, the jurisdiction of which is largely confined to criminal cases, is bound by decisions made in criminal matters by the House of Lords and Court of Appeal (Criminal Division) but not apparently by decisions of the Divisional Court of the Queen's Bench Division (*R* v *Colyer* [1974] Crim LR 243). A judge sitting in the Crown Court and exercising a civil jurisdiction, e.g. licensing, is bound by the decisions of the House of Lords, Court of Appeal and the High Court.

Magistrates' courts and county courts

These courts are bound by the decisions of the higher courts. Their own decisions are not reported officially and have no binding force on other courts at the same level.

The Employment Appeal Tribunal (EAT)

As regards this tribunal, only the decisions of the Court of Appeal and the House of Lords on matters of law are binding, though the decisions of the earlier Industrial Relations Court and the High Court in England are of great persuasive authority and the tribunal would not lightly differ from the principles which are to be found in those decisions (*per* Bristow, J in