

exception: in an application for judicial review, the Divisional Court may depart from an earlier decision if it considers that it was wrong. The reason for this is that in judicial review cases the situation is analogous to that of a judge at first instance.

7 The High Court

Although the County Courts deal with the most significant numbers of cases, the more serious civil matters are considered in the High Court. See Units 6–7, Part B for statistical information.

Decisions of individual High Court judges are binding on the County Courts but not on other High Court judges. However, in the interests of certainty, and bearing in mind that many cases may not get beyond the High Court, judges in that court try not to depart from previous decisions of the High Court. It is interesting to note that in a number of cases it has been suggested that where a first case has been fully considered (but not followed) in a second case, later judges should normally prefer the second case (see *Slapper and Kelly*, para. 3.6.3; the section on the High Court).

This is, of course, a reversal of the situation if the doctrine of precedent had applied, but given that it does not, it is a sensible approach. It avoids ‘reinventing the wheel’ and provides some measure of certainty.

8 The Crown Court

The Crown Court currently deals with over 80,000 cases each year, either for trial or sentence. The Crown Court, like the High Court, is not bound by its own previous decisions, but in the interests of certainty in criminal matters, is strongly persuaded by them. Note that for most cases, the judge sits with a jury and therefore it is only the judge’s decision on points of law which is relevant. Decisions in the Crown Court are, in practice, very seldom reported.

In the next activity you will examine the use of precedent in criminal cases.

ACTIVITY 50

Use of precedent in criminal cases (allow 20 minutes)

Please read the account of the process whereby marital rape became a criminal offence in ‘Rape within Marriage’, a further article which we have provided for you via the College’s ELITE electronic learning system. Remember that *R v. R* was discussed in Unit 1.

Discuss why the House of Lords did not use the *Practice Statement* to depart from its own previous decision.

What was the problem caused by the wording of s.1(1)(a) of the Sexual Offences (Amendment) Act 1976? Which rule of statutory interpretation do you think most closely fits the House of Lords’ approach to this problem?



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COMMENT

It was not necessary for the House of Lords to use the *Practice Statement* because Hale CJ's proposition was a fiction (i.e. neither Parliament nor the House of Lords had ever decided that marital rape could not be a criminal offence).

In *R v. J* [1991] 1 All ER 759, Roush J decided that the word 'unlawful' meant that marital 'rape' was not an offence. This is logical (and therefore was an application of the literal rule) as rape must per se be unlawful, and therefore for the word to have any meaning, it could only be referring to marital rape. However, the House of Lords decided that the word 'unlawful' was meaningless in the context of the Act. Obviously, the House of Lords was not applying the literal rule. It would have been difficult to use the mischief rule, as that requires looking at the purpose behind the Act, and whether marital rape was or was not an offence was not considered. Therefore, the use of the golden rule to deal with an absurdity would best fit the 'anachronistic and offensive common law fiction'.

9 County and magistrates' courts

These are 'inferior courts'; they do not bind any other courts and are not bound by their own decisions. We will examine the reasons for this in the next activity. However, they are a vital part of the court system. County courts deal with the vast majority of civil actions; currently, around 1.6 million claims are issued each year, although the vast majority settle out of court. Magistrates' courts also play a key role, and approximately 98% of all criminal trials are determined by the magistrates each year.

ACTIVITY 51

Why are inferior courts not bound by their own decisions? (allow 30 minutes)

To help you with this activity, you need to know something about the jurisdiction of these courts; please read *Slapper and Kelly*, paras 4.3 and 4.4, and paras 6.1 and 6.2 (stop before para. 6.2.1). (We will look at this again in Units 6–7.)



Based on your reading, can you think of any reasons why inferior courts are not bound by their own decisions?

COMMENT

You may have thought of a variety of reasons. Likely reasons include:

- Decisions are all first instance (i.e. not on appeal).
- Only one judge hears a case in a county court.
- Lay magistrates or one district judge hear a case in a magistrates' court.
- There are hundreds of courts throughout country.

Cases in these courts are not usually reported, and no record of them is kept at the Public Records Office. With hundreds of such courts throughout the country, it would be impossible for each court to keep track of decisions of the others. Each individual court does, however, attempt to be consistent within its own court or area, in order to provide some measure of consistency, although this often reflects local views or practices.