

STARE DECISIS: ITS DEVELOPMENT AND APPLICATION
IN WEST MALAYSIA

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INTRODUCTION

The sources of Malaysian law can be divided into two main forms: written and the unwritten. Unwritten law is that part of law which is not enacted or embodied in any codes or statutes but develops through custom practices and decisions of courts. In this paper, the decisions of the courts will be considered basically with the doctrine of Stare decisis.

The object of this paper is to ascertain the extent to which the English doctrine of precedent is accepted in Malaysia, giving due consideration to the policy of the past and present needs of the courts of Malaysia. It has never been disputed that since the introduction of the doctrine to our country, it has gone through many developments, politically and constitutionally. In determining the doctrine in Malaysia, this paper would be divided into several chapters.

Chapter One will discuss the doctrine itself and its early development in England. Chapter Two will highlight the introduction of the doctrine in the Straits Settlements. The application of the doctrine upon the formation of Malaysia will be discussed in Chapter Three with emphasis on the role of Privy Council as the final Court of Appeal then. Chapter Four will deal with the hierarchical system of precedents as practised today with the Supreme Court as its final Court of Appeal.

The very nature of this paper required a paper work research where most of the materials relied upon were cases and articles written on the subject matter.

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Chapter One

THE DOCTRINE AND ITS APPLICATION IN ENGLAND PRE 1807

Precedent has been defined by the Oxford Dictionary as '....a previous judicial decisionwhich serves as an authoritative rule or pattern in similar or analogous cases.'¹ It is generally regarded that the English doctrine of precedent reflects a policy of deciding like cases alike and that the presiding courts are bound by the previous decisions of the same courts, or co-ordinate courts, or superior courts although some possible inconvenience or undesirable results could result from a strict observance of it, or although a satisfactory reason is wanting, or although the principle behind the rule is questionable.²

The tendency of deciding a case in the same way as that in which a similar case has been decided by another judge varies greatly. It may be due to an inclination to do as others have done before, or to follow a previous decision in the absence of justification to depart from it. The peculiar feature of the doctrine of precedent is its strongly coercive nature where judges are sometimes obliged to follow previous decisions although they may have good reasons for not doing so.

One must remember that English law is to a large extent based on case-law which consists of the rules laid down by judges in giving decisions. Thus, in a