

RATIO DECIDENDI AND JUDICIAL PRECEDENT

1. INTRODUCTION

I will start by formally appreciating the highly esteemed Administrator of the National Judicial Institute (NJI), Hon. Justice RPI Bozimo, OFR, the Secretary of the Institute, the Directors of Study and Research, and indeed the entire management and workforce of the Institute for inviting me here today to participate by way of presentation in this important workshop.

A discussion on Nigerian Legal System will not be possible without reference to the British Legal System because Nigeria was a dependent territory of Britain. Although Nigeria is now independent, much of her laws derive their origins from Britain; and her legal system is modeled after the British Common Law System.¹ The central concept in the common law is judicial decision.² In giving their decisions, judges use legal argument to support their conclusions. This legal argument is known as reasoning. The reasoning leads to the establishing of a legal principle; given the Latin term *ratio decidendi*³. Under the common law system, these principles establish rules which, if all the facts are similar, must be followed in subsequent cases in the same or a lower court. The practice of the courts looking up to past similar issues to guide their decisions, is referred to as *stare decisis*, a Latin expression that means ‘to stand by things decided’. The past decisions are known as precedents. Accordingly, the doctrine of *stare decisis* or the rule of judicial precedent, being a fundamental doctrine in the common law system applies in Nigeria. It is one of the sources of law in Nigeria, often referred to as case law.⁴

¹ Tobi N. *Sources of Nigerian Law* (Lagos: MIJ Professional Publishers Ltd, 1996). Tobi thus identifies the sources of Nigerian Law as: the Nigerian Constitution; Customary Laws that have been in existence from ancient time; Islamic Law that is universally applicable among Muslims; and Received English Law brought into the country by the British colonialists. Other sources include International Law, Case Law, and Legislation.

² Joel Levin, The Concept of the Judicial Decision, 33 Case W. Res. L. Rev. 208 (1983) Available at: <https://scholarlycommons.law.case.edu/caselrev/vol33/iss2/4>.

³ often shortened to, ‘ratio of the case’.

⁴ *ibid.*

Finding the *ratio decidendi* that forms judicial precedent of a case is an important skill that every legal/research assistant must learn. It is not a mechanical process but is an art gradually acquired through practice and study. This paper attempts to give a general description of the techniques involved. We will proceed to examine the two principles (*Ratio decidendi* and Judicial Precedent) by: firstly defining the concepts, before considering the operation of the doctrine of judicial precedent and its application in Nigerian Courts. A review as to the advantages and disadvantages of judicial precedent will be considered, following which, an appropriate conclusion will be drawn.

2. DEFINITION OF KEY WORDS:

This section seeks to clarify the key terms relevant to the title of the paper and this covers the meaning of terms such as “*Stare Decisis*”, **Judicial Precedent**, *Ratio Decidendi*, *Obiter Dictum*, and *Per Incuriam*.

2.1 Judicial Precedent or *Stare Decisis*

Judicial precedent is defined in the Oxford Dictionary of Law as a “judgement or decision of a Court used as an authority for reaching the same decision in subsequent cases.”⁵ It is based on the term “*stare decisis*”, derived from the full Latin maxim “*stare decisis et non quieta movare*”, which literally means to stand by a decision and not to disturb that which is settled. This requires that when a particular point of law is decided in a case, all future cases containing the same facts and circumstances will be bound by that decision. The doctrine is a general principle of Common Law that is established in a case to help Courts decide upon similar issues in subsequent cases⁶. Thus, Judicial Precedent is also known as case law.

⁵ Oxford. *Oxford Dictionary of Law*, (6th edn OUP Oxford, 2006); see also Black’s Law Dictionary 9th Edition page 1214.

⁶ J Ashcroft and J Ashcroft. *Cengage Advantage Books: Law for Business*, (Cengage Learning: USA, 2010).

According to Obilade, “judicial precedent or case law consists of law found in judicial decisions. A judicial precedent is the principle of law on which a judicial decision is based. It is the *ratio decidendi* (literally, the reason for the decision).”⁷ Asein adds that, “case law refers to that body of principles and rules of law which, over the years, have been formulated or pronounced upon by the courts as governing specific legal situations”.⁸

The doctrine of *stare decisis* is a well rooted doctrine in the Nigerian jurisprudence. In *Osakue v Federal College of Education (Technical) Asaba*⁹, the Nigeria Supreme Court, per Ogbuagu J.S.C defined *stare decisis* thus:

Stare decisis means to abide by the former precedent where the same points came again in litigation. It presupposes that the law has been solemnly declared and determined in the former case. It does preclude the judges of the subordinate courts from changing what has been determined. Thus under the doctrine of *stare decisis*, lower courts, are bound by the theory of precedent.¹⁰

The Supreme Court again reiterated in *National Electric Power Authority v Onah*¹¹, that *stare decisis* means to stand by your decision and the decisions of your predecessors, however wrong they are and whatever injustice they inflict.

Illustration of *Stare Decisis*: Assuming that Blue borrows Red's lawnmower while Red is on vacation. Blue doesn't ask Red for permission. Blue accidentally breaks Red's lawnmower, but he doesn't tell Red. He simply places the lawnmower back in Red's garage. When Red returns home and discovers the broken lawnmower, he demands that Blue buy him a new one. The two end up in court, and the court decides that Blue does owe Red the money required for Red to fix his lawnmower; however, Blue does not have to buy Red a new

⁷ Obilade, Akintunde Olusegun, *The Nigerian Legal System* (Ibadan: Spectrum Law Publishing, 1990), p. 111.

⁸ Asein, John Ohireime, *Introduction to Nigerian Legal System* (Ibadan: Sam Bookman Publishers, 1998), p. 67.

⁹ (2010) 10 NWLR (Pt. 1201) 1.

¹⁰ *Ibid.*

¹¹ 1 NWLR (Pt. 484), Page 680 at 688.

lawnmower. This decision becomes precedent. Meaning from now on, lower courts in the same jurisdiction are expected to follow this new rule: When a borrower breaks a borrowee's item and was using the borrowee's item without permission in the first place, the borrower must pay to have the item fixed. Lower courts will follow this new precedent because the doctrine of *stare decisis* tells them they should.

In terms of material source, judicial precedent is embedded in cases decided by courts;¹² and in terms of composition, at least in the Nigerian legal sense, it consists of the principles of common law and the doctrine of equity.¹³ The whole essence of judicial precedent is that it is a law developed or evolved by courts. This therefore poses a serious challenge to the common law on the claim that judges of the common law courts do not make law, whereas the doctrine is no doubt well entrenched in its system.¹⁴

2..1.1 Types of Precedents

Precedents may be original, binding or persuasive.

An **original precedent** ensues when a point of law in a case has never been decided before, then whatever the judge decides will form new precedent for future cases to follow. The doctrine of **binding precedent** refers to the fact that, within the hierarchical structure of the courts, the decision of a higher court will be binding on a lower court. Every court in the hierarchy must follow the prior decisions of courts higher than itself even if the decision is wrong. It may not decline to follow the higher courts' decision on any ground. In general terms, this means that when judges try cases they will check to see if a similar situation has come before a court previously.

¹² This explains why it is otherwise referred to as "case law".

¹³ Tobi, n.1 p. 77.

¹⁴ Ibid pp. 78 – 80.

If a precedent from a similar situation exists and it was set by a court of equal or higher status to the court deciding the new case, then the judge in the present case should follow the legal principle established in the earlier case. Where the precedent is from a lower court in the hierarchy, the judge in the new case may not follow but will certainly consider it.

A **persuasive precedent** is one which is not binding on a court but which may be applied. The following are some examples:

- i. Decisions of courts lower in the hierarchy. For instance, the Court of Appeal may follow a High Court decision, although it is not bound to do so.
- ii. Decisions of foreign courts. These are usually cited where there is a dearth or total lack of local authority on a point.
- iii. *Obiter dicta* of courts higher in the hierarchy.
- iv. Persuasive authority may also be found in legal writings in textbooks and periodicals, where there is no direct authority in the form of decided cases.

Accordingly, in *FRA Williams v Daily Times (Nig) Ltd*¹⁵, it was held that decisions of Courts of Co-ordinate Jurisdiction are persuasive in nature. Also in *Yahaya v State*¹⁶; it was held that English authorities are of persuasive status in Nigerian Courts.

2.2 Ratio Decidendi and Obiter Dictum

When giving judgement in a case, the judge sets out the facts, states the applicable laws to them, and then provides their decision on the matter.

It is not all the aspects of a judgement that are relevant in determining the principle decided in a court. However, the other parts of the judgement are not entirely useless. Accordingly, the decision or judgement of a court may fall into two parts: the *ratio decidendi* (reason for the decision) and *obiter dictum* (something said by the way). A good understanding of what constitutes ratio

¹⁵ (1990) 1 WRN1 AT P.29.

¹⁶ (2002) 11 WRN 1 SC.

decidendi and obiter dictum is therefore very critical in determining what constitutes precedent.

2.2.1 *Ratio Decidendi*

This Latin term literally translates as the reason for the decision. The *ratio decidendi* of a case is the principle of law on which a decision is based. When a judge delivers judgement in a case, he outlines the facts which he finds to have been proved on the evidence. Then he applies the law to those facts and arrives at a decision, for which he gives the reason (*ratio decidendi*). Note that the *ratio decidendi* of a case is not the actual decision, or order, like ‘guilty’ or ‘the defender is liable to pay compensation’. Rather, it establishes a precedent, which is the rule of law used by the judge or judges in deciding the legal problem raised by the facts of the case. This rule, which is an abstraction from the facts of the case, is known as the *ratio decidendi* of the case.

Illustration of *Ratio decidendi*: Assuming that a couple leave their dog in their car while they pop out to a shop. For some unknown reason, the dog gets excited and starts jumping around. The dog paws the rear glass window. It shatters and a fragment of glass flies off and, unfortunately, falls into the eye of a passer-by, who later has to have his eye removed. Are the couple liable to pay compensation for the man’s eye? The court said no. People should take care to guard against ‘realistic possibilities’. They should only be liable, the court said, if they caused others harm by doing something that could be reasonably foreseen as likely to cause harm.

We are not liable if we fail to guard against ‘fantastic possibilities’ that happen to occur. The accident in this case, the judges ruled, was just such a ‘fantastic possibility’. The couple therefore did not have to pay compensation. The reason for the decision in this case, the *ratio decidendi*, can therefore be expressed simply as: “where harm was caused to a pedestrian by a dog smashing the window of the car that it was in, and where this sort of incident was unforeseeable, the defendants were not liable.”

2.2.2 *Obiter Dictum*

The judge may go on to speculate about what his decision would or might have been if the facts of the case had been different. This is *obiter dictum* (*obiter dicta* in the plural), a Latin phrase that means ‘a word said while travelling’ or ‘along the way’. It is important to note that the binding part of a decision is the *ratio decidendi*. An *obiter dictum* is not binding in later cases because it was not strictly relevant to the matter in issue in the original case. However, an *obiter dictum* may be of persuasive (as opposed to binding) authority in later cases.

Illustration of *Obiter dictum*: For example, in the case above about the dog and the man injured by the fragment of glass, assuming one of the judges says that, ‘if you knew your dog had an excitable tendency or went mad in cars then you would be liable if it caused someone harm in a predictable way and would have to pay compensation’. The judge will not need to rule on that in the dog and car window case, because the couple did not have a dog with a known excitable temperament. His observations are, therefore, made ‘by the way’ and thus can be referred to as an *obiter dictum*. Thus, in a future case involving a dog known by its owner to be excitable, a lawyer for an injured claimant could refer back to the judge’s *obiter dictum* in the car window case and use it as ‘persuasive’ but not ‘binding’ authority.

Please note that the division of cases into these two distinct parts is an analytical tool. Judges do not actually separate their judgments into the two clearly defined categories and it is then up to a later judge to determine/elicit what the *ratio* is. This is a bit like listening to, or reading, a speech made by a politician or a sports team manager and trying to identify the most important part of the speech.

In some cases this is not an easy matter, and it may be made even more difficult in cases where there are three or five judges and where each of the judge delivers their own lengthy judgment so there is no clear single *ratio*. There may, even be disagreement over what the ratio is and there may be more than one ratio.

2.3 Per Incuriam

Per incuriam, literally translated as "through lack of care", refers to a judgment of a court which has been decided without reference to a statutory provision or earlier judgment which would have been relevant. Ordinarily, under Common Law (unlike what obtains in other jurisdictions), the *rationes* of a judgment must be followed thereafter by lower courts while hearing similar cases. Thus in Nigeria, a lower court cannot depart from an earlier judgment of a superior court even where that earlier judgment was decided *per incuriam*.

3. OPERATION OF THE DOCTRINE OF JUDICIAL PRECEDENT

What the doctrine of precedent requires is that cases must be decided the same way when their material facts are the same. Obviously it does not require that all the facts should be the same, as few disputes have exactly the same facts or legal issues. We know that in this life all the facts of a case will never recur; but the legally material facts may recur and it is with these that the doctrine is concerned. It is the lawyer's duty to convince the judge that the past decision is similar factually; and legal issues underlying rationale of past decision may help to determine its precedential value. This is not exactly easy, thus, the operation of the doctrine of precedent is best understood by looking at specific examples. The English case of *Donoghue v Stevenson*¹⁷ is most illustrative.

The facts of the case are as follows: A friend of Mrs Donoghue bought her a bottle of ginger beer which was served in a dark, opaque bottle. Mrs Donoghue had drunk about half the bottle of beer before emptying the remaining ginger beer into a glass. As she did this, a partly decomposed snail floated out of the bottle. Subsequently, Mrs Donoghue became ill with gastroenteritis and shock. She claimed that her illness was a direct result of consuming the ginger beer and seeing the decomposed snail. Mrs Donoghue could not bring an action under the

¹⁷ [1932] AC 562

law of contract because she was not a party to the contract. The contract for the sale of the ginger beer was between the manufacturer and Mrs Donoghue's friend. The defence counsel argued that there was no duty of care because there was no contract between the manufacturer and Mrs Donoghue. However, The House of Lords (3:2) decided in favour of Mrs Donoghue. This was the first time that the House of Lords decided that the manufacturer owed a duty of care to the ultimate consumer.

The *ratio decidendi* here is this : “where a manufacturer sells a product which will reach the ultimate consumer without possibility of interference, and where inspection is not possible, the manufacturer owes a duty of care to avoid acts or omissions which one can reasonably foresee would be likely to injure your neighbor.”

Using precedent, the legal principles have been applied and extended to many other cases. A later Australian case heard in the Privy Council¹⁸, *Grant vs. Australian Knitting Mills*, involved similar circumstances.¹⁹ Here, Grant purchased woollen underwear manufactured by AKM Ltd. and suffered dermatitis as a result of wearing it. It was later discovered that the condition was caused by the excessive use of chemicals.

The precedent established in Donoghue's case has since been developed and extended to cover a range of other relationships, and reflected in statutes.

3.1 The Courts And Precedent

There are two essential elements to the application of precedent: a court hierarchy and accurate law reporting. It should be noted that without these two, the principle of *stare decisis* will be impracticable.

3.1.1 Judicial Precedent and Hierarchy of Courts

¹⁸ which then was where you appealed to from the High Court.

¹⁹ [1936] AC 85.

The courts contemplated by the Nigerian Constitution²⁰ as the repository or judicial powers are those listed in S. 6(5) as follows:

- a. the Supreme Court of Nigeria
- b. the Court of Appeal
- c. the Federal High Court including that of FCT
- d. the High Court of the FCT, Abuja
- e. a High Court of a State
- f. the Sharia Court of Appeal of the Federal Capital Territory
- g. a Sharia Court of Appeal of a State
- h. the Customary Court of Appeal of FCT, Abuja
- i. a Customary Court of Appeal of a State
- j. Such other Courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws; and
- k. Such other Courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws.

The Courts mentioned in S.6(5) a-i are identified as superior courts of record in accordance with the provision of S.6(3). Thus, the Court referred to in items j-k if and when created will be of the same status. Items c-j are courts with coordinate jurisdiction. It must be noted that the definition given by the National Judicial Institute is wider than the one provided under the Constitution by including Magistrates Courts in a State, Area Courts and Customary Courts.²¹

The doctrine of judicial precedent operates in two ways: vertical and horizontal. For the vertical operation, a court is bound by the prior decisions of all courts higher than itself in the same hierarchy. The hierarchy of courts of any common law country will immediately make obvious the precedents of which court bind the other courts. Briefly, in its operation in Nigeria, the decision of the Supreme Court being the Apex court in the country binds all the lower courts even when reached *per incuriam*. Similarly, the decision of the Court of Appeal binds all the courts lower to it , while decisions of High Courts bind courts lower to them. Decisions of the subordinate courts are, of course, not binding.

²⁰ CFRN 1999.

²¹ Section 17, National Judicial Institute Act CAP. N55 L.F.N. 2004.

Every court in the hierarchy must follow the prior decisions of courts higher than itself even if the decision is wrong. No lower court therefore has a right under any guise to refuse to follow the decision of a higher court. What this means is that the doctrine only operates where there is a hierarchy of court.²² In *Ossom v Ossom*²³, the Court of Appeal stated that:

I agree with the learned counsel that the doctrine of *stare decisis* is a well settled principle of judicial policy which is strictly to be adhered to by all lower courts. While a lower court may depart from its own decision reached *per incuriam*, a lower court cannot refuse to be bound by the decision of a higher court even if those decisions were reached *per incuriam*. The implication therefore is that a lower court is bound by the decision of a higher court even when that decision was given erroneously. If therefore a decision is wrongly reached by the court of appeal, the court of appeal or the supreme court is the proper forum where such an error can be corrected and certainly not a high court.”²⁴

Thus, a judge of the lower court who veers away from the obligations of *stare decisis* invites the condemnation of the higher court. The legendary jurist, Eso, JSC (as he then was) in *Okoniji v Mudiaga Odege*²⁵, had this to say:

In the hierarchy of court in this country, as in all other common law countries, one thing is clear, however learned a lower court considers itself to be and however contemptuous of the higher court, that lower court is still bound by the decision of the higher court... I hope it will never happen again whereby the lower court of appeal in this country or any lower court for that matter would deliberately go against the decision of this court and in this case, even to the extent of not considering the decision when those decision were brought to the notice of that court. **This is the discipline of law. This is what makes the law certain and prevents it from being an ass.**²⁶

²² See Dugdale and others; A level law Butterworths, 1988, pg. 170.

²³ (1993) 8 NWLR (pt. 314) 678.

²⁴ Ibid at pg. 692, paras. G – H

²⁵ (1985) 10. S.C 267

²⁶ Ibid at pg. 268, 289.

Similarly, the Supreme Court in *Dalhatu v Turaki*²⁷, vehemently defended the doctrine of *stare decisis*, when a judge of the High Court failed to follow the Supreme Court decision in an earlier case on the ground that the Supreme Court had given the judgement *per incuriam*. It is therefore safe to say that for any judicial officer, “the fear of *stare decisis* is the beginning of wisdom”. If a lower court is of the strong view that there is something wrong in the decision of a higher court it can only make its observation in very polite language, but must bow to the higher court²⁸.

While a court may not refuse to follow a decision of a higher court, what should it do when faced with two conflicting decisions?

Where there are two conflicting decision of the Supreme Court, the question faced by the lower court, as to which of the two conflicting decision to follow had been painted by court of appeal in the case of *G.T.B Plc v Fadco Ind. Ltd*²⁹. The court held as follows:

I am being faced with two conflicting decision of the Supreme Court, one supporting the respondent, the other supporting the appellant. I am fully aware of the fact that I am bound by the decision of the Supreme Court but it is also the law that in this kind of situation I am allowed to choose which to follow between the two decisions.

The controversy as to which of the Supreme Court decision to follow did not end with the holding of the Court of Appeal in *G.T.B’s* case (*supra*). In *Mohammed v Martins Electronics Company Ltd*³⁰, the court further highlighted as follows:

In Yusuf v Egbe (1987) 2 N.W.L.R (pt. 56) 341, Kolawole JCA (of blessed memory) reiterated that this court is bound by its previous decisions which has not been overruled by the Supreme Court. Furthermore, that this court of appeal must accept and apply loyally, the decision of the Supreme Court and where the decisions manifestly conflict, it was his opinion that the later decision is binding on the court of appeal. It was

²⁷ (2003) 15 NWLR (pt. 843) 310. See also *Enugu v. Okefi* (2000) 3 NWLR (pt. 650) 620 at pg. 639. See *global Transport Oceanico S.A V. Free Ent. (Nig.) Ltd* (1995) 8 NWLR (pt. 413) 257 at pg. 280. See *Diaro v U.B.N Plc* (2007) 16 NWLR (pt. 1059) 99 at pg. 159, where the Supreme Court describe a lower court defy of decided authority as border or amounts to judicial impertinence.

²⁸ See the case of *Nwangwu v. Nwangwu* (2000) Pt. 2 FWLR page 273.

²⁹ (2007) 7 NWLR (pt. 1033) 307.

³⁰ (2010) 2 NWLR (pt. 1179) 473.

also held by Ademola JCA (of blessed memory) that where there are two conflicting decisions of the higher court, the lower court is free to choose which of the decisions to be followed. See *Adegoke Motors v Adesanya* (1988) 2 NWLR (pt. 74) 108. Both are decisions of this court- Lagos division delivered on the 10 February, 1987 and 9 November, 1987 respectively.³¹

However, the marauding ghost of the controversy faced by the lower court in respect of two conflicting decisions of the higher court seems to have been laid to rest by the Supreme Court in the case of *Osakue v Federal College of Education (Technical) Asaba*³². Per Ogbuagu JSC, with emphasis in four different passages in the judgment stated thus:

For the umpteenth time, where there appear to be conflicting judgements of this court, the later or latest will or should apply and must be followed if the circumstances are the same.

For the horizontal operation of the doctrine of stare decisis, generally, courts are bound by their own prior decisions and prior decisions of a concurrent court of the same level, whether past or present³³. As noted in *Mohammed v Martins Electronics Company Ltd* (*supra*), every division of the Court of Appeal is bound by its own previous decisions or decisions of another division. However, for every general rule there must be an exception. Thus, the Supreme Court in *Usman v Umaru*³⁴, has stated the exceptions where the Court of Appeal may depart, when it held thus:

It is now well settled that under the doctrine of *stare decisis*, the court below as an intermediate court of appeal between the court below it and this court as the final appellate court, is bound by its own decision except in the circumstances specified in *Young v Bristol Aeroplane Co. Ltd*³⁵; that is:

³¹ Ibid at p. 506.

³² (2010) 10 NWLR (Part 1201).

³³ See generally: 'The Doctrine Of "Stare – Decisis" And Judicial Precedent: The Need For Lower Courts To Be Bound By Decisions Of The Superior Courts Of Record'. (being a paper delivered by Hon, Justice C.O Idahosa, Chief Judge, Edo State at the Conference of All Nigeria Judges of The Lower Courts Held Between 21 – 25 November, 2016) available at <nji.gov.ng>accessed 16/7/19.

³⁴ (1992) 7 NWLR (pt. 94) 377.

³⁵ (1944) 2 All E.R 293, 300.

1. The court of appeal is entitled to decide which of two conflicting decision of its own it will follow,
2. It will refuse to follow its own decision which, though not expressly overruled, cannot in its opinion stand with a decision of this court; and
3. It is not bound to follow a decision of its own if it is satisfied that the decision was given *per incuriam*.³⁶ For example, where a statute or rule having statutory effect which would have affected the decision was not brought to the attention of the Court.

The Supreme Court adheres to its own previous decisions and may only depart or deviate therefrom if it accords with the imperative requirements of fairness and justice. In the case of *Bronik Motors Ltd & Anor v Wema Bank*³⁷, the Supreme Court enumerated conditions under which it can deviate from its previous decision as follows:

1. Where there is a breach of justice
2. On grounds of public policy; and
3. Question of legal principle such that the retention of the decision will amount to a perpetuation of injustice.

Predicated upon these principles, the Supreme Court in the case of *Abdulkarim v Incar Nigeria Ltd*³⁸ held that although it will respect its previous decisions as a court of last resort which is not bound by precedent, the court will not hesitate to overrule any decision of its own which was reached on wrong principles since that is the only way to keep the stream of justice pure.

Notably, decisions of a State High Court are not binding on another State's High Court but merely persuasive. The reason is that for the purpose of precedent, other State High Courts are regarded as foreign courts. In the case of *Barclays Bank v Hassan*³⁹, it was held that a Judge of a High Court does not feel himself bound by his own decision or by those of other Judges of Courts of coordinate jurisdiction. Decisions of Magistrate, Area and District Customary Courts are not binding on any other court.

³⁶ Ibid at pg. 298.

³⁷ (1983) NSCC P.225.

³⁸ (1992) 7 SCNJ P.366.

³⁹ (1961) NMLR pages 293.

3.1.2 Efficient System of Law Reporting

The second essential element to the application of judicial precedent is an efficient system of law reporting. A Law report is a published record of a judicial decision that is cited by lawyers and judges for their use as precedent in subsequent cases⁴⁰. The report of a decision ordinarily contains the title of the case, a statement of the facts giving rise to the litigation, its history in the courts, and issues for determination,. It then reproduces the opinion of the court and concludes with the court's judgment—affirming or reversing the judgment of the court below. The report of a modern decision is usually preceded by an analytic summary of the opinion, called a headnote, that states the points decided⁴¹.

We can say that the bedrock of judicial precedent can safely be found in law reporting⁴². Law Reports provide the source of case law precedents. They are the conclave in which lawyers retreat to dig for the right law to apply in every situation that confronts their clients. Indeed, Lord Denning described Law Reports as the "tools of trade" of the practicing lawyer⁴³.

We are in the era of technology and the legal profession is not left behind. Law libraries are now going digital. Law Reports and other research material are now increasingly electronically stored and transmitted thereby altering the face of the traditional law library. It is not out of place to see lawyers rely more on various search engines for the source of judicial precedent.

Notably however, most of the cases reported are decisions of the Supreme Court, Court of Appeal, and some specialized courts. Thus, is now a growing school of opinion and indeed demand that Judgment of first instance, particularly at the High Courts be it Federal or States are not sufficiently reported. The editorial to Part 1 of the Lagos High Court Reports (250) 1 LHCR, states that:

Most cases do not go beyond the High Courts and several important principles are initiated at this level and remain the Law, especially where

⁴⁰ Law Reporting<britannica.com>accessed 2/6/19.

⁴¹ Ibid.

⁴² Bolaji Ayorinde, 'Nigeria: Judicial Precedent, Law Reporting And The Need For Regulation,'

⁴³ Lord Denning, Landmarks in the Law (Butterworths ,1984) p.369.

not appealed. Where these judgments are not reported a whole body of legal principles is lost from our aggregation of legal knowledge. Reporting the decision of the High Court, is therefore an imperative. Secondly, law reporting serves to highlight the tremendous industry and ingenuity of our High Court Judges....It is easy to forget that most of the English decisions that we rely on even at the Appellate Court level, King's Bench, Queen's Bench and Chancery reports, are High Court judgments faithfully recorded in that country by those who recognize that the High Courts form the backbone of the Superior Courts of Record and consequently are of fundamental importance to the development of law.

It is not enough to stop at acquiring law reports for the court libraries; what is even more important is for courts to take advantage of available technology to find a mechanism to instantly disseminate all its rulings and judgements across all its divisions. This will check the embarrassing situation witnessed in recent times whereby different divisions of the same courts continue to give conflicting judgements on the same subject matter, thereby embarrassing the judiciary, and confusing the general public.

4. ADVANTAGES AND DISADVANTAGES OF PRECEDENT

Whilst the doctrine of judicial precedent helps to maintain the interests of justice, many have argued that it restricts the law's ability to keep abreast with the changes in society and that much restriction thereby exists. Consequently, there are advantages and disadvantages to the doctrine of judicial precedent which will be briefly discussed hereunder.

4.1 Advantages of Judicial Precedent

There are many advantages to the doctrine of judicial precedent, which are identified as follows⁴⁴:

⁴⁴ Sixth Form Law. 'Advantages and Disadvantages of the Doctrine of Judicial Precedent' <http://sixthformlaw.info/01_modules/mod2/2_1_1_precedent_mechanics/08_precedent_advantages_dis.htm> [Accessed 23 May, 2019].

1. It helps to maintain consistency, stability, and a high degree of certainty, in the practice of the Courts.
2. It saves the precious time and energy of judges since they need not trace every point of law.
3. By keeping the law in view, the doctrine largely succeeds in keeping justice and fairness, ensuring within reasonable bounds, that citizens are treated as equals before the law.
4. By engendering due respect for the decisions of superior Courts in the hierarchy, it helps to maintain the ethics of the legal profession.
5. By introducing a sense of obligation in the inferior Courts to follow the decisions of the superior Courts, it enforces a welcome uniformity of standards through the hierarchy, and
6. It facilitates the task of legal practitioners to find law and advise their clients properly as to what the Court's decision in a particular legal issue may be expected probably to be.

4.2 Disadvantages of Judicial Precedent⁴⁵

1. Difficulties can arise in deciding what the ratio decidendi is, particularly if there are a number of reasons.
2. There may be a considerable wait for a case to come to court for a point to be decided.
3. Cases can easily be distinguished on their facts to avoid following an inconvenient precedent.
4. There is far too much case law and it is too complex.

5. AVOIDING PRECEDENT

The main mechanisms through which judges alter or avoid precedents are: overruling and distinguishing.

⁴⁵ Crystal Ayres, '6 Advantages and Disadvantages of Judicial Precedent' <connectus.org> accessed 2/6/19.

5.1 Overruling a Previous Case

Overruling is the procedure whereby a court higher up in the hierarchy sets aside a legal ruling established in a previous case. Overruling can occur if the previous court did not correctly apply the law, or because the later court considers that the rule of law contained in the previous *ratio decidendi* is no longer desirable.

It is strange that, within the system of *stare decisis*, precedents gain increased authority with the passage of time. As a consequence, courts tend to be reluctant to overrule longstanding authorities even though they may no longer accurately reflect contemporary practices or morals. While old principles are not usually good in dentistry or computer science, they are often seen that way in law. In addition to the wish to maintain a high degree of certainty in the law, the main reason for judicial reluctance to overrule old decisions would appear to be the fact that overruling operates retrospectively, with the effect that the principle of law being overruled is held never to have been law. It has to be emphasised, however, that the courts will not shy away from overruling authorities where they see them as no longer representing an appropriate statement of law.

Overruling should however not be confused with ‘reversing’, which means that the judgment of a lower court was incorrect and is therefore **reversed**. The result is that the lower court which tried the case is instructed to dismiss the original action, retry the case or change its judgment.

5.2 Distinguishing a Previous Case

In comparison with the mechanism of overruling, which is rarely used, the main device for avoiding binding precedent is that of distinguishing the previous case as having different material facts and, therefore, not being binding. Material facts are those in any case which have legal consequences.

As has been previously stated, the *ratio decidendi* of any case is based upon the material facts of the case. This opens up the possibility that a court may regard

the facts of the case before it as significantly different from the facts of a cited precedent, so it will not find itself bound to follow that precedent. What is reasonably distinguishable depends on the particular case and the particular court – some judges being more inclined to ‘distinguish’ disliked authorities than others. In *Jones v Secretary of State for Social Services*⁴⁶ Lord Reid stated:

It is notorious that where an existing decision is disapproved but cannot be overruled courts tend to distinguish it on inadequate grounds. I do not think that they act wrongly in so doing, they are adopting the less bad of the only alternatives open to them. But this is bound to lead to uncertainty...

At the other extreme, Buckley LJ in *Olympia Oil v Produce Brokers*⁴⁷ stated:

I am unable to adduce any reason to show why that decision which I am about to pronounce is right ... but I am bound by authority which, of course, it is my duty to follow ...

6. CONCLUSION

The presence of judicial precedent makes it easier for the courts to make decisions when the case before them is a reflection of previously-decided law. This system certifies that the consistency and certainty provided within the justice system offers a fast, effective judicial process that works fairly for everyone. When every case receives a similar outcome when the facts are equal, then the outcomes are predictable. However, despite the manifestly obvious advantages of judicial precedent, it also has some disadvantages. Consequently, unless the precedent to be followed is good, it may be a perpetuation of vice and injustice.

I will conclude by saying this:

The concept of Judicial Precedent and the doctrine of *stare decisis* might not be perfect in its operation; yet one only needs to imagine the courts operating without precedent to appreciate that indeed, its usefulness far outweighs whatever imperfection it might possess.

⁴⁶ [1972] AC 944.

⁴⁷ [1914] 3 KB 1262.

RATIO DECIDENDI AND JUDICIAL PRECEDENT

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