

# WJEC Eduqas GCE AS in LAW

## Component 1 Section A Judicial Precedent Suggested Activities



## Component 1 Section A

**EXAM LEVEL: AS LEVEL**

**AREA OF STUDY: Judicial Precedent**

### Key Points:

- Learners should be able to describe what is meant by judicial precedent.
- Learners should be able to explain the elements of judicial precedent.
- Learners should be able to explain the elements of the court hierarchy.
- Learners should be able to describe the types of judicial precedent.
- Learners should be able to discuss how a precedent can be altered or avoided, including the roles of the Supreme Court and Court of Appeal in relation to precedent.
- Learners should be able to apply the doctrine of judicial precedent to a given scenario.
- Learners should be able to discuss the advantages and disadvantage of precedent and the limitations on judicial law making.

### Provides an opportunity to develop the following skills:

- Application of the techniques of judicial precedent to analyse and offer answers to problems, based on legal principles, legislation and case law.
- Analysis of a factual scenario by identifying the key facts and applying the law in order to form a legal argument.
- Analysis, application and evaluation of the legal rules and principles of public and private areas of law.
- Identification and breaking down into constituent parts the relevant legal rules and principles for each area of law and applying those legal principles to a hypothetical situation.
- Evaluation of the law to reach a reasoned conclusion.
- Construction of clear, concise and logical legal arguments which are substantiated by legal authority, using appropriate legal terminology.

## Suggested Activities:

1. Learners could be presented with a hypothetical scenario in order to develop their skills of application. An example is provided below:

*In the case of Re Worley (1940) the Court of Appeal held that a trust for the benefit of one's relations could be a charitable trust so long as the relations in question could be considered as "poor relations". Charitable status is important because charitable trusts pay less tax. The Inland Revenue wishes to claim that such trusts should no longer be regarded as charitable, and in 2010 a case was brought before the High Court concerning a trust established by Lord Arrington. Lord Arrington is a multi-millionaire who had established a trust for a long lost relative. The relative in question has assets worth in excess of £500,000 but in comparison with Lord Arrington is not very well off.*

*Advise Lord Arrington on how the doctrine of judicial precedent would be applied to establish whether his trust would be awarded charitable status.*

Learners could adopt the **IDA** approach:

**I = Identify** the current court and **identify** the precedent court.

**D = Describe** options available to the courts in question (Choose from: Follow, Overrule, Reverse, Distinguish, Court of Appeal Young exceptions, Practice Statement?)

**A = Apply** the available options to the scenario.

- Use the facts in the cases to try and **distinguish** the two cases by finding differences in their material facts.
- Do you feel that the law in question is in need of reform (as in **R v R (1991)**) and would therefore use the **Practice Statement** to depart?
- If the precedent was set by a lower court, would you consider using it as **persuasive precedent**? What other sources could you use as persuasive precedent?
- Would you **follow** the precedent on the basis that law change should be left to Parliament? Highlight the reluctance to use the Practice Statement and mention **Lowry Guidelines – C v DPP (1995)**

2. *"The Supreme Court has not thought it necessary to reissue the Practice Statement in a fresh statement of practice in the Court's own name. This is because it has as much effect in this Court as it did before the Appellate Committee in the House of Lords. It was part of the established jurisprudence relating to the conduct of appeals in the House of Lords which was transferred to this Court."*

Source: Lord Hope in Austin v Southwark LBC (2011)

In light of this statement, facilitate class discussion on the role of the Supreme Court in relation to precedent. Learners could create a chart of cases where the Practice Statement has been used in order to establish the reluctance of the Supreme Court to use the Practice Statement.

3. Learners could create a court hierarchy diagram and highlight the following in different colours:
  - i. Courts that can **create** precedent.
  - ii. Courts that have to **follow** precedent.
  - iii. Courts that can **depart** from **their own decisions**.
  - iv. Courts that are **bound by their own decisions**.
4. Learners could be split into groups and each group asked to research one of the following cases of **original precedent**. They should then be encouraged to feed this back to the rest of the class so that all learners have the same information:
  - a) *Donoghue v Stevenson (1932)*
  - b) *R v R (1991)*
  - c) *Gillick v West Norfolk and Wisbech AHA (1985)*
  - d) *Fitzpatrick v Sterling Housing Association (1999)*

For each case, learners should discover the **facts of the case**, the **law before the case** and the **new law decided**.

5. The recent case of *Vinter v UK (2013)* ruled that the sentence of “whole life orders” were a breach of Article 3 ECHR – the right to be free from inhuman and degrading treatment.  
Does this decision stop judges from making any more whole life orders? How does this reconcile with judges’ responsibility under s2 *Human Rights Act 1998*?
6. Using a similar visual aid to that below, outline how the doctrine of judicial precedent creates a balance between certainty and flexibility. Plot the various elements of precedent on the diagram – does the doctrine of precedent create more flexibility or more certainty?

