



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

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LECTURE: 3

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Lecture-39



Topic- 3

Lecture – 39: Kinds of Judicial Precedent

Importance of judicial precedent as a source of law

- 1) Declaratory Theory
- 2) Judges made law

1) **Declaratory Theory:** -According to this theory, the main function of judges only declaration of law not made the law. The main jurist of this theory are Black stone, Coke, Baddeley. This theory provides that, Judges only discover law.They discover and declare.

Black Stone:-The function of judges is declaration of the law, not make the law.

Coke: Judicial decisions are not a source of law but the best proof of law is.

Baddeley: There is no such thing as judge-made law.

This theory was criticised on a number of grounds

Bentham and Austin: legislative power is not with Courts and they can not even claim it. **Salmond:** both at law and in equity, however the declaratory theory must be totally rejected.

2) **Judges Make Law:** - According this theory judges, not only they declaration the law but also, they make the law. The main jurist of this theory are Lord bacon, Gray, Diecy .

Lord Bacon: the points which the judges decide in cases of first impression is a “distinct contribution to the existing law”.

Gray: Judges alone are the makers of Law.

Diccy: -judges made law Where a statute clearly laid down the law, the judge has to enforce it. The judge is confined to the facts of the case while enunciating legal principles. Within those limits alone it can be said that judges make law.

Merits of Precedent: -

- 1) Respect for ancestors.
- 2) Saving of time.
- 3) Certainty in Law.
- 4) Satisfy the needs of the society.
- 5) Helps people to understand the Law.
- 6) Flexibility in Law.
- 7) practical in nature.
- 8) Development of Law.

Demerits of Precedent: - The demerits or disadvantages of precedent as a source of precede of law mentioned below

- 1) Very large number.
- 2) Development of law depends upon litigation
- 3) It is incomplete law
- 4) Wrong precedent may be established
- 5) Overruled case may be quoted before the court

Circumstance Destroying the Binding Force Of Precedents

- 1) Ignorance of Statute.
- 2) Legislation.
- 3) Ignorance of decision of superior court
- 4) Precedent Sub Silentio