

Criminal Court Report

Author's Name

Institutional Affiliation

1. Explain the doctrine of precedent and how it operates within a criminal court hierarchy.

The Latin phrase, *stare decisis*, literally translates to ‘let the decision stand.’ It is the premise upon which the doctrine of precedent is grounded. The doctrine of precedent is the legal norm that binds courts to adhere to the reasons given for decisions and the legal principles established by earlier cases. Following precedent is imperative where the decision is that of a court that is higher in the hierarchy and the material issues, and facts of both cases present similar circumstances. Even where earlier decisions do not bind judges, the doctrine obliges them to consider the reasoning of the judges in previous cases seriously. In cases where the judges are not bound, the precedent is said to be of persuasive value. The effect of the doctrine of precedent is akin to law-making because earlier decisions must be followed in subsequent cases. Another effect of the doctrine is to place restraints upon the law-making capacity of judges hence reinforcing the doctrine of separation of powers.

In criminal proceedings, an accused person’s liberty is often at stake. The doctrine of precedent is of utmost importance because of the need to ensure certainty in the conduct of criminal matters. However, note that an application of the doctrine of precedent in a manner that is too rigid may result in absurd or unjust outcomes. It is important to strike a balance between the obligation to follow established authority and the need to meet the ends of justice especially in circumstances where strict adherence to precedent may result in undesired outcomes. Therefore, flexibility is an important consideration when applying the doctrine of precedent to criminal matters. Granted that considerations of flexibility are at odds with the need for certainty that underlies the doctrine of precedent, a pragmatic application of the doctrine should be adopted in criminal cases where the ends of justice

demand. A pragmatic approach to avoid absurd outcomes cultivates confidence in the criminal justice system.

2. Briefly describe the following court hearings and explain their main purpose:

a. A jury trial

A jury trial is a hearing where specifically selected lay members of the community are obliged to sit through proceedings with the objective of assisting the court to make a proper determination of the case. A jury makes determinations of fact in a case. A jury trial has various purposes. It is a safeguard measure against the abuse of the rights and liberties of an accused person. A jury trial is a mechanism that prevents oppression by the government by placing checks and balances on the powers of the prosecution. Therefore, a jury trial enhances fairness and increases confidence in the criminal justice system because it allows for the direct participation of the community in administering justice.

b. A committal hearing

Also known as a preliminary examination, a committal hearing is a proceeding concerning serious indictable offences conducted in subordinate courts, usually the magistrate's court. A committal hearing is conducted to determine whether the available evidence is sufficient to sustain a conviction before the case proceeds to a higher court. The purpose of a committal proceeding is to enable the court assess the strengths and weaknesses of a case to determine whether it has attained the requisite threshold for the court's attention. Therefore, the proceeding serves to guard the criminal justice system against abuse of process by frivolous and unwarranted cases. It also saves the court's time and resources. Further, a committal hearing gives an accused person the chance to discover material

evidence tendered against him and other relevant details that may assist in the preparation of a defence. A committal proceeding also presents an opportunity for a defendant to move for a dismissal of his charge by the court.

c. A sentencing hearing

A sentencing hearing is a proceeding that takes place after both the prosecution and the defendant have closed their cases and the defendant has been adjudged guilty of the charged offence. At this point, depending on the nature of the case, the judge has the duty to impose the punishment that has been prescribed by law for the particular offence. However, before passing the sentence, there are various considerations that have to be made. These include the presence of either aggravating or mitigating factors as well as victim impact reports where applicable. Further, a pre-sentencing report presented to the court by a probation officer has to be also considered. The purpose of a sentencing hearing is to allow for the consideration of all these factors that may have a bearing on the case and its outcome.

3. What are the differences between summary and indictable offences?

Also known as misdemeanours, summary offences are those crimes that are creations of a statute and are not considered as serious in nature. Therefore, such offences are heard in Magistrate courts by a single magistrate. In contrast, indictable offences are crimes that are considered grievous hence serious in nature. Suffice to note that where the statute that creates a summary offence does not expressly provide for the trial of that offence summarily, the offence is considered indictable. Because of their degree of severity, indictable offences are tried before a judge in the presence of a jury. It necessarily follows that penalties imposed for summary offences are less severe compared to the punishment imposed for indictable

offences. Further, while a summary proceeding can be conducted in the absence of a defendant, this is not possible for indictable offences.

4. Give a brief description of the role of the following people in a jury trial

a. The Judge

The most basic role of a judge in a trial is that of a moderator or facilitator of proceedings. To this end, the judge is in control of the proceedings and has the obligation to ensure that all the proper procedures as required by law are followed. In jury trials, the role of the judge is akin to that of a legal advisor. He has the duty to determine all questions of law that arise in the course of the trial. He also interprets these questions of law for the jury to understand. The judge also issues instructions to the jury concerning the issues of law that the trial raises and what they are expected to deliberate on. Finally, after receiving the jury's verdict, the judge has the duty to impose the sentence that the offence attracts according to the law.

b. The prosecutor

Before the commencement of a trial, the prosecutor, together with the defence team, play the crucial role of selecting a suitable jury to determine the case. Once the case has started, the prosecutor's role is to present the government's case against the accused person in a comprehensive and articulate way to the jury. The prosecutor is expected to present the government's case in a way that is not prejudicial to the defendant. The prosecution bears the burden of proving that the accused person committed the offence that he is charged with. In criminal proceedings, the standard of proof required to secure a conviction is 'proof beyond reasonable doubt.' To this end, the prosecutor must adduce credible evidence to

prove the government's case. In situations where the defendant puts up a case in defence, it is the prosecutor's duty to rebut the defendant's case. The prosecutor also has a duty to guide the court and ensure that all relevant considerations are made during the sentencing proceedings.

c. The defence barrister

The defence barrister bears the duty of representing the accused person in the course of the jury trial. This duty demands that the defence counsel advances the case in a manner that is fair, just and most favourable to the defendant. The defence barrister plays a crucial role in the selection of the jury. Once the trial commences, the barrister's task entails ensuring that the defendant is accorded a fair trial. In discharging his duties, a defence barrister is also expected to adduce credible evidence to support his client's position. The barrister also brings to the court's attention any weaknesses that are apparent in the prosecution's case. It falls within the barrister's duties to ensure that any reasonable doubt inherent in the case is brought to the court's attention. He also plays a role at the sentencing stage by highlighting any relevant mitigating factors that may diminish the defendant's liability in a case.

d. The jury

The jury's basic duty is to determine questions of fact that are raised in the course of a trial. It is on the basis of these facts that a determination of the defendant's culpability is made. In criminal cases, the consideration of these questions of fact is the way through which the jury determines whether the defendant is guilty of the charged offence or not. Therefore, the jury bears the responsibility of deciding if, in light of the facts and circumstances of the case, the defendant is guilty or not of the offence that he has been charged with. The decision is made

after considering the evidence that has been adduced by both sides in court together with the directions of the judge on what law is applicable in the circumstances and on how to apply it.

5. Which court did you attend and what was the date of your attendance?

I attended the District Court criminal sittings at Beenleigh on Tuesday 15<sup>th</sup> September 2015.

6. What kind of hearing did you attend?

The hearing I attended was a trial.

7. What were the charges against the defendant in the court hearing you attended? Were these summary or indictable offences? How did you know this?

The defendant was charged with the offence of robbery contrary to section 411 of Queensland's Criminal Code. Robbery is an indictable offence. Robbery is a serious offence, if found guilty, a defendant is liable to imprisonment for fourteen years. Further, the trial of a person accused of robbery is conducted in the presence of a jury. The jurisdiction of District Courts comprises all indictable offences that have a penalty of not more than twenty years. Therefore, the offence of robbery qualifies as a serious indictable because of its severity in nature and of the imposed penalty as well as because a trial by jury is necessary.

8. Briefly describe what was happening in the courtroom.

During the trial, a prosecution witness started by giving his testimony. The prosecutor, while carrying out the examination-in-chief, was trying to establish the defendant's identity. The witness alleged that he was able to identify positively the defendant. At some point, the defence barrister made an objection against the prosecutor's line of questioning because he was leading the witness. The prosecutor completed his questioning and the defence was given an opportunity to cross-examine the witness.

9. Identify who was present in the courtroom you attended and briefly describe the role you observed them perform.

Although the judge was quiet at most times, he controlled the manner in which the hearing was conducted and made sure that rules, such as evidential ones were followed. He also brought the court to order whenever there were disturbances. The prosecutor was laying down the government's case against the defendant and to achieve his objective, he called a witness to testify. He led the process of examining the witness. The defence barrister's role came up when he was allowed to cross-examine the witness. The defendant was also present in court although he only sat and watched the proceedings unfold. I could see the members of the jury keenly listening to the testimony of the witness. Some were also noting down issues. The court deputy administered the oath to the witness before he began giving his testimony. The court reporter was furiously typing away the court proceedings. Members of the public were also present and they followed the proceedings from the gallery.

10. What was the most interesting thing you observed during your visit?

The most interesting observation I made was the fact that both the prosecutor and the defence barrister were striving hard to capture the attention of the jury members. Both legal representatives were trying to engage with the jury and maintain a connection with them. I was also intrigued by the manner in which the judge managed to detach himself from the arena of conflict while still maintaining overall control of the proceedings.

11. Was it easy to understand what was happening in the courtroom? Why/why not?

It was easy to understand what was happening in the courtroom because I am familiar with court processes in criminal trials. Further, the language used by the participants was simple, precise and articulate.

12. In a paragraph or two, critically reflect upon key course concepts like due process, the rule of law, and fair trials, and connect this to your experience in court. Was the hearing you attended a 'just' hearing?

The subjection of an accused person to the rigorous criminal trial process is among the indicia reflective of a legal system's subservience to the rule of law. Lindgren (2012) asserts that the underlying premise of the rule of law is the equal subjection of all people and institutions to the law. Therefore, every person is entitled to be treated equally under the law and no one should be above the law. According to Caenegem (1999), the most fundamental purpose of the criminal justice system is to prevent recourse to private justice by the victims of crime. To achieve this goal, it is imperative to recognise that all people are equally subject to the law and that there has to be a minimum standard for the treatment of alleged criminals. Such recognition ensures that the resort to the criminal justice system perpetuates the rule of law because an accused person will not be treated in a prejudicial and degrading manner just because he has committed an offence.

The conduct of criminal proceedings is a reflection of the attempt to strike a balance between the interests of the community on one side with the rights and freedoms of the accused person. In criminal cases, the liberty of the accused is often at stake. Due process requirements act as safeguards against the abuse of court processes that may ultimately be prejudicial to the accused person (Sandefur, 2009). Accordingly, observing due process requirements is one of the ways of ensuring that an accused person is accorded a fair hearing (Hope, 1996). The criminal trial process is designed to ensure that both sides fully present their case and that the final determination is made based on these presentations. In my opinion, the hearing I attended was just because of the following reasons. First, by operation

of the rule of law, the accused was brought to trial rather than leaving him to the devices of his victims. Second, he was given an ample opportunity to present his case and defend himself through the structured court process. Therefore, whatever the outcome of the trial, justice was seen to be done.

## References

- Hope, J. (1996). A Constitutional Right to a Fair Trial? Implications for the Reform of the Australian Criminal Justice System. *Federal Law Review*, 24, 173.
- Lindgren, K. (2012). *The Rule of Law: Its State of Health in Australia* (1st ed.). Rule of Law Institute of Australia. Retrieved from <http://www.ruleoflaw.org.au/wp-content/uploads/2012/10/Lindgren-Rule-of-Law-Its-State-of-Health-in-Australia-20121.pdf>
- Sandefur, T. (2010). Privileges, Immunities, and Substantive Due Process,. *New York University Journal of Law and Liberty*, 5(1).
- Van Caenegem, W. (1999). Advantages and Disadvantages of the Adversarial System in Criminal Proceedings. Retrieved from [http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1223&context=law\\_pubs](http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1223&context=law_pubs)