"LEGAL REASONING FROM PRECEDENTS"

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"Legal reasoning is a method of thought and argument used by lawyers and judges when applying legal rules to specific interactions among legal persons."[1] Legal reasoning, for lawyers, is a tool to find and formulate compelling arguments in order to further their own cause. While for the judiciary, legal reasoning is used to assess a situation and help make informed and lawfully correct decisions. In this regard, in common law countries, such as India, arguments from precedents become prominent feature of legal reasoning. The Stanford Encyclopedia on Philosophy defines a precedent as *"the decision of a court (or other adjudicative body) that has a special legal significance. That significance lies in the court's decision being regarded as having practical, and not merely theoretical, authority over the content of the law."*[2] In layman's terms, it suggests that a legal reasoning through precedents is integral in common law countries for the reason that precedents, can partly constitute law. This is because of a concept known as doctrine of precedents, or the maxim '*stare decisis'* (standing by things decided). To exemplify in India Article 141 of the Indian Constitution, 1950 provides that the decisions of the Supreme Court are binding on all lower courts within the territory of India. Hence, it follows that finding a precedent that is binding on one's case becomes practically imperative in order to win cases in common law countries. Hence, the focus of this essay will be to gauge and understand the application of legal reasoning from precedents by the lawyers and judiciary. Richard Cappalli, the author of Advanced Case Law Methods: A Practical Guide, as well describes the legal reasoning method, employed by a lawyer, in regards to precedents, as a process of "analogical reasoning: the matching of case facts."[3] On a simplified level, this is indeed true because for the precedent to be binding all elements of the precedential case have to coincide with the later case (case that precedent is binding on) facts. However, Cappalli himself highlights the intricacies involved with this simplistic version of analogical reasoning (such as of comparison of only facts: calling it "unilluminating"[4]). Hence, he sets forth a process of reasoning that any successful common law lawyer must employ in order to find relevant precedents, this is known as the *'rule model'*[5] of legal reasoning from precedents. Precedent can be

[1] cleverism.com, *Martin, Legal Reasoning,* (August, 2018), https://www.cleverism.com/lexicon/legal-reasoning-definition/

[2] Grant Lamond, *Precedent and Analogy in Legal Reasoning*, The Stanford Encyclopedia of Philosophy 2 (Spring 2016 Edition), https://plato.stanford.edu/archives/spr2016/entries/legal-reas-prec/

[3] Richard B. Cappalli, *Advanced Case Law Methods: A Practical Guide* 56 (2005).

[4] Cappalli, *supra* note 3.

[5] Lamond, *supra* note 2, at 7.

divided into the '*ratio decidendi*' (the rule of law on which a judicial decision is based) of a case and the '*obiter dicta*' (a remark in a judgment that is said in passing). Cappalli, and the 'rule model' assert that the *ratio* of a case represents the "holding" or, more meaningfully, the proposition or part of law for which the case is an authority; it is this aspect of the case which is binding on later courts. *Obiter dicta*, on the other hand, represents other facts in the precedent which are not binding on later courts. Hence, through this distinction Cappalli highlights that rather than facts it is the *"holding"* which is key for lawyers and judges to conduct analogous comparisons between the precedent and the cases it is binding upon. Theorists such as Schauer and Burton, who also propound the rule model, set out *"rules of relevance"*[6] and *"importance"*[7] in terms of selecting material facts and extracting a *ratio* (rule) from the facts of the precedent. Cappalli conveys how this stands to be inductive reasoning, in the sense that it extracts a generalization from a series of facts. Cappalli then elucidates upon the inductive reasoning involved via a three-step process. The first: to ascertain relevant and important facts (those facts that the precedential court deems to be relevant to the case). The second deals with the concept of *'abstraction'*[8] and inductive reasoning in order to infuse the "precedential proposition with generality."[9] However, it should also be noted the degree of abstraction to be employed is a subjective notion, and, as Cappalli points out, the skill to employ the right amount of abstraction comes with experience. Lastly the product: the abstracted facts of the case should be infused with legal categories and laws. This would yield a product close to a law, as it yields the *ratio* of the precedent. To exemplify, Cappalli carries out the process in relation to the precedential case of *Bradley v Fisher*,[10] and yields it's holding through his process - "Regardless of the severity of the harm produced by alleged judicial error, a judge of a superior court of record is immune from a tort suit for his judicial action..."[11] To explain his process, lets use an example. he uses the case fact of "disbarment of an attorney" to yield an element of the rule: "judicial action". Benjamin N. Cardozo, in his book The Nature of the Judicial Process, also highlights the role of deductive and syllogistic reasoning in the application of the holding to later cases.[12] He highlights that precedent must subsume the later case facts. This essentially means that the rule, the major premise, must apply to both situations. On a deeper level, it means for each element of the rule, there is a class of general facts. Therefore, for a case to fall under binding-force of a precedent, there must a fact in the

[6] B. Rey Schauer, Precedent 39 (Stan. L. Rev 1987).
[7] Steven J. Burton, *An Introduction to Law and Legal Reasoning* 86-163 (1985).
[8] Cappalli, *supra* note 3, at 57-58.
[9] Cappalli, *supra* note 3, at 57.
[10] Bradley v. Fisher (1871) 80 U.S. (13 Wall.) 335.
[11] Cappalli, *supra* note 3, at 57.
[12] Cardozo, The Nature of the Judicial Process 47 (1921).

later case which fits into the class of every element of the rule. For example, for a case to fall under the precedent of *Bradley v Fisher*, it must have facts which fall under the class of "judicial error," "superior court of record" and "judge" among other relevant elements of the rule. If this occurs, then the later case is bound by the decision of the precedential case, and the legal reasoning will be successful. However, the 'rule method' of legal reasoning from precedents, is not always as streamlined and perfect as depicted above. There are a multitude of problems that come along each step of the process. Firstly, syllogistic reasoning is gravely affected by the linguistic nature of classifying and interpreting things. For example, sometimes rules contain relatively vague words which hinder its application to other later cases. For example, in the case of the holding of *Bradley v Fisher*,[13] the word "judicial" is vague, which makes it difficult to determine facts that could fall under the general class of the elements: "judicial actions" and "judicial error". Similarly, even if a precedential case's elements broadly coincide with the facts of the later case, the legal reasoning via the precedent can be rejected due to problems with induction. For example, the adversarial feature of law causes issues to legal reasoning from precedents. The is because the one lawyer may find the precedent to be binding, while the other lawyer can stretch or narrow the holding of the precedent to suit his/her purposes. This is because, unlike statutes who's rules/law rely on their verbiage and precise wording; rules from precedents are merely the user's (lawyers) approximation and are subjective. In layman's terms, a narrower interpretation of a element in the rule can be promulgated by the opposing lawyer, in an attempt to circumvent the binding nature of a precedent. For example, in the example of *Bradley v Fisher*, "judge of superior court of record" might be narrowly interpreted as only supreme court judges; which in turn eliminates all high court judges from being under the ambit of the precedent. Additionally, there exist situations wherein there exist clusters of precedents which are applicable to the same case, which make it tremendously hard for the judiciary to determine which precedents to apply in the case. Consequently, in these situations the judiciary must apply their legal reasoning. In the context of precedential cases, Cappalli asserts that the judiciary when conflicted about a precedent/precedents will remain "faithful to the rule's purpose."[14] Meaning that the judge will use his reasoning to incorporate the rule/rules to the later case in a manner that is consistent with the motivations of the precedential court. This can be accomplished via *'distinguishing'*.[15] Distinguishing allows that the later court to not follow the decision of the precedent(s) by pointing out some differences in the facts between the two cases, even though those facts are not material to the *ratio* of the precedent. Hence, it can be said that

[13] Bradley v Fisher, 80 U.S. 13 Wall. 335 335 (1871).
[14] Cappalli, *supra* note 3, at 59.
[15] Lamond, *supra* note 2, at 5-6.

the later court does not have to follow a precedent that *prima facie* applies to it, at the discretion of the judge. Hence, some even argue that a better approach to legal reasoning from precedents is seeing the "binding force of precedents in the *justification* for the earlier decision, rather than in the ruling itself."[16] This asserts that lawyers must understand the purpose behind the precedent first, and the *ratio* of the precedent is of secondary importance. This stands to be an alternative to the more famous 'rule method,' and is one of many schools of thought in regards to legal reasoning from precedents. It also, according to the Stanford Encyclopedia of Philosophy, works to hinder the role of conflicting/multiple precedents and dilutes the issue of lawyers trying to broaden or narrow the ratio of a precedent. However, once again, no school of thought in regards of legal reasoning is perfect. This is because some judges do not judge in accordance to the purpose of precedential judgements, but rather are motivated by personal reasons, which negates the theory behind the school of thought. Additionally, accounting for the real *ratio* becomes difficult when the justification becomes key behind legal reasoning from precedents. Evidently, precedents are key in common law countries for the purpose of legal reasoning. Hence, various theorists refer to various schools of thought as the ideal one for legal reasoning from precedents. But, due to the issues, such as vagueness, plaguing the reasoning styles of inductive and syllogistic reasoning, ability of judges to 'distinguish,' and the presence of a plethora of ever-growing precedents in common law countries, no one method can be deemed perfect, and makes legal reasoning through precedents very complex. However, one can conclude that legal reasoning via precedents can work to make very compelling arguments, and decidedly win cases, if used effectively.

[16] Lamond, *supra* note 2, at 8.