

Cases of the House of Lords overruling previous decisions

Slapper, G. and Kelly, D. (2003) *The English Legal System*, London, Cavendish, pp. 75–7.

Any appellant who intends to ask the House of Lords to depart from its own previous decision must draw special attention to this in the appeal documents (Practice Direction (House of Lords: Preparation of Case) [1971] 1 WLR 534). Since 1966, the House has used this power quite sparingly. It will not refuse to follow its earlier decision merely because that decision was wrong. A material change of circumstances will usually have to be shown.

In *Conway v Rimmer* (1968), the House of Lords unanimously overruled *Duncan v Cammell Laird and Co* (1942). The first case concerned the question of whether a claimant could get the defendant to disclose documents during wartime which related to the design of a submarine. The second case concerned whether a probationary police officer could insist on getting disclosure of reports written about him by his superintendent. In the earlier case, the House of Lords held that an affidavit sworn by a government minister was sufficient to enable the Crown to claim privilege not to disclose documents in civil litigation without those documents being inspected by the court. In the later case, their Lordships held that the minister's affidavit was not binding on the court. The second decision held that it is up to the court to decide whether or not to order disclosure. This involves balancing the possible prejudice to the State if disclosure is ordered against any injustice that might affect the individual litigant if disclosure is withheld. Today, the minister's affidavit will be considered by the court, but it is no longer the sole determinant of the issue.

In *Herrington v British Railway Board* (1972), the House of Lords overruled *Addy and Sons v Dumbreck* (1929). In the earlier case, the House of Lords had decided that an occupier of premises was only liable to a trespassing child if that child was injured by the occupier intentionally or recklessly. In its later decision, the House of Lords changed the law in line with the changed social and physical conditions since 1929. They felt that even a trespasser was entitled to some degree of care, which it propounded as a test of 'common humanity'.

In 1961, in *R v United Railways of the Havana and Regla Warehouses Ltd* (1961), the House of Lords decided that damages awarded in an English civil case could only be awarded in sterling. The issue came up for reconsideration in 1976, by which time there had been significant changes in foreign exchange conditions and the instability of sterling at the later date was of much greater concern than it had been in 1961. In the second case – *Miliangos v George Frank (Textiles) Ltd* (1976), the House of Lords overruled the earlier decision, stating that damages could be awarded in other currencies.

In *R v Secretary of State for the Home Department ex p Khawaja* (1983), the House of Lords departed from its own previous decision made two years earlier – *R v Secretary of State for the Home Department ex p Zamir* (1980). The earlier case had put the main burden of proof on an alleged illegal immigrant to show that his detention was not justified. In its decision two years later, the House of Lords expressed the view that the power of the courts to review the detention and summary removal of an alleged illegal immigrant had been too narrowly defined in the 1980 decision. It held that continued adherence to the precedent would involve the risk of injustice and would obstruct the proper development of law.

In *Murphy v Brentwood District Council* (1990), the House of Lords overruled its earlier decision in *Anns v Merton London Borough Council* (1978) on the law governing the liability of local authorities for the inspection of building foundations. In the earlier decision, the House of Lords held that a local authority was under a legal duty to take reasonable care to ensure that the foundations of a building complied with building regulations. This created a very wide and extensive duty of care for local authorities which was out of kilter with the development of this area of law (negligence) in relation to other property like goods. There was considerable academic and judicial resistance to the decision in *Anns*. In overruling it, the House of Lords in *Murphy* cited the reluctance of English law to provide a remedy for pure economic loss, that is, loss which is not consequential upon bodily injury or physical damage.

If a person commits a murder or assists someone to do so under duress, that is, while under threat that unless he kills or helps, he himself will be murdered, should this afford him a legal defence? In *DPP for Northern Ireland v Lynch* (1975), the House of Lords decided that duress was available as a defence to a person who had participated in a murder as an aider and abettor. Twelve years later, the House of Lords overruled that decision. It held in *R v Howe* (1987) that the defence of duress is not available to a person charged with murder or as an aider and abettor to murder. Some people might regard it as unjust that a person who kills or assists in a killing whilst under duress should be so severely punished via the criminal law but, in taking away the defence of duress from murderers and those who assist them, the House of Lords founded its decision partly upon considerations of social policy (it made references to a rising tide of crimes of violence and terrorism which needed a strict response from the law) and a recognition that where people killed others or assisted in such events while under duress, their conviction could be addressed by other mechanisms like the availability of parole and the royal prerogative of mercy.

Another significant example of the House of Lords recognising and accommodating changed circumstance can be seen in *Hall v Simons* (2000), in which it declined to follow the previous authority of *Rondel v Worsley* (1969), which had recognised the immunity of barristers against claims for negligence in their presentation of cases [...].