HOW THE PRACTICE OF PRECEDENT ACCOMMODATE
SOCIAL CHANGE? LESSONS LEARNED FROM
THE COMMON LAW SYSTEM IN AUSTRALIA

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Abstract
The practice of precedent which essentially means that judges should refer to previous
decisions when they decide similar cases seems contradict with the nature of society which
continuously evolves. Law, on the one hand, need to be certain and therefore, it is somewhat rigid.
On the other hand, society changes continuously. In order to keep in a serviceable condition,
therefore, law should be able to accommodate social change. This paper intends to examine
how the practice of precedent in the common law system accommodates social change. It
will specifically examine the development of the law of negligence. In order to give a better
picture of how the law of negligence develops, this paper will discuss six negligence cases.
These include: Langridge v Levy,1 Winterbottom v Wright,2 George v Skivington,3 Heaven v
Pender,4 Donoghue v Stevenson,5 and Grant v Australian Knitting Mills Ltd.6 Based on
the six cases mentioned above, it can be said that the practice of precedent can sufficiently
accommodate the social change. The legal principles of the law of negligence develop through
the decision of the judges when they decide cases. The development of the law of negligence,
however, is done in a gradual way. This is because the judges are bound by the doctrine of
stare decisis. The incremental change in the practice of precedent can maintain the continuity
and the stability of law.

Keywords: precedent, social change

A. Introduction
The doctrine of stare decisis requires common law judges to refer to previous decisions
when they decide cases. This obligation has more or less influenced the development of
the common law system. This is because there seems to be a contradiction between law, as a
means to regulate society, and the society itself.

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1 Langridge v Levy (1837) 750 ER 863.
2 Winterbottom v Wright (1842) 152 ER 402.
3 George v Skivington (1869) 39 LJ Ex 8.
4 Heaven v Pender (1883) 11 QBD 503.
5 Donoghue v Stevenson (1932) AC 562.
6 Grant v Australian Knitting Mills Ltd (1936) AC 85.
7 M Rheinstein. 1952,'Common Law and Civil Law: An Elementary Comparison' 22 Revista Juridica de la
Universidad de Puerto Rico, p. 52.
While society continuously evolves, law needs to be certain and, therefore, it is somewhat rigid. However, a good law should be able to meet society’s needs. As a consequence, law needs to be changed as well. Most of the time, courts deal with the application of “known law” to certain facts. In deciding such cases, common law judges can easily refer to precedent.

In practice, sometimes judges must decide novel cases that contain new issues as a result of changes in the society. It seems peculiar to apply similar legal reasoning in different situations, as although the cases maybe similar. Even though this creates difficulties, it does not mean that the practice of precedent in the common law system is unable to accommodate social changes properly.

This paper argues that even though the doctrine of precedent requires judges to look at the previous decisions, it still enables judges to consider social change in their decisions. The first part of this paper will discuss the relationship between social change and the law. This includes the discussion regarding the judges’ law-making function and the roles of judges in relation to social change. The second part will examine how the doctrine of precedent accommodates social changes. The third part will analyze how the accommodation influences the development of the law of negligence. In doing so, six cases regarding negligence will be presented. These include: Langridge v Levy,9 Winterbottom v Wright,10 George v Skivington,11 Heaven v Pender,12 Donoghue v Stevenson,13 and Grant v Australian Knitting Mills Ltd.14

B. The Relationship between Social Change and the Law

It is still in debate whether law should follow social change or whether law should be a determined agent in the creation of new norm.15 In certain circumstances, law precedes societal changes.16 This is true when the purpose of law is to make social reform or to impose the purpose of the state.17 In most cases, however, a change in law is the result of a change in social reality.18 Such change usually emphasizes on the living

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9 Langridge v Levy (1837) 750 ER 863.
10 Winterbottom v Wright (1842) 152 ER 402.
11 George v Skivington (1869) 39 LJ Ex 8.
12 Heaven v Pender (1883) 11 QBD 503.
13 Donoghue v Stevenson (1932) AC 562.
14 Grant v Australian Knitting Mills Ltd (1936) AC 85.
law of people and frequently based on social behavior.\textsuperscript{19} This is especially in the area of private law.\textsuperscript{20}

The fact that the society changes is inevitable.\textsuperscript{21} It sometimes changes rapidly and it sometimes changes gradually. When social reality in the society is changed, the values of the society may be changed too. Furthermore, the change in values in the community should be followed by the change in law. This is because the law regulates the relationship between people in society and, therefore, it should meet the values of society.

It is important to review legal rules and principles which do not accommodate social needs because these influence public confidence.\textsuperscript{22} When judges become reluctant to adapt the law to a changing society, public confidence in the rule of law is impaired because law does not fit with the needs of society.\textsuperscript{23} Eventually, it is possible that the public will lose respect for the existing law.

1. Judges or the Legislature: Who Has the Authority to Make Law?

The doctrine of \textit{stare decisis}, in the common law system, creates the expectation that the law will remain as it is stated in the precedent.\textsuperscript{24} This creates certainty in the law. The certainty of law will be enhanced if the existing law is clear. This will enable the society to understand the law which will prevent the intervention of the legislature.

It is still questionable as to whether or not judges have an authority to make a law. This debate is related to the principle where the law making function belongs to the legislature and the courts “simply interpret and apply laws”.\textsuperscript{25}

In regard to this matter, there are two different opinions. The first is that the law-making function should be the legislature’s responsibility. There are three reasons why the law should be made by the legislature: the first reason is that the legislature maintains the idea of democracy.\textsuperscript{26} This is because the members of the legislature are elected, directly or indirectly, by people through a general election. Since they are elected by the majority of the community, they represent the community. As a result, they are more legitimate.

The second reason why only the legislature should be permitted to make law is that it safeguards the law against a distrust of judges.\textsuperscript{27} The notion that judges, to a cer-
tains extent, can be very subjective when they resolve a dispute. This can be minimized by giving the law-making authority to the legislature.

Another reason why the legislature should make law is to secure the idea of separation of power.\textsuperscript{28} By distributing the authority to make laws to the legislature and that of applying laws to the judiciary it will maintain the idea of separation of powers. Each government branch has its own responsibility, each can be more independent.

There are, however, some difficulties when the law-making function belongs absolutely to the legislature. The long and complex procedure for the legislature to make law is one of the difficulties. To make law, the legislature must follow several procedures such as hearing, first reading, second reading and other necessary steps.\textsuperscript{29} The process may become longer since, in some stages, it is possible that there are long debates. The necessity to accommodate the social change will be disturbed if the legislature cannot change the law in a relatively short time.

Another disadvantage of the legislature having the sole law-making function is that the debate in parliament may become more political rather than legal. This is because the members of the legislature represent the interests of the community. As a result, the legislature is more concerned with the community interests than legal certainty.

In addition, the legislature is not directly involved in the legal process which they may not be foreseen in the application of a rule. As a result, it cannot formulate the precise and comprehensive rules.\textsuperscript{30}

The second opinion is that judges, to a certain extent, should have the authority to make law, for several reasons. First, judges made law is relatively shorter, in terms of time, than the legislature. This is because in court, in order to make law, there is no such long and complex procedure. Second, Judges frequently deal with legal matter and as a consequence they are familiar with the practical problems of law.\textsuperscript{31} As a result, they can be more accurately address the problems.

The practice of precedent, in this regard, will minimize some of the difficulties mentioned above. This is because judges can make law through their decisions. When deciding cases, they, based on the precedents, make law. They make law by modifying, extending or reviewing the previous precedents. As a result, they can adapt the existing law to the current situation.

2. The Importance of Judges' Law-Making Function in Relation to the Social Change

In relation to change in society, judges have a significant role. This is because judges resolve disputes in the society which come before them. When resolving disputes, they sometimes follow the existing precedent.

\textsuperscript{28} Ibid.


\textsuperscript{31} Ibid.
This is especially when there are sufficiently similar facts between the case at hand and the existing precedent.

Following the previous precedent is important because it can maintain certainty and predictability in society. Such certainty is important not only for the disputants but also for the community. The high degree of certainty in law will create public trust of the legal system.

On certain occasion, however, judges make law. This is especially when there is no applicable law. Judges, on such occasion, make law by re-interpreting the precedent. This attitude is essential so that law can accommodate the social change in the community.

The development of precedents is ‘inter-temporal and inter-jurisdictional’ among the judges who decide cases. The development of precedent is inter-temporal because the principle in precedents developed through decades. To decide current cases, judges often use the ratio of old precedents. This is, particularly, when such court decisions are well reasoned precedents. Inter-jurisdictional means within jurisdiction, the doctrine of precedent is binding. In other jurisdictions, however, the precedent is not binding but may be persuasive.

The creation of law in a precedent is never ending. This is because each case adds to the principles of case law. A lawyer in the common law system usually enters the system with a particular problem and locates the relevant precedents. As a result, the common law precedent may achieve a high predictability and certainty if the court decisions emerge from the multiplicity of well-reasoned precedents.


Judges, in the common law system, play important roles in the adaptation of law to the social changes. This is because the common law system authorizes judges to engage in “a law-making function.” Thus, judges, especially in the High Court, frequently make law in their decisions. In doing so, Judges sometimes have to consider the values of the society. This is important to ensure that the law keeps pace with society’s perceptions and meets society’s needs.

Even though judges frequently follow previous decisions, judges, especially in ap-

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35 Ibid.
38 Harris, Op.Cit., 408 PM 303.
pellate courts, have the freedom to depart from their own precedents. This is essential because society is constantly evolving, and the law has to be able to move with that evolution. This not only means that social changes are well accommodated in law, but further it implies that law which has been made by judges may influence the development of society itself.

Changing law is important however, it should be done very carefully. This is because changing law sometimes affects the certainty and the stability of law. The law, therefore, should be changed in a gradual way to maintain the balance between the need for change and the need for stability. The practice of precedent which requires judges look at the previous decisions, certainly maintains the continuity and stability of law.


Theoretically, there are several mechanisms how the practice of precedent deals with the social change. Initially, judges can make several different levels of generality to the material facts of the precedent. This means that material facts of precedent can be narrowed or broadened in order to meet the current cases. This is important because courts do not only resolve dispute, they also formulate rule and principle that can be used to decide comparable cases.

Judges can also reinterpret the previous decision in the light of other cases. In addition, there are other methods how the practice of precedent can fit with the social changes such as by extending, modifying and re-examining the legal principle. Through these mechanisms the legal principle in precedent is developed. In order to give best picture of how the practice of precedent engage with the social change, the following part will discuss six cases regarding negligence from different time frame.

a. *Langridge v Levy*[^46]

The facts of this case were that a father purchased a gun from a gun seller. The father explained to the gun seller that it would be used by him and his son (the plaintiff). The gun seller (the defendant) stated that the gun had been made by Nock, a respectable gun maker and it was safe. The father tested it and bought it. His son used the gun and it exploded in his hand and causing injuries requiring the amputation of his hand.

[^40]: Harris, Loc. Cit.
[^46]: *Langridge v Levy* (1837) 750 ER 863.
In *Langridge v Levy*, the court stated that a sold product "should be reasonably fit for the purpose it was bought for and compounded with reasonable care." This case was decided on fraud. The court stated that the gun seller had given a poor quality of report to the buyer. This is a matter of "fraudulent misrepresentation," and therefore, it has nothing to do with negligence. The gun seller was responsible to the plaintiff's injury as a consequence of fraud. The judge did not consider that negligence existed in this case. This is because there was no contract between the plaintiff and the defendant. Therefore, the defendant was not liable to the plaintiff and as a result, negligence did not exist.

The court decision will be different if the father used the gun and had been injured. If such a case were happen, the father, under the contract of sale, would have been able to recover. This case was criticized for potentially widening liability.

b. *Winterbottom v Wright*

The facts of this case were that a coachbuilder (the defendant) had a contract with postmaster general to supply mail coaches. Under that contract, the coachbuilder agreed that he would be responsible for keeping the coaches in a fit, proper, safe and secure condition for the purpose of mail delivery. Atkinson, aware of the terms of the coachbuilder's contract with the postmaster, made a contract with the post master general to provide horses and coachmen to drive the coaches. The coachbuilder did not keep the coaches in good condition and, as a result, the coach driver (the plaintiff) was thrown from a coach and lamed for life. The coach driver argued that he could recover under the contractual obligation owed by the coachbuilder, and the rule in *Langridge v Levy* applied. Further the coach driver stated that fraud was also present since the coachbuilder stated that he would provide coaches in a good condition.

In *Winterbottom v Wright*, the court corrected the judgment in *Langridge v Levy*, by determining that contractual obligation is only enforceable by a party to that contract. In this, the plaintiff could not recover case since the plaintiff was not a contracting party. The judge stated that to do so would invite the 'most absurd and outrageous consequences, to which I can see no limit.'

In reaching the decision, the court stated that this case can be distinguished from the previous case namely *Langridge v Levy*. In *Langridge v Levy*, the plaintiff 'was really and substantially the party contracting. Further, there was a distinct fraud committed on

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47 Ibid.
48 Ibid, p. 694.
49 Ibid.
50 Ibid. p. 694 (B Parkc L).
51 *Winterbottom v Wright* (1842) 152 ER 402.
52 Ibid.
53 Ibid. p. 405 (Lord Abinger CB).
the plaintiff with the intention that it be acted upon by the plaintiff.

The decision in Winterbottom v Wright\(^{54}\) implied a principle that a manufacturer is not liable to any third party injured by negligent construction, or repair of, a building. In this case, the judge gave the example that passengers or pedestrians who are injured as a result of a coach cannot sue the person who is responsible for the coach.\(^{55}\)

This case shows that the judges applied very narrow liability; they did not calculate possible dangers that may arise. It seems that the judges ignored the foreseeability injury that may occur to a non contracting party. This might be because in that era, there were a very small number of vehicles and passengers in roads, and therefore, the possibility of traffic's accident was small. Thus, to extend the responsibility of a vehicle owner to the person who did not have contract with them seems to be unfair.

c. George v Skivington\(^{56}\)

The facts of this case were that a chemist (the defendant) made a hair wash, based on his own recipe. He said that it was safe and fit for washing hair. A man (the first plaintiff) purchased the wash and said to the chemist that it was intended for use by his wife. The wife (the second plaintiff) used the wash and suffered personal injury as a result.

This case focused on the liability of the defendant for the negligence in manufacture of a product which, as a result, caused injury to the plaintiff.

The central question in this case is 'whether the duty of exercise ordinary care and skill imposed on the compounder of a product extends beyond the person with whom the contract of sale is made, to cover a person or persons for whom the article is purchased, where the compounder/seller knows it is purchased for the use of that person.'\(^{57}\)

George v Skivington\(^{58}\) concerned the liability of the manufacturer to a person who was injured because of its product. 'An article sold should be reasonably fit for the purpose it was bought for and compounded with reasonable care.'\(^{59}\) The court stated that the manufacturer owed a duty of care to a person who uses the product, even though that person did not have a contract with the manufacturer. This especially applies when the manufacturer knows that the product purchased would be used by a person other than the buyer.

The judge stated that where 'a product is purchased by A for the use of B and this is clearly stated at the time of purchase and sale and therefore is known to the seller, then

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\(^{54}\) (1842) 152 ER 402.

\(^{55}\) Loc.Cit., p. 405 (Lord Abinger CB).

\(^{56}\) George v Skivington (1869) 39 LJ Ex 8.

\(^{57}\) Ibid., p. 3 (Kelly CB) PM 351.

\(^{58}\) (1869) 39 LJ Ex 8.

\(^{59}\) Ibid., p. 4 (Kelly CB) PM 352.
the defendant is held under a duty that the product is reasonably fit for its purpose.\textsuperscript{60} It is, therefore, in this case, the manufacturer's duty of care can be extended to the wife because the manufacturer has already known that the product would be used by the wife.

In reaching the decision, the court compared the facts in this case and the facts in \textit{Langridge v Levy}. The court, furthermore, concluded that the facts in this case were sufficiently similar to the facts of \textit{Langridge v Levy} and therefore the rule in \textit{Langridge v Levy} can be applied.

The court also considered that there is proximity in that case. This is because the court saw that even though the husband was the contracting party, and the wife was not, the wife could be categorized as the party as well. This is as a consequence of the principle married women, at that time, was not eligible to make contracts on their own.\textsuperscript{61}

Regarding the principle of privy of contract, a seller is liable to anyone who has been injured as a result of his/her negligence or fraud, if the person is in the seller's contemplation as a user of the product. This is regardless of whether the person is not a party to the sale's contract.\textsuperscript{62} Further, the judge stated that the injury occurred as a result of the person who made the product. Therefore, the person is negligent because he or she did not take due and reasonable care to ensure that the product is safe.\textsuperscript{63}

In order to make this case fit the principle in \textit{Langridge v Levy}. Cleasby B J stated that 'a vendor guilty or fraud is liable to anyone who has been injured as a result, even if not a party to the contract of sale, as long as they were in the vendor contemplation as a user of the article.'\textsuperscript{64} Further, His Honor stated that because only the compounder knew the ingredients of the product, then he should have taken reasonable care that the product was not injurious.

In this judgment, it is clear that the court extended the duty of care owed by the product maker. The court, in this case, dealt with the issue of foreseeability and proximity between the user and the compounder of a product.

d. \textit{Heaven v Pender}\textsuperscript{65}

The material facts in this case were that the plaintiff was an employee of Gray (ship painters). Gray had contract with a ship owner to paint a ship. The ship owner had a contract with the dock owner. The contract included the provision of a stage for the purpose of painting the ship. The stage was unfit as a result the plaintiff was injured.

In \textit{Heaven v Pender}\textsuperscript{66} the judge found that a duty of care may exist outside of a

\textsuperscript{60} Ibid.

\textsuperscript{61} \textit{George v Skivington} (1869) 39 LJ Ex 8, 4 (Piggott B) PM 352.

\textsuperscript{62} Ibid., p.5 (Cleasby B) PM 352.

\textsuperscript{63} Ibid.

\textsuperscript{64} Ibid.

\textsuperscript{65} \textit{Heaven v Pender} (1883) 11 QBD 503.

\textsuperscript{66} (1883) 11 QBD 503.
contract or absent of fraud. Therefore, to determine whether or not a person is negligent does not necessarily require the existent of a contract. Rather, the most important factor is whether or not a duty of care exists between those people. If a duty of care exists, then it can be considered that an action is negligent.

In determining whether or not a duty exists, the court uses inductive reasoning. This means that "where two major propositions lead to exactly similar minor premises there must be a more remote and larger premise which embraces both major propositions." It is stated that a duty arises on the part of A if it is obvious to an ordinary person that without A providing reasonable care or skill, A would cause injury to B. Therefore, the duty arises on A to use reasonable care or skill to avoid such an injury.

In *Heaven v Pender*, the judge took a different approach to that in *Langridge v Levy* and *Winterbottom v Wright*. The judge (Brett MR) reviewed that *Langridge v Levy* should be decided on the basis of negligence not fraud. Furthermore, His Honor stated that in *Winterbottom v Wright* the defendant failed to make the case in negligence because the defendant focused on the defendant’s contractual obligation. It appears that the above cases arrive at different ratio of generality in order to provide a broader principle.

In this case, His Honor introduced the element of proximity in determining whether or not a person is negligent. His Honor, therefore, decided that the defendant owed a duty of care according to the deduced principle (major premises), and invitee-invitee relationship.

The other judges (Cotton LJ and Bowen LJ) stated that even though they agreed with decision which found for the plaintiff, the basis for reaching the decision was not the same. The basis was that the defendant owed a duty of care to the plaintiff because of the invitee-invitee relationship. Their Honors stated that there was no need to broaden the principle.

In this case, it appears that the court’s attitude to the negligence law began to change. The judge tried to accommodate the social change through the development of a new principle of law. As a result, the principle of negligence was extended. This is a clear example of where application of legal principle being available to the cases turns to the issue of values. The judge in this case found the necessity to refer to society's needs. It is important to find gaps between law and society’s needs.

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70 (1883) 11 QB 503.
71 (1837) 750 ER 863.
72 (1842) 152 ER 402.
73 (1842) 152 ER 402.
e. **Donoghue v Stevenson**

The facts of this case were that the plaintiff drank a bottle of ginger beer which was manufactured by a manufacturer company and purchased by the plaintiff friends and then gave to the plaintiff. The plaintiff drank almost all of the contents and she discovered a decomposing snail in the bottle. The plaintiff suffered shock and gastro-enteritis. The plaintiff instituted proceedings against the manufacturer for negligence.

The main question in this case is whether a manufacturer of a product has a duty of care to a purchaser or consumer to take reasonable care that the product is safe to be consumed. This is considering that the product has been sold by a distributor. The distributor, the purchaser and the consumer, however, were unable to inspect whether or not there is a defect in the product.

In this case, three judges agreed that the decision was found for plaintiff (Atkin J, Thanherton J and MacMillan J) and two judges were dissenting (Buckmaster J and Tomlin J). Buckmaster J and Tomlin J stated that, in this case, the law should not impose on the manufacturer. This was because the principle which allowed that the manufacturer should be liable, in such a case, would be too broad. The manufacturer was possibly cannot answer.

In reaching the decision, Buckmaster J reviewed four previous decisions namely: *Langridge v Levy*, *Winterbottom v Wright*, *George v Skivington*, and *Heaven v Pender*. His Honor stated that the principle in *Langridge v Levy* had nothing to do with negligence. This case was particularly about fraudulent misrepresentation. Further, His Honor stated that the principle in *Winterbottom v Wright* dealt with a manufacturer who was not liable to third party who was injured because of the negligent construction or repair of an article.

In relation to *George v Skivington*, the court took a different approach in reaching the decision, compared to the principle in *Winterbottom v Wright*. Regarding these two cases, His Honor stated that "it is my opinion that they should be buried so securely that their perturbed spirit shall no longer vex the law." His Honor concluded that the obiter dicta of Brett MB in *Heaven v Pender* was the only basis to decide this case.

Atkin J applied a broader principle of negligence. His Honor stated that, in order to determine that a person is negligent, there must be three elements. These include: a duty owed, a breach of the duty, and injury as a result of the breach. In addition, His Honor use the statement of Brett MR in *Heaven v Pender* in the sense that Brett

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75 *Donoghue v Stevenson* (1932) AC 562.
76 (1837) 750 ER 863.
77 (1842) 152 ER 402.
78 (1869) 39 LJ Ex 8.
79 (1883) 11 QBD 503.
80 *Donoghue v Stevenson* (1932) AC 562, 576 (Buckmaster L) PM 364.
81 Ibid., p.599 (Atkin L) PM 374.
MR introducing the element of proximity. His Honor stated that in *Heaven v Pender* it was correct that the court rejected Brett MR proposition because it is too wide, however, now, it can be conformed as a correct statement of English law. His honor stated:

You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour—your neighbours are “persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.”

The above principle is known as a general “neighbour” principle. This principle can be stated at narrower principle which was only fit for the manufacturer. The majority agree with the more specific ratio of the case, this is because it based on the specific facts of the case.

The other judges: Thankerton J and MacMillan J, did not agree with Atkin J’s broader principle regarding negligence. However, both of them agreed that, in order to establish negligence, there must be a relation of duty of care between the plaintiff and the defendant, which is not limited to contractual relations. Their Honors stated that duty of care existed in *Donoghue v Stevenson*, because of special circumstances.

According to Burns:

“If negligence law is to serve any useful social purpose, it must reflect attitude and perception of ordinary members of the community. To hold defendants to standards of conduct that not reflect the common experience of the relevant community can only bring the law of negligence into disrepute.”

1. *Grant v Australian Knitting Mills Ltd*

The facts of this case were about a customer who took action against a manufacturer, because the customer suffered dermatitis after wearing underwear manufactured by the manufacturer’s company. The product contained an irritating chemical.

The court believed that the facts in this case were analogous to the *Donoghue v Stevenson*. The rule in *Donoghue v Stevenson* is, therefore, applied. The court decided that the manufacturer was liable in tort of negligence. The court, furthermore, noted that:

no doubt many difficult problems will arise before the precise limits of the principle are defined; many qualifying conditions and many complications of facts may in the future come before the courts for decision. It is enough now to say that their lordships holds the present case to come within the principle of the *Donoghue’s case*.

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82 Ibid., p. 580 (Atkin L) PM 366.
83 (1932) AC 562.
85 *Grant v Australian Knitting Mills Ltd* (1936) AC 85.
86 Ibid., p. 107 (Wright L) PM 398.
From the six cases presented above, it is clear that there have been efforts from the court to create rules which respond to the social changes. The court tried to consider and accommodate the change of the society when they decided a case. This resulted in the change of law.

The change of law is done in an incremental way. If we look at the aforementioned cases, it took almost fifty years to establish the three elements of tort of negligence (from *Heaven v Pender* (1833) to *Donoghue v Stevenson* (1932)).

The evolution nature of changing law does not make the law too conservative. This is because the law still adequately accommodates the society needs, even though the values of society changed. Furthermore, the gradual way of changing law is important because it avoids uncertainty and instability of law. Stability and certainty in law are essential, not only for the parties of a dispute but also to maintain the public trust.

C. Conclusion

The doctrine of precedent, requiring judges to follow the previous court’s decisions, does not prevent the common law judges from accommodating social change. This is because the practice of precedent allows judges, to a certain extent, to reinterpret or to extend the legal principle of the precedent.

The obligation to refer previous decisions affects the pace of social change in law. This is because to make new law, judges are constrained by the doctrine of *stare decisis*. Therefore, they are not free to depart from previous decisions. As a result, the change in law is done in a gradual way.

The gradual change in law, however, does not make the law too conservative. This is despite the practice of precedent seeming to be conservative because of its attitude in the past decisions. In practice, however, the practice of precedent is not too conservative. This is because it can appropriately adapt to the changes in society.

The incremental change in the practice of precedent can maintain the continuity and stability of law. The continuity and stability of law is important to maintain public confidence. This also creates the certainty of law.

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