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What effect does legal precedent from other jurisdictions have on the courts in the Isle of Man.

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Introduction

The doctrine of precedent is based upon the Latin maxim *stare decisis et non quieta movere*, meaning that comparable cases in the same or more junior courts in the Isle of Man should be adjudicated in a similar manner. Lord Gardiner once said "*Their lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law…it provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules*[1]". The doctrine of precedent means that decisions of Manx courts of a similar or a higher level are binding; although in the Isle of Man it is common for advocates to submit case law from other jurisdictions. However, the persuasiveness of these foreign judgments in the Isle of Man courts is debatable.

The effect of legal precedent from other jurisdictions in the Isle of Man

The much-quoted traditional view on the persuasiveness of precedent from other jurisdictions was outlined by Lord Ackner in the Privy Council decision of *Frankland & Moore*:

> *"Decisions of England courts, particularly decisions of the House of Lords and the Court of Appeal in England, are not binding on Manx courts, but they are of high persuasive authority, as was correctly pointed out by Glidewell JA in giving the judgment of the Staff of Government Division (Criminal Jurisdiction). Such decisions should generally be followed unless either there is some provision to the contrary in Manx statute or there is some clear decision of a Manx court to the contrary, or, exceptionally, there is some local condition which would give good reason for not following the particular English decision. The persuasive effect of a judgment of the House of Lords, which has largely the same composition as the Judicial Committee of the Privy Council, the final Court of Appeal from a Manx court, is bound to be very high.*[2]"

This traditional view, which means that generally the Isle of Man should follow decisions of England was summarised in *Solly's Government and Law in the Isle of Man* which stated:

> *"In summary, it is clear that English decisions are not strictly binding on Manx courts but that they are of high persuasive value and will frequently be followed in the absence of special circumstances or local precedent to the contrary.*

[1] Note; (Judgement: Judicial decision as authority: House of Lords) [1966] 3 All ER 77
[2] Frankland and Moore v R 1987-89 MLR 65 at 80

> *It is to be hoped that Manx common law will develop independently in accordance with the needs, requirements and interests of the inhabitants of the Isle of Man and indeed the international community of which the Island is a part. It is to be hoped that Deemsters will not slavishly follow English decisions, which in certain cases may not be in the best interests of the Island, in areas where it would be more appropriate to develop Manx law in a different way to the way in which English law has developed and is developing.[3]"*

Frankland was therefore seen as the benchmark case when considering English precedent, as was outlined *in the matter of the Petition of Cussons*[4] where it was said that "*the correct approach seems to us to be to establish the English precedent … and to follow that precedent unless there is any justification to depart from it in line with Frankland v. R.*".

The reasoning in *Frankland & Moore*[5] was adopted in the majority of cases where it was decided not to follow the case law of England. *In the matter of Caine Brothers (Builders) Limited* was an example of this, where Glidewell J.A decided that there was a special local condition giving a good reason to not follow the English decision. He said that:

> "*We have been informed that this is the first appeal of this nature to be heard in the Isle of Man, a fact which, speaking for myself, is a great credit to all concerned, considering that it is an appeal based upon legislation which has now been in force for exactly 45 years. But for that reason there is little precedent to guide the court and though English precedents as always are generally helpful, in this particular case they do not provide more than general assistance because the whole system of development control in England and Wales differs in a number of material respects from that in force in the Isle of Man*[6]."

City and International Securities Limited[7] narrowly extended *Frankland & Moore,* as Deemster Cain did not follow the majority House of Lords decision in the *Home Office v Harman*[8] because it had been challenged before the European Commission of Human Rights.

However, over time it is argued that there has been a steady departure from the traditional view set out in *Frankland & Moore*[9], as first indicated in *Barr and Anglo International Holdings Limited* where Judge of Appeal Hytner said "*this court is not in any way bound by decisions of the English courts*[10]". As well as this, the courts will now look to consider judgments from other jurisdictions where appropriate. In *Cusack, Cotter v Scroop Limited* Deemster Corrin emphasised

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[3] Solly's Government and Law in the Isle of Man (1994) pg 463
[4] In the matter of the petition of Cussons 2001 - 03 MLR 539 (SGD)
[5] Frankland and Moore v R 1987-89 MLR 65 at 80
[6] In the matter of Caine Brothers (Builders) Limited 1978 - 80 MLR 113 (SGD) at 117
[7] City and International Securities Limited 2001-03 MLR 239
[8] Home Office v Harman [1983] AC 280
[9] Frankland and Moore v R 1987-89 MLR 65 at 80
[10] Barr and Anglo International Holdings Limited 1990-92 MLR 398 pg 409

the potential importance of judicial decisions from other jurisdictions within the Commonwealth when he said:

> "*The Isle of Man is an active member of the Commonwealth and whilst historically it has tended to follow English law I feel quite free to look for guidance to other Commonwealth countries as there is no binding or persuasive authority to the contrary in England.* [11]"

In the recent case of *Bitel*[12] Deemster Doyle outlined the current position of Manx precedent in respect of the persuasiveness of precedent from other jurisdictions:

> *"529. Counsel have referred to authorities from various jurisdictions including the Isle of Man, England and Wales, Jersey, Guernsey, the United States of America, Australia, Canada and the British Virgin islands. In such circumstances it may be of some assistance to set out the Manx law position in relation to precedents from other jurisdictions.*
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> *530. If a point of law is covered by local Isle of Man authority especially if that authority is from the Appeal Division or the Privy Council dealing with an appeal from the Isle of Man then it is to that authority which the court should turn to in the first instance.*
>
> *531. If however there is no local binding authority then it is appropriate for counsel and the court to look beyond local frontiers…*
>
> *541. In addition to applying our own local precedents Manx courts will also continue to benefit from the learning and reasoning of judgments of the English courts and "other great common law courts" including the High Court of Australia."*

It is argued that Deemster Doyle's statement in *Bitel* now replaces the traditional view set out in *Frankland & Moore*[13]. The *Dominator* case[14] evidences this when it was said by Deemster Kerruish and Judge of Appeal Tattersall that:

"*We note that Mr Jacobs also made reference to Frankland v R … even without the benefit of full argument on such issue, we are bound to express some doubt whether they do so in the context of a jurisdiction which is becoming increasingly independent of English statutes and procedure and is frequently choosing to be informed by or to adopt the common law and practices found in jurisdictions other than England*."

[11] Cusack, Cotter v Scroop Limited (judgment 16 January 1997) pg 9
[12] Bitel v Kyrgyz Mobil and Others (Chancery Division, CA 2006/07, unreported
[13] Frankland and Moore v R 1987-89 MLR 65 at 80
[14] Dominator Limited v Gilberson SL and Others 2009 MLR 161

It is therefore argued that the current position in the Isle of Man in respect of the persuasiveness of legal precedent from other jurisdictions is that the courts will first look to case law within its own jurisdiction, but failing that courts will now turn to other common law jurisdictions both inside and outside of the commonwealth, and after the submission of the relevant foreign case law it is for the Deemster to decide the approach which best suits the Island.

The situation in Guernsey – a comparison

At this point it is worth taking a brief look at a comparable jurisdiction to see whether they take a similar approach as the Isle of Man in respect of the persuasiveness of decisions from foreign courts. Guernsey is akin to the Isle of Man constitutionally in that it is a self-governing crown dependency which is part of the Commonwealth, but not part of the United Kingdom. Guernsey has a comparable court structure and its ultimate appellate court is also the Privy Council[15].

In general, English principles have been consistently adopted to supplement customary law or statute in Guernsey where compatible with Guernsey principles[16]. In *Flightlease* it was said that[17]

"… it is clear that policy in Jersey has been generally to follow the guidance of English law, both statutory and judge-made, in this field. That is not at all surprising. English law offers a more sophisticated body of law developed in the light of the demands of a sophisticated modern economy. International financial services are a speciality of Jersey, as of Guernsey. So there is much sense when developing Jersey law in this field to look for guidance to the English law developments."

It is therefore clear that broadly speaking, where Guernsey and England are compatible, English precedent is not binding but is usually followed. Also, where there are two conflicting lines of English authority the Guernsey courts are free to choose which decision to follow[18]. One example of where Guernsey has followed an English decision was in *Ashdene*[19] where it was decided that in the absence of Guernsey authority the court should follow the modern English case law.

Whilst some areas of Guernsey law such as criminal and commercial law (where Guernsey has largely copied the English statutes) are heavily influenced by English Law, Guernsey is unique

[15] Richard Clark, The Dispute Resolution Review 2nd Ed. (Law Business Research Ltd, 2010); pg 275
[16] Flightlease Holdings (Guernsey) Ltd. V Flightlease (Ireland) Ltd. 2009-10 GLR 38
[17] Flightlease Holdings (Guernsey) Ltd. V Flightlease (Ireland) Ltd. 2009-10 GLR 38
[18] States v Miller & Baird (C.I) Ltd. (C.A.) 2005-06 GLR 295
[19] Ashdene Consultants Ltd. V Bachmann Group Ltd. (Royal Ct.) 2005-06 GLR N [22]

in that it has decided it was inappropriate to apply English equitable principles affecting land if it would cause hardship, as Guernsey land law is based on Norman customary law[20].
Guernsey is also unique in that there is a special relationship of closeness with Jersey. However the courts have said that it is not essential to follow Jersey authorities, but a common approach is desirable[21].

In a similar manner to the Isle of Man there been times where the Court of Guernsey has not followed English case law. This occurred in *Manches LLP*[22] where a case from the Isle of Man Staff of Government Division was seen as a more appropriate line of authority to follow than a case from the Royal Court of Jersey.

Overall, the case law suggests that Guernsey will give more weight to decisions from England than Manx courts do, and its special relationship with Jersey adds another unique consideration when the courts of Guernsey are considering whether to follow an English decision.

Conclusion

It has recently been said that "*decisions of English courts are not binding on Manx courts but they are of highly persuasive authority. English decisions are generally followed unless there is a Manx provision to the contrary or if there is a local condition that would give good reason not to follow the English decision*[23]", however it is suggested that this is an outdated proposition based on *Frankland & Moore*[24]. It is argued that in reality this does not reflect the current position outlined by Deemster Doyle in *Bitel*[25], which means that Manx courts will at first look to case law within its own jurisdiction, but failing that the courts will consider cases from any other common law jurisdictions. The Isle of Man's approach in the use of legal precedent from other jurisdictions has developed over time, and can now be contrasted with other offshore jurisdictions such as Guernsey which can be more inclined to follow English decisions.

[20] Bougourd v Woodhead (Royal Ct.) 2009-10 GLR 487
[21] McNamara v Gauson (Royal Ct.) 2009-10 GLR 387
[22] Manches LLP v Inter Global Fin. Ltd. (Royal Court) 2009-2010 GLR 283
[23] Richard Clark, The Dispute Resolution Review 2nd Ed. (Law Business Research Ltd, 2010); pg 350
[24] Frankland and Moore v R 1987-89 MLR 65
[25] Bitel v Kyrgyz Mobil and Others (Chancery Division, CA 2006/07, unreported