(d) Declaration of will

- **Allen** calls it "Megalomaniac jurisprudence."

Functional School

Dean Pound – Profounder of this school. Law is more than set of abstract norms or a legal order – it is also process of balancing conflicting interest and securing satisfaction of maximum of wants with minimum of friction. (Corresponds with teleological). Left wing of the functional school termed – **Realist school**. Realists trace their intellectual ancestry to scepticism of Holmes.

Llewellyn concluded that realists had following in common conception of law in flux means to social ends, separation of 'is' from ought.

Realist School
(Holmes, Gray, Frank, Llewellyn, Haggerstorm, Olivercona)

- "Law never is, but is always about to be."
- Law is studied for its social effects.
- Special stress was given upon the legal decisions.
- Also called "left wing of the functional school".
- Less concerned with the ends of law/concentrates upon the study of law as it is in actual working and its effects.
- Origin in USA owes to Holmes and Gray.
- "Law is what the judges declare". (Gray in "Nature and Sources of Law")
- **Homes in "The path of the Law":**
  - "Law is the **prophecies** of what the courts will do in fact, and nothing more pretentions are what we mean by the law".
  - "Study of laws on a national system based on **history**."
  - "The theory is the most important part of the **dogma of law**."
  - "Need for a legal theory."
- **Jerome Frank in "Law and the Modern Mind":**
  - "Certainty of law is a legal myth."
  - "Father Complex" makes one think of certainty in law. He took the Freudian approach.
  - "Judges should not stick to principles and precedents – they should evolve law case by case."
- **Llewellyn:**
  - Realism distrusts traditional legal rules and concepts.
  - Society changes faster than law.
  - Temporary separation between 'is' and 'ought'.
  - Jurists should **examine** how the law meets **contemporary** social problems.
  - "Rules are **generalised prediction** of what the **courts will do**."
  - "There is no realist school; Realism means a **movement** in thought and work about law."
  - Emphasises the study of case law and also the personality of the judge and jury.
- **Haggerstorm and Olivercona (Swedish jurists) are also realists.**
  - Olivercona says "Nature of law has universal validity".
- **Vs. Social School:**
  - Realist school also says that the law should be studied for its social effects but it gives special attention to legal decisions.

Natural School: Some facts

- **Grotius (1583-1645)** – Grotius built his legal theory on 'social contract'. His view, in brief, is that political society rests on a 'social contract'. It is the duty of the sovereign to safeguard the citizens because the former was given power only for that purpose. The sovereign is bound by 'natural law'. The law of nature is discoverable by man's 'reason'. It should be carefully noted that the 'reason' of Grotius is not the 'reason' of Thomas. It is a self-supporting 'reason' of the man.
- **Hobbes (1588-1679)** – Hobbes' theory also proceeds from the 'social contract'. Before the 'social contract', man lived in a chaotic state. According to him, man's life in a state of nature was one of fear and selfishness. It was 'solitary, poor, nasty, brutish and short'. The idea of self-preservation and avoiding misery and pain are inherent in his nature. He desires society also. These natural inclinations induced him to enter into a contract and surrender his freedom and power to some authority. The law of nature can be discovered by 'reason' which says what a man should do and what he should not do. Man has a natural desire for security and order. This can be achieved only by establishing a superior authority which must command obedience. Therefore, Hobbes is a supporter of absolutism. Subject has no rights against the sovereign, and the latter, in no case can be disobeyed.
- **Locke (1632-1704)** – According to Locke, the state of nature was a golden age, only the property was insecure. It was for the purpose of protection of property that men entered into the 'social contract'. Man, under this contract, did not surrender all his rights but only a part of them, namely, to maintain order and to enforce the law of nature. His natural rights as the right to life, liberty and property he retained with himself. The purpose of government and law is to uphold and protect the natural rights. Locke's theory is contrary to that of Hobbes. The former supports liberty whereas the latter supports authority.
- **Rousseau (1712-1778)** – According to him, 'social contract' is not a historical fact but a hypothetical construction of reason. Before this contract, man was happy and free and there was equality among men. By the 'social contract' men united for the preservation of their rights of freedom and equality, for this they surrendered their rights not to a single individual-sovereign, but to the community to which Rousseau gives the name of 'general will'. It is the duty of every individual to obey the 'general will' because in doing so he directly obeys his own will. The existence of the State is for the protection of freedom and equality. The State, and the laws made by it both are subject to 'general will' which creates the state.
- **Stammler** – Stammler says that 'all positive law is an attempt at just law' and that is justice law or justice is a 'harmony' of wills or purposes within the framework of the social life. The harmony of wills or purposes varies according to time and place. Law is valid even if it does not conform to this 'just' but attempt should be made to being it near its aim. This concept has been called by Stammler as, natural law with a variable content.'
- **Kohler** – Kohler is a neo Hegelian. He defines law as 'the standard of conduct which in consequence of the inner impulse that urges men towards a reasonable form of life emanates from the whole, and is forced upon the individual.' **Dean Pound** observes that Kohler's "formation of the jural postulates of the time and place is one of the most important achievements of recent legal science."
- **H.L.A. Hart** – Hart combines positivism with natural law. He has attempted to restate a natural law position from a semi-sociological point of view. He states that there are certain substantive rules which are essential if human beings are to live continuously together in close proximity. "These simple facts constitute a core of indisputable truth in the doctrines of natural law. Hart places primary emphasis on an assumption of survival as a principal human goal. We are concerned with social arrangements for continued existence. There are, therefore, certain rules which any social organisation must contain; and it is these facts of human nature which afford a reason for postulating a "minimum content" of natural law."

- **Finnis** – According to Finnis, "natural law" is "the set of principles of practical reasonableness in ordering human life and human community". He sets up the proposition that there are certain basic goods for human beings. The basic principles of natural law are pre-moral. Finnis list seven. Other basic forms of good are the combination of ways of pursuing one of the seven. These seven are:
  (1) **Life:** "The first basic value, corresponding to the drive for self-preservation, is the value of life. The term 'life.....signifies every aspect of vitality.....which puts a human being in good shape for self-determination."
  (2) **Knowledge:** A preference for true over false belief. It corresponds to that basic drive we call curiosity, a drive which leads us to reject any celebration of self-proclaimed ignorance or superstition. It is "knowledge.....for its own sake, not merely instrumentally: that Finnis has in mind. It can range from the speculations of a great philosopher or scientist to knowledge of how often Middlesex have been country circuit champions."
  (3) **Play:** "Each one of us can see the point of engaging in performances which have no point beyond the performance itself."
  (4) **Aesthetic experience:** The appreciation of beauty.
  (5) **Sociability or friendship:** "Acting for the sake of one's friend's purposes, one's friend's well-being."
  (6) **Practical reasonableness:** "The basic good of being able to bring one's own intelligence to bear effectively: on the problems of choosing one's actions and life-style and shaping one's own character."
  (7) **Religion:** "Questions of the origins of cosmic order and of human freedom and reason." Expressed thus, this view is a good that even an atheist can value.

THEORY OF LAW

Law as the dictate of Reason – Natural Law:

According to this theory, the central notion that there exist certain objectives, moral principles which depend on the essential nature of the universe and which can be discovered by natural reasons. As such, ordinary human law is the only true law in so far as it is consistent with these principles of morality and justice constitutes natural law, which is valid of necessity because rules of human conduct and truths concerning human nature are logically inter-twined. This connection helps to ascertain the principles of natural law by reason and common sense.

The root of this theory are said to be found in philosophies of ancient Greek philosophers were constructed upon by the stoic philosophers of the following centuries. Their philosophy was that man should live according to nature and that since the distinctive features of man was his endowments with reason, he should live according to dictates of his reason.

The attraction of this theory is evident:

1. In many cases, ordinary law fall short of the ideal, and men have always felt the need for an appeal for positive law to a higher standard. Natural law provides just such a standard, which with its battle cry 'lex unjust non est lex' meaning an 'unjust law is no law', has served to criticize and restrict positive law.
2. Morality as product of history and convenience.
3. Another attraction of natural law theory is the possibility of finding common ground for a different religious difference outlook.

Criticism: Bentham who regarded natural law nothing but a phrase, and natural rights as 'non sense on stilts' was of the view that the theory of natural law resulted from confusing scientific with moral and legal laws. Scientific laws describe, what generally does occur, moral or legal laws prescribe how men should behave. This criticism is met by advocates of the theory of

Everything has its proper function and so to be good of its kind it must fulfill this function.

Further, the critics contend that a human being cannot be compared to an object like a motorcar. A motorcar is created for performing certain functions and for certain purposes. It is very different to maintain the human being is created for particular purposes and function alone.

Another drawback of the natural law theory is its belief in universal principles of morality but societies differs and time changes.

The drawback is sought to be salvaged by writers like **Rudolf Stammler**, who devised the idea of natural law with a variable content.

The doctrine of natural law has formed the basis of the charter of UN.

Friedman observed: "the most important and lasting theories of Natural law have undoubtedly been inspired by two ideals – of a universal order governing all men and of the inalienable right of the individual."

Imperative theory or Austinian theory

According to **Austin** "Every positive law or every law simply or strictly so called is set by a sovereign individual to persons in a state of subjection to its author".

Austin further observes, "Positive law consists of command set as general rules of conduct by a sovereign to a member or members of the independent political society".

Criticism of Austinian theory

(a) The source of law need not necessarily be the sovereign
(b) All laws are not commands
(c) Ethical purposes of law have not been taken into account.

Maine points out that source of law need not necessarily be sovereign.

Bryce (historical) 'Studies in History and jurisprudence'..."Once Popular definition of law as command of the state is an instance of the danger of forgetting the past, for the fact that it would have been palpably untrue in certain stages of political development shows it does not rest on sufficiently broad foundation.

Salmond counters **Maine's** criticism of Austin's definition as historically inaccurate by observing - "If there are any rules prior to and independent of society, they may greatly resemble law, they may be the primeval substitutes for law, they may be the historical source from which law is developed, but they are not themselves law." Thus according to **Salmond**, **Austin's** theory is a theory of law as it exists in a mature state.

Salmond's criticism of **Austin's** theory: he considered **Austin's** theory to be inadequate, as it ignored the ethical element in law. **Salmond** points out that the end of law is justice and any definition of law, which does not take this into account, cannot be treated as adequate. Further according to **Salmond**, **Austin's** theory laid an undue emphasis on its imperative aspect.

All legal principles are not commands of the state and those which are such commands are at the same time and in their essential nature something more of which the imperative theory takes no account.

Salmond also refers to another defect. The Austinian theory attempts to answer the question 'what is a law' where as correct inquiry should be what is law as Salmond points out." the central ideas of juridical theory is not lex (law) but jus not lex.

Law as the practice of the court:

Salmond defines law may be defined as the body of principles recognised and applied by the state in the administration of justice.

This definition more or less corresponds with the definition of law by **Professor Gray**, "the law of the state or by any organized body of men is composed of rules which the courts, that is, the judicial organs of that body – lay down for the determination of legal rights and duties."

It is only courts ruling that is binding force of law.

Salmond – the true test of law is enforceability in the courts of law. Further **Salmond's** point is not that law is justice but that law is an instrument by which justice can be achieved.

Vinogradoff in his "historical jurisprudence" criticizes **Salmond** – 'the direct purpose for which judges act is, after all, application of law. He further observes, "What should we think of a definition of medicine as a drug prescribed by a doctor."

Theory of legal realism

Another version of legal realism is the theory propounded by American jurists, according to which law is in reality judge-made. This theory can be traced back to **Holmes** who observed, "The prophesies of what the courts will do infact and nothing more pretentious are what I mean law."

Law is the matter of prediction. It does not consist of rules already recognised and acted upon. **Salmond** could define it. It consists of rules.

This theory differentiates between law in books and law in action.

Gray observed: The courts put life into the dead words of statute.

- **Hart: Law as a system of Rules** - Rules are concerned not with what happens but with what ought to happen; they are prescriptive i.e. they prescribe a code of conduct. Rules can be defined as code of conduct which is observed with the attitude of feeling that such conduct is obligatory. This feeling is not a psychological illusion and a person who is required by the rule to act in a certain way and who conforms to such a pattern of behaviour, will require the same from others.
- **Hart defines law:** "Law then consists of rules which are of broad application and non-optional character, but which are at the same time, amenable to formalisation, legislation and adjudication."
- According to **Hart**, a legal system arises from a combination of **primary and secondary** rules.

Primary rules are those which simply impose duties while secondary rules are power conferring rules.

According to **Hart**, it is secondary rules of recognition, which transfer a set of unrelated rules into a unified dynamic legal system capable of adaptation to social change.

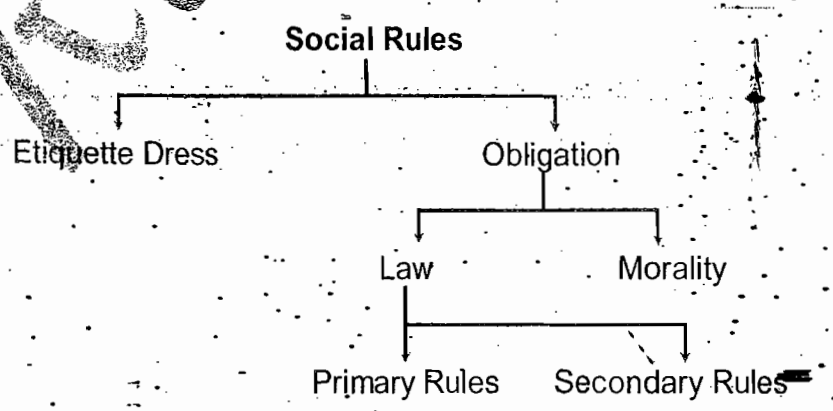
Thus IPC – Primary Rule, Constitution – Secondary Rule.

Kelson's pure theory of law

Law is a norm of action and that laws in jurisprudence have normative connection.

Kelson calls it pure as it is capable of universal application. It is improvement upon **Austin**. No dualism between state and law. No dichotomy of public and private law.

- **Hart's System of Rules:**



SOURCES OF LAW

According to **Salmond** – '**legal sources** are those sources which are recognised as such by the law itself, while **historical sources** are those sources lacking formal recognition by the law. The legal sources of law are authoritative. The historical sources are unauthoritative.'

Kinds of legal sources:

i) Custom – giving rise to customary law
ii) Precedent – giving rise to case law
iii) Legislation – giving rise to enacted law
iv) Agreement – giving rise to conventional law.

CUSTOM

According to **Salmond**: "Custom is to society what law is to the sate. Each is the expression and realisation to the measure of men's insight and ability of the principles of right and justice."

Nature and Origin of Custom

Custom has its origin in the usage or practice of people in doing certain things in a certain way and one of its characteristics is that it is not consciously formed.

Usage developing into customary law is the oldest form of law making and in its early stages depends for its validity on willingness of those who generally follow the usage to submit to it.

Holland: "Usage is the spontaneous evolution by the people or part of them of rules of conduct, the existence and general acceptance of which is proved by their regular observance".

Custom: Custom is useful to law giver and codified in the following two ways.

i) It provides material from which law can be formed and fashioned, to create law 'de Novo' is the task requiring intellectual efforts of a high order.
ii) It is easier to secure acceptance and reverence for a law based on a custom which has been observed over a long period of time.

In today's world custom has lost its efficacy owing to growth of precedent and legislation.

Kinds of Custom:

Customs which have force of law may be classified as legal and conventional. Legal custom in turn is divisible into general and local.

Legal Custom:

According to **Salmond**, a legal custom is one which is operating per se as a binding rule of law, independently of any agreement on the part of those subject to it. A legal custom is one whose authority is absolute.

A **conventional custom**, on the other hand, observes **Salmond**, is one which operates only indirectly through medium of agreements whereby it is accepted and adopted in individual instances as conventional law between the parties. Conventional custom is one whose authority is conditional on its acceptance and incorporation in agreements between the parties bound by it.

Usually conventional custom is referred as usage and legal custom as custom simpliciter.

Legal custom and conventional custom (differences):

1. A valid legal custom should have existed from time immemorial; such antiquity is, however, not needed to support the validity of usage.

2. Conventional customs are implied if they are not in conflict with the general law of the land. In case of conflict however such usage may be made applicable by the express agreement between the parties

Legal custom in turn may be:

a) General or (b) Local

General Custom: Where a custom is observed throughout the land, it is known as a general custom. **Blackstone** distinguished general custom from particular custom which affect only in particular class or the members of particular community.

Local Custom: A local custom is a usage which has obtained the force of law and is binding within a particular area. In practice a plaintiff or defendant relying upon a local custom must plead it and give particulars of it.

A modern example of a local custom is in the case of ***New Windsor Corp. vs. Mellor***, where an 81 year old lady successfully established the customary right of local inhabitants to indulge in lawful sports and pass time on area of land in the middle of New Windsor.

Tests for custom: Before the law will recognise a local custom, nine tests must be satisfied:

1. The custom must have existed since time of immemorial (as fixed by legal convention at 1189).

   Blackstone: A custom in order that it may be legal and binding, must have been used so long that the memory of men runneth not to the contrary.

   In ***Subhani vs. Nawab (1941)*** – What is necessary to be proved is that the usage has been acted upon in practice for such a long period and with such invariability as to show that it has by common consent been submitted as the established governing rule of a particular district.
2. The custom must have been continuously in operation without any interruption. This does not mean that custom should have been continuously exercised but that at all times, it must have been possible to exercise it lawfully. If it were legally unenforceable for even a short time it would not be recognised as a valid custom.
3. The custom must have been exercised peaceably, openly and as of right. The basis of custom is that it is exercised by consent and any secret or forcible exercise cannot be with consent. Furthermore an exercise of a right which depends on the granting of permission can not be a valid custom, for clearly, if there had been a right, permission would have been necessary.
4. The custom must not be unreasonable in the eyes of law. The period for ascertaining whether a custom is reasonable is the period of its inception.

   In this connection it should be noted that while the courts reserve the powers to abrogate an unreasonable custom, they are not invested with unrestrained power to disallow a custom, whenever they are not fully satisfied that it represents the perfection of custom courts should not lightly reject an established custom, it can do so only when it is opposed to public policy and presently inconsistent with rights and reasons.
5. The custom must be certain

   In ***Lady Wilson vs. Willes (1806)*** an alleged custom that the tenants of a manor might take from the manorial common as much turf as they required for their lands was held to be unreasonable and uncertain.
6. Compulsory observance: A custom to be regarded as law must be backed by 'Opinio necessitatis' i.e. an ethical conviction on the part of those who use custom that it is obligatory and not merely optional.

As observed by Blackstone: "A custom that all the inhabitants shall be treated towards maintenance of a bridge will be good, but a custom that everyone is to contribute thereto at his own pleasure is idle and absurd and indeed no custom at all.

Conformity with Statute Law:

A custom must not be contrary or inconsistent with a legislative enactment. A legislative enactment can reject a custom and it must necessarily yield where it militates against or is inconsistent with enacted law.

Allen in his **'law in making'** observes: "Age cannot whither an Act of Parliament and at no time so far as I am aware has it ever been admitted that a statute might become inoperative through obsolescence."

8. The custom must be consistent with other customs – otherwise they cannot at all be good. It must not conflict with other established customs.
9. It must apply to a definite locality. Local Customs apply only to the things or inhabitants.

THEORIES OF CUSTOMARY LAW

1. **Custom is the formal source of law**

The Historical school's view is that custom is formal source of law.

James Carter in **'Law: its origins, growth, function':** "What has governed the conduct of man from the beginning of time will continue to govern it to the end of time. Human nature is not likely to undergo a radical change, therefore that to which we give the names of law always has been, still is and will forever continue to be custom."

Carters view: - a judicial precedent is not law per se but evidence of it only: the real law is custom.

Savigny – Customary law may be complete, it may modify and repeal a statute. It may create a new rule and substitute it for the statutory rule which it has abolished.

The above view according to **Salmond** has been rejected by English jurists. Custom is natural and not formal source of law. The function of custom is to make available the principles to which the will of the state gives legal validity. From custom state may draw the material contents of law and give them form and nature of law.

2. **Custom is a historical material source:** This theory is also called the Austinian theory.

According to **Austin**, "A customary rule may take the quality of a legal rule in two ways: It may be adopted by a sovereign or subordinate legislatives and turned into a law in the direct mode or it may be taken as a ground for judicial decision, which afterwards obtains as a precedent and in this case, it is converted into a law after judicial fashion. In whatever of these ways it becomes a legal rule, the law into which it is turned emanates from the sovereign."

Austin further says, "Law Styled customary is not to be considered as a distinct kind of law. It is nothing but judicial law founded on anterior custom".

Criticism: Allen – "The fallacy of the Austinian doctrine is in supposing that custom is not law until it has been pronounced upon by a court. The exact reverse is the truth. Custom is the first and most essential law."

3. **Custom is legal material source**

Holland and Salmond: "The authority of custom springs not from the facts of judicial recognition and approval, but because it will be so approved in accordance with certain requirement of law if occasion arise".

Custom is thus a legal material source of law, irrespective of and even prior to, the existence of judicial decision upon it.

PRECEDENT

A Precedent is statement of law embodied in the decision of a Superior Court, which decision has to be followed by the court and by courts subordinate to it. As such the theory of precedent plays a significant and important role in the jurisprudence of every country.

Advantages and disadvantages of precedent:

Advantages:

1. Such a system leads to an element of certainty in the law. If a client seeks advice from a solicitor, he wants to know his legal position. As the courts follow previous decision's it will be possible to given the client advice in most cases.
2. The law is able to grow as the needs of the society alter. New rules arise out of concrete fact situation. As **Kiralfy** puts it: - "forged slowly on the anvil of reality".
3. Under such a system, the law is flexible. A general ratio decidendi may be extended to various fact situations.

Disadvantages:

1. Once a hierarchy of binding precedents has been established, a certain amount of rigidity creeps into law.
2. Leads to endless hairsplitting.
3. Development of law through new precedents is too slow and too irregular. **Bentham** – "It just is dog's law – you do something wrong, you are hit, then you realize, you have done something wrong."

Hierarchy of Courts

Courts of inferior jurisdiction are bound only by decisions of courts of superior jurisdiction. A High Court Judge is bound by decision of a court of Appeal and court of appeal is bound by decision of the House of Lords. Courts are not bound by decisions of coordinates jurisdiction courts. A single Judge is not bound by the decision of another single judge of the High Court though he will normally follow it on the principles of comity in order to avoid conflict of authority and to secure certainty and uniformity in the administration of justice.

Is House of Lords bound by its earlier decision?

In 1989 in ***London Street Tramways vs. London Country Council,*** the HL decided at it was bound by its own previous decision. But exceptions have been recognised.

1. HL is not bound by a decision made in ignorance of statute.
2. It is not by its decision in peerage claims. Judicial decisions (precedents) are an important source of law. They have enjoyed high authority at all times and in all countries.
3. Where there are two conflicting decisions, the HL can choose between the two.
4. When the ratio decidendi of a previous decision is so obscure as to be undiscoverable, the HL need not strain itself to deduce a principle.

The HL in 1968 issued a judicial precedent statement to the following effect:

"Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law in its application to individual cases. It provides some degree of certainty upon which individual cases can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules".

Conway vs. Rimmer is the first case where HL refused to follow a previous decision of itself.

Position in India

The same doctrine of precedents applies to the Indian system as well. All inferior courts are bound by the decisions of the High Court to which they are subordinate. A single Judge of a high court, in conformity with judicial comity, is bound to follow a decision of another single Judge. Judicial propriety demands that in case a single Judge does not agree with the ratio in the decision of another single Judge, he should refer the matter for decision to a

bench of two or more judges. Similarly a Bench of two judges is bound by earlier decision of two judges.

A decision of the High Court has only persuasive value to the High Court of another state, all being courts of co-ordinate jurisdiction.

But all courts are bound by the decision of the Supreme Court of India.

Article 141 – "The law declared by Supreme Court shall be binding on all courts within the territory of India".

This is even if they are contrary to the decision of House of Lords or the Privy Council, for the latter have only persuasive value for the Supreme Court.

Is Supreme Court of India bound by its own decisions?

This question arose in ***Bengal immunity Co. vs. State of Bihar (1955)***. The Supreme Court observed: "The error, if any made by the court of Appeal in England, may be corrected by HL or eventually by parliament by a simple majority. The mistakes if any made by High Court of Australia if not corrected by itself in a subsequent case, could be set right by the Privy Council. An error, if made by the HL or PC can easily be rectified by parliament by a single majority. But in a country governed by Federal constitution such as USA and India, it is by no means easy to amend the constitution if an erroneous interpretation is put by this court. But 141 deals with other than Supreme Court." The decision in ***State of Bombay vs. United Motors (1953)*** was overruled.

But the Supreme Court laid down **the rules:**

1. In reviewing an earlier decision the court would take into consideration the fact that the said decision has been followed in a large number of cases.
2. In overruling an earlier decision of its own, the Supreme Court should remember that while decisions of a court are only binding on the litigants, a decision of the Supreme Court is something more, namely, that it is declaratory for the nation. In particular, where the previous decision is of a constitutional Bench, the later court should treat it as final, unless the subject is of fundamental importance to national life.
3. A contrary decision of larger Bench prevails over the decision of a smaller Bench.
4. The court would not depart from long settled rule of interpretation solely depending on the facts of a given case.
5. A division bench of two judges cannot overrule the decision of another Bench of two judges. If they are unable to agree, they should refer it to a larger bench.

STARE DECISIS

English Law

The doctrine of precedent in Britain has assumed a special form known as Stare Decisis, the effect of which is that judicial decisions have binding force and enjoy 'law quality' per se. Binding force depends on hierarchy of courts, higher courts bind lower courts, never vice-versa.

Two conditions before Stare Decisis could be established

1. There has to be a settled judicial hierarchy before there could be any clear cut doctrine of binding authority, for until then it could not be known whose decisions bound whom.
2. There has also to be reliable reports of cases. If cases are to be authoritative as law there should be precise records of what they lay down.

According to **Salmond,** "the importance of judicial precedents has always been a distinguishing character of English law."

Salmond further observes that a judicial precedent speaks in England with authority; it is not merely evidence of law but a source of it and courts are bound to follow the law that is so-established. Judicial precedent become binding precedents for adjudication of cases in the future, and so contributes to the natural content of the legal system.