Published on *The National Law Review* https://natlawreview.com

When Should Prior Precedent Be Overruled?

Article By:

Joshua D. Dunlap

With debates over the application of *stare decisis* taking center stage in recent Supreme Cout arguments regarding the viability of *Chevron* deference—an issue which we will likely revisit in June—it was notable that the Law Court recently engaged in its own heated debate over that doctrine in *Finch v. U.S. Bank, N.A.* I recently blogged about the substance of that decision. Today, we take a look at the court's discussion of stare decisis.

The doctrine of stare decisis, as the court noted, is a judge-made doctrine designed to create stability in the law and enable the public to reasonably rely on judicial decisions. Fair enough. But courts and commentators agree that there can be a time and a place to overrule precedents. But when, and for what reasons?

In *Finch*, the Law Court noted that "stare decisis does not carry the same force and weight in every context, and there are well-established factors that help guide the ultimate determination of whether to revise precedent." **The court identified several factors in its decision:**

- *Consistency*. The Law Court seeks to promote overall consistency in the law; at times, that may require overruling a prior case when such a case is inconsistent with prior precedent.
- *Anomalous results*. The court noted that it may be more willing to revisit precedent when it is contrary to the "tide of critical or contrary authority from other jurisdictions."
- *Workability*. The court observed that it is willing to revisit cases when the precedent has not proven to be workable in practice.
- *Reliance*. On the other hand, the court is less willing to revisit precedent if it would upset settled expectations on the part of the public.
- *Policy*. Finally, the court noted a somewhat more amorphous consideration, namely, whether the precedent promotes sound public policy and addresses social needs.

The dissent in *Finch* did not dispute the factors. The difficulty was in the application of the factors. The majority, for example, concluded that reliance weighed in favor of reversing the court's prior decisions because the prior rule—that a typographical error in a foreclosure notice results in a judgment against the lender and transfer of title to the borrower—could not engender reliance because no party can plan on such a "windfall." The court observed that the rule was similar to "winning a casino bet." The dissent, by contrast, argued that borrowers and the public generally should be able to rely on the stability of the court's foreclosure jurisprudence. The differing perspectives on the reliance factor highlight that judges may often apply the factors at different levels of generality,

leading to different conclusions.

The testy exchange between the majority and dissenting justices—the dissent argued that the majority “simply prefers a different balance” than had previously been struck by the court—is reminiscent of the debate over stare decisis in *The Bank of New York Mellon v. Shone*. In that case, too, the dissent argued that various stare decisis factors—including whether the existing precedent had fallen into disrepute, whether change in circumstances called for reassessment, and the administrability of the law in issue—counseled for a different outcome in the case.

As these debates show, there can be very different views not only regarding the proper outcome in a matter of first impression, but also regarding the viability of past precedent. That’s true of the Supreme Court, and it’s true of the Law Court.

©2025 Pierce Atwood LLP. All rights reserved.

National Law Review, Volume XIV, Number 24

Source URL:https://natlawreview.com/article/when-should-prior-precedent-be-overruled