

# Judicial precedent – law



Judicial precedent is based upon the Latin maxim “stare decisis” which loosely translates into “stand by what has been decided and do not unsettle the established”. Judicial precedent is the source of law where past decisions of the judges create law for future judges to follow, this law can be found in judgement that is binding.

Ratio Decidendi is the part of the judgement that is binding. In the English legal system, higher courts bind lower courts so lower courts have to follow the past decisions of the higher courts. For example, the Supreme Court binds the court of appeal. Ratio Decidendi loosely translates as “the reason for deciding”. It was described by Michael Zander as “a proposition of law which decides the case in the context of the material facts”. When the binding precedent has been formed lower courts have no other choice but to follow it even if the outcome of the case can seem harsh or injustice. This is illustrated when the decision of the House of lord in Caldwell was bound on the decision by the Divisional court in Elliot v C.

The other part of the judgment that is not binding is obiter dicta. Obiter dicta translates into “thing said by the way” and often include hypothetical examples. This is not a binding precedent so lower courts don't have to follow it. However, it can be a persuasive precedent. In the case of Howe the ratio Decidendi stated that duress cannot be used as a defence to murder but the judge also made an other comment (Obiter dicta) and stated that duress cannot be used as a defence to attempted murder either. The judge in Gotts used that Obiter dicta as a persuasive precedent and it was made law that duress cannot be used as a defence to attempted murder.