

# Judicial precedent assignment



**ASSIGN  
BUSTER**

Judicial precedent: A judgment of a court of law cited as an authority for deciding a similar set of facts; a case which serves as authority for the legal principle embodied in its decision. The common law has developed by broadening down from precedent to precedent. A judicial precedent is a decision of the court used as a source for future decision making. This is known as stare decisis (to stand upon decisions) and by which precedents are authoritative and binding and must be followed.

In giving judgment in a case, the judge will set out the facts of the case, state the law applicable to the facts and then provide his or her decision. It is only the ratio decidendi (the legal reasoning or ground for the judicial decision) which is binding on later courts under the system of judicial precedent. Any observation made by the judge on a legal question suggested by the case before him or her but not arising in such a manner as requiring a decision is known as obiter dictum (a saying by the way).

There may several reasons for a decision provided by the judge in any given judgment and one must not assume that a reason can be regarded as ‘obiter’ because some other ‘ratio’ has been provided. Thus, it is not always easy to distinguish ratio decidendi from obiter dictum when evaluating the effects of a particular decision. A single decision of a superior court is absolutely binding on subsequent inferior courts.

However, certain of the superior courts regard themselves as bound by their own decisions whilst others do not: 1. Decisions of the House of Lords bind all other courts but the House does not regard itself as strictly bound by its previous decisions, for example, in *Murphy v Brentwood District Council*

(1990) the House elected to overrule its earlier decision in *Anns v London Borough of Merton* (1978) on the issue of a local authority's liability in negligence to future purchasers of property. 2.

The Court of Appeal, Civil Division, holds itself bound by its previous decisions: *Young v Bristol Aeroplane Co Ltd* (1944) but in that case also identified three exceptional cases where it would disregard its own previous decision. These are (i) where two Court of Appeal decisions conflict; (ii) if the decision although not expressly overruled conflicts with a later decision of the House of Lords; and (iii) if the earlier decision was given *per incuriam* (through want of care) however it cannot ignore a decision of the House of Lords on the same basis. . Divisional courts of the High Court have adopted the rule laid down in *Young's* case although judges sitting at first instance are not bound to follow the decisions of other High Court judges although they tend to do so for the sake of certainty Judicial precedent is an important source of English law as an original precedent is one which creates and applies a new rule. However, the later decisions, especially of the higher courts, can have a number of effects upon precedents..

In particular, they may be: ??? Reversed: where on appeal in the same case the decision is reversed, the initial decision will cease to have any effect ??? Overruled: where in a later case a higher court decides that the first case was wrongly decided ??? A refusal to follow: this arises where a court, not bound by the decision, cannot overrule it but does not wish to follow it so it simply refuses to follow the earlier decision ??? Distinguished: where an earlier case is rejected as authority, either because the material facts differ or because the statement of law in the previous case is too narrow to be

properly applied to the new set of facts ??? Explained: a judge may seek to interpret an earlier decision before applying it or distinguishing it, thus the effect of the earlier case is varied in the circumstances of the present ca