

## The Doctrine of Stare Decisis

What is the doctrine of precedent or of stare decisis?

- The operation of the doctrine of stare decisis is best explained by reference to the English translation of the Latin phrase. "Stare decisis" literally translates as "to stand by decided matters". The phrase "stare decisis" is itself an abbreviation of the Latin phrase "stare decisis et non quieta movere" which translates as "to stand by decisions and not to disturb settled matters".

Basically, under the doctrine of stare decisis, the decision of a higher court within the same provincial jurisdiction acts as binding authority on a lower court within that same jurisdiction. The decision of a court of another jurisdiction only acts as persuasive authority. The degree of persuasiveness is dependent upon various factors, including, first, the nature of the other jurisdiction. Second, the degree of persuasiveness is dependent upon the level of court which decided the precedent case in the other jurisdiction. Other factors include the date of the precedent case, on the assumption that the more recent the case, the more reliable it will be as authority for a given proposition, although this is not necessarily so. And on some occasions, the judge's reputation may affect the degree of persuasiveness of the authority.<sup>1</sup>

What the doctrine of precedent declares is that cases must be decided the same way when their material facts are the same. Obviously it does not require that all the facts should be the same. We know that in the flux of life all the facts of a case will never recur, but the legally material facts may recur and it is with these that the doctrine is concerned.

The ratio decidendi [reason of deciding] of a case can be defined as the material facts of the case plus the decision thereon. The same learned author<sup>2</sup> who advanced this definition went on to suggest a helpful formula. Suppose that in a certain case facts A, B and C exist, and suppose that the court finds that facts B and C are material and fact A immaterial, and then reaches conclusion X (e.g. judgment for the plaintiff, or judgment for the defendant). Then the doctrine of precedent enables us to say that in any future case in which facts B and C exist, or in which facts A and B and C exist the conclusion must be X. If in a future case A, B, C, and D exist, and the fact D is held to be material, the first case will not be a direct authority, though it may be of value as an analogy.<sup>3</sup>

- Usually, the best position for the lawyer occurs when there is a precedent case supporting his or her client's case. The lawyer will then argue that the court is either bound, or that the court, if not actually bound, ought to be persuaded by the precedent case to find in the client's favour. In his or her research, the lawyer will therefore look for cases with results which support the client's position and the lawyer will prepare to argue that the ratio decidendi of those precedent cases covers the facts of the case at bar.