

Assignment of Legal Theory

Tests for determining Ratio decidendi of a Decision

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L.L.M (1ST YEAR)

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Introduction:

The three main organs of the Government are Legislative, Executive and Judiciary. The function of the legislature is to make laws, while that of the executive is to execute the laws made by the legislature and the function of the judiciary is to interpret the laws made by the legislature. The main function of the judicial organ is to adjudicate the rights and obligations of the citizens. In the beginning, in this adjudication the courts are guided by the customs and their own sense of justice. As the society progresses, legislation becomes the main source of law and the judges decide cases according to it. Even at this stage the judges perform some creative functions. In filling up any lacuna in the law made by the legislation the judges, to some extent, depend on their own sense of right and wrong and in doing so, they adapt the law to the changed conditions. The decisions on such points become authority or guide for the subsequent cases of a similar nature.

In almost all legal systems the judges take guidance of the previous decisions on the point and rely upon them. The decisions made by the higher courts are very useful in deciding the subsequent cases of similar nature which are called as precedents. Precedent is considered as a source of law. Precedent is a strong argument and it is given respectful consideration. A precedent may be cited from any source which is reliable. Generally, the reports are used, and some reports are considered more authoritative than the other.

The precedent is not abrogated by the lapse of time. With the passing of the time the authority of a precedent goes on strengthening if the law on that point is not altered by some statute. But very ancient precedents are sometimes inapplicable due to the changed circumstances, and then the courts resort to distinguishing and get rid of the binding authority of such precedents. Precedents have been compared with wine, which 'improves with age up to a certain point and then begins to go off. Every precedent has a ratio decidendi i.e. Reasons for deciding which alone is binding in future cases.

The decision has to be seen in two aspects, what the case decides between the parties and what principle does it lay down. Ratio decidendi is the rule of the court.

Precedent defined:

In 'Oxford Dictionary' precedent is defined as 'a previous instance or case which is, or may be taken as an example of rule for subsequent cases, or by which some similar act or similar act or circumstances may be supported or justified.

A precedent covers everything said or done, which furnishes a rule for subsequent practice.¹

A judicial precedent is judicial to which authority has in some measure been attached.²

In general use, the term precedent means some set pattern guiding the future conduct. In judicial field, it means guidance or authority of the past decisions for future cases. Only such decisions as lay down some new rule or principle are called precedents. It is the attribution of authority that makes a judicial decision a judicial precedent.

PERSUASIVE PRECEDENTS

A persuasive precedent is one which is not absolutely binding on a court but which may be applied.

ADVANTAGES AND DISADVANTAGES OF PRECEDENT:

ADVANTAGES;

1. There is certainty in the law. By looking at existing precedents it is possible to forecast what a decision will be and plan accordingly.
2. There is uniformity in the law. Similar cases will be treated in the same way. This is important to give the system a sense of justice and to make the system acceptable to the public.
3. Judicial precedent is flexible. There are a number of ways to avoid precedents and this enables the system to change and to adapt to new situations.
4. Judicial precedent is practical in nature. It is based on real facts, unlike legislation.
5. Judicial precedent is detailed. There is a wealth of cases to which to refer.

¹ The Nature and the Sources of Law, Gray.

² The Elementary Principles of Jurisprudence, Keeton

DISADVANTAGES;

1. Difficulties can arise in deciding what the ratio decidendi is, particularly if there are a number of reasons.
2. There may be a considerable wait for a case to come to court for a point to be decided.
3. Cases can easily be distinguished on their facts to avoid following an inconvenient precedent.
4. There is far too much case law and it is too complex

Ratio Decidendi:

The authority of a decision as a precedent lies in its ratio decidendi. It is, therefore necessary to know what this ratio decidendi is and how it is determined.

The ratio decidendi of a case is the principle of law on which a decision is based. When a judge delivers judgement in a case he outlines the facts which he finds have been proved on the evidence. Then he applies the law to those facts and arrives at a decision, for which he gives the reason (ratio decidendi).

There are cases which involve questions of being answered on principles. Such principles are deduced by way of abstraction of the material facts of the case eliminating the immaterial elements. And the result is that the principle that comes out is not only applicable to that case, but to others cases also which are similar to the decided case in their essential features. This principle is known as ratio decidendi. It is the ratio decidendi or the general principle that has a binding effect as a precedent. But the determination of ratio decidendi is not so easy as it appears to be in theory. Many eminent jurists have laid down principles and methods to determine the ratio decidendi of a decision.

It is upon the judges to determine ratio decidendi and to apply it on the case which he is going to decide. This gives an opportunity to him to mould the law according to the changed conditions by laying emphasis on one or the other point.

It is the doctrine of precedent which makes the ratio decidendi of the precedent decision binding.

Ratio decidendi literally means reason of the decision. Ratio decidendi is said to be the principle or principles deduced from authority in which court reached its decision or negatively, the principle without which the court would not have reached the decision that it did reach. The ratio decidendi can be defined as the material fact of the case and the decision thereon. The ascertainment of the ratio decidendi of a case depends upon a process of abstraction from totality of facts that occurred in it. The reason for the decision ratio decidendi forms the groundwork of an authoritative precedent.

Ratio decidendi (plural rationes decidendi) is a Latin phrase meaning “the reason for the decision.” Ratio decidendi refers to the legal, moral, political and social principles on which a court’s decision rests. It is the rationale for reaching the decision of a case. It is binding on lower courts through the principle of Stare decisis.

Determination of Ratio Decidendi:

Ratio decidendi can be determined or identified in the following ways:

- By distinguishing material facts from unimportant facts.
- By discovering the precedents applied to identify the court’s approach.
- By restricting analysis to the majority opinions.
- By reading out subsequent decisions and considering it at several levels.

What is Ratio?

Ratio is a ruling on a point of law and the decision on a point of law depends on facts of a case. Culling out ratio from a judgment is difficult. A thorough reading of an entire judgment is required to identify a ratio.

Essence of the decision is the ratio. Every observation found in a judgement is not the ratio. Ratio decidendi is based upon the facts actually decided. It is an authority for those facts³. When the ratio of an earlier decision is interpreted in a later decision, it is proper only to look into the policy interest which the ratio seeks to guard and the consequences which it seeks to avoid. It is beyond doubt that the binding element in Supreme Court judgement is ratio decidendi of the decision and not any finding on fact. It is the principle found upon reading of a judgement as a whole, in the light of the question before the court that forms ratio and not any particular word or sentence. The law which will be binding under Article 141 would extend to all observations of points raised and decided by the Supreme Court in a given case, as explained in Director of Settlements, A.P. v. M.R. Apparao.

³ Jagdish Lal v. State of Haryana, (1997) 6SCC 538.

Finding out Ratio Decidendi:

As it is the ratio decidendi of the decision that is binding, the judge will have to find out the ratio decidendi. To discover the ratio decidendi, or the reason which led the court to reach that decision is, thus, a very complicated and strenuous job. The ratio decidendi so discovered by the judge is applied to the case before him, and he decides it accordingly. A judge is bound by the precedent under these circumstances. Therefore the word bound in relation to precedent should never be taken in its common meaning.

The value preferences which guide judicial decision making are an important fact to the problem of determining ratio decidendi.

The ratio decidendi is one of the most powerful tools available to a lawyer. With a proper understanding of the *ratio* of a precedent, the advocate can in effect force a lower court to come to a decision which that court may otherwise be unwilling to make, considering the facts of the case.

The search for the ratio of a case is a process of elucidation; one searches the judgment for the abstract principles of law which have led to the decision and which have been applied to the facts before the court. As an example, the ratio in *Donoghue v. Stevenson* would be that a person owes a duty of care to those who he can reasonably foresee will be affected by his actions

Ratio decidendi also involves the holding of a particular case, thereby allowing future cases to build upon such cases by citing precedent. However, not all holdings are given equal merit; factors that can strengthen or weaken the strength of the holding include:

- Rank of the court (Supreme Court versus an appellate court)
- Number of issues decided in the case (multiple issues may result in a so-called "multi-legged holdings")
- Authority or respect of the judge(s)
- Number of concurring and dissenting judges
- New applicable statutes
- Similarity of the environment as opposed to the age of the holding

The ability to isolate the abstract principle of law in the pragmatic application of that abstraction to the facts of a case is one of the most highly prized legal skills in the common law system. The lawyer is searching for the principles which underlined and underlay the court's decision.

Another problem may arise in older cases where the *ratio* and *obiter* are not explicitly separated, as they are today. In such a case, it may be difficult to locate the *ratio*, and on occasion, the courts have been unable to do so.

Doctrine of Stare Decisis:

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 principle of *stare decisis* can be divided into two components. The first is the rule that a decision made by a superior court is binding precedent (also known as mandatory authority) which an inferior court cannot change. The second is the principle that a court should not overturn its own precedents unless there is a strong reason to do so and should be guided by principles from lateral and inferior courts. The second principle, regarding persuasive precedent, is an advisory one which courts can and do ignore occasionally. In order for the doctrine of *stare decisis* to be applicable, there are two basic prerequisites, first that there must be authentic reporting of decisions of courts. The second requirement is an established hierarchy of courts.

Article 141 of Indian Constitution:

The law declared by the Supreme Court of India is binding on all Courts within the territory of India.

The law declared by the Supreme Court is binding on the subordinate courts under Art. 141 of the Constitution, Art. 141 cannot in the very context of the doctrine of judicial precedent preclude the freedom open to the future courts of ascertaining the ratio of a case as it sees it, after the event and in the light of the litigational exigencies now before it which might on the level of forensic perception of the ratio suggest dimensions which might not have been present in the mind of the earlier court, but which necessarily must be taken into account for arriving at a view of the ratio decidendi.

Supreme court is not bound by its own decision:

The Supreme Court is not bound by its own decision. The expression all courts in Article 141 refers only to the courts other than the Supreme Court. However, if an earlier decision is found to be erroneous and is thus detrimental to the general welfare of the public, the Supreme Court will not hesitate in departing from it.

Important Points:

- 1) **Legal Reasoning:** legal reasoning disclose an applicable principle of law which can be ascertained having regard to the material facts and the actual decision of the case, they form operative part of the ratio decidendi.
- 2) **Full opportunity:** in order to construct the ratio decidendi of the case full opportunity must be available to the parties in the later case to expound their views of the ratio and after contesting claims in this behalf as advanced by the counsel for both the sides are fully heard by the instant court, it must then consider what is the true effects of the decision and what is the ratio decidendi of the precedent case which the instant court is required to follow.
- 3) **Discover the ratio:** the legal fiction is that the judge must discover the ratio of the earlier case as it was laid down by the author of the judgement but this obligation is discharged if the material facts of the precedent case and the reasons as disclosed are similar to the subsequent case.
- 4) **Final holding:** the ratio decidendi has to be always related to the final holding on the different legal issues in the various judgements.
- 5) **Narrow or wide:** the ratio decidendi of a decision may be narrowed or widened by the judges before whom it is cited as a precedent. The ratio decidendi which the judges who decided the case would themselves have chosen may be different from the one which has been approved by the subsequent judges.
Bhagwati, J. In *Ramana Dayaram Shetty v. International Airport Authority of India*⁴ refers to both views narrow and broader views taken by Ray, C.J. and Mathew, L., in *Sukhdeo v. Bhagatram Sardar Singh Raghuvanshi*⁵ and preferred to adopt the test of governmental instrumentality or agency as one more test and perhaps a more satisfactory one for determining whether a statutory corporation, body or other authority falls within the definition of 'State'.
- 6) **Other judgements which are considered:** in order to understand the ratio decidendi of a case we need to read and interpret it in the light of other judgements which have considered it.
- 7) **Subject matter:** the subject matter of judicial determination must be sufficiently of general importance so as to serve the needs of the future.

⁴ (1979) 3 SCC 489; AIR 1979 SC 1628.

⁵ (1975) 1 SCC 421; 1975 SCC (L&S) 101

Two reasons: It is well established that if the judges give two reasons for his decision, both the decisions are binding. It is not permissible to pick out one as being supposed the better reason and ignore the other one, nor does it matter for this purpose which comes first and which comes second. A judge may often give additional reasons for his decisions without wishing to make them part of the ratio decidendi, he may not be sufficiently convinced of their cogency as to want them to have the full authority of precedent, and yet may wish to state them so that those who later may have duty of investigating the same point will start with some guidance.

In *B. Shama Rao v. UT of Pondichery*⁶, Shelat, J., observed that a decision is binding not because of its conclusion but in regard to its ratio and the principles laid down therein. As a statement of judicial practice in the area of precedents this observation may be generally correct, because it tends to focus attention on the ratio and the legal principle disclosed by a case which serves as an authoritative source of law on that point decided for future cases.

Ratio Decidendi as formulated by Lord Dunedin:

While ascertaining and interpreting the ratio of a case care should be taken to ensure that the legal reasoning correlates with the actual decision because as remarked by Lord Dunedin, it is the final judgement which is binding and the ratio decidendi is also binding, but only on the footing that it leads to that judgement.

Though as a matter of strict legal theory, a High Court Judge is obliged to adopt and apply ratio decidendi of a precedent decision, in actual practice things are not so simple. The authority may overlap, or

or even conflict with another of equal weight. This is particularly the case with Supreme Court decisions which when they involve question of law of general importance are almost always burdened with a plurality of opinion, which because of diversity of judicial reasoning almost tend to cancel one another or sharply conflict with each other on all the important questions of ratio decidendi, yielding very little by way of guidance to the judges in the lower tier in regard to the operative part of legal reasoning which is supposed to illumine the dim or obscure area of ratio decidendi.

The doctrine of ratio decidendi can make sense only if judges act institutionally as part of an integrated judicial process. This is so because the doctrine of ratio decidendi of precedent works on the fundamental assumption that there is a single ratio decidendi. If there are multiple versions of a ratio decidendi or multiple ratio decidendi produced by a single judicial decision, a conflict as to the compelling authority as between them can be resolved only through resort to judicial policy choice outside the framework of the particular precedent though the ambiguity produced by the concept of stare decisis permits creative exercise of this kind. Multiple versions of a ratio decidendi result when judges are agreed on an point of

⁶ AIR 1967 SC 1480

law but prefer to articulate their own reasons for expounding it. Multiple ratio decidendi result when judges are agreed on the ultimate decision but deviate from one another as to the course of legal reasoning determinative of that result.

In order to have correct perception of the ratio decidendi of a case it is necessary to have close look at the structure of the judgement itself. It is not that everything said by a judge which has the force of precedent.

Of even greater importance is the existence of certain rules of judicial practice concerning the construction to be placed by a future judge upon past decisions. These rules of judicial practice emphasise with ritualistic rigour the need of focus attention on the material facts of the earlier decision, the language of prior or subsequent judgements that have reflected on the point of law involved in the ratio requiring to be interpreted, the course of legal reasoning and its relationship with the actual decision reached in the form of final order and so on.

Ratio decidendi is based upon the facts actually decided. It is an authority for those facts⁷

Historical Perspective:

From an historical perspective the ratio decidendi of a case can be viewed in three stages;

1. The first occurs in the period immediately following the decision, when the case tends to be viewed only in the light of its facts.
2. The second occurs when the case has been widely followed and applied and an attempt is made to state the ratio in terms of legal principle that will encompass the case that have purported to have followed the initial decision.
3. The third stage begins when a final court of appeal gives a more or less final and authoritative formulation of the rule of the initial case.⁸

Overruling / Reversing:

Overruling implies disapproval with the ratio in a previous case, either that the previous Court did not correctly interpret the law or because the latter court considered the Rule of Law contained in the previous ratio to be no longer desirable.

Reversing is the overturning of a decision on appeal in the same case. It involves disapproval of the ratio as decided by the lower court.

⁷ Jagdish Lal v. State of Haryana, (1997) 6 SCC 538: 1997 SCC (L&S) 1550.

⁸ Smith J.C. and Peter Burns, "Donogue v. Stevenson- The Not so Golden Anniversary" (1983) A6 M.L.R.

Tests to determine Ratio decidendi of a decision:

Wambaugh's Test: (Reversal test)

The inversion test propounded by Wambaugh is based on the assumption that the Ratio decidendi is a general rule without which a case must have been decided otherwise. Inversion test is in a form of dialogue between him and his student. He gave following instructions for this;

1. Frame carefully the supposed proposition of law
2. Insert in the proposition a word reversing its meaning
3. Inquire whether, if the court had conceived this new proposition to be good and had it in mind, the decision could be the same.
4. If the answer is affirmative, the however excellent the Original proposition may be, the case is not a precedent for that proposition.
5. But if the answer is negative, the case is a precedent for the original proposition and possibly for other proposition also.

Thus, when a case turns on one point the proposition or doctrine of the case, the reason for the decision, the ratio decidendi, must be a general rule without which the case must have been decided otherwise. A proposition of law which is not ratio decidendi under the above test must, according to Wambaugh, constitute a mere dictum.

However, Ruper Cross criticized the Inversion test on the ground that 'the exhortation to frame carefully the supposed proposition of law and the restriction of the test to cases turning on only one point rob it of most of its value as a means of determining what was the ratio decidendi of a case, although it has its uses as a means of ascertaining what was not ratio.

Thus, the merit of Wambaugh's test is that it provides what may be an infallible means of ascertaining what is not ratio decidendi. It accords with the generally accepted view that a ruling can only be treated as Ratio if it supports the ultimate order of the court. So in reversal test it is advocated that we should take the propositions of law put forward by judge, reverse or negate it, and then see if its reversal would alter the actual situation. If so, then the proposition is the ratio or part of it and if the reversal would make no difference then it is not ratio.

According to the Wambaugh test, also known as the reversal test, the proposition of law put forward by the judge should be reversed or negated and if the reversal would alter the actual decision, that proposition is the ratio decidendi of the case.

Halsbury Test:

The concept of precedent has attained important role in the administration of justice in modern times. The case before the court should be decided in accordance with law and the doctrines. The mind of the court should be clearly reflected on the material in issue with regard to the facts of the case. The reason and spirit of the case make law and not the letter of a particular precedent.

Halsbury explained the word 'ratio decidendi' as, it may be laid down as general rule that, that part alone of a decision by a court of law is binding upon courts of coordinate jurisdiction and inferior courts which consists of the enunciation of the reason or principle upon which the question before the court has really been determined. This underlying principle which forms the only authoritative element of a precedent is often termed as Ratio Decidendi.

In the famous case of *Quinn v. Leatham*, Lord Halsbury said that

‘ now, before discussing the case of *Allen v. Flood* and what was decided therein, there are two observations of general character which I wish to make, and one is to repeat what I have very often said before, that every judgement must be read as applicable to particular facts proved, or assumed to be proved, since the generality of the expression which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which the expressions are to found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.

Thus according to Lord Halsbury, it is the choice of material facts that the court create law.

In Halsbury's *Laws of England* it has been observed that ratio decidendi are the general reasons given for a decision or the general grounds upon which it is based, detached or abstracted from specific peculiarities of a particular case which gives the rise to a particular decision

Goodhart's test: (Material Facts)

In 1929, Goodhart had argued that the ratio of the case must be in the reasons for the decision and there is no necessary connection between the ratio and the reasons. He laid down following guidelines for discovering the ratio decidendi of the case:

1. Ratio decidendi must not be sought in the reasons of which the judge has passed the decision.
2. The reasons given by the judge are of peculiar importance, for they may furnish us with a guide for determining which facts he considered material and which immaterial.
3. A decision for which no reasons are given does not necessarily lack ratio, furthermore, the reasons offered by the court in reading a decision might be considered inadequate or incorrect, yet the court's ruling might be endorsed in later cases- a bad reason may often make good law. It is by his choice
4. Thus ratio decidendi is whatever facts the judge has determined to be the material facts of the case, plus the judge's decision based on those facts of the material facts that the judge creates law.

Goodhart test of ratio is: ratio decidendi = material facts + decision. Goodhart states that "It is by his choice of material facts that the judge creates law."

The Goodhart test involves taking into account facts treated as material by the judge who decided the case cited as precedent.

The goodhart's theory is also known as Material fact theory. The ratio is to be determined by ascertaining the facts treated as material by the judges together with the decision on those facts.

Advantages of the test are as follows;

- a. It is only way of finding out the ratio when no judgement is given
- b. It stresses the point that a proposition of law is authoritative only to the extent it is relevant to the facts in issue in the case.
- c. It is valuable in pointing out that we cannot always rely on the judge's reasoning in a case since this may be patently faulty. This is likely to happen where the judge supports his decision with arguments of policy and justice.

The only drawback of the test is that the test is not in actual use by the judges. In practice the courts seem to be paying more attention to the judge's own formulation of law than that permitted under the test. Difficulty arises when the court deals with the law without first finding the facts. They depart from normal situation where rule of law is enunciated and applied to the facts as found. In these cases facts are assumed and in some the actual facts do not fit into the law as enunciated.

American Realist Julius Stone test:

In illuminating conceptual vagueness inherent in the notion of ratio decidendi, Professor Stone distinguishes two versions of ratio decidendi namely, prescriptive and descriptive versions. Prescriptively used, the phrase ratio decidendi refers to a normative judgement requiring the later court to choose a particular ratio decidendi as legally required to be drawn from a prior case i.e. as the binding ratio decidendi. *Descriptively* the phrase imports an explanation of the court's reasoning to its conclusion based on sociological, historical and even psychological inquiry. And the finding from such an inquiry is true or untrue *as a matter of fact*. This may be sought at *various levels*.

The Descriptive Ratio is the rule that the judge who decides the case intended to lay down and apply to the facts. Prescriptive Ratio is the rule that a latter court concedes him to have power to lay down.

Julius Stone observes that an automobile in bad repair is not the same thing as an opaque bottle containing a dead snail. Yet judicial creativity has made it possible to extend the similar thrust of *Donoghue v. Stevenson* to a wide range of differing decisional situations. This means that the scope of the ratio decidendi of a precedent case will frequently will not be determined until further decisions have been made plotting the limits of the precedent case. This is because each material fact of the precedent case can be stated at several levels of generality, generating competing versions of ratio decidendi. A later court choosing between these versions at the time of its decision is determining what it regards as prescriptive ratio. Thus the entire process from the stage of ascertaining material facts to the final stage of identifying the common holding on the question of law and relating to the said material facts bristles with fantastic creative possibilities. We cannot be dogmatic in insisting that there is only one or single ratio decidendi which must inevitably follow once the material facts are sifted as day follows night.

Classical theory; the wide-spread view, of which Julius Stone was a prominent supporter in Australia, is which considers the whole notion that a single case could stand for a single ratio decidendi as a complete illusion.

Conclusion:

A difficulty arises in that, although the judge will give reasons for his decision, he will not always say what the ratio decidendi is, and it is then up to a later judge to "elicit" the ratio of the case. There may, however, be disagreement over what the ratio is and there may be more than one ratio. Yet in actual practice judges have drawn a distinction between the actual decision and the ratio decidendi and on the basis of this distinction have even asserted that what is binding of the past decision is the judicial decision itself. If there is a ratio decidendi which flows therefrom that also is binding, but that it is no part of the judicial task to spell out with great difficulty a ratio decidendi, the existence of which may be a matter of grave doubt and debate, in order to be bound by it.

So long as the tradition of deciding cases on the faith of previous judicial pronouncement exists as an integral part of judicial process, it will be necessary to struggle with concepts, like stare decisis and ratio decidendi as conceptual tools which are supposed to structure judicial responses to the demands of justice in concrete situations within the overall limits of legal reasoning contained in the earlier case law of compelling cogency.

In India, the doctrine is constitutionally recognized in respect of the decisions of the Supreme Court which have been declared under Article 141 to be binding on all courts and tribunals in the country. This of course implies that even a single pronouncement of the Supreme Court would be binding on subordinate courts. However, as held in the Bengal Immunity case, the decisions of the Supreme Court are not binding on itself. It is only the reasons for deciding a case i.e., the *ratio decidendi* of the case which are binding on future courts

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