

# RATIO DECIDENDI

WAMBAUGH'S TEST, GOODHART'S TEST, LORD  
HALSBURY'S TEST

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## INTRODUCTION

A Precedent is a statement of law enunciated by the superior court in the course of rendering a judgment which has to be followed by that court and the inferior court. This brings in certainty in legal matters and the litigant has an idea of how the court will act in similar situations and facts. In the course of rendering decisions on actual disputes the courts explain and expound the law; they clarify and clear the ambiguities in the Legislation; in the process they make statements of law which operates as a source of law. Thus, the theory of precedent plays an important role in the development of Jurisprudence of the country. In India, under Article 143 of the constitution, law laid down by the Supreme is binding on all the courts in India.

According to Osborne's Concise Law Dictionary a precedent is "A judgment or decision of a court of law cited as authority for deciding a similar set of facts. It is a case which serves as an authority for the legal principle embodied in its decision. The common law has developed by broadening down from precedent to precedent. A case is an authority for what it actually decides."<sup>1</sup>

## THE ENGLISH DOCTRINE OF PRECEDENT

It is a basic principle of the administration of justice that like cases should be decided alike. This is enough to account for the fact that, in almost every jurisdiction, a judge tends to decide a case in the same way as that in which a similar case has been decided by another judge. The strength of this tendency varies greatly. It may be little more than an inclination to do as others have done before, or it may be the outcome of a positive obligation to follow a previous decision in the absence of justification for departing from it. Judicial precedent has some persuasive effect almost everywhere because *stare decisis* (keep to what has been decided previously) is a maxim of practically universal application. The peculiar feature of the English doctrine of precedent is its strongly coercive nature. English judges are sometimes obliged to follow a previous case although they have what would otherwise be good reasons for not doing so.<sup>2</sup>

### Case-law

The strongly coercive nature of the English doctrine of precedent is due to rules of practice. called 'rules of precedent', which are designed to give effect to the far more fundamental rule that English law is to a large extent based on case-law. 'Case-law'

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<sup>1</sup> Dr. Veena Madhav Tonapi; Textbook on Jurisprudence; 2010 Edition; Universal publishing co.

<sup>2</sup> Rupert Cross; Precedent in English Law

consists of the rules and principles stated and acted upon by judges in giving decisions. In a system based on case-law, a judge in a subsequent case must have regard to these matters; they are not, as in some other legal systems, merely material which he *may* take into consideration in coming to his decision. The fact that English law is largely a system of case-law means that the judge's decision in a particular case constitutes a 'precedent'. If we place ourselves in the position of a judge in a later case, there may be said to be many different kinds of precedent. The judge may simply be obliged to consider the former decision as part of the material on which his present decision could be based, or he may be obliged to decide the case before him in the same way as that in which the previous case was decided unless he can give a good reason for not doing so. Finally, the judge in the instant case may be obliged to decide it in the same way as that in which the previous case was decided, even if he can give a good reason for not doing so. In the last-mentioned situation the precedent is said to be 'binding' or of 'coercive effect' as contrasted with its merely 'persuasive' effect in the other situations in which the degree of persuasiveness may vary considerably.

Some branches of English law are almost entirely the product of the decisions of the judges whose reasoned judgments have been reported in various types of law report for close on 700 years. Other branches of our law are based on statutes, but, in many instances, case-law has played an important part in the interpretation of those statutes. As the sovereignty of Parliament is more complete in England than practically anywhere else in the world, it might be thought that the rigidity of the doctrine of precedent in this country is of no particular importance because any unsatisfactory results of case-law can be swept away by legislation, but the promotion of a statute on matters of this nature is often slow and difficult. There are many instances in which the recommendations of Royal Commissions and Law Revision Committees, designed to ameliorate the situation produced by case-law have been ignored, apparently for no other reason than pressure on parliamentary time.

Perhaps the number of such instances will be reduced in the future because there are now in existence several very important law-reforming agencies, notably the Law Reform Committee dealing with the reform of the civil law on matters referred to it by the Lord Chancellor, the Criminal Law Revision Committee dealing with the reform of the criminal law on matters referred to it by the Home Secretary, and, most important of all, the Law Commission. The Commission was set up by statute in 1965, and it is charged with the task of reviewing the law with a view to systematic development and reform, including, *in particular*, codification. When the work of the Law Commission results, as it probably will do, in codes of the more important branches of English law, the role of case-law will, *pro tanto*, be diminished.<sup>3</sup>

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<sup>3</sup> Rupert Cross; Precedent in English law

## **Rules of precedent**

The rules of precedent are dependent on the practice of the courts, which has varied considerably. As recently as 1948 it was possible for Dr Goodhart, one of the leading contemporary writers on precedent, to say: 'The English doctrine of precedent is more rigid, today, than it ever was in the past. Since then, however, there have been pronounced signs of relaxation, and they culminated in 1966 in a very important Practice Statement, in which the Lord Chancellor said that, while, in general, the House of Lords would continue to treat its past decisions as binding on it, it would modify its then present practice by departing from a past decision when it thought right to do so.

Under the practice prevailing between 1898 and 1966, the House considered itself absolutely bound by its past decisions, and there had been pronounced tendencies in this direction throughout the nineteenth century. At present the English doctrine of precedent is to some extent in a state of flux, but there appear to be three constant features. These are the respect paid to a single decision of a superior court, the fact that the decision of the court is a persuasive precedent even so far as courts above that from which it emanates are concerned, and the fact that a single decision is always a binding precedent as regards courts below that from which it emanated.

## **KINDS OF PRECEDENTS**

Authoritative (conditional and unconditional)

### *1. Authoritative Precedent*

a. *Judges must follow*: An authoritative precedent is one which the judges must follow whether they approve it or not. Persuasive precedents are *not binding* on the judges, but they may take them into consideration and attach such weight as they deem fit. Hence, authoritative precedents are legal sources of law; persuasive precedents are merely historical.

b. *Authoritative precedent may be conditional or unconditional*: Sir John Salmond classifies authoritative precedents as conditional and unconditional. It is unconditionally authoritative if under all circumstances it must be followed by the lower courts. A precedent which is conditionally authoritative may be rejected under certain cases as for example, where the decision is so unreasonable or erroneous that it would be a mockery of justice to follow the precedent. It is not a simple case of error or unreasonableness but a gross case of error or unreasonableness.

c. *Examples of Persuasive Precedent*: Following are the persuasive precedents:

(i) *Foreign Judgments*: In India foreign judgments are given effect provided they satisfy the conditions laid down in Section 13 of Civil Procedure Code.

(ii) *Commonwealth court decisions*: Decisions of the superior courts in other parts of the Commonwealth

(iii) *Judgments of the Privy Council*: Privy Council used to hear appeals from Commonwealth countries. Judgments given by the Privy Council while hearing appeal from one Commonwealth country is persuasive with respect to other Commonwealth countries.

(iv) *Obiter dicta*: Obiter dicta *i.e.*, statements of law made by the court while passing a judgment which are not necessary for the disposal of the case. They are passing observations which the later court regards as unduly wide. J. Krishna Iyer in *Mohinder Singh Gill v. Chief Election Commissioner*, has observed that an obiter binds none, not even the author. Yet, when the obiter comes from the Supreme Court it would be highly persuasive and it sets the tone for speculation of how the future courts may react to a like situation.

### **DOCTRINE OF PRECEDENT IN INDIA.**

(i). After independence, the decisions of the Privy Council are not authoritative but of high persuasive value.

(ii). Article 143 of the Constitution lays down that the decisions of the Supreme Court are binding on all the courts in India and hence highly authoritative.

(iii) The decisions of one High Court are not binding on the other High Courts. They are only persuasive in nature as the courts are of coordinate jurisdiction.

(iv). In the same High Court, the decision of a Single Judge is binding on another single judge, but not on a court of Appeal.

(v) The decision of the larger Bench of the same Court is binding on the smaller Bench of the same Court.

(vi). The lower Courts are bound by the ruling given by the State High Court to which they are subordinate. Even when there are conflicting opinions between different High Courts the subordinate Court is bound by the ruling of the High Court to which it is subordinate. For example, a District Court in Karnataka is bound by the ruling of the Karnataka High Court.

(vii). When on the same point of law, there are different opinions given by different High Courts and then later the Supreme Court gives a ruling on the same point it is the Supreme Court which must be followed in all the High Courts.

(viii). Unreported judgments have as much authority as reported ones. Difficulty with persuasive and authoritative precedent is that the same decision may be authoritative in one court while persuasive in another. For example, ruling given by the Karnataka High Court is authoritative in Karnataka courts but only persuasive outside Karnataka<sup>4</sup>

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<sup>4</sup> Dr. Veena Madhav Tonapi; Textbook on Jurisprudence; 2010 Edition; Universal publishing co.

## **RATIO DECIDENDI**

A judicial decision consists of following parts:

***Ratio decidendi***: This is what the court decides generally, it is the rule of law for which the judgment is an authority. It is the only part which is conclusive as against the persons who are not parties to the case.

***Res Judicata***: That part of the decision which is binding only on the parties and their privies.

***Obiter Dictum***: These are passing observations made by the judge or reference to hypothetical situations while giving the judgment. They are not binding.

**Res Judicata**: Once the case is heard by a court of competent jurisdiction, all appeals are disposed of or time for filing appeal is over, all parties to the dispute and their successors are bound by the court's finding on the issues raised between them and on questions of fact and law necessary to the decision of such issues. This is in order to give finality to the decision and to put an end to the litigation. This is known as *res judicata*. It is dealt with under Section 11 of the Code of Civil Procedure, 1908. At times the judgment may be conclusive against the third parties also. It is known as a judgment *in rem i.e.*, against the world at large. For example, in a petition for declaration of nullity of a marriage the court's decision is conclusive not only against the parties but also against the third parties.

The rule of precedent is a fundamentally important legal institution in common law countries: even the single judgment of a higher court speaks with a voice of authority and must be followed by lower courts. This doctrine is also known as *stare decisis*<sup>5</sup>. It is one of the important contributions made by common lawyers to the theory and practice of jurisprudence and it has had some kind of impact in almost all legal systems. If judgments are a source of law, judges are a source of power and authority. The rule of precedent is the instrument through which that power is exercised in common law countries. It is thus not just of legal, but also of political importance. Accordingly it comes as no surprise that the mysteries of judicial law-making and of the rule of precedent in particular, continue to attract attention and much intense reflection from prominent judges, academic lawyers, and legal philosophers.<sup>6</sup>

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<sup>5</sup> Dias, *Jurisprudence* (5th edition 1985) p. 126.

<sup>6</sup> <http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1001&context=blr>

### **HIERARCHY OF CIVIL COURTS IN INDIA**

Starting from the lowest rung of the ladder, we have

- The Civil Court( junior Division)
- The Civil Court (Senior Division)
- The District Court (to handle both Civil and Criminal Matters)
- The High Courts of each State. High Court Benches are established in several States .
- The Supreme Court.

*Classes of Criminal Courts in every State in India (Section 6 of the Code of Criminal Procedure, 1973.)*

- Courts of Session at the District level
- Judicial Magistrate of the First Class and in any Metropolitan area, Metropolitan Magistrate. Where the population exceeds one million- it is a Metropolitan area. Bombay, Madras, Calcutta and Ahmedabad are deemed to be Metropolitan area.
- Judicial Magistrate of the Second Class, and
- Executive Magistrate.
- High Courts
- Supreme Court.

### **RATIO DECIDENDI AND OBITER DICTA**

1. One essential feature of the doctrine of precedent in common law is that rules of law are developed while being applied to live issues raised between actual parties and argued on both sides. It means that they are created by judges while acting in their capacity as judge and not as say teachers or in their extra judicial capacity while giving lectures etc. If statements of law are made in any other capacity, they are not binding.
2. As against persons who are not parties to the suit the only part of the case which is conclusive is the general rule of law for which the case is an authority, known as *ratio decidendi*. It is a rule applied by and acted on by the court.
3. In the course of delivering a judgment a judge may make various observations not relevant for the disposal of the case. He may illustrate his reasoning by referring to hypothetical situations and the law which he considers to apply to them. As it is not a live

issue before the court, the counsel would not adduce full argument. Under the circumstances it would be unwise to attach the same importance to such observations as would be attached to the actual decision of the case on which the case is disposed of. These observations are *obiter dicta* and without any binding force.

For example, in *Unnikrishnan v. State of Andhra Pradesh*,<sup>7</sup> case the question of right to primary education was not in issue at all. It was right to higher education which was in issue. Yet a pronouncement was made declaring right to primary education as a fundamental right under the Constitution of India. This was only an *obiter* observation.

4. Though *obiter dicta* are not binding they are important. They tend to rationalize law and suggest solutions for problems that may arise in future. Obiter observations from House of Lords or the judges of the Supreme Court who are masters in their areas may carry more weight than that of the lesser judges

5. *Ratio decidendi* is the rule acted upon and applied by the court in the given case. The difficulty lies in finding out this rule. The rule may have been too widely stated; it may have come up for the first time, hence all possible situations may not be within its contemplation. Yet the original court is not obliged to ponder over situations that may arise in future or lay down exceptions to it. No two cases would be exactly the same. Later courts therefore are not totally fettered by the earlier decision. They may narrow down the rule or restrict its application.<sup>8</sup>

For example, in *Keshvanand Bharati*'s<sup>9</sup> case the Supreme Court laid down the general rule that basic structure of the Constitution shall not be amended. It was the later judges as and when the cases came up, started laying down what the basic structure is.

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<sup>7</sup> [1993] 1 SCC 645

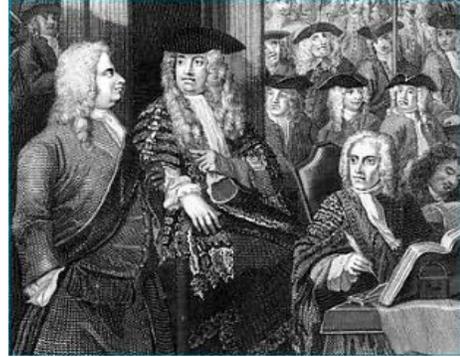
<sup>8</sup> Dr. Veena Madhav Tonapi; Textbook on Jurisprudence; 2010 Edition; Universal publishing co.

<sup>9</sup> AIR 1973 SC 1461.

## METHODS OF DETERMINING THE RATIO DECIDENDI

### EUGENE WAMBAUGH (1856-1940)

**Eugene Wambaugh** (February 29, 1856–August 6, 1940) was an American legal scholar. He was born on a farm near Brookville, Ohio to Rev. A. B. Wambaugh and Sarah Wells Wambaugh. He was educated at Harvard (A.B., 1876; LL.B., 1880). Admitted to the Ohio bar in 1880, he practiced law in Cincinnati until 1889. He was professor of law at the State University of Iowa College of Law from 1889 to 92 and thenceforth at Harvard. In 1906-13 he was a member of the *American Political Science Review*, and in 1908-12 served as special attorney of the United States Bureau of Corporations. Several universities gave him the honorary degree of LL.D. His publications include:



*The Study of Cases* (1892; second edition, 1894)

*Cases for Analysis* (1894)

*A Selection of Cases on Agency* (1896)

*Littleton's Tenures* (1903)

*A Selection of Cases on Constitutional Law* (four volumes, 1914-15)

Wambaugh was an adviser to the State Department on war problems in 1914 and was discharged honorably from the U.S. Army in 1919 with the rank of colonel. He retired from Harvard Law School in 1925.

Wambaugh devised the eponymous **Wambaugh's Inversion Test**, which provides that to determine whether a judicial statement in a common law case is *ratio* or *obiter*, you should invert the argument, that is to say, ask whether the decision would have been the different, had the statement is omitted. If so, the statement is crucial and is *ratio*; whereas if it is not crucial, it is *obiter*.<sup>10</sup>

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<sup>10</sup> [http://en.wikipedia.org/wiki/Eugene\\_Wambaugh](http://en.wikipedia.org/wiki/Eugene_Wambaugh)

**The Reversal Method of Prof. Wambaugh:**

Take the proposition of law laid down by the judge; reverse it or negate it. If the reversal alters the actual situation then the proposition is the ratio or a part of the ratio. If the reversal makes no difference then it is not a ratio. That it is ratio is a general rule without which the case would have been decided otherwise. This test is of no use where no proposition is laid down or where several reasons are given for the decision. Each proposition may be reversed and yet the decision remains because it is based on many propositions.<sup>11</sup>

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 form of a 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 had it in mind, the decision could have been the same.
4. If the answer is affirmative, then, however excellent the **Original Proposition** may be, the case is not a precedent for that proposition.
5. But if the answer be negative, the case is a precedent for the Original Proposition and possibly for other propositions also.

Thus, when a case turns only 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.

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<sup>11</sup> Dr. Veena Madhav Tonapi; Textbook on Jurisprudence; 2010 Edition; Universal publishing co

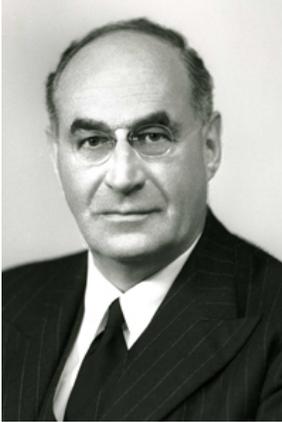
However, Rupert Cross criticized the Inversion Test on the ground that "the exhortation to frame carefully the supposed proposition of law and the restriction of the test to cases turning on only one point rob it of most of its value as a means of determining what was the ratio decidendi of a case, although 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<sup>12</sup>

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<sup>12</sup> <http://www.desikanoon.co.in/2014/05/jurisprudence-notes-three-tests-to.html>

**ARTHUR LEHMAN GOODHART**, (1891-1978)



**Arthur Lehman Goodhart**, (1 March 1891, New York City – 10 November 1978, Oxford) was an American-born [British](#) academic jurist and lawyer; he was professor of jurisprudence, University of Oxford, 1931–51, when he was also a Fellow of University College, Oxford. He was the first American to be the Master of an Oxford, University College and was a significant benefactor to the College

Arthur Goodhart was born in New York and educated at the Hotchkiss School, Yale University and Trinity College, Cambridge. He returned to the United States where he practiced law until World War I. Following the war, he started to pursue an academic career in law, initially at Cambridge University and later at Oxford University where he became a Professor of Jurisprudence and subsequently the Master of University College. He was editor of the *Law Quarterly Review* for fifty years.

Rejected for service with British forces in World War I, in 1914, he became a member of the American forces when USA joined the war in 1917; he became counsel to the American mission to Poland, in 1919. He was called to the bar (Inner Temple), 1919, and became a fellow of Corpus Christi College, Cambridge, and university lecturer in jurisprudence; he edited the *Cambridge Law Journal*, 1921–5, and the *Law Quarterly Review*, 1926. In 1931 he moved to Oxford to become professor of jurisprudence. He gave up that chair when he became Master of University College, Oxford, (1951–63). As a member of the Law Revision Committee, he helped to promote improvements in various branches of the law.<sup>13</sup>

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<sup>13</sup> [http://www.squire.law.cam.ac.uk/eminant\\_scholars/arthur\\_lehman\\_goodhart.php](http://www.squire.law.cam.ac.uk/eminant_scholars/arthur_lehman_goodhart.php)

## **DR. GOODHART'S METHOD OR THE MATERIAL TEST METHOD:**

### **Goodhart's 'material facts' theory**

Goodhart wrote his seminal article in 1930 upon the basis that the classical theory, as he understood it, was untenable: 'it is not the rule of law "set forth" by the court or the rule "enunciated" as Halsbury puts it, which necessarily constitutes the principle of the case.' Nevertheless, Goodhart did not join the ranks of the sceptics; he did not abandon his belief in the binding nature of the single precedent. Goodhart seems to have been impressed with what German lawyers have aptly called 'the normative power of facts'. When judicial statements of principle must be read 'subject to the underlying facts' and when precedents can be distinguished 'on the facts', one is led to consider what magic there might be in 'facts' which seem able to override the law. When the actual facts of a precedent can be used to qualify a judicial statement of a rule or principle, one must wonder whether 'facts' are not the most important building blocks of judicially created rules. Having discarded the classical view of precedent, Goodhart suggested that the true ratio consisted of the material facts of the case plus the actual ruling of the court. Nearly thirty years after he wrote his original article, he summed up its essence as follows: 'The principle of the case [can] be found by determining (a) the facts treated by the judge as material, and (b) his decision based on them.'

In his original article, Goodhart had illustrated his thesis with a number of examples. One may suffice for the purpose of illustration. In *Hambrook v. Stokes*,<sup>14</sup> a woman died of shock when she witnessed a car accident, caused by the defendant's carelessness, which threatened to kill or injure her child. The deceased's husband recovered damages. Goodhart asked whether the fact that the deceased was the child's mother rather than a mere bystander was material. That, Goodhart suggested, depended upon the way in which the judge had treated it. If he had, expressly or by implication, declared it non-material, then the estate of a mere bystander could recover if he had lost his life in similar circumstances. As Goodhart said: 'It is by his choice of the material facts that the judge creates law.'

. According to him the ratio is to be determined by ascertaining the facts treated as material by the judge together with the decisions on those facts. Here the emphasis is on what the judges do rather than what they say.

### ***Advantages of the test:***

- It is the only way of finding out the ratio when no judgment is given.
- 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.

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<sup>14</sup> 1925] 1 KB 141.

- 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.

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

1. *Ratio decidendi* must not be sought in the reasons on which the judge has based his decision.
2. The reasons given by the judge in his opinion 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 a *ratio*; furthermore, the reasons offered by a court in reaching 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'.
4. Thus, *ratio decidendi* is whatever facts the judge has determined to be the material facts of the case, plus the judge's decision as based on those facts. It is by his choice of the material facts that the judge creates law.

If we accept Goodhart's conception of *ratio decidendi*, we could explain why hypothetical instances are unlikely to be accorded the same weight as judicial precedents as hypothetical instances are by definition *obiter dicta*. Also, this conception of *ratio decidendi* links the doctrine of precedent with the principle that like cases be treated alike. Any court which considers itself bound by precedent would come to the same conclusion as was reached in a prior case unless there is in the case some further fact which it is prepared to treat as material, or unless fact considered material in the previous case is absent.<sup>15</sup>

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<sup>15</sup> <http://www.desikanoon.co.in/2014/05/jurisprudence-notes-three-tests-to.html>

The only drawback of the test is that the test is not in actual use by the judges. In practice the courts pay more attention to the judge's own formulation of the law than that permitted under the test.

Difficulty arises when the court deals with the law without first finding the facts. They depart from the 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.<sup>16</sup>

The observations of the Supreme Court in *State of Orissa V. Misra*<sup>17</sup> are relevant. "A decision is only an authority for what it actually decided. What is of the essence in decision is its ratio, and not every observation found therein nor what logically follows from the various observations made in it."

Goodhart's contribution has been very influential and it is undoubtedly of great intrinsic importance. Its full implications seem never to have been completely spelt out.<sup>18</sup>

### **A critical assessment of Goodhart's theory**

Goodhart's formula (ratio decidendi = material facts, as determined by the precedent judge, plus decision) must be examined in some detail. Goodhart used 'ratio' and 'principle of the case' as if they were interchangeable. 'Rule' has been used as yet another synonym for the same concept. That creates terminological difficulties. 'Rule' and 'principle' are often used in different senses in modern jurisprudential debates. Moreover, both these concepts are fairly securely tied to deductive reasoning, which ratio decidendi is not. However, as long as one bears in mind these difficulties they should not cause any serious confusion. The really serious difficulties with Goodhart's formula lie in (1) his reference to the 'facts of the case' as part of the ratio, and (2) his insistence that the precedent judge has the power to declare facts material or nonmaterial and thus to shape the future course of the law. These aspects of his theory raise issues of fundamental importance concerning the logical structure of the ratio decidendi and the nature of the judicial lawmaking process.

#### **1 The 'facts of the case'**

##### **(a) The judicially adopted version of the facts and the true facts:**

One must distinguish between the facts adopted by the precedent judge (guided by party admissions, the evidence before the court, the rules concerning the onus of proof and

<sup>16</sup> Dr. Veena Madhav Tonapi; Textbook on Jurisprudence; 2010 Edition; Universal publishing co.; p. 119

<sup>17</sup> AIR 1968 SC 647

<sup>18</sup> <http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1001&context=blr>

such factual assumptions as it is legitimate for the judge to make) and the true facts. The true facts are those events which have actually occurred and those circumstances which might give us a better chance of discovering them than do court proceedings. For the purpose of discovering the ratio decidendi, it is not the true facts which matter, but those which the judge took to be established. Dias has illustrated this with reference to one of the most famous precedents, *Donoghue v Stevenson*:<sup>19</sup> what is important in law is the statement of facts rather than even their truth. The House of Lords remitted the case to the Scottish court for trial on the ruling laid down by the House, but this did not take place because of the death of one of the parties. So the truth as to whether or not there was a snail in the bottle was never established and is irrelevant to the ruling.

**(b) The facts of the precedent case and 'classes of facts':**

In the late 1950s Goodhart's theory sparked off a lively debate in the pages of the *Modern Law Review*. The participants were Montrose, Simpson, Goodhart himself and Stone. Goodhart's use of 'facts' and 'facts of the case' was subjected to some scrutiny in this debate. Simpson put forward, as unquestionable and axiomatic, his understanding of the logical nature of 'rule of law' (which all participants to the debate took the ratio decidendi to be) as follows: A rule of law will always be found to contain two parts; the first specifies a number of facts and the second specifies the legal result or conclusion which ought to follow whenever these facts are found to co-exist. Neither Simpson nor Goodhart had given any indication whether, in their respective statements, 'facts' was intended to refer to the actual, concrete facts of the precedent case, as established before the precedent judge, or to some generalized and abstracted version of those facts as is usually found in legal rules and statutory provisions. Montrose took both writers to task for this alleged ambiguity of their statements: The ambiguity of the phrase 'facts of the case' is concerned with the distinction between words which refer to classes of facts and words which refer to particular facts. The brute facts of the world deal with individual men and women, particular things and unique events... Rules of law specify in their antecedents *classes* of facts...

As Montrose explained, it is one thing to refer to the dead snail in the ginger beer bottle in *Donoghue v Stevenson* as that unique dead snail, it is quite another to refer to it, when we turn the case into a rule, as 'a harmful drink, or a harmful thing for human consumption, or a harmful thing for personal use or a thing capable of any kind of harm'. It is easy to see that these expressions are general references to things like the snail in the bottle at differing levels of generality and that, depending upon which one is chosen for incorporation into a rule, that rule will embrace a narrower or broader range of actual cases. Montrose's observation was grist to the mill for Stone, who elaborated it in great

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<sup>19</sup> [1932] AC 562.

detail and demonstrated successfully that, when rules had a number of factual components which could all be stated at different levels of generality, the possible combinations and permutations meant that large numbers of rules could be constructed from them which vied amongst themselves for recognition as the one *ratio* of the precedent. To Stone this was proof indeed of his contention that judges had an ample range of 'leeways of choice'. To lawyers conditioned to thinking in the categories of deductive logic, the criticisms made by Montrose and Stone are indeed incontrovertible. Before analyzing Montrose's proposed distinction, one should note in passing that, in his reply to Montrose, Goodhart simply ignored the fundamental point which Montrose had made, whilst Simpson adverted to it briefly and denied the validity of Montrose's distinction with arguments which seem inconclusive.<sup>52</sup> It seems strange that the fundamental difficulties involved in the distinction have been given so little attention in the literature since 1959.

**(c) Classes of facts and their use for descriptive purposes:**

As it stands, Montrose's distinction between 'words which refer to classes of facts and words which refer to particular facts' is in need of some further clarification. We employ words of the first type continually when we refer to particular facts. The purpose of descriptive statements of the facts in judgments is to acquaint the reader with the relevant events, to put him in the position in which he would be if he had personally witnessed the events which led to the dispute. If the reader is already familiar with a thing, the best way of evoking it for him is to use its name ('Festival Theatre', 'Sydney Opera House'). The same applies to persons ('Bob Hawke', 'Rolf Harris'), or to events ('The great train robbery', 'World War I'). No 'level of generality' problem can arise, for names are entirely specific: they simply 'point to' some temporally and spatially unique thing. However, we find that, even in the context of factual description, generic terms are used with much greater frequency than are simple names. All persons have names, but many things and events have not; even when names exist, they often mean nothing to readers who lack familiarity with the circumstances of the dispute. We resolve the resulting linguistic problem by using generic terms instead. The reader will not know Jack Brown who came to inspect the crash site, but the reader knows 'policeman' as a genus, and (if Jack Brown was one) we introduce Jack by using the indeterminate 'a policeman' and add some distinguishing characteristic ('who appeared at the crash site shortly after the accident') which makes our reference specific to Jack. In subsequent references to him we speak of 'the policeman', using a generic term with a definite article in much the same way as we would a name. The use of 'a policeman' was a convenient and short-hand way of conveying a good deal of specific information to the reader about the person who appeared at the crash site.

The nature of the class terms we use in such a context, in particular their level of generality, is determined by the descriptive purpose which we are pursuing. As Montrose has said, 'the relativity of classification to purpose is a commonplace of logical thought'. The function of the statement of facts is to convey concrete information about the facts of the case. Accordingly, the level of generality of the generic terms we use is very low, for the lower it is, the greater is the amount of information it will convey about the specific

facts of the case. For example, when describing the facts in *Donoghue v Stevenson* one might wonder whether to say that the ginger beer was in a 'container' or in a 'bottle'. At the *descriptive* level of the judgment the latter term is preferable because it is more specific and thus creates a more distinct image of what happened.

Although terms like 'policeman' or 'bottle' are generic terms and are capable, depending on the way they are used, of referring to classes of things, they would usually be quite useless as components of rules which we might wish to formulate to govern facts such as those in *Donoghue v Stevenson*. As has often been pointed out, if the ratio of that case were confined to Scottish widows who swallow snails in ginger beer bottles, it would not be of much value. When sensible rules to govern legal affairs are formulated, a much higher level of generality is often appropriate. The distinction proposed by Montrose is more fundamental than the merely linguistic distinction between generic terms and names, it is concerned with the logical structure of our thinking about facts, events and circumstances and with the purposes which we pursue when we formulate and use words to reflect our various images of them. The distinction is so fundamental that Goodhart should not have ignored it in his reply to Montrose.

**(d) The specific facts of the case as part of the ratio decidendi:**

If Goodhart had given serious attention to Montrose's criticism, he would have been forced to ponder the merits of a ratio decidendi which has the specific and concrete facts of the precedent case as its first component. Such a version of the concept is in danger of invoking nothing more than a factual description of an historical event, including its forensic aftermath. If it is to be turned into a working hypothesis, a number of qualifications will be unavoidable.

As already explained, we are concerned with the judicially established version of the facts which may or may not differ from the true facts. Moreover, the statement of the facts which we find in judgments is already heavily selective: much that cannot be of any legal relevance has already been ignored. If the law is a seamless web, so are the facts of any case. Each fact related in a judgment has a 'tail' of further facts attached to it which a judge is bound to ignore lest his statement of the facts turn into an epic. For example, a divorce judge must identify the immediate parties and, perhaps, the children, but there is no need for a full list of blood relations or of friends. Some facts may be related only because they add colour and plausibility to the overall account of the case (eg, '*intending to visit his uncle, the defendant set out in his car*', as the introduction to the account of a traffic accident), but apart from such facts, the judge will usually only establish and relate what is conceivably of some legal relevance. As Montrose might have said, the scope of the judicial statement of the facts is determined by a forensic purpose. Whilst this is little more than a statement of the obvious, our hypothesis must contain one further qualification which is both less obvious and more crucial. If concrete facts are to

be of any use as parts of a *ratio decidendi*, they must be abstracted at least to the point where they are detached from their temporal setting. If *Donoghue v Stevenson* is to be applied today we must ignore the fact that the events occurred in 1928. Those facts must be projected forward to the present day so as to test their applicability to a present-day dispute. As Goodhart expressed this requirement: 'All facts of... time..., are immaterial unless stated to be material. We think of rules and statutory provisions as being projected forward in this way. Precedents must be given the same notional treatment, if only to make their operation comparable with that of rules and statutes. Rules specify 'classes of facts' which enable us to draw deductive inferences and thus to apply them to further concrete cases. Although concrete facts cannot yield *deductive* inferences, they are a suitable basis for *analogical* inferences and these may be just as useful and compelling. The operation of precedents without the medium of rules is a well-established feature of the law. Not infrequently a judge comes to the conclusion that a precedent 'is in point' (and therefore binding on him if it has been decided by a higher court in the same judicial hierarchy) on the simple basis that the facts of the two cases are 'substantially the same', 'on all fours', 'identical', 'indistinguishable'. Once that is established, it is not necessary to formulate the rule which might flow from the precedent. Cross, expressly acknowledges that precedents can have this simple effect: 'a court bound by a judgment, as distinct from a *ratio decidendi*, is bound to make a similar order to that made in the previous case when all the material facts are similar.' In order to formulate a rule of general application, one has to imagine a whole range of cases which, for the same reasons, deserve the same legal treatment. To make a judgment that a mere two cases (the precedent and the case to be decided) require the same legal treatment if the law is to be consistent, is bound to be a somewhat simpler process. Judges resort to that process quite frequently in practice. The binding quality of a statutory provision stems, at least in part, from our syllogistic approach to its application. Once the case to be decided (the minor premise) fits under the provision (the major premise) the result seems to become a logical necessity. The logic of deductive reasoning allows for no doubts, no gradations and no escape.

## **2. The material facts**

As pointed out earlier, there are many facts which are connected with the precedent but which the judge will have ignored because they are legally irrelevant. Other facts might at first have been thought potentially relevant (and are thus included in the judicial account of the case) but then turned out, on closer inspection, to be just as irrelevant legally as those which the judge excluded from his descriptive account in the first place. It seems obvious that such facts cannot have been part of the reason for the decision. It must have been considerations of this kind which prompted Goodhart to include in his proposed *ratio decidendi* only those facts which were considered material facts by the precedent judge. The first difficulty with this suggestion is that Goodhart's use of

'material' is just as fundamentally ambiguous as is his use of 'facts'. The second difficulty arises from his suggestion that the precedent judge has the power to rule one or several factual features of the case before him material or non-material.

**(a) 'Material'**

A single word often suffices to attribute a particular quality to a thing. Examples are 'green' or 'invisible'. 'Material' was intended by Goodhart to ascribe a quality to 'facts', but 'material' is a relational term, rather like 'related' or 'larger than'; it lacks a complete and distinct meaning until further words are added which provide a relationship ('related to Bob Hawke', 'larger than a jumbo-jet') or a context in which the expression acquires a clear and unambiguous meaning.

For example, it is easy to demonstrate that a fact which would clearly have been non-material in Goodhart's sense, could be material in another sense. '*Intending to visit his uncle*, the defendant set out in his car' as the introduction to an account of an accident case would almost certainly

be non-material to the defendant's liability, but quite material *descriptively*, for it would perform a useful function in helping to provide a complete and plausible account of the facts. Naturally, one cannot blame Goodhart for having failed to rule out this possible meaning of 'material' since it is obvious from his articles that he did not intend to use 'material' in this sense.

However, there are two other possible meanings of 'material', which faced Goodhart with a choice. For the sake of clarity, he should have made that choice. Did he mean *material for purposes of justification* or *material for purposes of prescription*? A fact may be material in providing or helping provide a justification or rationale for a particular decision, yet not material prescriptively, in the sense that it would play no role in a rule pitched at its optimal level of generality and intended to govern a wide range of future cases. Depending upon which of these two meanings is chosen, the result can be significantly different.

*Hambrook v Stokes* may yet again serve as a convenient and simple example to illustrate the problem. Goodhart raised the question whether the close blood relationship between the child and the deceased had been a material fact. If one means 'material' in a justificatory sense, the blood relationship was undoubtedly a material fact, for it provided added justification for holding the defendant liable. If, on the other hand, 'material' is understood in a prescriptive sense, then the answer becomes doubtful. Should a judge subscribe to the view that recovery should extend to all such bystanders, whether related to the accident victim or not, then the blood relationship would (prescriptively) be non-material.

**(b) Judges and material facts**

Goodhart failed to grapple with a problem which was most important to Montrose and particularly to Stone: at which level of abstraction or generality is the 'principle of a case' to be pitched if it is to be regarded as binding in future cases? Judges are free to

adopt as abstract a style as they like, but if they extend a passion for abstraction to rules of law which they formulate, they run the risk of having these treated as obiter dicta. As Glanville Williams has said, judges do not accord to their predecessors the unlimited right to lay down wide propositions of law. It is submitted that there is a two-fold answer to the question posed by Montrose and Stone: (1) a judicially formulated ratio decidendi is only binding if its level of abstraction is such that it includes only cases which are as strong as or stronger than the precedent case; and (2) even if so expressed, the formula chosen remains subject to review by later judges to ensure that it does not extend beyond the scope defined in (1) without some separate justification being provided.

Goodhart's theory was really an attempt, only partially successful, to 'switch' the ratio debate from the realm of deductive logic to that of analogical logic which is undoubtedly more appropriate to the common law. Within the altered framework in which he was thus working and to which neither Montrose nor Stone seemed able to adapt sufficiently, Goodhart did provide an answer of sorts to the questions posed above. He accorded to the precedent judge the power to create law by declaring facts material or non-material. The more facts are thus eliminated, the broader the sweep of the ratio decidendi will become. The judge who decided *Hambrook v Stokes*, to refer once again to our stock example, had had the power, so Goodhart thought, to declare the blood relationship between the deceased and the accident victim non-material, and thus to bind future judges in similar cases involving bystanders who were not blood relations. Were a judge able, in this way, to make law for cases materially different from the one before him, he would have crossed the line which separates adjudication from legislation. It is submitted, with respect, that Goodhart defined the judicial law-making power too broadly. The better view is that judges do not make strictly binding law when they go beyond providing the strongest possible rationale or justification for their decisions, a rationale which must always incorporate all those factual features of the precedent case which have significant justificatory weight in indicating that the actual decision is legally appropriate.<sup>20</sup>

**(3) All facts which the court impliedly treats as immaterial must be considered immaterial.**

The difficulty in these cases is to determine whether a court has or has not considered the fact immaterial. Evidence of this implication is found when the court, after having stated the facts generally, then proceeds to choose a smaller number of facts on which it bases its conclusion. The omitted facts are presumably held to be immaterial. In *Rylands v. Fletcher*, the defendant employed an independent contractor to make a reservoir on his land. Owing to the contractor's negligence in not filling up some disused mining shafts, the water escaped and flooded the plaintiff's mine. The defendant was held liable. Is it the principle of the case that a man who builds a reservoir on his land is liable for the

<sup>20</sup> <http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1001&context=blr>

negligence of an independent contractor? Why then is the case invariably cited as laying down the broader doctrine of "absolute liability"? The answer is found in the opinions. After stating the facts as above, the judges thereafter ignored the fact of the contractor's negligence, and based their conclusions on the fact that an artificial reservoir had been constructed. The negligence of the contractor was, therefore, impliedly held to be an immaterial fact. The case can be analyzed as follows:

Facts of the case

Fact I: *D* had a reservoir built on his land.

Fact II: The contractor who built it was negligent.

Fact III: Water escaped and injured *P*.

Conclusion : *D* is liable to *P*.

Material facts as seen by the court

Fact I: *D* had a reservoir built on his land.

Fact III: Water escaped and injured *P*.

Conclusion: *D* is liable to *P*.

By the omission of fact II, the doctrine of "absolute liability" was established.

It is obvious from the above cases that it is essential to determine what facts have been held to be immaterial, for the principle of a case depends as much on exclusion as it does on inclusion. It is under these circumstances that the reasons given by the judge in his opinion, or his statement of the rule of law which he is following, are of peculiar importance, for they may furnish us with a guide for determining which facts he considered material and which immaterial. His reason may be incorrect and his statement of the law too wide, but they will indicate to us on what facts he reached his conclusion.

(4) All facts which are specifically stated to be material must be considered material.

Such specific statements are usually found in cases in which the judges are afraid of laying down too broad a principle. Thus in *Heaven v. Pender*, the plaintiff, a workman employed to paint a ship, was injured owing to a defective staging supplied by the defendant dock owner to the ship-owner. Brett, M.R., held that the defendant was liable on the ground that, whenever one person is by circumstances placed in such a position with regard to another that every one of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger.

(5) If the opinion does not distinguish between material and immaterial facts, then all the facts set forth in the opinion must be considered material with the exception of those that on their face are immaterial. There is a presumption against wide principles of law, and the smaller the number of material facts in a case the wider will the principle be. Thus if a case like *Hambrook v. Stokes Bros.*, in which a mother died owing to shock at seeing a motor accident which threatened her child, is decided on the fact that a bystander may recover for injury due to shock, we have a broad principle of law. If the additional fact that the bystander was a mother is held to be material we then get a narrow principle of law. Therefore, unless a fact is expressly or impliedly held to be immaterial it must be considered material.

(6) Thus far we have been discussing the method of determining the principle of a case in which there is only a single opinion, or in which all the opinions are in agreement. How do we determine the principle of a case in which there are several opinions which agree as to the result but differ in the material facts on which they are based? In such an event the principle of the case is limited to the sum of all the facts held to be material by the various judges. A case involves facts *A*, *B* and *C*, and the defendant is held liable.

The first judge finds that fact *A* is the only material fact, the second that *B* is material, the third that *C* is material. The principle of the case is, therefore, that on the material facts *A*, *B* and *C* the defendant is liable. If, however, two of the three judges had been in agreement that fact *A* was the only material one, and that the others were immaterial, and then the case would be a precedent on this point, even though the third judge had held that facts *B* and *C* were the material ones. The method of determining the principle of a case in which there are several opinions is thus the same as that used when there is only one. Care must be taken by the student, however, to see that the material facts of each opinion are stated and analyzed accurately, for sometimes judges think that they are in agreement on the facts when they only concur in the result.

Having established the material and the immaterial facts of the case as seen by the court, we can then proceed to state the principle of the case. It is found in the conclusion reached by the judges on the basis of the material facts and on the exclusion of the immaterial ones. In a certain case the court finds that facts *A*, *B* and *C* exist. It then excludes fact *A* as immaterial, and on facts *B* and *C* it reaches conclusion *X*. What is the *ratio decidendi* of this case? There are two principles: (a) in any future case in which the facts are *A*, *B* and *C*, the court must reach conclusion *X*, and (b) in any future case in which the facts are *B* and *C* the court must reach conclusion *X*. In the second case the absence of fact *A* does not affect the result, for fact *A* has been held to be immaterial. The court, therefore, creates a principle when it determines which are the material and which are the immaterial facts on which it bases its decision.

It follows that a conclusion based on a fact, the existence of which has not been determined by the court, cannot establish a principle. We then have what is called a *dictum*. If, therefore, a judge in the course of his opinion suggests a hypothetical fact, and then states what conclusion he would reach if that fact existed, he is not creating a principle. The difficulty which is sometimes found in determining whether a statement is a *dictum* or not, is due to uncertainty as to whether the judge is treating a fact as hypothetical or real. When a judge says, "In this case as the facts are so and so I reach conclusion X", this is not a *dictum*, even though the judge has been incorrect in his statement of the facts. But if the judge says, "If the facts in this case were so and so then I would reach conclusion X", this is a *dictum*, even though the facts are as given. The second point frequently arises when a case involves two different sets of facts. Having determined the first set of facts and reached a conclusion on them, the judge may not desire to take up the time necessarily involved in determining the second set. Any views he may express as to the undetermined second set are therefore *dicta*. If, however, the judge does determine both sets, as he is at liberty to do, and reaches a conclusion on both, then the case creates two principles and neither is a *dictum*.

Thus the famous case of *National Sailors' and Firemen's Union v. Reed*, in which Astbury, J., declared the General Strike of 1926 to be illegal, involved two sets of facts, and the learned judge reached a conclusion on each. It is submitted that it is incorrect to say that either one of the conclusions involved a *dictum* because the one preceded the other or because the one was based on broad grounds and the other on narrow ones. So on the other hand, if in a case the judge holds that a certain fact prevents a cause of action from arising, then *his* further finding that there would have been a cause of action except for this fact is an *obiter dictum*. By excluding the preventive fact the situation becomes hypothetical, and the conclusion based on such hypothetical facts can only be a *dictum*.

Before summarizing the rules suggested above, two possible criticisms must be considered. It may be said that a doctrine which finds the principle of a case in its material facts leaves us with hardly any general legal principles, for facts are infinitely various. It is true that facts are infinitely various, but the material facts which are usually found in a particular legal relationship are strictly limited. Thus the fact that there must be consideration in a simple contract is a single material fact although the kinds of consideration are unlimited. Again, if *A* builds a reservoir on Blackacre and *B* builds one on Whiteacre, the owners, builders, reservoirs, and fields are different. But the material fact that a person has built a reservoir on his land is in each case the same. Of course a court can always avoid a precedent by finding that an additional fact is material, but if it does so without reason the result leads to confusion in the law. Such an argument assumes, moreover, that courts are disingenuous and arbitrary. Whatever may have been true in the past, it is clear that at the present day English courts do not attempt to circumvent the law in this way. The second criticism can be stated as follows: If we are

bound by the facts as seen by the judge, may not this enable him deliberately or by inadvertence to decide a case which was not before him by basing his decision upon facts stated by him to be real and material but actually non-existent? Can his conclusion in such a case be anything more than a *dictum*? Can a judge, by making a mistake, give himself authority to decide what is in effect a hypothetical case? The answer to this interesting question is that the whole doctrine of precedent is based on the theory that as a general rule judges do not make mistakes either of fact or of law. In an exceptional case a judge may in error base his conclusion on a non-existent fact, but it is better to suffer this mistake, which may prove of benefit to the law as a whole, however painful its results may have been to the individual litigant, than to throw doubt on every precedent on which our law is based.

### *To conclude*

The rules for finding the principle of a case can, therefore, be summarized as follows:

- (1) The principle of a case is not found in the reasons given in the opinion.
- (2) The principle is not found *in* the rule of law set forth in the opinion.
- (3) The principle is not necessarily found by a consideration of all the ascertainable facts of the case, and the judge's decision.
- (4) The principle of the case is found by taking account (*a*) of the facts treated by the judge as material, and (*b*) his decision as based on them.
- (5) In finding the principle it is also necessary to establish what facts were held to be immaterial by the judge, for the principle may depend as much on exclusion as it does on inclusion.<sup>21</sup>

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<sup>21</sup> Lloyd Dennis; Introduction To Jurisprudence; 1959;p.385

## **GIFFARD, HARDINGE STANLEY, LORD HALSBURY (1823-1921)**

**Hardinge Stanley Giffard**, like many British then and now, is also known by the adopted name given to him by British royalty, first in 1885, when he took the name *Baron of Halsbury* and again in 1898 when he was promoted *Earl of Halsbury*.

Giffard studied law at Oxford and entered the profession through Inner Temple, toiling for decades as counsel of record of many notorious criminal trials, notably, the Tichborne case. His reputation was so great that the government often hired him to prosecute high profile criminal cases. Gradually, he became involved in politics as a Conservative, losing his first two elections.

Halsbury was 68 years old and still two decades away from his great life work when, in 1875, Prime Minister Disraeli appointed him Solicitor General and two years later, Giffard had his seat in the House of Commons. During his political career, he was thrice appointed Lord Chancellor (England's equivalent to a minister of justice or attorney general; 1885-1886, 1886-1892 and 1895-1905).

He had watched with great interest the sparks of codification of English law, especially when the government created a commission in this regard in 1866.<sup>22</sup>



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<sup>22</sup> <http://www.duhaime.org/LawMuseum/LawArticle-887/Giffard-Hardinge-Stanley-Lord-Halsbury-1823-1921.aspx>

### LORD HALSBURY'S TEST

The concept of precedent has attained important role in administration of justice in the 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 reflecting on the material in issue with regard to the facts of the case. The reason and spirit of case make law and not the letter of a particular precedent.

Lord Halsbury explained the word “*ratio decidendi*” as “it may be laid down as a 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 the *ratio decidendi*”.

In the famous case of *Quinn v. Leatham*<sup>23</sup>, Lord Halsbury said that:

“Now, before discussing the case of *Allen v. Flood*<sup>24</sup>, and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions 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 such expressions are to be 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 by the choice of material facts that the Court create law.<sup>25</sup>

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<sup>23</sup> [1901] UKHL 2.

<sup>24</sup> [1898] A.C. 1

<sup>25</sup> <http://www.desikanoon.co.in/2014/05/jurisprudence-notes-three-tests-to.html>

## CONCLUSION

Thus, a Precedent is a statement of law enunciated by the superior court in the course of rendering a judgment which has to be followed by that court and the inferior court. In India, under Article 143 of the constitution, law laid down by the Supreme is binding on all the courts in India. . The peculiar feature of the English doctrine of precedent is its strongly coercive nature. English judges are sometimes obliged to follow a previous case although they have what would otherwise be good reasons for not doing so. After independence, the decisions of the Privy Council are not authoritative but of high persuasive value. ***Ratio decidendi*** is what the court decides generally, it is the rule of law for which the judgment is an authority. It is the only part which is conclusive as against the persons who are not parties to the case. One essential feature of the doctrine of precedent in common law is that rules of law are developed while being applied to live issues raised between actual parties and argued on both sides. It means that they are created by judges while acting in their capacity as judge and not as say teachers or in their extra judicial capacity while giving lectures etc. If statements of law are made in any other capacity, they are not binding. As against persons who are not parties to the suit the only part of the case which is conclusive is the general rule of law for which the case is an authority, known as *ratio decidendi*. It is a rule applied by and acted on by the court.

There are **three famous tests** used by the courts to ascertain *ratio decidendi*. They are i) **wambaugh's test** formulated by prof. Eugene wambaugh also known as inversion test 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.ii) **goodharts test** by A.L. Goodhart also known as material test focuses mainly on the material fact of the case. The rules for finding the principle of a case can, therefore, be summarized as follows: The principle of a case is not found in the reasons given in the opinion. The principle is not found *in* the rule of law set forth in the opinion. The principle is not necessarily found by a consideration of all the ascertainable facts of the case, and the judge's decision. The principle of the case is found by taking account (a) of the facts treated by the judge as material, and (b) his decision as based on them. In finding the principle it is also necessary to establish what facts were held to be immaterial by the judge, for the principle may depend as much on exclusion as it does on inclusion. The third test is **Lord Halsbury's test** and he explains, word "*ratio decidendi*" as "it may be laid down as a 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 the *ratio decidendi*".

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