

Key Elements of Judgments

- To decide whether a decision needs to be followed it is necessary to identify:
 - the material facts in each case; and
 - the legal proposition which forms the basis of the earlier decision.
- Lawyers draw a distinction between:
 - the **ratio decidendi** ("reason for decision") which is **strictly binding** on later lower courts faced with the same issue;
 - Reason - ruling on a point of law - NOT just a statement of a rule of law - can only come from those legal issues that were in contention before the court
 - Working Definition - "Any proposition of law expressly or impliedly used to reach the final decision, or to decide any issue that is a step towards the final decision."
 - Consider facts/matters in dispute and the line of reasoning but alternative lines of reasoning can be used to support the decision.
 - NB a ratio does not exist in a vacuum – context - it is necessary also to determine the material facts to which it relates – ie, those that are essential to the reasoning.
 - Problems in finding the Ratio
 - Judges don't clearly indicate which remarks are obiter.
 - Judges don't state the ratio expressly, or state it in different ways.
 - Alternative lines of reasoning used to support the decision.
 - an **obiter dictum** ("statement on the side") which is NOT binding but may be treated as persuasive.
 - Remarks 'in passing' - statement of a rule of law
 - Examples:
 - An observation that is in the course of argument
 - Application of the law in a hypothetical situation
 - Statement of the background law
 - Remarks indicating how the decision fits in with other principles of law
 - Comment on state of the law
 - **No Reasons/Split Reasons**
 - If no reasons are given for a decision, it is authority only for what it actually decides – ie, for the proposition of law to be derived from the order of the court and the material facts...if these facts apply, then this is legal consequence.
 - So also where the decision is given by an appellate court in which the majority of judges give different reasons for reaching the same conclusion, so that there is no majority for a particular principle or reason.
 - Levels of Generality - Donohue v Stevenson [1932] AC 562

Status of Cases - 2 Types of Authority

- **Binding** - a court has NO choice but to apply it unless there is some material difference in the facts
 - Binding on lower courts
 - Comes from the Ratio from higher courts
 - 'Seriously considered dicta' of the High Court
- **Persuasive** - a court has a discretion as to whether or not to follow it - whether it does so will depend on how convincing it finds the reasoning which underlies the particular legal conclusion.
 - Not binding
 - Obiter, Ratio from lower or same courts / extra-jurisdictional courts
 - Some persuasive precedent more persuasive than others

The Rules of Precedent

- The doctrine of precedent generally provides that a court is bound to follow the previous decisions of courts higher in the same hierarchy on the same or similar issues provided that there is NO material difference in the facts.
- If there exists a material difference in the facts, a judge can **distinguish the precedent**.
- **Judges can also overrule or reject previous precedents** where **they disagree with the reasoning** in the decision.
- However, a decision of an equally divided court is NOT binding.

Current situation in Victoria

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- Legislation is to be interpreted with reference to its underlying purpose.
- Use the *Interpretation of Legislation Act*, 1984 to assist.
- Do not need to conclude that a provision is ambiguous or unclear in order to look at purpose.
- Be aware of the provisions of the Victorian Charter of Human Rights & Responsibilities.

Prior Judicial Decisions on the Meaning of Terms in Legislation

- The same legislation
 - Rules of precedent apply
- A similar term in another Act
 - Cannot be strictly binding, because the case is authority only for the interpretation of the provision that was before the court.
 - In assessing its persuasive value, consider if the statutes are in pari materia (of same subject matter) and/or have a similar purpose.

- Presumption that new legislation prospectively applies from the time it enters into force.
- Parliament can pass retrospective law (that applies to things that happened before the law was passed), however this intention must be clear.⁵⁰
 - I.e.. legislation needs to contain a provision stating a commencement date that is retrospective.
- If no such provision, the courts presume that legislation is not intended to be retrospective.
 - *Maxwell v Murphy* (1957) 96 CLR 261

First Exception to the Presumption against Retrospectivity

- Where the Act merely uses past conduct as a foundation for determining present fitness e.g., to carry on a profession, and the Act is directed to protecting the public interest rather than punishing for the conduct.
 - *Geschke v Del Monte Home Furnishers Pty Ltd* [1981] VR 856
 - E.g. *Re a Solicitor's Clerk*

Second Exception to the Presumption against Retrospectivity

- The presumption applies only to laws which affect substantive rights or liabilities, as opposed to the procedure for exercising or enforcing them - *Maxwell v Murphy*; *Rodway v R*
- So there is NO presumption against retrospectivity in the case of statutes which affect mere matters of **procedure**.

Substance and Procedure

- *Rodway v R*
- After R had been charged, but before his trial began, the law was changed.
- New law: an accused could now be convicted on the uncorroborated evidence of the alleged victim.
- Court held that R was to be tried under the new rule.
- A person charged with a crime has no accrued right to be tried in any particular way; only a right to be tried in accordance with the procedure prevailing at the time of the trial.

Construction of Penal Statutes / Penal Presumption

- Presumption that in case of ambiguity, penal provisions will be strictly construed (ie interpreted so as NOT to extend the categories of criminal offences).
- However, it cannot operate if contrary to the purpose of legislation: *R v Smith* [1974] 2 NSWLR 586
- *Beckwith v R* (1976) 135 CLR 569 'In determining the meaning of a penal statute the ordinary rules of construction must be applied, but if the language of the statute remains ambiguous or doubtful the ambiguity or doubt may be resolved in favour of the subject by refusing to extend the category of criminal offences... The rule is perhaps one of last resort' (per Gibbs J)

Victorian Charter of Human Rights

What is the Charter?

- The Charter is an agreed set of human rights, freedoms and responsibilities protected by law.
- Public sector bodies, including courts and tribunals, must observe these rights when they create laws, set policies and provide services.
- The Charter protects these rights but it also recognises that human rights are NOT absolute but may be limited in certain circumstances.
- It does NOT provide a right to sue of breaches of rights (unless the conduct complained of also gives rise to other legal rights).

Effect on Statutory Interpretation- s 32

- (1) So far as it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights.
- (2) International law and the judgments of domestic, foreign and international courts and tribunals relevant to a human right may be considered in interpreting a statutory provision.
- (3) This section does NOT affect the validity of—
 - (a) an Act or provision of an Act that is incompatible with a human right; or
 - (b) a subordinate instrument or provision of a subordinate instrument that is incompatible with a human right and is empowered to be so by the Act under which it is made.