

Precedent: rules, flexibility, difficulty

### Rules of precedent:

- **Ratio decidendi:** reasoning behind the decision, forms precedent
- **Obiter dictum:** additional (by the way) statement that does not form binding precedent
- Binding precedent: courts bound to follow precedents set in similar cases by higher courts in same hierarchy
- **Stare decisis:** to stand by what has been decided
- Persuasive precedent: influential and may come from a lower court, same level court, different hierarchy, obiter dictum statement

### Flexibility:

- Reversing: one case with the decision reversed on appeal
- Overruling: two cases where the judge in the second case (in a higher court) creates a new precedent
- Distinguishing: judge shows significant differences between precedent-setting case and case at hand
- Disapproving: judge may not be able to change the precedent but expresses disapproval

**Difficulties in interpreting past decisions:** locating the precedent, conflicting precedents, determining the ratio decidendi, conservatism of judges

### Statutory interpretation

**Reasons:** ambiguous wording, meanings change over time, statutes do not account for future circumstances

**Effects:** the court makes law, law may be expanded, law may be restricted

**Deing v Tarola (studded belt case):** Supreme Court interpreted the Weapons Act; debated whether a studded belt is a 'regulated weapon' and whether wearing one is a 'lawful excuse' for possession; decided that a studded belt can be a weapon is used as one

### Strengths and weaknesses of court-made law

Strengths	Weaknesses
Changes law quickly when a case comes before it	Must wait for a new case to arise, where a party has legal standing and resources
Free from political pressure and can make law on controversial areas	Judges can be conservative and unwilling to embrace the role of law-maker
Can prevent law from becoming too rigid with flexibility of precedent	May be bound to outdated precedents
Fill in the gaps left by parliament (e.g. due to changes in technology)	Can make law on the case before them, but not beyond
Judges have expertise and may be able to recognise the law's weaknesses	Judge's resources are limited

### Relationships between courts and parliament

1. Courts apply the laws of parliament
2. High Court can increase Commonwealth's power
3. Courts can hear challenges to legislation
4. Parliaments can pass Acts establishing courts and their jurisdictions
5. Courts can fill in gaps left by parliament
6. Court decisions can influence parliament