

Complete the text using the words from the box:

## JUDICIAL PRECEDENT

*process of appeal, particularly, Judge, the reason for deciding, precedent contained, hierarchy of the courts, lower court, legal system, lower court, consequently.*

Judicial precedent is one of the sources of law, Common Law which, itself, is the basis of world (e.g. the USA and Commonwealth countries).

Essential to the common law is the principle of binding precedent. In practice, this means that the decision of a higher court is binding on a lower court, and in the course of a trial the judges must refer to existing precedents. This is known as *stare decisis* ‘stand by what has been decided’. The judges will also consider decisions made by a , although they are not bound to follow them. However, a rule set by a court of greater or equal status must be applied if it is relevant.

During a trial, a counsel will cite cases and either attempt to distinguish the case at trial from those referred to, or alternatively, argue that the rule established in a previous case is applicable and should be followed. At the end of each legal case the gives a summary of the facts of the case; then a review of the arguments (defence and prosecution) and an explanation of the principles of law he/she is using to come to a decision. Only the legal principles used to come to a decision are referred to as the *ratio – decidendi*’ which means ‘

’. Sometimes the Judge will consider what his/her decision would have been if the facts of the case had been different; this hypothetical situation is referred to as the ‘*obiter dicta*’ (i.e. other things said) and the legal reasoning put forward may be used in future cases.

The great body of legal in law books is the result of appeals to higher courts against the decisions of lower courts. The appeals have resulted in the clarification of specific principles, either by improving them or by overturning the original court's decision through the introduction of a new precedent.

So, put in broad terms, judicial precedent is the body of legal principles established by past court decisions which have survived the to higher courts and have become binding on all courts.