1. The reason for the decision – ratio decidendi

The ratio decidendi of a case is not the actual decision, like 'guilty' or 'the defendant is liable to pay compensation'. The precedent is set by the rule of law used by the judge or judges in deciding the legal problem raised by the facts of the case. This rule, which is an abstraction from the facts of the case, is known as the ratio decidendi of the case (see Box 4).

Box 4 Example of ratio decidendi

A couple leave their dog in their car while they pop out to a shop. For a reason that cannot later be discovered, the dog gets excited and starts jumping around. There is no issue that the dog was suffering from dehydration or being overheated. The dog paws the rear glass window. It shatters and a shard of glass flies off and, unfortunately, into the eye of a passer-by, who later has to have his eye removed. Are the couple liable to pay compensation for the man's eye? The court said no. People should take care to guard against 'realistic possibilities'. They should only be liable, the court said, if they caused others harm by doing something that could be reasonably foreseen as likely to cause harm. We are not liable if we fail to guard against 'fantastic possibilities' that happen to occur. The accident in this case, the judges ruled, was just such a 'fantastic possibility'. The couple therefore did not have to pay compensation. The reason for the decision in this case, the ratio decidendi, can therefore be expressed simply as: where harm was caused to a pedestrian by a dog smashing the window of the car that it was in, and where this sort of incident was unforeseeable, the defendants were not liable.

2. Obiter dictum

In a case judgment, any statement of law that is not an essential part of the ratio decidendi is, strictly speaking, superfluous. Any such statement is referred to as obiter dictum. This is Latin for 'a word said while travelling' or 'along the way' (obiter dicta in the plural). Although obiter dicta statements do not form part of the binding precedent, they are persuasive authority and can be taken into consideration in later cases, if the judge in the later case considers it appropriate to do so (see Box 5).

Box 5 Example of obiter dictum

In the case above about the dog and the man injured by the shard of glass, one judge said that if you knew your dog had an excitable tendency or went mad in cars, then you would be liable if it caused someone harm in a predictable way (not in the freakish broken window scenario) and would have to pay compensation. The judge did not need to rule on that in the dog-and-the-car-window case, because the couple did not have a dog with a known excitable temperament. His observations were, therefore, made 'by the way' and thus can be referred to as an obiter dictum. In a future case involving a dog known by its owners to be excitable, a lawyer for an injured claimant could refer back to the judge's obiter dictum in the car window case and use it as 'persuasive' but not 'binding' authority.

The division of cases into these two distinct parts is a theoretical procedure. Unfortunately, judges do not actually separate their judgments into the two clearly defined categories and it is up to the person reading the case to determine what the ratio is. This is a bit like listening to, or reading, a speech made by a politician or a sports team manager and trying to identify what the most important part of the speech was.

In some cases this is no easy matter, and it may be made even more difficult in cases where there are three or five judges and where each of the judges delivers their own lengthy judgment so there is no clear single ratio.

In some cases it may be difficult to ascertain precisely the ratio of the case and to distinguish the ratio from the obiter dicta.