

<b>Course Name</b>	<b>LL.B 6<sup>th</sup> sem</b>
<b>Subject</b>	<b>Interpretation of Statute</b>
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<b>Concept</b>	<b>Rule of Stare decisis</b>

## **Rule of Stare decisis**

The doctrine of stare decisis is best explained by reference to the English translation of the Latin phrase. "Stare decisis" literally translates as "to stand by decided matters". The phrase "stare decisis" is itself an abbreviation of the Latin phrase "stare decisis et non quieta movere" which translates as "to stand by decisions and not to disturb settled matters". Basically, under the doctrine of stare decisis, the decision of a higher court within the same provincial jurisdiction acts as binding authority on a lower court within that same jurisdiction. The decision of a court of another jurisdiction only acts as persuasive authority. The degree of persuasiveness is dependent upon various factors, including, first, the nature of the other jurisdiction. Second, the degree of persuasiveness is dependent upon the level of court which decided the precedent case in the other jurisdiction. Other factors include the date of the precedent case, on the assumption that the more recent the case, the more reliable it will be as authority for a given proposition, although this is not necessarily so. And on some occasions, the judge's reputation may affect the degree of persuasiveness of the authority.

### **Stare decisis**

The stare decisis (in Latin : "stay on what was decided") is a general principle of the systems of common law , under which the judge is obliged to comply with the decision taken in an earlier judgment , in the event that the case brought to the examination is identical to that already treated in case it decided. In this way, the previous inferred from earlier judgments operating as a source of law and, in the legal systems of common law , to date, most of the rules is brewed right through this source. In the common law system, under the doctrine of stare decisis, the judicial decision also has precedential value. The doctrine, from stare decisis et non quieta movere, "stand by the decision and do not disturb what is settled," is rooted in the common law policy that a principle of law deduced from a judicial decision will be considered and applied in the determination of a future similar case. In essence, this policy refers to the likelihood that a similar or like case arising in the future will be decided in the same way. In a common law system, where the law is enunciated and developed through judicial decisions, the doctrine of stare decisis is absolutely essential. It was indispensable in the early periods of the common law when legislative enactments were few and usually limited to public law. Stare decisis was received in the United States as part of the common law tradition. In addition to fostering stability and permitting the development of a consistent and coherent body of law, it also served other beneficial functions. It preserved continuity, manifested respect for the past, assured equality of treatment for litigants similarly situated, spared judges the task of re-examining rules of law with each succeeding case, and afforded the law a desirable measure of predictability. These concepts, developed in the course of hundreds of years of judicial experience, require further consideration as a result of today's massive legislative activity. Mr. Justice Cardozo says, " in a system so highly developed as our own, precedents have so covered the ground that they fix the point of departure from which the labor of the judge begins. Almost invariably, his first

step is to examine and compare them. If they are plain and to the point, there may be need of nothing more. stare decisis is at least the everyday working rule of our law”.

### **General Characteristics**

According to the classical theory the binding effect of the judgment is limited to the ratio decidendi, that the essential arguments adduced by the court to justify the decision of the case submitted to him or, according to a different perspective, the standard specific legal, deduced from the judgment under which the decision was taken. The remaining parts of the judgment, that the arguments are not essential to the decision, are the so-called obiter dicta, which is not recognized as binding, but only persuasive, given the strength of the arguments on which they are based.

Operations of stare decisis is due to the particular style of the judgments of the courts of common law, which tend to explain in great detail and detailed how they came to the decision. In doing so the court, on the one hand, justifies its decision in light of the previous applicable and facilitates those who in the future may derive from its previous judgment.

In a system based on stare decisis is particularly important knowability of judgments, secured by special publications known as Law Reports: These are collections of selected judicial decisions, published periodically by private individuals or official bodies.

### **Stare decisis ; horizontal and vertical**

Distinguishing stare decisis horizontal from the vertical: the first is when the judge to comply with an earlier ruling already issued by his own office; the second is when the judge to comply with an earlier judgment given by a court superior to him, accrual or function.

In the case of stare decisis vertical, the lower court is obliged to comply with the previous inferred from the decisions of the upper one. Instead, in the case of stare decisis horizontal, not all jurisdictions require the judge to comply with the above; when this is not done the previous year has no binding (binding) but only persuasive (persuasive), the same that have the obiter dicta, as obtained from the previous judgments of the lower courts and the dissenting opinions, that the positions of members of the bench that have not found the consent of the majority but which, nevertheless, can be expressed in the judgment.

In particular, the stare decisis horizontal operates binding in Britain, although since 1966 the judicial committee of the House of Lords, which served until 2009 on the role of the Supreme Court, could depart from its previous option referred to, however, was used very rarely; I stare decisis horizontal not work, however, in a binding way in the United States, where the Supreme Court departs from its previous much more frequently in the British House of Lords.

Reasons behind the Doctrine of stare decisis

The basic reasons behind the doctrine of stare decisis is the maintenance of consistency and certainty. Certainty, predictability and stability in law are considered to be the major objectives of the legal system, and the doctrine of stare decisis aims at achieving these objectives.

In *Hari Singh v. State of Haryana* (1993)66ELT23(SC), it was noted that it is true that in the system of justice which is administered by courts, one of the basic principles to be kept in mind that the courts of co-ordinate jurisdiction should have consistent opinions in respect of similar sets of facts and circumstances or question of law. If opinion given on identical facts are inconsistent, instead of achieving harmony in the judicial systems, it will lead to judicial anarchy. The view that has held the field for a long time must not be disturbed merely because of the possibility of another view, this was given by way of another judgement in *State of Gujarat v. Mirzapur Moti Kureshi Kasab Jamatand Ors.*AIR 2006 SC 212.

### **Certain important cases which upheld the principle of Stare decisis**

As noted by the Supreme Court in *Waman Rao and Ors v. Union of India*, the doctrine of stare decisis is the basis of common law.

The decision in *London Street Tramways Co. Ltd. v. London County Council* made the decisions of House of Lords binding on the House of Lords itself. A similar view had been taken in an earlier decisions *Attorney general v. Dean of Windson* wherein Lord Campbell observed that the House of Lords is the court of appeal of last resort and its decisions are authoritative and conclusive declarations of the existing state of law and binding on itself as much as they are on all inferior tribunals *Bell Atlantic Corporation et al.,v. Twombly et al.* 127 S. Ct.1955 *Bowles v. Russell*, 127 S. Ct. 2360

### **Stare Decisis: Pros and Cons**

A number of commentators have explored the pros and cons of the doctrine of stare decisis. Supporters of the system, argue that obeying precedent makes decisions "predictable." Another advantages of this doctrine, as mentioned earlier is that it brings certainty, stability and consistency in law. It also saves time and energy of judges as they are not required to determine the same question of law over and over again once it has been settled. As noted by Bodenheimer, the doctrine also plays a role in curbing arbitrariness on the part of judges as they are bound to follow established precedents thus preventing bias and error. The doctrine brings flexibility in law and law is shaped according to the social, economic and other circumstances. However, critics argue that stare decisis is an application of argument from authority logical fallacy and can result in the preservation and propagation of cases decided wrongly. Another argument often used against the system is that it is undemocratic as it allows unelected judges to make law. A counter-argument (in favor of the concept of stare decisis) is that if the legislature wishes to alter the case law (other than constitutional interpretations) by statute, the legislature is empowered to do so. Critics sometimes accuse particular judges of applying the doctrine selectively, invoking it to support precedents which the judge supported anyway, but ignoring it in order to change

precedents with which the judge disagreed. Regarding constitutional interpretations, there is concern that over-reliance on the doctrine of stare decisis can be subversive. An erroneous precedent may at first be only slightly inconsistent with the Constitution, and then this error in interpretation can be propagated and increased by further precedents until a result is obtained that is greatly different from the original understanding of the Constitution. Stare decisis is not mandated by the Constitution, and if it causes unconstitutional results then the historical evidence of original understanding can be re-examined. In this opinion, predictable fidelity to the Constitution is more important than fidelity to unconstitutional precedents. Another factor is that the doctrine of binding precedent can in a sense hinder the development of law. Society is not static and there are changes in social, economic and other circumstances with time. Changed circumstances may require a different interpretation of law. Conclusion stare decisis is a doctrine or policy of following rules or principles laid down in previous judicial decisions. It is the principal that maintains that previous decisions are to be followed by the courts. This policy dictates that the court must abide or adhere to decided cases. When a point has been settled by a decision in court, this forms a precedent that must not be departed from. Professor Dias has mentioned in his book "Jurisprudence" that the doctrine of precedent in Britain has assumed a special form, known as stare decisis, the effect of which is that judicial decisions have binding and enjoy law-quality. Bindingness depends on the hierarchy of courts; higher courts bind lower courts, never vice versa. Law quality relates to the principle behind the decision, its ratio decidendi. In short, we can say the doctrine of stare decisis has done an up to mark work that is judicial process in attaining the seemingly two contradictory goals; stability and change.