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**Precedent** comes from what is called the **common law**. The common law is one of the main sources of law in England and the USA. The common law developed after the year 1066, when the whole of England developed the same body of laws instead of each area having its own local laws – that is why it is called 'common'. The common law covers both criminal and civil court decisions.

As judges' decisions were written down, often described as '**recorded**', in law reports that were common to the whole country, the idea of precedent developed. This means that when a judge decides the result of a particular case he or she must pay attention to the *principles of law* that come from an earlier case dealing with the same or

similar points. In this way, a statement of law can become **binding** upon later judges and can become the law for everyone to follow. When does a particular decision, or pronouncement, by a judge become binding upon later judges? There are two important deciding factors:

1. Judges in courts at the lowest level of decision-making, often called **courts of first instance**, do not normally create binding precedents. It is the higher courts that issue binding rulings and the lower courts must follow them.

2. The pronouncement must form what is called the **ratio decidendi** of the case. This is Latin for 'the reasoning behind the decision'. This is the part of

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the judge's words that provides the legal reasoning for his or her decision. Everything else the judge says is called **obiter dictum**. Obiter dictum is something that is not really necessary for the legal basis for the decision. Only the ratio decidendi is binding.

A later judge dealing with a similar case must decide which precedents are binding. He or she may decide that a precedent suggested by a lawyer is either:

- relevant to the case before him or her, or
- **distinguishable** from the present case, which means that the case is so different that the precedent does not apply in this particular situation.

Many countries use a codified system. However, many people believe that the common law is more practical than a codified system because it was developed from real life situations that were presented to the courts.