

ANSWER SHEET

Which Precedent Takes Precedence?

Sample answer to 'Which precedent takes precedence?' on page 298 of textbook. These answers are on New South Wales based. Academics in other states can adjust the answers as needed.

A New Zealand decision with the exact same facts as this case

X

OR

✓

A decision of the supreme court in your state or territory on the same general issue of law

The Supreme Court decision is a binding precedent in the District Court, whereas the New Zealand decision will only ever be interesting or persuasive.

A 1998 decision in the Federal Court exercising original jurisdiction

X

OR

✓

An appellate decision of the High Court from 1920

The High Court decision is binding, because the High Court stands at the top of the state court hierarchy, whereas the Federal Court is in another court hierarchy. Also, an appellate decision which is still good law is better than a decision by a court exercising original jurisdiction.

A decision from a week ago by another judge in the same court

✓

OR

X

A decision by the district or county court in another state, which has been applied regularly for years

This is not clear-cut. On the one hand, a court will usually follow its own previous decisions, but a single judge in the District/County Court does not hold a great deal of precedent value. But neither then does the decision at District/County Court level in another state. All things considered, if that choice was all you had, you'd probably use the recent decision by the same court.

The decision of a lower court in your state, on similar facts but with less money at issue

X

OR

✓

Obiter comments in a related decision by a single judge in the High Court

The lower court's decision has no real precedent value, because magistrates make immediate decisions in court and do not have the luxury of reserving judgment in order to consider all cases on point. Obiter comments from a High Court judge will still be persuasive in a District/County Court in the absence of any better authority.

A House of Lords decision which held exactly what you want to be held for your client

X

OR

✓

A decision of the Coroner's Court in your state which found exactly what you want for your client

Neither of these is a particularly good precedent to use. The House of Lords decision may be persuasive because of the quality of judicial thought it involves, and the Coroner's Court decision may be interesting and persuasive as an analogous case. But neither is binding.