This is an internal assessment / assignment for LAW131 Legal Method. All the grading comments have been retyped by me in Red.

1. *Ratio Decendendi* and the virtue of pragmatism

There seems to be about as many definitions of *ratio decendendi* as there are theorists who have attempted to define the notion. While I have found it useful to read what different theorists have had to say, I have also found it useful to put this to one side, and to attempt to develop intuitions in line with experts about statements of *Ratios* constructed by others. Also to develop my own skill at stating *Ratios* that might be considered good by relevant others. To be a bit pragmatic about it all, in other words.

In my limited experience of trying to understand what statements of *Ratio* might be considered good I have become fairly attracted to the view that one of the jobs of the lawyer is to construct / find the issue-ratio pair that presents the most compelling case for ones client. Part of that involves stating the issue-ratio pair in such a way that a favourable verdict for ones client seems intuitively plausible. Part of doing this is to provide precedent or legal reason that embeds the case within the scope of (a plausible interpretation of) precedent cases in order to support a judgment that is favourable to ones client. The opposing counsel similarly helps the court by presenting the best case they can for the other side. The judge gets the opportunity to reflect upon all of this in order to synthesise all of this and provide something of a commentary on what they took the relevant issue / ratio / material facts / legal reasons to be in arriving at their judgment for the present case.[1]

2. Specificity and Generality of *Ratio Decendendi*

In order for *Ratios* to be useful to the above process they need to be specific enough such that the courts don't become clogged with cases that seem (intuitively) to be importantly different. They also need to be general or abstracted enough such that future particular

[1] Of course one can worry about what the *Ratio* is really (aka all things considered, or from the point of view of ideal rationality). This makes sense of the idea that the lawyers and / or the judge can be wrong in their attempt to capture the *ratio.* Of course legal scholars might be thought to be one step removed from the process and in a better position to arrive at an ideal judgment. Ideal rationality (God?) might be thought to be further removed again insofar as ideal rationality isn't bounded by finite cognitive resources of mere mortals.

cases may fall under their scope. There are trade-offs between generality and specificity and while there is widespread agreement by experts that some statements of *ratio* would be too specific while other statements would be too broad there also seems to be quite a bit of wiggle room in which a case can be made either way. Of course there is a step from one being able to make a case either way to one being able to win the case either way. There is a step again from winning the case to actually being right. At least, there would be, if there were objective facts about *ratios*[2]. I see that for all practical purposes it may be useful for lawyers and judges and pragmatically inclined academics to think that there is indeterminacy in the law, however, and I will grant a space of indeterminacy in what follows.

2.1 Specificity

If a *Ratio* is stated too narrowly then it may seem as though the courts are being capricious or unfair in treating a particular case as exceptional rather than as falling under the rules. For instance, if a judge attempts to formulate a *Ratio* as applying only to manufacturers of ginger beer then one might well wonder whether the judges brother is involved in the manufacture of lemonade such that the judge is attempting to unreasonably limit the scope of the *Ratio* for fear of creating unfavorable precedent for the courts (from the brother's point of view). Part of the concerns here is that there doesn't seem to be suitably objective rational reason to think that the duty of care appropriate for ginger beer manufacturers should be any different from the duty of care appropriate for lemonade manufacturers. Thus a more compelling statement of *Ratio* would be the broader class of manufacturers of food and drink. At least, that is what I would attempt to argue if I were defending a client who suffered emotional distress from drinking bad lemonade. **Highly unlikely. It is perfectly reasonable to limit ratio to specific facts at hand. Refer to lord Atkin's ratio that does not limit it to food and drinks.**

2.2 Generality

[2] Goedal's theorum may have application insofar as there may be facts about *ratios* that are grounded in rationality / logic / mathematics that are not provable from within the legal system / by appeal to legal reasons. It may be the case that from the perspective of the lawyers and judges there are cases where *ratios* seem indeterminate *for all they know* but where there are facts about *ratio* that determine it that are unknown to them.

On the other hand, a broad statement of *Ratio* can be problematic in that a larger range of cases would be expected to fall under it and as a result the courts may become overwhelmed hearing a vast range of cases. For example, if the government did away with ACC tomorrow then the courts would swiftly become inundated by a seemingly endless succession of negligence cases. Medical practitioners and district health boards wouldn't be able to continue to deliver whatever meagre health services the government has decided is appropriate for our nation as they'd be spending all their time attempting to justify their actions (or lack thereof) in court. While these are pragmatic concern there is also the theoretical concern that what has gone wrong with a too broad statement of *Ratio* is that it fails to properly allow for differences in fact that seem material – that should be incorporated into the *issue / ratio* decendendi of the case. Clearly health is *special.*

Final Remarks

In sum, in deciding whether a broader or narrower statement of *ratio* is appropriate one must consider that there are trade-offs to be made either way. One of the dangers in erring on the side of narrowness is that there may be the perception of unfairness insofar as something of an exception is being made for the present case. One of the dangers in erring on the side of broadness is that significant differences between cases may be overlooked and the courts may become clogged with cases. While experts may agree that certain statements of *ratio* are too broad, or too narrow, there is a space in between where (legitimate) cases can be made either way. Whether or not there is irreducible indeterminacy in *ratio* may be something that is forever beyond our ken.

Word Count: 1,138 (Microsoft Word including headers and footnotes)

Unfortunately, most of your essay is not relevant to the topic and does not answer the question. You have identified few advantages / disadvantages and have not referred to any case law examples.

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