Mandatory v. Persuasive

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The Common Law

What is common law?

• Court-created rules and legal principles that are created when there is no statute to follow
• Courts reach decision by following PRECEDENT
• Precedent = Common Law
Common Law (cont.)

Stare Decisis

• Court must reconcile new decisions with old decisions or decisions from higher court within jurisdiction

• Why?
  • Creates certainty – people can plan
  • Fairness – equal treatment
  • Efficiency
  • Limits judicial bias
Common Law (cont.)

Mandatory vs. Persuasive Precedent

• Mandatory – BINDING / Must Follow
• Persuasive – NONBINDING / Can Follow
Mandatory Precedent

State Mandatory Precedent

Trial courts must follow:

• prior decisions of higher courts in its jurisdiction
• U.S. Supreme Court decisions involving federal statutes and constitutional issues
Mandatory Precedent

State Mandatory Precedent (cont.)

Appeals courts must follow:

• Decisions from own court (but not other districts within circuit)

• Supreme Court decisions in its jurisdiction

• U.S. Supreme Court on federal matters
Mandatory Precedent

State Mandatory Precedent (cont.)

Court of Last Resort must follow:

• Its own court
• U.S. Supreme Court
Mandatory Precedent

Federal Mandatory Precedent:

U.S. District Court must follow:
• U.S. Supreme Court
• Circuit Court for its district
• Own previous decisions
Mandatory Precedent

Federal Mandatory Precedent (cont.)

U.S. Circuit Court of Appeals must follow:
  • U.S. Supreme Court
  • Previous decisions of own circuit court
Mandatory Precedent

Federal Mandatory Precedent (cont.)

U.S. Supreme Court must follow:

• Own previous decisions
Mandatory Precedent

Federal Mandatory Precedent (cont.)

Special Diversity Situation

• Federal court tries to apply law like the state court would, BUT state court is not bound by decision of federal court
Mandatory Precedent

Other Mandatory Authority (federal and state)

• Statutes from jurisdiction
• Constitution
• Administrative regulations
Persuasive Precedent

Persuasive precedent – Nonbinding/Can Follow

Cases from other courts

• (informal hierarchy sometimes applies in practice)
• Use other jurisdictions to “fill in the gaps” from your research in jurisdictions that matter.
Persuasive Authority

• Restatements of the law
• Treatises
• ALR annotations
• Law reviews
• Journal articles