

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