



## **WHICH COURT IS BINDING?\*** **Mandatory vs. Persuasive Cases**

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You've found the perfect case: the facts are similar to yours and the law is on point. But does the court before which you practice (or, in law school, the jurisdiction to which you've been assigned) have to follow the case? *Stare decisis* is the common law principle that requires courts to follow precedents set by other courts. Under *stare decisis*, courts are obliged to follow some precedents, but not others. Because of the many layers of our federal system, it can be difficult to figure out which decisions bind a given court. This handout is designed to help you determine which decisions are mandatory and which are persuasive on the court in which you are practicing.

### **Persuasive versus Mandatory Authority: What's the Difference?**

Mandatory authority refers to cases, statutes, or regulations that a court **must** follow because they bind the court. Persuasive authority refers to cases, statutes, regulations, or secondary sources that the court **may** follow but does not have to follow. For a more detailed discussion of the differences between mandatory and persuasive authority, please see the Writing Center's handout, "Can I Cite to Examples and Explanations: How to Use Mandatory and Persuasive Authority."

**To get started, ask yourself two questions: 1) Are the legal issues in your case governed by state or federal law? and 2) Which court are you in? Once you know the answers to these questions, you are well on your way to determining whether a decision is mandatory or persuasive.**

### ***Step 1: Are the Legal Issues in Your Case Governed by Federal or State Law?***

First, a lawyer needs to know the facts and issues of the case. Facts such as where the events took place, where the home(s) of the parties are, and where the parties conduct most of their business frame the legal issues.

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*Facts: Imagine that you are shopping in a grocery store in Virginia when a little old woman in line at the checkout starts screaming that she's been pick-pocketed. The police arrive on the scene and the woman identifies you as someone who suspiciously brushed against her. The police arrest you and throw you in jail. Later, they seek to interrogate you without informing you of your right to have a lawyer present.*

*Legal Issues: Some possible legal issues raised by these facts include:*

- *Is pick pocketing a crime in Virginia? If so, under what law?*
- *Did the police have probable cause to arrest you based on the identification of the old woman?*
- *How reliable was the old lady's identification?*
- *How long can the police hold you?*
- *Were any of your Constitutional rights violated during the police's arrest and interrogation of you?*
- *If you are found guilty, can the little old lady also sue you in civil court for infliction of emotional distress or another tort?*

After you have brainstormed all the possible legal issues the facts raise, determine whether the legal issues are governed by federal or state law. In any given case, there may be both federal and state issues. America operates on a system of dual sovereignty: the 50 states and the federal government all retain their own sovereignty. Because each state is a sovereign, each state sets its own laws and has its own Constitution. In addition, the United States federal government makes laws and has a Constitution.

When determining whether a legal issue is governed by federal or state law, keep in mind that some areas of the law, such as criminal and environmental law, are governed by both state and federal laws. Generally, the principle of **preemption** means that a legitimate federal action supersedes a state law in certain cases. Although a full discussion of preemption is beyond the scope of this handout, you should be aware of some basic principles. Federal law preempts state law when the two laws conflict, when Congress expressly or implicitly says so, or when federal laws are so pervasive that they occupy the entire field of law.

*There is no preemption issue in your case. So, two sets of laws potentially govern:*

- *Federal Issues: Once you were arrested, basic rights ensured by the Fourth, Fifth, and Sixth Amendments of the Constitution came into play. These rights are ultimately governed by federal law—the U.S. Constitution. **Usually, there are state cases adopting Federal Courts' interpretation of the Constitution. If this is so, you should cite your state case. Be careful, though, to check and see if there are any new federal decisions governing basic Constitutional rights surrounding your case.***
- *State Issues: Although there are no federal laws against pick pocketing, states and local governments make laws for the public welfare and safety. In your case, Virginia's or the town's local pick pocketing statute will lay out the elements of the offense, as well as the punishment to be levied against such an offender. The court's decision as to whether you are guilty of pick pocketing will be informed by state statutes and cases about pick*

*pocketing. Remember, too, that state Constitutions also protect your rights. They must give you at least as many rights as the Federal Constitution, but they can also entitle you to broader protections.*

## **Step 2: Which Court Are You In?**

Determining which court you are in is a two part inquiry. First, ask yourself whether you are in federal or state court. Dual sovereignty means that each sovereign has its own court system: the states each have courts and the United States has courts, which are called federal courts. Federal courts are located throughout the United States—not just in Washington, D.C.

Second, ask yourself whether you are in a trial court, a mid-level appeals court, or a supreme court. Most American court systems—whether they are federal or state—have a similar structure, consisting of trial courts, mid-level appeals courts, and supreme courts. In the federal court system, the trial courts are called United States District Courts. The federal courts of appeals each cover a geographical area called a circuit and are, accordingly, called Circuit Courts. States vary in the names they give to their courts, but regardless of the nomenclature, the structure is the same.

*In your case, the local police arrested you. These police were acting under the authority of the Virginia state or local statute against pick pocketing. Thus, at this point, you are in a Virginia state trial court. Realize, though, that even though you are in a state court, the federal Constitutional issues you identified in step 1 can still be heard by that court.*

*If you lose at trial and need to appeal, that appeal will go to Virginia's mid-level court of appeals, and then to Virginia's highest court. Only if you lose at the state's highest court and believe that the state law violates the U.S. Constitution can you appeal to the U.S. Supreme Court.*

*If you had been arrested by the FBI or for a federal offense, then you could be tried in federal district court, perhaps in the U.S. District Court of the Eastern District of Virginia. If the case were appealed, it would go to the Fourth Circuit Court of Appeals, then to the U.S. Supreme Court.*



**NOW YOU'RE READY! Is the case you've found mandatory or persuasive?**

Now that you have found a case on point, some general principles will help you to figure out whether a law is mandatory or persuasive. Use your answers to the above questions to apply these principles to your case.

First, **higher courts bind lower courts** within their particular state or circuit. With the exception of the U.S. Supreme Court, courts of appeals and state courts do not bind courts outside the state or circuit in which they are located. That is, a federal Supreme Court decision is mandatory on all lower federal courts, both courts of appeals and district courts. A federal circuit decision is mandatory on all federal courts within its circuit, but not federal courts in other circuits. For example, a 9<sup>th</sup> Circuit decision binds the U.S. district courts within the 9<sup>th</sup> Circuit, but not federal courts in any other circuit. However, a district court or trial court decision would not bind higher courts. A state supreme court decision is mandatory on all appeals courts and trial courts in that state, but not on state courts in other states, and a state court of appeals' decision binds state trial courts in that state.

Second, **federal courts usually bind only other federal courts**, *not* state courts. Similarly, **state courts usually bind only other state courts**. Thus, a decision by the U.S. Ninth Circuit Court of Appeals, a federal court, mandatory on federal courts within the boundaries of the Ninth Circuit. It is not mandatory on California state courts, even though California is geographically within the Ninth Circuit. Similarly, a California Supreme Court decision would bind other California state courts, but not the Ninth Circuit or other state courts (like Nevada state courts).

Finally, **federal courts bind other federal courts only when they interpret and apply federal law while state courts bind other state courts only when they interpret and apply state law**. Sometimes a federal court must apply a state's law. In that case, the state's interpretation of that law is mandatory on the federal court. Even so, the federal court can still decide whether the state's interpretation is consistent with federal law. Similarly, state courts must sometimes decide issues of federal law, but they are not bound by federal courts except the U.S. Supreme Court. The U.S. Supreme Court, a federal court, *is* mandatory on state courts when it decides an issue of federal law, such as Constitutional interpretation. Other federal courts—district and appellate—are not mandatory on state courts.

*The Virginia state trial court in which your case will be heard is bound by Virginia courts of appeal and by Virginia's highest court on all state issues. Because the pick-pocketing law is a state issue, the state's courts of appeals and state supreme court decisions will bind the state trial court you are in. In contrast, the Constitutional issues are federal. The state trial court is not bound by the state's higher courts on these federal issues. Rather, it is bound by the U.S. Supreme Court's decisions about fundamental rights. Although a State Constitution will also grant these rights, no state can guarantee less protection than the Federal Constitution.*

*If you had been accused of a federal offense, you probably would have appeared in a Federal District Court, which would have been bound by the court of appeals for your Circuit, and the Supreme Court on all federal issues. However, Virginia state courts' decisions would still have governed state issues in federal court.*

Applying this analysis from the outset will help you to be a smarter, faster researcher and to narrow down the body of case law that you are looking at. Knowing what the court is bound to follow will help you to write more persuasive memos, motions, and briefs.

For further reading, see *The Legal Research Manual*, Christopher G. Wren and Jill Robinson Wren or *Finding the Law*, Robert C. Berring and Elizabeth A. Edinger.

This chart displays the above principles in another form. Use your answers to questions 1 and 2—whether the issue is state or federal and which court you are in—to find the box in the

1) State or Federal Issue? 2) Which court are you in?	Binding Authority	Persuasive Authority
State issue in state trial court	That state's state appeals court That state's highest court	All federal courts Other states' state courts Other state trial courts in the same state
State issue in state appeals court	That state's highest court	All federal courts Other states' state courts State trial courts in the same state Other state courts of appeals in the same state
State issue in state's highest court	That state's highest court	All federal courts Other states' state courts State trial courts in the same state State courts of appeals in the same state
Federal issue in state trial court	US Supreme Court	All federal district courts All federal circuit courts State courts
Federal issue in state appeals court	US Supreme Court	All federal district courts All federal circuit courts State courts
Federal issue in state supreme court	US Supreme Court	All federal district courts All federal circuit courts State courts
State issue in federal district court	Interpretations from the state's highest court	All federal courts Other state courts
State issue in federal circuit court	Interpretations from the state's highest court	All federal courts Other state courts
State issue in U.S. Supreme Court	Interpretations from the state's highest court	All federal courts Other state courts
Federal issue in federal district court	US Supreme Court Federal circuit court in the circuit where the district court is	Other federal circuit courts Other federal district courts All state courts
Federal issue in federal circuit court	That federal circuit court US Supreme Court	Other federal circuit courts Other federal district courts All state courts
Federal issue in US Supreme Court	US Supreme Court	All federal circuit courts All federal district courts All state courts

left hand column that applies to your case. Then, read across that row to find out which courts bind you and which courts are only persuasive to you.