

Argument from Precedent



David A. Hughes, Ph.D.

Associate Professor
University of Louisiana at Lafayette
Department of Political Science

Common law precedents

- Lower courts are required to follow controlling (or binding) precedents in similar future cases.
- Precedents from other courts that are non-binding are called persuasive.
- *Stare decisis* holds that courts should follow their own precedents, but they needn't and could ignore or overturn a precedent.



Louisiana's hybrid system

- Louisiana uses the country's only hybrid common law/civil law system.
- Louisiana does not use *stare decisis*, which affords every precedent equal weight.
- Instead, courts use a related system called *jurisprudence constante*, which relies more upon a string of precedents.



Arguments from precedent

- A lower court might “distinguish” a controlling precedent when the facts differ from it.
- Because the typical case will have a fact pattern that tends to represent not just one, but many precedents, one might combine those precedents to form a single legal argument.



Arguments from precedent (cont'd)

- Analogizing between the present case and previous ones is called “argument from precedent.”
- Lawyers want to analogize similar cases that support their position and distinguish those that do not.
- Lawyers and judges might also distinguish *ratio decidendi* from *obiter dicta*.



Example: Searches and seizures

- The Fourth Amendment protects from warrantless searches.
- *Carroll v. United States* (1925)
- *California v. Carney* (1985)
- *United States v. Hill* (1988)



Practice: No vehicles in the park

- Imagine a municipality with a simple ordinance: “No vehicles in the park.”
- Precedent 1: Food truck
- Precedent 2: Golf cart
- Hypothetical: RC car



Conclusion

- Arguing from precedents is one of the most critical skills attorneys must develop in order to succeed as professionals.
- Consequently, learning how to analogize apposite cases and distinguish inapposite ones will be a key step in learning not only how to read law but also to practice it.