

Precedent in common law system

Law



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Precedent in Common Law System Precedent in Common Law System What role does precedent play in common law legal systems? A precedent, under the common law legal system, refers to a principle developed by courts out of the previous legal cases that courts are obliged to follow in deciding subsequent cases with similar facts. The principle holds that cases, in common law with similar facts should be decided in a manner that is consistent, predictable, and similar (Schaffer, Agusti, and Earle, 2008). As such, the decisions or rulings made by a higher court in common law are binding on lower courts under *stare decisis*. Therefore, lower courts are obliged to honor the rulings of a higher court within the path of appeals of the cases that the court hears (Schaffer, Agusti and Earle, 2008).

Therefore, the precedent principle in common law is important since it ensures that judges do not give different rulings on cases with similar facts. In addition, it ensures that the outcomes are predictable, certain, precise and above all saves time in making a ruling (Schaffer, Agusti and Earle, 2008).

What role does it play in civil law legal systems?

The precedent principle plays a big role in determining the outcome of cases in civil law system. However, unlike in common law system, there is no adoption of the *stare decisis* principle in deciding cases. In civil law system, the precedent principle serves a persuasive role. This implies that civil law courts are only required to take into account past ruling when there is a high level of consistency in case law. In this regard, the higher the level of consistency, the greater the persuasive level of case law (Fon and Parisi, 2006).

References

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Fon, V., & Parisi, F. (2006). Judicial precedents in civil law systems: A dynamic analysis. *International Review of Law and Economics*. 26: 519–535.

Schaffer, R., Agusti, F., & Earle, B. (2008). *International business law and its environment* (Seventh ed.). Mason: OH: Cengage Learning.