

## **Englische Rechtsterminologie – Skript 3**

Vorlesung von Dr. Jens Bormann, LL.M. (Harvard)

von *Marcus Seyfarth*, Universität Freiburg

### **1. Form and General Nature of Case Law**

#### *1.1. Judicial Opinions and their Structure*

- opinions can take several forms:

If all the judges completely agree on the result, one judge will write the opinion for all. If all the judges do not agree, the formal decision will be based upon the view of the majority, and one member of the **majority** will write the **opinion**.

The judges who did not agree with the majority may write separately in dissenting or concurring opinions to present their views. A **dissenting opinion** disagrees with the majority opinion because of the reasoning and/or the principles of law the majority used to decide the case. A **concurring opinion** agrees with the decision of the majority opinion, but offers further comment or clarification or even an entirely different reason for reaching the same result. Only the majority opinion can serve as binding precedent in future cases.

#### *1.2. Precedential Effect of Court Decisions*

- stare decisis: "to stand by the precedents and not to disturb settled points"
- rationales are equality of treatment and to avoid bias and arbitrariness; certainty how the system once dealt with similar cases

### *1.2.1. The Binding Stare Decisis Effect*

- decisions of a superior court have binding effect on all lower courts in the same system (= vertical s. d.)
- prior decisions binds same court in later cases (= horizontal s. d.)
- horizontal is more flexible → sometimes court will overrule its own precedent

Sometimes courts interpret the law differently. From time to time, cases arose where the U.S. Court of Appeals for the Second Circuit ruled different than e.g. the Fourth and Eleventh Circuits did, on the exact question of law. This effectively meant that the law differed depending where in the country a case arose! Higher-level courts try to resolve these inconsistencies. The Supreme Court of the United States, for instance, often chooses to hear a case when its decision can resolve a division among the Circuit courts. The Supreme Court precedent will control, or apply to all the lower federal courts.

### *1.2.2. Persuasive Stare Decisis Effect*

- court is not obliged to follow precedents, but may be persuaded by reasoning used
- precedent is only "persuasive"
- decisions of courts of one state only have p. authority on cases of other states
- interpretation of state law in federal courts not binding for respective state courts

### *1.2.3. Stare Decisis Effect of Statutory Interpretations*

- not adopted by US S.Ct.

#### 1.2.4. *Stare Decisis Effect of Constitutional Decisions*

→ only possible with amendments to the constitution, so they have in fact a binding effect

## **2. The Legal Reasoning Process in Case Law**

### 2.1. *Deductive Reasoning from Case Law Rules*

- „holding“ or “rule“ is only a short statement of one or two sentences that summerizes the broader principle of the case
- law students learn how to formulate the rule in a way it can be understood by someone else

### 2.2. *Dictum*

- = statements that were not essential to the decision of the particular case
- has no precedential effect for the future

## ***Vokabelliste***

- |                       |  |
|-----------------------|--|
| • legal reasoning     | juristische Argumentation                            |
| • judicial opinion    | gerichtliche Urteilsbegründung                       |
| • appellate court     | Berufungsgericht                                     |
| • dissenting opinion  | abweichende Auffassung                               |
| • concurring opinions | agreeing on outcome but not on the line of arguments |
| • degree of unanimity | Grad der Übereinstimmung                             |
| • to discern          | erkennen   |
| • procedural history  | Verfahrensverlauf                                    |
| • holding             | Gerichtsentcheidung                                  |

- secondary authorities ~ zusätzliche Argumentationsquellen
- treatises Abhandlungen
- „stare decisis“ Kurzform für „stare decisis et non quieta movere“ (~ beim Vorangegangenen bleiben und einmal Beschlossenes nicht verändern) = Rechtsgrundsatz des Case Law
- rationale Begründung, Gründe
- bias Voreingenommenheit
- arbitrariness Willkür
- vertical stare decisis Urteil bindend für Gerichte niederer Instanz
- horizontal stare decisis Urteil bindend für das Gericht, das es gefällt hat
- to overrule a precedent das Präzedenz abändern durch neues Urteil
- authoritative verbindlich
- pursuant gemäß
- deductive reasoning schlussfolgernde Argumentation
- statutory provision gesetzliche Bestimmung
- legal principles rechtliche Grundsätze
- „dictum“ richterliche Rechtssätze ohne bindende Wirkung
- „holding“ richterliche Rechtssätze mit bindender Wirkung