

# Stare Decisis

## *When Should Precedent Be Followed?*

1. *Another ct's holding* is **mandatory** if:
  - a. Same issue & determinative facts.
  - b. An appeal could be made to the precedent court on the particular (state or federal) issue.
2. *Own ct's holding* should **ordinarily** be followed if a.
3. *Other holding* is merely **persuasive**.

# Holding v. Dicta?

Under *stare decisis*, only prior “holding” must be followed.

- a. “Holding” means statement of law necessary to decide a case.
- b. “Dicta” (from the Latin “obiter dictum,” meaning “a remark made in passing”) is a statement of law *unnecessary* to decide a case.

Judicial opinion may include dicta ...

- as background
- for analogy/distinction

# Same Issue?

1. Is a corporation a person for purposes of the First Amendment right to free speech?
2. Is a corporation a person for purposes of claiming the “personal privacy” exemption from the Freedom of Information Act?

# Same determinative facts?

Precedent Holds: “Where the determinative facts are A & B, the holding is H.”

New cases:

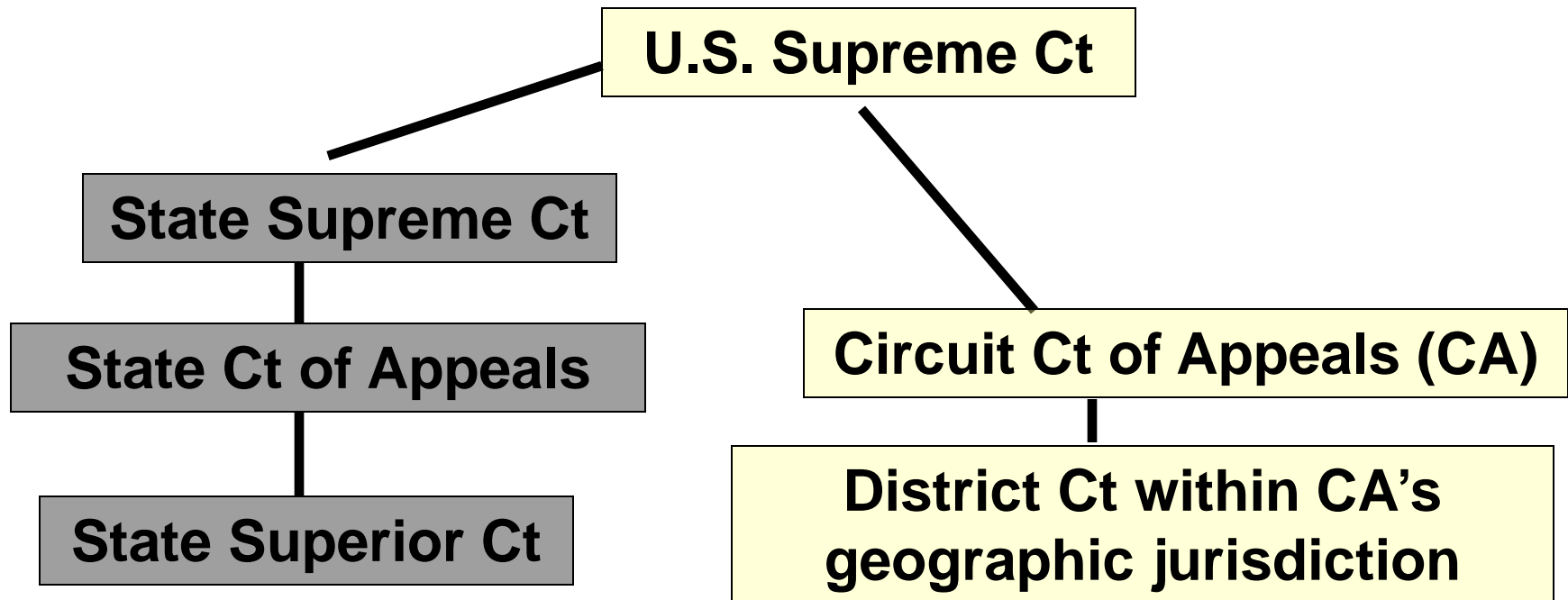
1. Determinative facts A & B—mandatory.
2. A or B changed or missing—not mandatory.
3. Determinative fact C added—not mandatory.

Remember, “determinative” facts are those that are essential to the case in that they will determine the court’s decision.

How do you know whether a change in facts is “determinative” or merely coincidental?

1. Court’s stated rule
2. Court’s stated reasoning.
3. Your own reasoning.

Could an appeal be made to the precedential court on a **Federal Law Issue**?



Could an appeal be made to the  
precedential court on a **State Law Issue**?

