CAMBRIDGE

Cambridge University Press 978-1-108-83563-3 — US Supreme Court Doctrine in the State High Courts Michael P. Fix , Benjamin J. Kassow Table of Contents <u>More Information</u>

Contents

List	of Fig	ures	<i>þage</i> xi
List of Tables			xiii
Table of Cases			XV
Acknowledgments			xxiii
_	T., I., .	de atten	
1		duction	1
	1.1	A Tale of Three State Court Decisions	3
	1.2	A New Theoretical Approach	6
	1.3	A Road Map for the Book	9
2	The	Role of Precedent: A Brief History	13
	2.1	The Origins of Stare Decisis	13
		2.1.1 The Earliest Systematic Court Records: Bracton	
		and the Year Books	14
		2.1.2 The Gradual Modernization of Case Reporting	16
		2.1.3 Precedent and Case Reporting in the American	
		Colonies and the Early Post-independence Period	19
	2.2	The Adoption of the Strong View of Precedent in English	
		and American Law	22
		2.2.1 Toward an Absolute View of Precedent and Back	
		Again: England in the Nineteenth and Twentieth	
		Centuries	22
		2.2.2 The View of Precedent in the US Courts	25
	2.3	Are State Courts Bound to US Supreme Court Decisions?	30
	-	2.3.1 When State and Federal Questions Are Mixed	34
	2.4	Conclusion	38

viii		Contents		
3	A Tł	neory of State High Court Usage of US Supreme		
)		urt Precedent		
	3.1	Decision-Making on State High Courts	39 40	
	3.2	State High Courts and US Supreme Court Precedent	42	
	3.3	Core Assumptions	44	
	3.4	A Theory of Precedent Usage by State High Courts	48	
	3.5	From Federal Precedent to State Policy	55	
4	Con	ceptualizing and Measuring How State High Courts Use		
•	US S	Supreme Court Opinions	57	
	4.1	Brief History of Compliance Studies in Terms of		
		Measurement Theory	57	
	4.2	Newer Research Contributions: The Gift of Shepard's		
		Citations	60	
	4.3	Our Measure of State High Court Responses to US		
		Supreme Court Precedents	64	
	4.4	Descriptive Findings from Three Empirical Applications	68	
5	State	e High Court Responses to Atkins v. Virginia: Characterized		
	by F	lexibility	71	
	5.1	A Brief History of Death Penalty Litigation:		
		Post-Gregg v. Georgia	72	
	5.2	Intellectual Disability and the Eighth Amendment:		
		Controversy and Resolution	73	
	5.3	How States Have Dealt with Atkins	76	
	5.4	Supreme Court Post-Atkins	82	
	5.5	Application of Our Theory to <i>Atkins</i>	83	
	5.6	Data and Methods	86	
	5.7	Results and Discussion	90	
	5.8	Concluding Thoughts	93	
6		e High Court Usage of Lemon v. Kurtzman: Examining		
		ise of Maximum Discretion	96	
	6.1	A Brief History of Establishment Clause Jurisprudence	98	
	6.2	Lemon v. Kurtzman: A (Failed) Attempt at a Universal		
	6	Standard	100	
	6.3	How States Have Dealt with <i>Lemon</i>	104	
	6.4	Application of Our General Theory to <i>Lemon</i>	109	
	6.5	Data and Methods	113	
	6.6	Results and Discussion	115	
	6.7	Concluding Thoughts	118	

		Contents	ix
7		e High Court Usage of District of Columbia v. Heller and	
		Donald v. City of Chicago: Moderate Degrees of Flexibility	121
	7.1	Heller and McDonald: Establishing a Second	
		Amendment Constitutional "Floor"	122
	7.2	A Brief History of Second Amendment Case Law	123
	7.3	Heller and McDonald: Cases and Immediate Aftermath	126
	7.4	Research Design and Method 7.4.1 General Trends in State Court Responses to <i>Heller</i>	128
		and McDonald	128
	7.5	Case Studies in State High Court Reactions to <i>Heller</i> and	120
	<i>[</i> • <i>)</i>	McDonald	136
		7.5.1 States' Citations and Treatments of Heller Prior to)
		McDonald	138
		7.5.2 Massachusetts' Treatments of McDonald and Heller	-
		Post-McDonald	140
		7.5.3 Illinois' Treatments of Heller and McDonald	146
		7.5.4 The Louisiana Supreme Court's Discussion of	
		Heller and McDonald	149
	7.6	Conclusion	153
8	Con	cluding Thoughts and Future Extensions	156
	8.1	Purpose and General Findings of the Book	156
	8.2	Case Selection Concerns	159
		8.2.1 Additional Notes on Case Selection: Alden v. Maine	160
	8.3	Summary of Specific Findings from Our Applications	161
		8.3.1 Summary of Findings from <i>Atkins</i> Chapter	162
		8.3.2 Summary of Findings from <i>Lemon</i> Chapter	163
		8.3.3 Summary of Findings from Second Amendment	C
	ο.	Chapter	164
	8.4	Implications of Our Book	165
	8.5	Future Work	166
Bib	Bibliography		
Ind	ndex		179