GIMME 5 — WHAT EVERY LAWYER SHOULD KNOW ABOUT STARE DECISIS

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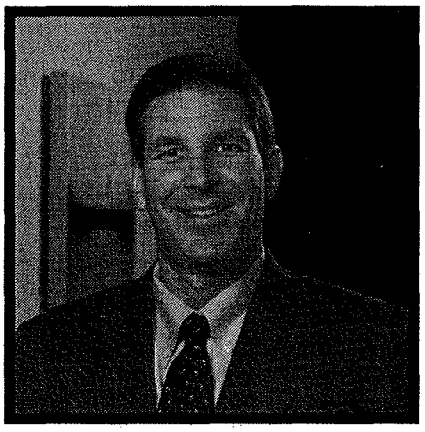
One of the very first concepts taught in law school is the doctrine of stare decisis. This doctrine comes from the Latin phrase *stare decisis et non quieta movere*, meaning to adhere to precedent and not unsettle what is established. (*In re Osborne* (9th Cir. 1996) 76 F.3d 306, 309.) The core of the doctrine is often simply stated that the decisions of higher courts are binding precedent on lower courts. For law school purposes, this understanding typically suffices. But lawyers in practice — especially those in California — must understand much more. Here are five key points highlighting and contrasting stare decisis under California and federal law.



1. Geography Matters in Federal Practice. The basics of federal stare decisis are easily understood. Decisions of the United States Supreme Court bind all other federal courts; decisions of the various Circuit Courts of Appeals bind the federal district courts located within each circuit; and the decisions of district courts generally have no binding precedential effect. Thus, a district court judge in California is not bound to follow precedent from any circuit court except published decisions from the Ninth Circuit Court of Appeals, which has appellate jurisdiction over California's federal courts. In other words, geography — specifically whether a given district court sits within a given circuit — has substantive meaning in federal practice.

2. There Is Only One California Court of Appeal. In contrast, although the California court system seems to mirror the structure of the federal courts, there is no geographical component to stare decisis under California law. Like the federal courts, California has a three-tiered court system with a Supreme Court, courts of appeal, and superior courts. Supreme Court decisions bind all lower courts — and this is true no matter how old the Supreme Court opinion might be. (*Lawrence Tractor Co. v. Carlisle Ins. Co.* (1988) 202 Cal.App.3d 949, 954; *Mehr v. Superior Court* (1983) 139 Cal.App.3d 1044, 1049 fn. 3.) Similarly, decisions from the courts of appeal bind the superior courts. There is a difference, however, in the geographic reach of California appellate decisions.

The California Court of Appeal is divided into six geographic districts, and some districts are further subdivided into divisions, some of which have geographic boundaries (e.g., the Fourth District, Division 3, covers Orange County). Under the federal scheme, only the decisions from the appellate court that would entertain an appeal from a given trial court's decision binds that trial court. But under the California scheme, there are no such geographical boundaries to decisions of the California Court of Appeal: Every superior court must follow any published decision from any District (and any division) of any court of appeal. (*Cuccia v. Superior Court* (2007) 153 Cal.App.4th 347, 353-354 [stare decisis requires a superior court to follow a published court of appeal decision, even if the trial judge believes the appellate decision was wrongly decided].)

Thus, a court of appeal decision from the Fourth District, Division Two (covering Riverside and San Bernardino Counties), is just as binding on a superior court in Sacramento as a decision from the Third District, which is the court with appellate jurisdiction over a Sacramento judge's rulings. (See *In re Pope*, 2008 WL 73683.) Philosophically, there is only one California Court of Appeal, albeit administratively divided into districts (and sometimes subdivided into divisions). (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

3. Horizontal Stare Decisis Operates Differently Between Federal and California Practice. So much for vertical stare decisis (i.e., the precedential effect of decisions on higher or lower courts). What about horizontal stare decisis (i.e., the effect of decisions by courts at the same level)? In the federal system, an opinion from one circuit court of appeals may be persuasive precedent, but is not binding on other courts of appeals. (*Hart v. Massanari* (9th Cir. 2001) 266 F.3d 1155, 1172-1173.) This allows the circuits to reach contrary decisions suitable for decision by the Supreme Court.

But within the Ninth Circuit, horizontal stare decisis operates to bind subsequent panels. Thus, the first panel of Ninth Circuit judges to publish an opinion on an issue binds not only district courts within the circuit, but also subsequent Ninth Circuit panels. For the Ninth Circuit to overrule its own precedent, it must issue an en banc decision. (*Miranda B. v. Kitzhaber* (9th Cir. 2003) 328 F.3d 1181, 1185 [panel must

follow prior panel decisions, unless a Supreme Court decision, an en banc decision, or subsequent legislation undermines its precedential value].)

In contrast, there is no horizontal stare decisis between appellate panels of the California Court of Appeal. (*Marriage of Shaban* (2001) 88 Cal.App.4th 398, 409.) Panels of the California Court of Appeal are not bound by prior panels, even within the same district. Thus, any given district or division of the court of appeal may disagree with a decision by any other district or division. Hence, while the U.S. Supreme Court regulates circuit-splits from the 13 federal circuits, the California Supreme Court oversees potential splits from effectively 19 separate courts of appeal (i.e., counting each of the six districts, plus the divisions within those districts as independent courts).

As for the federal and state supreme courts, each are free to overrule their own precedents. (*State Oil Co. v. Khan* (1997) 522 U.S. 3, 20; *Freeman & Mills, Inc. v. Belcher Oil Co.* (1995) 11 Cal.4th 85, 93.) Under what circumstances a high court should exercise its discretion to reverse itself, however, is topic of much scholarly debate. (E.g., Michael Sinclar, *Precedent, Super-Precedent*, 14 Geo. Mason L. Rev. 363 (2007); Lawrence B. Solum, *The Supreme Court in Bondage: Constitutional Stare Decisis, Legal Formalism, and the Future of Unenumerated Rights*, 9 U. Pa. J. Const. L. 155 (Oct. 2006) [discussing "super-stare decisis"].)

4. Superior Courts Are Free to Choose When Faced with Conflicting Precedent. Because there is no horizontal stare decisis in California, and because geography does not influence the precedential power of a Court of Appeal decision, a superior court may face the prospect of simultaneously being bound to follow conflicting Court of Appeal decisions. In this situation, the trial court is free to pick which of the decisions to follow. (*Auto Equity Sales, supra*, 57 Cal.2d at p. 456 ["where there is more than one appellate court decision, and such appellate decisions are conflict," the superior court "can and must make a choice between the conflicting decisions"].)

Some superior court judges may view this freedom as more theoretical than real, however. In practice, "a superior court ordinarily will follow an appellate opinion emanating from its own district, even though it is not bound to do so." (*McCallum v. McCallum* (1987) 190 Cal. App.3d 308, 315.)

5. Stare Decisis Across Court Systems. Federal courts applying state law are bound by the highest state authority to have ruled. Thus, the Ninth Circuit may be bound by a decision of the California Supreme Court, or the California Court of Appeal, if that is the highest court to have addressed the issue of state law. (*Johnson v. Frankell* (1997) 520 U.S. 911, 916 [federal courts must follow state's highest court on question of state law]; *Cal. Pro-Life Council, Inc. v. Getman* (9th Cir.2003) 328 F.3d 1088, 1099 [federal courts must follow state's intermediate appellate courts, absent convincing evidence that the state's highest court would rule differently].)

State courts applying federal law are bound by decisions of the U.S. Supreme Court. (*Elliott v. Albright* (1989) 209 Cal.App.3d 1028, 1034.) But they are not bound by district or circuit court decisions — although such rulings are entitled to "substantial deference." (*Yee v. City of Escondido* (1990) 224 Cal.App.3d 1349, 1351.) Finally, federal court decisions on state law are not binding on state courts. (*Choate v. County of Orange* (2000) 86 Cal.App.4th 312, 327-328.)

These five points are merely the tip of the iceberg. Many interesting complications lurk beneath the surface of the seemingly simple doctrine of stare decisis. For further general guidance see: Goelz & Watts, Rutter Group Practice Guide: Federal Ninth Circuit Civil Appellate Practice §§ 8:150-8:206 (The Rutter Group 2007); Eisenberg, Horvitz & Wiener, Cal. Prac. Guide: Civil Appeals & Writs §§ 14:191-14:197 (The Rutter Group 2007).