Beyond the Basics of Stare Decisis

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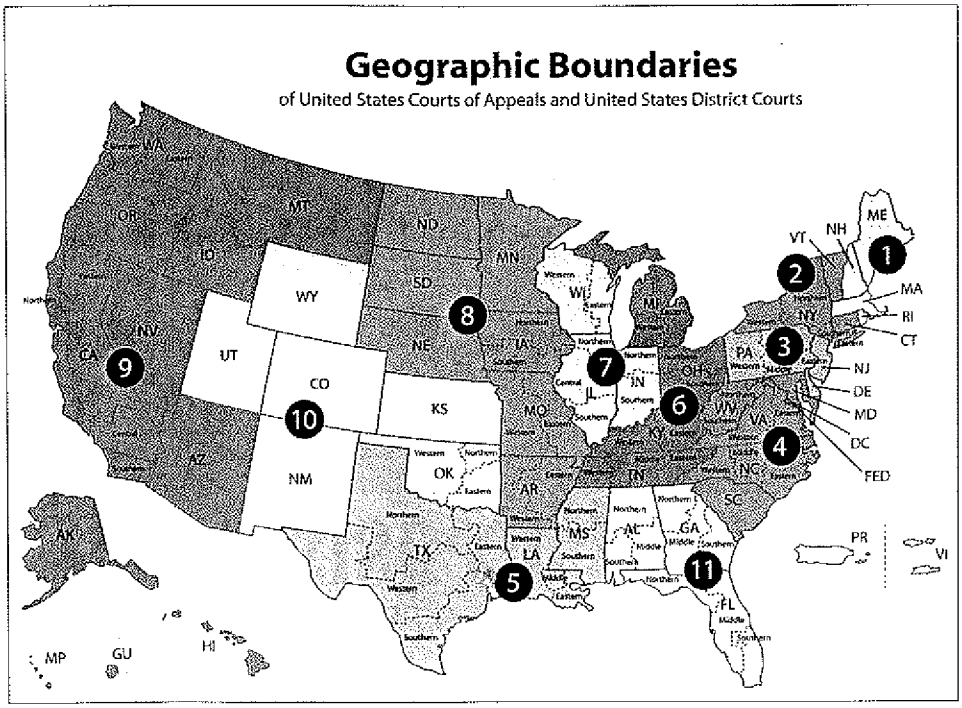
One of the first concepts taught in law school is the doctrine of stare decisis. This doctrine draws its name from the Latin phrase *stare decisis et non quieta movere*, meaning to adhere to precedent and not unsettle what is established. (*In re Osborne*, 76 F.3d 306, 309 (9th Cir. 1996).) The core of the doctrine is often simply stated that the higher courts decision are binding precedent on lower courts. Law schools focus on federal practice, and the basics of stare decisis for that court system are easily understood: Decisions of the United States Supreme Court bind all other federal courts, and decisions of the various circuit Courts of Appeals bind the federal district courts located within the circuits. Thus, a federal district court judge in California need not follow precedent from any circuit court except that of the United States Supreme Court and the Ninth Circuit Court of Appeals, which has appellate jurisdiction over that district court's rulings.



For law school purposes, discussion of stare decisis typically ends here. Unfortunately, many lawyers in practice never advance beyond this rudimentary understanding. But there is more to know. Much more.

A fundamental point to understand is that stare decisis operates differently in different court systems. California's court system may look like the federal court system – with both having a three-tiered layering of trial courts, then intermediate appellate courts (called "circuits" in the federal system, and "districts" in the state system) with decisions issued by three-judge panels (called "judges" in federal lingo, but "justices" in California), and a supreme court at the top (comprised of 9 justices in federal court versus 7 in California) – but these outward similarities belie rather different internal mechanisms. In short, assuming that the functioning of the federal doctrine applies equally in state court is a mistake.

The two biggest differences between federal and California stare decisis concern the roles of geography and equality within the intermediate level. Starting with geography, as noted already, geography matters in federal practice. Decisions of the various Circuit Courts of Appeals bind only the federal district courts located within each circuit. A district court judge in California

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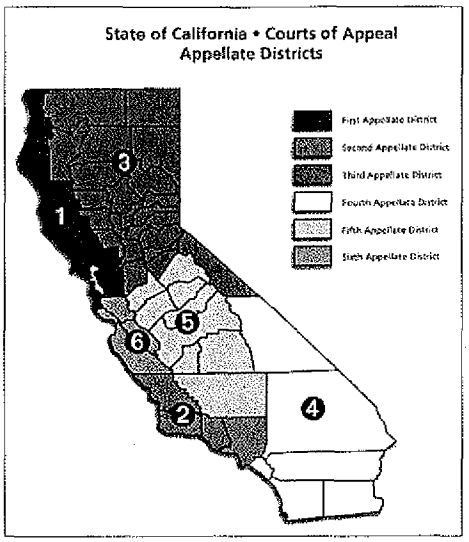
may therefore disregard a Second Circuit decision, but not a published Ninth Circuit decision, because the Ninth Circuit has appellate jurisdiction over California's federal courts. In other words, geography – specifically whether a given district court sits within a given circuit – has substantive meaning in federal practice.

In contrast, although the California court system outwardly seems to mirror the structure of the federal courts, there is no geographical component to stare decisis under California law. Where the binding effect of a federal circuit court of appeals exists only within the circuit's borders, the scope of a California district court of appeal decision extends statewide, even beyond the geographic limits of the district.

The California Court of Appeal is divided into six geographic districts.



Some districts are further sub-divided into divisions, some of which have geographic boundaries (e.g., the Fourth District, Division 3, covers only Orange County; the Second District, Division 6, covers Ventura, Santa Barbara, and San Luis Obispo Counties, whereas the other seven divisions within the Second District all cover only Los Angeles County). And yet 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 2 (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 district having appellate jurisdiction over a Sacramento judge's rulings. The key authority on this point is the Supreme Court's opinion in *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.

Therefore, the geography plays different roles in the federal and state court systems with respect to *vertical* stare decisis – with vertical referring to the binding precedential power of decisions up and down the court systems. But what about *horizontal* stare decisis – i.e., the effect of decisions on "sister" courts at the same level of the court system?

At the highest level, this poses no problem because there is only one United States Supreme Court and only one California Supreme Court. (Note that some states, however, have two supreme courts. Texas, for instance, has separate supreme courts for civil and criminal matters.)

At the intermediate appellate level in both systems, however, there are multiple courts. In the federal system, there are 13 circuit Courts of Appeals, and in California there are six district Courts of Appeal. (Note the difference in nomenclature here: The word "district" indicates a trial court in federal parlance, but an intermediate appellate court in California. Also, the federal systems has circuit Courts of Appeals, with an "s," whereas California has Courts of Appeal, without an "s.")

In federal practice, decisions of one circuit court has no binding effect outside that circuit. Thus, the Second Circuit is free to disagree with the Ninth Circuit, and thereby set up a circuit-split suitable for review via a petition for certiorari by the United States Supreme Court. (Again, a vocabulary diversion exists: a "cert petition" is the vehicle to ask the U.S. Supreme Court for review, but in California practice that document is titled a "petition for review.")

Thus, there is no horizontal stare decisis across circuit lines. (*Hart v. Massanari* (9th

Cir. 2001) 266 F.3d 1155, 1172–1173.) But there is horizontal stare decisis within a given circuit. (*Id.*) Circuits must convene en banc panels of all their judges (or limited en banc panels, e.g., the Ninth Circuit convenes 11-judge en banc panels) to overrule existing circuit precedent. In other words, three-judge panels of the courts of appeals are bound by prior three-judge panels from that same circuit, and by en banc decisions of the court. (*In re Amy & Vicky* (9th Cir., Oct. 24 2012) ___ F.3d ___ [9th Cir. panel bound by prior panel decisions, absent "intervening higher authority" that is "clearly irreconcilable" with circuit precedent, and sister circuit opinions are not such "higher authority"]; *Miranda B. v. Kitzhaber* (9th Cir. 2003) 328 F.3d 1181, 1195 [panel must follow prior panel decisions unless a Supreme Court decision, an en banc decision, or subsequent legislation undermines its precedential value].)

In contrast to the horizontal stare decisis that exists for Ninth Circuit panels, panels of the California court of appeal are not

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bound by prior appellate decisions, even within the same district. (*Marriage of Shaban* (2001) 88 Cal.App.4th 398, 409.) So if Division 5 of the Second District Court of Appeal issues a decision on a certain issue, it is binding on all superior courts, but is not binding on any other court of appeal anywhere in the state, *and is not even binding on Division 5 itself*, which is free to change its mind if the issue arises again. Thus, while the U.S. Supreme Court must regulate circuit-splits from the 13 federal circuits, the California Supreme Court oversees potential splits from 19 separate and independent intermediary appellate courts (i.e., each of the six districts, plus the divisions within some of those districts).

Combining the fact that there is no horizontal stare decisis in the California Court of Appeal with the fact that geography plays no role in the authority of California's intermediate appellate courts to bind lower courts, a problem exists in California that does not exist in the federal system: There may simultaneously exist two conflicting opinions that are both binding on a superior court. For instance, assume a published opinion from the Fifth District (based in Fresno) goes one way, but another published opinion from the Fourth District Division 1 (covering San Diego and Imperial Counties) goes another way. How is a trial court bound by these conflicting appellate decisions, supposed to rule?

As explained, geography does not govern the analysis. Thus, it does not matter if that the superior court is in Fresno or in San Diego, or San Francisco. Instead, the superior court is free to choose one or the other of the decisions to follow, based on whatever factors the trial judge believes are most compelling. Once again, the Supreme Court's *Auto Equity Sales* opinion provides the precedent for this rule. (*Auto Equity Sales*, 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.) Thus, geography may creep into a particular judge's analysis. But it needn't, as Supreme Court precedent makes clear. *Auto Equity Sales* is one Supreme Court decision every California litigator should know by name.

EDITOR'S NOTE: I solicited this article for Verdict magazine after hearing of a recent exchange during oral argument in the Court of Appeal. One of the lawyers presenting argument believed a published California appellate decision compelled a ruling in his favor, and he urged that the court was "bound" by that decision. One member of the panel corrected the lawyer on this point, but the lawyer continued to insist that the decision was "precedent" and therefore must be followed – at which point the state court appellate justice remarked, "We are not the 9th Circuit!"

And speaking of California Supreme Court decisions, note that they are, of course, binding on the Courts of Appeal and all superior courts, and that 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.) Note also that both supreme courts 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 the notion of "super" stare decisis based on the number of justices adopting a particular view].)

A final topic to consider is the effect of stare decisis across court systems. Federal courts applying state law are bound by the highest state authority to have reviewed the issue. Thus, the Ninth Circuit may be bound by a decision of the California Supreme Court, or the California Court of Appeal, or possibly even a superior court Appellate Division if that is the highest court to have addressed the issue. (*Johnson v. Frankell* (1997) 520 U.S. 911, 916 [federal courts must follow state's highest court on question of state law].) On an unsettled state law issue, the 9th Circuit will do its best to determine how the California Supreme Court would rule if presented with the issue. (See *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 construing federal law – although such rulings are entitled to "substantial deference." (*Rohr Aircarft Corp. v. San Diego County* (1996) 42 Cal. App. 4th 177, 191.) Lastly, federal court decisions on state law are not binding on state courts. (*Qualified Patients Assn. v. City of Anaheim* (2010) 187 Cal.App.4th 734, 764; *Bodell v. Walbrook* (9th Cir. 1997) 119 F.3d 1411, 1422 (Kozinski, J., dissenting) ["The good thing when a federal court misapplies state law is that its opinion can be ignored by the state courts."].)

The foregoing points expound upon the cursory explanation of stare decisis encountered in law school. But even these few points do not address many interesting complications that lurk beneath the surface of the seemingly simple doctrine of stare decisis. The elementary principles discussed above identify just some of the quirks that practicing lawyers need to know to move beyond the basics of stare decisis.

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