The Law of the Case Doctrine

The law of the case doctrine is an important principle in appellate law, but yet often it is misunderstood by litigants. In my experience, nine out of ten times when opposing counsel asserts that the law of the case controls the outcome of an issue, it does not. This article discusses the parameters of the law of the case doctrine in California.

Law of the Case Requires a Prior Appeal

The doctrine of law of the case deals with the effect of a first appellate decision on the subsequent retrial or appeal. *Morohoshi v. Pacific Home*, 34 Cal. 4th 482, 491 (2004). “The decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case.” *Id.* Thus, the doctrine of law of the case, “generally precludes multiple appellate review of the same issue in a single case.” *Searle v. Allstate Life Ins. Co.*, 38 Cal. 3d 425, 434 (1985). The doctrine does not apply where its application would result in an unjust decision or where the controlling rules of law have been altered or clarified by a decision intervening between the first and second appellate decisions. *Morohoshi*, 34 Cal. 4th at 491-92.

In contrast to a direct appeal, the law of the case doctrine does not apply to the summary denial of a petition for writ of mandate. However, when a writ petition results in a written opinion following the issuance of an alternative writ, the decision becomes law of the case.

Law of the Case Only Applies to Issues of Law

As the name implies, the law of the case doctrine only applies to issues of law. *Searle*, 38 Cal. 3d at 434. Except where the sufficiency of the evidence as a matter of law is involved, the law of the case doctrine does not give any conclusive effect to determinations of questions of fact. *Stockton Citizens for Sensible Planning v. City of Stockton*, 210 Cal. App. 4th 1484, 1488 n.2 (2012). Rather, the doctrine is applicable to principles of law laid down by the appellate court as applicable to a retrial of fact. *Id.*

In addition, the doctrine does not apply to the appellate court’s recitation of the facts in an opinion. This issue is a common source of confusion. Often on remand, litigants contend that the appellate court’s factual discussion is binding on the trial court based on the law of the case doctrine. However, the law of the case doctrine simply does not reach issues of fact.

Law of the Case is Not Jurisdictional
The law of the case doctrine is procedural, not jurisdictional. The California Supreme Court has described it as a matter of “policy and convenience.” *Searle*, 38 Cal. 3d at 434. The primary purpose of the law of the case doctrine is judicial economy – conserving scarce judicial resources. *Id.* at 435. As a matter of policy, finality is attributed to an initial appellate ruling so as to avoid further proceedings on remand or in a subsequent appeal on the same legal issue.

As discussed above, under the doctrine of the law of the case, an appellate court ordinarily will not revisit an issue of law that was actually presented and determined in a prior appellate proceeding if the issue was necessary to the decision in the prior case. However, pursuant to the exceptions to this general rule, the court may decline to adhere to the law of the case when there has been a manifest misapplication of existing principles resulting in substantial injustice or a change in the law. *Morohoshi*, 34 Cal. 4th at 491-92. “‘The doctrine of law of the case is a discretionary policy which should not be followed if it results in a manifestly unjust decision. In looking to a just determination of the rights of the parties, an appellate court is not precluded from reconsidering questions decided on a former appeal.’” *Moore v. Kaufman*, 189 Cal. App. 4th 604, 617 (2010). However, in the absence of exceptional circumstances of hardship and injustice, “the need for attributing finality to considered judicial determinations compels adherence to the previous decision.” *Searle*, 38 Cal. 3d at 435.

**“Law of the Case” is Inapplicable to a Different Case**

The doctrine of law of the case applies only where there is a prior appellate decision in the same case. In some instances, the doctrine of law of the case does not apply, but the parties are bound by res judicata. In addition, the doctrine only applies to those who were parties to the case when the prior appellate decision was issued. Of course, a published appellate decision governs other cases under the doctrine of stare decisis.

**Conclusion**

The law of the case doctrine promotes judicial economy and avoids the relitigation of issues that were previously decided by the appellate court in that particular case. For a court to exercise its discretion and apply the doctrine the following conditions must be met: (1) there must have been a prior appeal; (2) the issue is an issue of law; (3) the issue of law was necessary to the prior appellate decision and expressly decided; (4) the prior appellate decision was issued in the same case; and (5) the parties in the prior appellate decision are the same parties in subsequent litigation.

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