Res Judicata: New Standards for Evaluating the Effect of a Change in Law after Judgment

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Notes & Comments


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Res judicata is the judicially-created doctrine which dictates that once a matter has been litigated or has otherwise gone to judgment in a court of competent jurisdiction, the controversy should be laid to rest and the judgment should be given conclusive effect as to the parties to that litigation. This doctrine serves important functions in the American system of jurisprudence. There will be times, however, when a court must consider whether competing values indicate that a party should be allowed to relitigate a claim despite the existence of a judgment which purports to settle the matter forever.

Such a situation is presented when subsequent to a final judgment in a civil case there has been a change in the law that was applied in arriving at the judgment. This change in law may be the result of a square holding declaring a statute unconstitutional or a rule of common law invalid. The change in law might also be the result of a

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1. The term res judicata will be used in this Note to express the general principle of the finality of a judgment. As used, res judicata includes the concepts of merger, bar, and collateral estoppel. See, e.g., Clark v. Lesher, 46 Cal. 2d 874, 299 P.2d 865 (1956); 4 B. Witkin, California Procedure Judgments § 148 at 3293 (2d ed. 1971). Res judicata is employed in its general sense in this Note for conceptual clarity only. There is little consistency in the use of this term among writers and courts. See Comment, Res Judicata in California, 40 Calif. L. Rev. 412, 412 (1952).


4. The problem posed by a change in law after final judgment in a criminal case is beyond the scope of this Note.

5. See, e.g., Chicot County Drainage Dist. v. Baxter State Bank, 308 U.S. 371 (1940); Slater v. Blackwood, 15 Cal. 3d 791, 543 P.2d 593, 126 Cal. Rptr. 225 (1975). The problem caused by a change in law effected by the legislature is beyond the scope of this Note.

more subtle process of changing judicial values. The effect of such a change in law is that a different result might be reached should the case be retried.

After such a change in law has occurred, a party may feel justified in seeking to have a matter readjudicated in light of the new holding. The new law may permit a theory of liability or defense that had been disallowed in the prior suit. The opposing party will raise the defense of res judicata to prevent the new determination. When the interests of the parties or the public in a new adjudication override the interest in a permanent resolution of the controversy, an exception to the doctrine of res judicata should be made and relitigation allowed.

At present, California courts lack a clear standard under which to decide whether relitigation will be permitted after there has been a change in law. This Note first will examine how California courts have reacted to the problem caused by a change in law. Typically courts have applied different analyses depending on whether the second suit is brought on the same or a different cause of action as the initial suit. This bifurcated treatment will be criticized. In the second part of this Note, a test will be suggested under which a court can confront the problem caused by a change in law.

Judicial Reaction to the Change-in-Law Problem in California

California courts have adopted two lines of analysis in resolving the problem caused by a change in law subsequent to a final judgment. The analysis applied corresponds to whether the court deems a second suit to be brought on the same or a different cause of action as the suit which went to judgment. When the second suit is brought on the same cause of action, a court will find that the merger or bar aspect of the doctrine of res judicata precludes relitigation as a procedural matter. When the second suit is brought on the same issue or facts but on a different cause of action, the collateral estoppel aspect of the res judicata doctrine is the preclusionary defense raised. In a collateral estoppel situation, courts are more prone to look at the facts of the case before determining whether a second adjudication is justified.

F.2d 52 (5th Cir. 1962); Shelton v. Superior Court, 56 Cal. App. 3d 66, 128 Cal. Rptr. 454 (1976).

7. See, e.g., City of Los Angeles v. City of San Fernando, 14 Cal. 3d 199, 537 P.2d 1250, 123 Cal. Rptr. 1 (1975); Cochran v. Union Lumber Co., 26 Cal. App. 3d 423, 102 Cal. Rptr. 632 (1972). In Cochran, the court characterized another court's interpretation of a contract clause as "clearly erroneous" because of a misapplication of case law. 26 Cal. App. 3d at 428, 102 Cal. Rptr. at 635. It is suggested that the alleged error was not so "clear" to the original court. What is perceived as error may be the result of a difference in values which leads to differing interpretations of case law.
It is suggested that this bifurcated approach places an unwarranted emphasis on the definition of a cause of action. A test is needed that will determine whether relitigation should be allowed after a change in law regardless of whether the merger/bar or collateral estoppel preclusionary defense is raised.

Merger and Bar

Scope of the Preclusion

The merger/bar aspect of the doctrine of res judicata applies when the adjudicated matter consists of an entire cause of action.8 When judgment is rendered in favor of the plaintiff, the plaintiff’s entire claim is extinguished and merged into the judgment.9 When judgment is given in favor of the defendant, the plaintiff’s claim is extinguished and the judgment bars a subsequent action on that claim.10

When merger or bar prevents relitigation of a cause of action, the preclusion applies not only to issues which were actually determined by the judgment in the initial suit but also to any issue which was so relevant to the subject matter of that action that it could have been raised there. Merger or bar will encompass this related issue even though it was neither expressly pleaded nor argued in the first suit.11 “[T]he rule is that the prior judgment is res judicata on matters which were raised or could have been raised, on matters litigated or litigable.”12

The scope of the merger/bar preclusion is sometimes expressed in the form of a rule against splitting causes of action.13 A plaintiff will not be allowed to pursue the same claim in a second action merely because he is prepared to present new evidence or theories which were not presented in the first suit14 or to seek new forms of relief not previously demanded.15

Effect of a Change in Law

In Slater v. Blackwood,16 the California Supreme Court indicated

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8. See notes 36-49 & accompanying text infra.
9. RESTATEMENT OF JUDGMENTS § 47 (1942). A subsequent suit to enforce the judgment is said to be on a new claim created by that judgment. Id. § 47, Comment a.
10. Id. § 48.
12. Id.
that a summary analysis will be applied in a change-of-law situation when the second suit is brought on the same cause of action as the first. The plaintiff in *Slater* had been injured in an automobile accident while riding as a passenger in the defendant’s car. At the time of her first suit, the guest statute was in effect in California and negligence would not have supported her personal injury suit against the defendant. In order to comply with the statute, the plaintiff had to allege either intoxication or wilful misconduct. Nonsuit was granted after the plaintiff’s opening statement on the ground that the evidence would not support a recovery on this theory. The court of appeal rejected plaintiff’s contention that the guest statute was unconstitutional and affirmed the trial court judgment. The California Supreme Court denied Slater’s petition for a hearing.

Approximately seven months after the judgment became final in Slater’s first action, the California Supreme Court decided the case of *Brown v. Merlo*\(^1\) holding the guest statute unconstitutional as applied to an injured, nonowner guest. If Slater had been able to bring her lawsuit subsequent to the *Brown v. Merlo* decision, it is unlikely that the nonsuit would have been granted. Accordingly, she instituted a second action against the same defendant on a simple negligence theory. The defendant’s demurrer to the second complaint was sustained without leave to amend on the ground that the original judgment was res judicata and a bar to the second action. The Supreme Court of California affirmed.\(^2\)

Under the supreme court’s analysis in *Slater*, the key determination to be made when a party seeks to take advantage of a change in law by bringing a second suit is whether the plaintiff is attempting to relitigate the same cause of action. In *Slater*, the court noted that under California law the invasion of one primary right, defined in terms of the harm suffered, gives rise to one cause of action.\(^3\) The fact that the plaintiff brought her second suit on a legal theory which was not available at the time of the initial suit was not determinative with respect to a finding that she was attempting to split her cause of action. Once it is determined that a party is attempting to relitigate the same cause of action, public policy requires that the second suit be dismissed. The principle that a final judgment is a bar to further proceedings based on the same cause of action, the *Slater* court stated, is “necessary

\(^{17}\) 8 Cal. 3d 855, 506 P.2d 212, 106 Cal. Rptr. 388 (1973).

\(^{18}\) The supreme court initially purported to decide the appeal on the theory of the retroactivity of *Brown v. Merlo*, which had been urged by the plaintiff. Because the plaintiff was a minor, the statute of limitations had not yet run and the theory of retroactivity was thus available to her. *See* CAL. CIV. PROC. CODE § 352 (West 1954). The bulk of the opinion, however, spoke in terms of the res judicata defense.

\(^{19}\) 15 Cal. 3d at 795, 543 P.2d at 594, 126 Cal. Rptr. at 226.
to the well-ordered functioning of the judicial process."\(^{20}\)

This Note does not take issue with the result in *Slater*; it is the reasoning that must be reevaluated. If courts were to allow relitigation of a cause of action after every change in law the result would be a flood of new actions in all cases in which the old law was controlling. The problem is the summary analysis applied in *Slater*. The court precludes relitigation of an adjudicated matter primarily on the basis of its definition of a cause of action without considering whether the social policies that underlie the doctrine of res judicata will be well served by its application in that case. The *Slater* court failed to consider the reasons for allowing relitigation.\(^{21}\) As demonstrated below, when, after a change in law, a second suit is grounded on a different cause of action, courts may allow relitigation on the basis that an unjust result would be reached by applying a preclusion.

**Collateral Estoppel**

**Scope of the Preclusion**

When a party brings a second suit on a different cause of action from a prior suit and seeks redetermination of an issue which was raised in the first suit, the doctrine of collateral estoppel\(^{22}\) may be invoked to prevent a reconsideration of that issue. The preclusionary effect of collateral estoppel is more limited than that of merger and bar. The prior judgment operates as an estoppel or conclusive adjudication in the second suit only with respect to those issues that were actually litigated and necessarily determined by the judgment in the first action.\(^{23}\)

**Effect of a Change in Law**

When relitigation is attempted after a change in law in the context of a second suit brought on a different cause of action, the analysis applied by California courts in the face of a res judicata defense is more protracted than that applied when the second suit is brought on

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\(^{20}\) *Id.* at 797, 543 P.2d at 596, 126 Cal. Rptr. at 228.

\(^{21}\) Exceptions to the rules of merger and bar are not without precedent in California. Exceptions have been made, for example, when prior suits have yielded conflicting adjudications, Greenfield v. Mather, 32 Cal. 2d 23, 194 P.2d 1 (1948); when the plaintiff did not have a fair opportunity to litigate in the initial suit, *In re Marriage of Hight*, 67 Cal. App. 3d 498, 136 Cal. Rptr. 685 (1977); and when changed facts and new conditions have intervened between the first and second lawsuits, People v. Ocean Shore R.R., 32 Cal. 2d 406, 196 P.2d 570 (1948); Guardianship of Snowball, 156 Cal. 240, 104 P. 444 (1909); McGaffey v. Sudowitz, 189 Cal. App. 2d 215, 10 Cal. Rptr. 862 (1961).

\(^{22}\) The doctrine of collateral estoppel is also expressed by the term "estoppel by judgment." *See, e.g.*, Commissioner v. Sunnen, 333 U.S. 591, 598 (1948).

\(^{23}\) Clark v. Lesher, 46 Cal. 2d 874, 880, 299 P.2d 865, 868 (1956).
the same cause of action. In such a situation, courts will look behind the res judicata doctrine to determine whether, under the facts of a case, relitigation is justified. When collateral estoppel rather than merger or bar is the defense raised in the second suit, courts may invoke section 70 of the Restatement of Judgments which provides:

Where a question of law essential to the judgment is actually litigated and determined by a valid and final personal judgment, the determination is not conclusive between the parties in a subsequent action on a different cause of action, except where both causes of action arose out of the same subject matter or transaction; and in any event it is not conclusive if injustice would result.\textsuperscript{25}

Comment (f) further explains the "injustice" exception by stating that the judgment will not be conclusive "if it would be unjust to one of the parties or to third persons to apply one rule of law in subsequent actions between the same parties and to apply a different rule of law between other persons."\textsuperscript{26}

The use of "injustice" as a basis for creating an exception to the doctrine of res judicata allows a court to look at the facts of a particular case to assess the equities involved before applying a preclusion. Invoking Restatement section 70, courts have been unwilling to find a preclusion when to do so would perpetuate an erroneous ruling in the first suit or when the perceived public importance of the issue dictates that the court reexamine a previous ruling of law.\textsuperscript{27}

The California Supreme Court's reasoning in City of Los Angeles v. City of San Fernando,\textsuperscript{29} a collateral estoppel case, presents a contrast to the analysis employed by that court in Slater v. Blackwood.\textsuperscript{30} In part, the controversy in City of Los Angeles concerned the plaintiff city's "pueblo right" to certain water. The plaintiff's right was first established in a declaratory judgment action to which two of the pres-

\begin{footnotes}
\item[25] \textit{RESTATEMENT OF JUDGMENTS} § 70 (1942).
\item[26] \textit{Id.} § 70, Comment f.
\item[29] 14 Cal. 3d 199, 537 P.2d 1250, 123 Cal. Rptr. 1 (1975).
\item[30] 15 Cal. 3d 791, 543 P.2d 593, 126 Cal. Rptr. 225 (1975); see notes 16-21 & accompanying text \textit{supra}.
\end{footnotes}
ent defendant cities were also parties. In the present suit for injunctive relief, the existence of the pueblo right was relitigated and the trial court found against the plaintiff. On appeal the plaintiff contended that the declaratory judgment of the first suit was res judicata on the issue of the existence of that right.

The supreme court avoided the application of res judicata altogether. It first found that the two suits were based on different causes of action because the first asked for declaratory relief while the second sought injunctive relief.31 Because the collateral estoppel aspect of res judicata was thus applicable, the court felt free to examine "the possible exception to this rule when the prior determination was of an issue of law rather than of fact."32 Looking at the facts of the case, the court found two justifications for allowing relitigation of the pueblo right.33 First, it would be unjust to hold two of the defendants bound to the prior determination of the pueblo right "solely because of the doctrine of collateral estoppel" when the new party defendants would not be bound thereby.34 Second, the court perceived a public interest attaching to the proper determination of the conflicting claims of major public

31. 14 Cal. 3d at 227, 537 P.2d at 1271, 123 Cal. Rptr. at 22. In support of its finding two causes of action, the court cited Langley v. Schumacher, 46 Cal. 2d 601, 297 P.2d 977 (1956). In Langley, the initial suit asked for a decree of annulment of a marriage on the ground of fraud in its inducement. The plaintiff alleged that the defendant had married her while secretly intending never to consummate the union. Armed with the decree, the plaintiff instituted a second action for damages for fraud based on the same facts. The court ruled that because the first suit was brought in equity and the second suit was brought for damages at law, the harm remedied by the annulment was not the same as the harm remedied by the fraud action. The second suit was therefore held not to be barred under any theory of res judicata. 46 Cal. 2d at 602-03, 297 P.2d at 979. Although Langley was cited without discussion in City of Los Angeles, the implication seems to be that the declaratory relief/injunctive relief distinction in that case is analogous to the law/equity distinction in Langley.

32. 14 Cal. 3d 199, 227, 537 P.2d 1250, 1271, 123 Cal. Rptr. 1, 22. In order to apply Restatement § 70, a court must find both that the second suit is based on a different cause of action than the first and that the matter to be relitigated is one of law rather than one of fact. Here, the court referred to its own historic treatment of the existence of a pueblo right as a proposition of law rather than of fact as further justification for the possibility of creating an exception to the collateral estoppel effect of the determination of the pueblo right in the first suit. Id. at 229, 537 P.2d at 1272-73, 123 Cal. Rptr. at 23-24.

33. The defendant cities first contended that application of res judicata with respect to the determination of the pueblo right was precluded by an intervening change of law. The court did not consider this claim because the intervening decision concerned a prescriptive right and not a pueblo right, although it noted in dictum: "This contention might have merit if the change of law were relevant to the issue on which res judicata is to operate." Id. at 228, 537 P.2d at 1272, 123 Cal. Rptr. at 23. Under the reasoning of Slater v. Blackwood, 15 Cal. 3d 791, 543 P.2d 593, 126 Cal. Rptr. 225 (1975), this avenue would now seem to be foreclosed. Although the intervening decision was not considered, the reexamination of the pueblo right by the court in City of Los Angeles represents a change in judicial values which is included under the concept of a change of law in this Note.

34. 14 Cal. 3d at 230, 537 P.2d at 1273, 123 Cal. Rptr. at 24.
entities to water resources.\textsuperscript{35}

The Cause of Action as a Red Herring

As \textit{Slater v. Blackwood} and \textit{City of Los Angeles v. City of San Fernando} illustrate, the decision as to whether the doctrine of res judicata will yield to other expressions of public policy will depend initially on a determination of whether the second suit is based on the same cause of action as the first suit. It is suggested in this Note that the cause of action determination diverts courts into an unnecessary avenue of inquiry. Not only is the definition of a cause of action that has been adopted in California only one of several possible definitions,\textsuperscript{36} but a court's decision as to what constitutes a cause of action within that definition may be fairly debatable.\textsuperscript{37} Unless a party contends that the matter to be relitigated was not actually and necessarily determined by the first judgment, the fact that the second suit is brought on a technically different cause of action does not help to resolve the question of whether relitigation should be allowed after a change in law.

Primary Right Theory of a Cause of Action

California courts embrace the "primary right" theory of a cause of action. This theory flows from the concept that every judicial action consists of the following elements: (1) a primary right which is possessed by the plaintiff and a corresponding primary duty owed by the defendant; (2) a wrong done by the defendant which consists of a breach of the primary right and duty; (3) remedial right of the plaintiff and a remedial duty of the defendant; (4) a remedy or relief.\textsuperscript{38} The first two elements constitute the cause of action.\textsuperscript{39} Under this theory, a suit for bodily injuries arising out of an automobile accident will constitute one cause of action regardless of the theory of the plaintiff's case.\textsuperscript{40} In contrast, a suit for bodily injuries and for loss of consortium, although arising out of one automobile accident in which a husband and wife are involved, is brought on two causes of action.\textsuperscript{41} Similarly, claims for personal injury and property damage will give rise to two causes of action despite the fact that both were caused by the same

\textsuperscript{35} Id.
\textsuperscript{37} See note 49 & accompanying text infra.
\textsuperscript{38} 3 B. Witkin, \textit{California Procedure Pleading} § 22 at 1707 (2d ed. 1971).
\textsuperscript{39} Id.
negligent act of the defendant. 42

Transactional Theory of a Cause of Action

The primary right theory of a cause of action is only one of several possibilities which could be adopted by a jurisdiction. 43 The American Law Institute, for example, has proposed a “transactional” theory in its draft of the Restatement (Second) of Judgments. Under this formulation, the claim 44 to be extinguished by merger or bar includes “all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.” 45 A transaction for this purpose is to be determined pragmatically with reference to facts which are related in time, space, origin, and motivation, and which form a convenient trial unit. 46

The transactional theory is effectively broader than the California primary right theory of a cause of action. A suit for personal injuries arising from a single accident will still constitute one cause of action despite allegations of both simple and gross negligence. 47 Under the transactional formula, however, a plaintiff will be held to have pleaded a single cause of action despite allegations of both personal injury and property damage. 48

The Elusive Cause of Action

Even within the framework of the California primary right theory of a cause of action, it may be difficult to determine whether a party is seeking to relitigate a cause of action. For example, the characterization of the pueblo right dispute in City of Los Angeles v. City of San Fernando 49 as two causes of action is debatable. In that case, the court found that because the first complaint sought declaratory relief with respect to the plaintiff’s right to the water and the second complaint sought injunctive relief, the two suits were based on different causes of action. The basic harm suffered by the plaintiff city was, however, the same in both suits: the defendant cities were not acting in accordance

44. A “claim” is the procedural equivalent of the California “cause of action.”
46. Id. § 61, Comment b.
47. Id. § 61, Comment c.
48. Id.
49. 14 Cal. 3d 199, 537 P.2d 1250, 123 Cal. Rptr. 1; see notes 29-35 & accompanying text supra.
with the plaintiff's alleged pueblo right. The two actions differ, then, in the form of relief requested, which should be no more determinative with respect to whether one or two causes of action have been stated than whether different theories of liability have been propounded.

An Unnecessary Inquiry

Deciding whether a second suit is brought on the same or a different cause of action does not aid in solving the problem of when relitigation should be allowed after a change in law. The outcome of the cause of action question only leads to a determination that either merger/bar or collateral estoppel applies. When the parties to the two suits are the same, and when there is no dispute that the matter to be relitigated has been determined by the first judgment, it should not make a difference whether merger/bar or collateral estoppel applies.

In Moch v. East Baton Rouge Parish School Board, the Fifth Circuit expressed this conclusion in terms of simple logic:

We do not feel compelled to determine . . . whether a supervening change in the case law renders a subsequent claim a different cause of action, thus making collateral estoppel rather than bar applicable, or whether such a change constitutes an "altered circumstance" that renders bar, itself, inapplicable. If public interest in giving effect to changes in this important area of law outweighs [the defendant's] interest in finality under one doctrine, one would logically conclude that it would compel the same result under the other rule of preclusion.

The draft of the Restatement (Second) of Judgments reaches a similar result under section 68. The predecessor section in the first Restatement limited the collateral estoppel effect of litigated issues to situations when relitigation of the issue was sought in the context of a different cause of action. Section 68 of the draft of the Restatement Second states that when an issue is actually litigated and determined by a valid final judgment, and that determination is essential to the judgment, the judgment should be conclusive in a subsequent action.

50. It should be emphasized that this discussion of the irrelevancy of the existence of the same or a different cause of action in the second suit does not concern the situation where there is an allegation that matters which could have been determined by the first judgment, but were not raised, are now sought to be litigated in a second action. In such a situation, the definition of a cause of action assumes importance.
51. 548 F.2d 594 (5th Cir. 1977).
52. Id. at 598.
54. RESTATEMENT OF JUDGMENTS § 68 (1942).
55. The Restatement Second also expands collateral estoppel from the first Restatement to include issues of law in addition to issues of fact. RESTATEMENT (SECOND) OF JUDGMENTS § 68, Reporter's Note (Tent. Draft No. 4, 1977).
between the parties whether that suit is on the same or a different cause of action.

Following the logic of *Moch* and the *Restatement Second*, the determination of whether relitigation of the plaintiff's right to damages in *Slater v. Blackwood*56 and the plaintiff city's right to an injunction in *City of Los Angeles v. City of San Fernando*57 is to be allowed would proceed along identical lines. The primary consideration in both cases is whether an exception to the doctrine of res judicata should be made when there is a change in law subsequent to a final judgment. A test to determine when such an exception should be made is discussed in the second part of this Note.

An Alternative to the California Solution to the Change-in-Law Problem

The most simple solution to the problem caused by a change in law subsequent to a final judgment would be to treat the doctrine of res judicata as an immutable principle. Under this procedure, once a matter has been necessarily and actually determined by a final judgment, relitigation would never be allowed despite arguments that injustice would result. As this Note has demonstrated,58 this solution is not acceptable to California courts.

On the other hand, to rely on vague notions of "injustice"59 in determining when an exception to the doctrine of res judicata will be made would be to undermine the stability of a final judgment which the doctrine seeks to protect. Dissenting in *Greenfield v. Mather*,60 Justice Traynor posed just such a caveat:

> By what test are the trial and appellate courts of this state to determine whether the circumstances of a case are rare enough to justify a departure from the doctrine of res judicata? . . . The number of times this court has overruled earlier decisions is a reminder that principles of justice and policy are not static. No test emerges from the turbid generalities of the majority opinion; in fact it precludes any application of the doctrine of res judicata until the courts look behind each judgment to the specific circumstances of each case to determine whether those circumstances involve such considerations of policy or justice as to require a departure from the doctrine. The rule announced in the majority opinion therefore defeats the whole purpose of the doctrine of res judicata by casting the shadow of doubt on the finality of judgments.61

56. 15 Cal. 3d 791, 543 P.2d 593, 126 Cal. Rptr. 225 (1975).
58. See notes 16-21, 24-35 & accompanying text supra.
59. See notes 24-35 & accompanying text supra.
60. 32 Cal. 2d 23, 194 P.2d 1 (1948).
61. *Id.* at 37, 194 P.2d at 9 (Traynor, J., dissenting). The "rule" in the majority opinion
To address Justice Traynor's fear of "casting the shadow of doubt on the finality of judgments," while simultaneously preserving a court's option to allow relitigation in compelling cases, this Note suggests a test to be applied in situations when there has been a change in law subsequent to a final judgment. This test involves balancing the policy reasons which underlie the doctrine of res judicata against the reasons advanced in a given case for abrogating that doctrine in favor of relitigation. Cases in which the balance will favor relitigation will be rare. In those cases, however, when judicial and social interests would be only minimally served by requiring the parties to rest on a prior judgment, the balancing test would ensure a reasoned decision to allow relitigation.

Policy Bases of the Res Judicata Doctrine

The first step in the proposed balancing test is to identify the social values served by the doctrine of res judicata. Under the circumstances of a given case, some of these values will weigh more heavily than others, and some may not be served at all. Although countless rationales have been propounded by courts and writers, it is suggested that the bases for the doctrine may be grouped conveniently under three major headings: (1) benefits to the parties; (2) the functioning of the judicial system as an entity; and (3) public opinion of the judicial system.

Benefits to the Parties

A primary function of the doctrine of res judicata is to prevent a party from being harassed by vexatious litigation. If a plaintiff were free to press the same claim time and time again after judgment had been rendered in favor of the other party, the economic and psychological expense to the unfortunate defendant would be enormous. Further, there would be the possibility that variations in judgments from

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62. See text accompanying notes 64-71 infra.
63. See text accompanying notes 72-83 infra.
one suit to the next would impose conflicting obligations on a party\textsuperscript{65} and that the public policy which favors certainty in legal relations would be undermined by such a result.\textsuperscript{66}

\textit{Judicial Economy}

A second major function of res judicata recognized by courts and writers is the promotion of judicial economy.\textsuperscript{67} To allow repetitive litigation would place an intolerable burden on the court system. As the drafters of the \textit{Restatement Second} have noted, "The simplification of procedural systems, mounting calendar pressure and great increase in the costs of litigation have understandably led courts to be progressively more critical of needless repetition in resorting to judicial process."\textsuperscript{68} On a practical note, one writer suggests that a point will be reached in proceedings where it is unlikely that anything new and worthwhile bearing on the merits will turn up, and that a second trial may not be any better than the first.\textsuperscript{69}

\textit{Public Opinion of the Judicial System}

The third major rationale supporting the doctrine of res judicata concerns the public's conception of the courts. Application of res judicata serves to prevent inconsistent judgments whose existence undermines the integrity of the judicial system in a society which looks to the courts to decide the "truth" in any given dispute.\textsuperscript{70} Similarly, the authority of judicial decisions is jeopardized when courts readily recon-


\textsuperscript{68} \textit{Restatement (Second) of Judgments}, Foreward at vii (Tent. Draft No. 1, 1973). \textit{But cf.} Hazard, \textit{Res Nova in Res Judicata}, 44 S. Cal. L. Rev. 1036, 1041 (1971) (Res judicata and collateral estoppel not really explicable in terms of saving time by not allowing relitigation when compared to the burdens of elaborate discovery and other pretrial practices, trials, and appeals.).

\textsuperscript{69} F. James, \textit{Civil Procedure} § 11.1 at 518 (1965).

Interests to be Served by Allowing Relitigation: Some Suggestions

After a court has determined how the policies which underlie the res judicata doctrine will be served in a given case, the second part of the balance will be analyzed. Under the second part of the balancing test, a court will articulate the interests to be served by allowing relitigation. Factors which may be considered here include the interests of nonparties, the degree of reliance placed on the first judgment, and the quality of the rights of the parties which are involved.

Interests of Nonparties

A court's decision not to allow relitigation after a change in law may have an impact on the public in general or on a more limited class of nonparties to the suit. The interest of nonparties may be affected when issues in the suit involve a constitutional dimension or in situations when the business activity of a litigant is controlled by an interpretation of law which has changed subsequent to the initial determination. In Christian v. Jemison, for example, suit was brought to enjoin enforcement of a city ordinance which required racial segregation in buses. Because allegations of the unconstitutionality of the ordinance were improperly pleaded, the constitutional question was not reached by the court. After the United States Supreme Court had declared such segregation to be unconstitutional, some of the same plaintiffs again brought suit to enjoin enforcement of the ordinance, and relitigation was allowed.

A balancing of the social policies which would be supported by requiring the parties to rest on the first judgment in a case like Jemison and those policies which

72. See Restatement (Second) of Judgments § 68.1(e) (Tent. Draft No. 4, 1977).
73. See, e.g., Bronson v. Board of Educ., 525 F.2d 344 (6th Cir. 1975); Christian v. Jemison, 303 F.2d 52 (5th Cir. 1962).
75. 303 F.2d 52 (5th Cir. 1962).
76. The Fifth Circuit rested its decision to allow relitigation on "the general rule that res judicata is no defense where between the time of the first judgment and the second there has been an intervening decision or a change in law creating an altered situation." Id. at 55 (citations omitted). The general rule articulated by the Fifth Circuit is not followed in California. See Slater v. Blackwood, 15 Cal. 3d 791, 543 P.2d 593, 126 Cal. Rptr. 225 (1975).
would be advanced by allowing relitigation of the invalidity of the ordinance would most likely lead a court to a decision to disallow the res judicata defense.77

Reliance on the First Judgment

A second factor which may be considered in favor of relitigation is the degree of reliance placed on the first adjudication by the parties themselves. In Cochran v. Union Lumber Company,78 for example, a plaintiff sought to offensively invoke collateral estoppel to bind a defendant to an interpretation of a clause in a contract which had previously been litigated between the defendant and another party. A California court found the previous interpretation to be erroneous because of a misapplication of case law. The court declined to apply collateral estoppel, noting that were it to require the defendant company to be bound by the previous judgment that party would suffer a competitive disadvantage with respect to other companies which would be free to litigate the issue.79

Even if the parties to both suits were identical in a situation such as the one in Cochran, the same result might obtain if by the time of the second suit neither party had relied to its detriment on the first interpretation of the contract language. In such a case the argument that the doctrine of res judicata is designed to protect the parties to the litigation80 would be weakened while the argument in favor of relitigation would be strengthened. On the other hand, had one party relied on the previous judgment to its detriment, the case for upholding the res judicata defense would be strengthened.81

Quality of the Rights to be Protected

A third factor to be considered involves the quality of the rights of the parties to be protected by the application or nonapplication of res judicata. In a footnoted discussion in Monroe v. Trustees of the California State Colleges,82 the California Supreme Court said that it could

77. In contrast, a case such as Slater v. Blackwood, 15 Cal. 3d 791, 543 P.2d 593, 126 Cal. Rptr. 225 (1975), would not embody such important social policies and therefore, on balance, a court would not allow relitigation. See text accompanying notes 16-21 supra.
79. Id. at 428, 102 Cal. Rptr. at 636.
80. See text accompanying notes 64-66 supra.
81. See Traynor, Quo Vadis, Prospective Overruling: A Question of Judicial Responsibility, 28 Hastings L.J. 533, 561 (1977). Former Chief Justice Traynor suggests that a factor in the decision to apply a court's ruling prospectively would be when the hardship on the party who has relied on the old rule outweighs the hardship on the party who is denied the benefit of the new rule.
82. 6 Cal. 3d 399, 406 n.3, 491 P.2d 1105, 1109, 99 Cal. Rptr. 129, 133 (1971).
independently find no case where the retroactive application of a civil decision was held to revive a cause of action on which the statute of limitations had already run. The court noted, however, that in the criminal field courts may grant the benefits of a decision to imprisoned people whose time for challenging their convictions had expired. The court attributed this practice, in part, to the importance of the prisoner's interest in personal liberty. The court noted the possibility that the relief afforded a party to a civil action from the continuing disabilities of an earlier civil decision might be analogous to the release of a prisoner through habeus corpus under a fully retroactive criminal decision. Situations supporting this analogy would be rare, but in comparison to the interest of the opposing party to a civil suit there could be circumstances when a party seeking relitigation has been denied so fundamental a right in the initial suit that a new determination would be justified.

Conclusion

In response to changes in policy and attitudes about justice, a court will overrule its prior decisions or decide a matter differently than it would have at an earlier time. Such a change in law may be reason to allow relitigation of a matter which has once been laid to rest. In making its decision to allow relitigation, however, a court must be mindful of the values which the doctrine of res judicata protects.

In considering whether a new adjudication of a matter will be allowed after a change in law, California courts presently are diverted into a discussion of whether a second suit is grounded on the same cause of action as the first suit. This Note has suggested that the resolution of this issue is of secondary importance. The crux of the court's analysis should be whether the policies served by the doctrine of res judicata are of such importance that they should be protected in light of the values which will be served by relitigation in a given case.

Situations in which the balance of equities will tip in favor of relitigation will be rare. Some of the factors that should weigh in this balance have been suggested in this Note. Inflexible application of res judicata may lead to unwarranted hardship. Judicial restraint in creat-

83. In Monroe v. Trustees of the Cal. State Colleges, 6 Cal. 3d 399, 491 P.2d 1105, 99 Cal. Rptr. 129 (1971), the plaintiff was discharged from his position as a professor for refusal to sign a loyalty oath. The loyalty oath requirement was later declared to be unconstitutional. Plaintiff then sought reinstatement as well as back pay and pension benefits accruing from the time of his dismissal. The court held that the plaintiff was entitled to reinstatement and noted that the relief thus afforded from the "continuing disabilities of the earlier unconstitutional action is somewhat analogous to the release of a prisoner . . . under a 'fully retroactive' criminal decision." Id. at 407 n.3, 491 P.2d at 1110, 99 Cal. Rptr. at 134.
ing exceptions to the doctrine of res judicata will ease the fear that the potential of exceptions will become "an invitation to all unsuccessful litigants to relitigate their cases."\textsuperscript{84}

\textsuperscript{84} Greenfield v. Mather, 32 Cal. 2d 23, 36, 194 P.2d 1, 9 (1948) (Traynor, J., dissenting).