**Trial & Res Judicata (pt. 1): Monday, 11/8/13**

Terminating litigation before verdict

* Rule 56: summary judgment (after close of discovery)
  + Doesn’t need to be complete agreement between parties re: all facts
    - If you had complete agreement, the case could be resolved on a motion for a judgment on the peladings
  + Just need “no genuine issue as to any material fact,” which means that no reasonable jury could find for the nonmovant on the basis of the evidence that would be presented at trial
* Summary judgment compatible with 7th Amendment in federal court ?
  + 7th Am. hasn’t been applied to the states
  + **Yes, compatible**. No right to an unreasonable jury. Right to a jury if your claim concerns something that a jury could possibly find.
  + Historical argument: concept of a type of directed verdict existed at common law.
  + Twiqbal more problematic than summary judgment: Twiqbal might take away a jury trial from someone who could’ve gotten through discovery before Twiqbal.

Trial

* Pre-trial disclosure of evidence presented (except for impeachment evidence)
* Jury selection (see *Runaway Jury*)
  + *Voir dire* period:
    - Can knock out potential jurors for cause
    - Can knock out potential juror for no reason at all (preemptory challenges)
* Presentation of evidence
  + Plaintiff’s lawyer presents opening statement and plaintiff’s evidence (all before defendant presents any evidence)
    - Witnesses directly examined by plaintiff’s lawyer and cross-examined by defendant’s lawyer
    - At end defendant’s lawyer will often move for a directed verdict
  + Defendant’s lawyer presenting opening and evidence
    - At end both sides will move for a directed verdict
  + Directed verdict (after trial but before jury verdict)
    - No reasonable jury could find for opponent
    - Jury verdict
      * Sometimes questions are submitted to jury to determine if jury applied law to facts properly; sometimes questions are purely factual and judge takes jury’s answers and applies law to them.
* Judgment N.O.V. (notwithstanding the verdict—judgment as a matter of law)
  + Why? You’ve already motioned for directed verdict and obviously lost. Jury found for opponent. Why would court change its mind?
    - If directed verdict were granted at end of evidence and the decision to grant were reversed on appeal? Would have to have trial all over again—big cost to the court.
    - If defendant successfully moves for judgment n.o.v. after jury gave adverse judgment. If trial court’s decision to grant n.o.v. is reversed on appeal, they have jury verdict to fall back on.
* **Motion for a new trial** (**Rule 59**)
  + Points out some obvious reason to have a do-over of the trial
    - Not enough that court thinks that jury’s decision was wrong
    - Saying jury instructions were wrong, something went wrong procedurally, damages are really off-base given the evidence (right to ask for new trial if damages are contrary to the weight of the evidence).
  + Easier standard to satisfy than motion for directed verdict/motion for judgment n.o.v.
* Judgment
  + At this point, decision is legally binding on winner & loser
* **Motion for relief from a judgment** (**Rule 60**)
  + Newly discovered evidence somehow concealed by other side? Did you default on judgment?
  + Can go to rendering court and ask for motion to set aside judgment.
* Relief
  + Injunctive relief: backed up by sanctions to encourage compliance
  + Damages (in favor of plaintiff): creation of a debt; in order to execute the debt, plaintiff must go through debt collection process
    - Can happen through second court system (state court, after judgment rendered in federal court)
    - Courts can order defendants to pay money, but they RARELY do this (courts aren’t big fans of Debtor’s Prison)
      * Wouldn’t work if defendant were bankrupt; judgment would just get in line with defendant’s other debts (we want bankruptcy courts to take care of this)
* **Rule 69** (**Execution of judgment**—aptly titled)
  + - Process of enforcing judgment through rendering federal court (Action to collect the debt; debt collection laws are state laws)

Congratulations, you have your judgment. What effect does it have on future litigation?

* Judgment has to be binding on participants in some way.
* Res judicata is common law and there are differences between states (and state and federal law).
* (1) Final (2) valid judgment (3) on the merits:
  + If judgment is for plaintiff, plaintiff’s claim is merged in the judgment (all plaintiff has now is the judgment—claim has been replaced by judgment)
  + no new causes of action that plaintiff can bring against THAT defendant about THAT transaction.
  + Transactional standard is really the same as the standard for compulsory counterclaims (except parties are reversed)
  + If federal cause of action in federal court, transactional standard is FEDERAL.
  + If judgment is for defendant, plaintiff’s claim is extinguished. This is true for ALL causes of action that plaintiff could’ve brought for that same transaction.
    - Claim preclusion isn’t just about what actually ***was*** litigated; it’s about what ***could’ve*** been litigated concerning that transaction.
* **Judgment has to be (1) FINAL**:
  + Ex: P sues D for personal injury after car accident
  + P loses, appeals
  + While action is on appeal, P sues D concerning property damage connected with same accident
  + Even if appeal is ongoing, you are still barred from bringing claims re: same transaction.
    - What if the appeal is successful and the judgment disappears on appeal (e.g. if appellate court reverses and remands for new trial). You can bring your action.
    - If judgment remains after appeal then claim preclusion still applies
    - Cost: might have claim preclusion invoked in situations where actions could’ve been brought because judgment is later overturned
    - What if SOL runs out while you’re appealing?
      * If you were allowed to continue previous proceedings, you’re okay. If you have to start over and SOL has run out, you’re (generally) screwed.
  + Ex: P sues D for fraud
  + P loses
  + Next day, P discovers that D fabricated evidence
  + P sues D again for fraud
    - D can bring up claim preclusion. Judgment has not been ste aside or reversed on appeal.
    - **Never sue again—you’ll be claim precluded**. If something went wrong in earlier proceedings, make a motion to set aside the judgment before the rendering court (time limit: 1 year, though if there is some fault on opponent’s side, you can have a longer time). Or, appeal.
  + Ex: P sues D for battery in federal court
  + While action proceeds (before P v. D comes to judgment), D sues P in state court concerning his damages from the same brawl
  + Can P invoke the compulsory counterclaim rule? Yes. Compulsory counterclaim rule applies even if you don’t have a judgment.
    - NOTE: federal claim preclusion rule applies because federal court is first court here; second suit brought in state court makes the state court the second court.
  + Ex: P sues D for negligence in federal court re: car accident, asking for property damages.
  + While that action is proceeding, (before P v. D comes to judgment), P sues D concerning his personal damages in state court. Okay?
    - **No**. Prior action pending (not claim preclusion): defendant can get action dismissed (without prejudice) if P tries to sue D for same cause of action in state court after already filing the same suit in federal court.
    - Prior action pending does not require a final judgment
  + Ex: P sues D for personal injury in federal court in connection with car accident
  + D fails to appear and defaults
  + May P subsequently sue D in state court for property damages in connection with same accident?
    - No, claim precluded by the default judgment. Should have brought all of his causes of action in the first suit.
  + May D subsequently sue P in state court for his damages in connection with same accident?
    - Compulsory counterclaim rule doesn’t preclude D because he defaulted – did not submit a pleading (answer)
    - Could D default to preclude P from other causes of action concerning the transaction?
      * Yes. Plus, there are lots of things that P could’ve done in a normal suit that he couldn’t with a default judgment: discovery, amendment of pleadings.
      * Often, court will allow plaintiff to amend complaint if what he got in a default judgment was far less than what he could’ve.
    - Default judgments DO have preclusive effect.
* **Judgment has to be (2) VALID**:
  + If defendant appears, then defendant will have waived grounds to challenge validity of judgment later on PJ service or venue grounds. Usually, plaintiff can’t challenge validity of judgment on PJ or venue grounds.
  + Generally only works as a challenge if you have a default judgment.
  + Ex: P sues D in federal court.
    - There is no SMJ, but no one notices.
    - D gets a judgment
    - P then tries to sue D again concerning same T/O on ground that earlier judgment is invalid for lack of SMJ.
    - Can P attack for lack of SMJ after judgment has been entered? NO. Could attack if the judgment in the original proceedings, even if it were still in appellate process.
    - Could attack for lack of SMJ after judgment entered if defendant defaulted in first action.
  + Ex: P sues D for IIED.
  + D gets action dismissed via 12(b)(6), alleging P did not allege requisite intent.
  + P re-sues for ***negligent*** infliction of emotional distress.
  + Is a dismissal for failure to state a claim a dismissal **on the merits**? Will it have preclusive effect?
    - YES. Unless court says it is w/o prejudice. That is why you must be careful that if the court dismisses for failure to state claim, you get the court to explicitly say that the dismissal is ***not on the merits***.
    - This is why if a motion to dismiss via 12(b)(6) is accompanied by a chance for plaintiff to amend complaint.

**Defense Preclusion**

* Claim preclusion basically binding on the plaintiff (if he loses, that’s it; if he wins, no more money than he got in the first place)
* Claim preclusion also binding on the defendant via defense preclusion
  + Usually these are brought by pro se litigants who screwed up somehow and want to undo the earlier suit
* Ex: P sues D (often a *pro se* litigant) for nuisance in state court
* P gets injunction
* D then brings suit against P in federal court for injunction against state court ordering it to not enforce first judgment
  + Don’t bring a new suit. You’ll be precluded. If D really thinks something went wrong in the earlier suit, he should appeal.
* Ex: P sues D
* Gets judgment for $100K
* Court executes judgment
* D sues P to get restitution of amount paid (that’s actually MY money)
  + No. Defense preclusion applies. Stop filing new suits!
* Ex: P sues D for breaching a contract requiring D to give P coal every winter.
* In suit, D challenges validity of contract.
* Court determines contract valid and P wins damages from D.
* Next winter, D breaches again.
* P sues again for breach
* Is P’s claim precluded?
  + No—this is a different instance, just same kinds of circumstances.
* D once again challenges validity of the contract
  + P can claim this is ISSUE PRECLUSION (not defense preclusion—D isn’t trying to undo the earlier judgment).
  + D is trying to re-litigate an issue that was fully and fairly litigated between parties in earlier suit—the **validity of the contract**. (will discuss later)

**Scope of a claim**: what can be precluded within the claim?

* *Williamson v. Columbia Gas & Electric* (3d Cir. 1950)
  + Williamson brought 2 suits against D in federal court in DE: one in February saying Columbia was conspiring with other companies (Sherman Act—requires antitrust violators to work in concert) and claiming injuries
    - Second suit in September of that year under Clayton Act (company is being a monopolist all on its own) against only Columbia.
  + Both suits brought before D. Del., same plaintiff, same defendant.
  + 2nd suit knocked out: parties made a stipulation and SOL ran out (dismissal on the merits)
    - Court used DE SOL because sometimes, federal statutes don’t have SOLs within them. Must be some limitation, so borrow the analogous SOL from the forum state.
  + 1st suit barred by same stipulation?
    - Not barred on SOL grounds. Conspiracy can be ongoing—extends accrual date for SOL
    - 1st action barred on *claim preclusion* bounds. Should have been brought together with the 2nd claim.
      * INCENTIVE TO JOIN ACTIONS: If you fail to join your actions and one of them comes to a judgment, the other action is barred.
  + Does it matter that the precluding claim was brought after the precluded one?
    - No. All you need is a final judgment—regardless of which claim finished first.
* To sue for malpractice in a situation like this, plaintiff would have to show that he would’ve won on the precluded suit when suing his lawyer later.
* Should we punish defendant for not bringing up prior action pending defense when the 2nd suit arose?
  + Not recognized in Williamson
    - Modern approach: yes, burden on defendant too. If defendant acquiesces in claim-splitting (two suits going on at the same time and defendant doesn’t bring up prior action pending as a defense), he cannot invoke claim preclusion after one suit comes to judgment.
      * P sues D in PA state court for personal damages concerning a PA accident
      * While that suit is going on, P sues D in PA state court for property damages sustained in same accident?
      * First suit comes to judgment. Is second barred by claim preclusion? No, not if defendant didn’t bring prior action pending as a defense.
      * What if second suit had been filed after 1st suit came to judgment?
      * Claim preclusion is a defense. Defendant didn’t acquiesce to simultaneous suits
      * What if D brought up prior action pending against the 2nd suit (instead of bringing it up after one of the suits reaches a judgment)?
      * P can just bring the cause of action from the 2nd suit into the 1st suit by amending his 1st complaint.
* Claim preclusion can be brought up *sua sponte* by the court.