**Review-Claim Preclusion**

**Scope of claim**- Determines what is going to be barred

-Federal approach follows 2nd Restatement § 24- same transaction or series of connected transactions

-Transaction- takes into account of a lot of factors (parties’ expectations of understanding/usage, united together in time, space, origin, etc.)

-Even if have independent wrongdoings, could be same series of transactions b/c could be united in time (one right after another), united in place (happens in same spot), united by motivation (get off train), witnesses likely to be the same

-Business practices may have relevance (different transactions bought at different times)- have duty to bring amount on running account all at once or lose it b/c claim preclusion

-Contracts- entire contractual transaction (breach of contract) all claims associated with the breach have to be brought together

**On the Merits**

-Can’t have claim preclusion unless judgment on the merits- term of art, conclusory term saying that judgment is claim preclusive

-Restatement § 20- not on the merits: lack of jurisdiction, improper venue, non-joinder of parties, voluntary dismissal (sometimes is still w/ prejudice) – these do not have claim preclusive effect

-Prematurity of action- don’t have concrete disagreement yet (not sufficient harm yet) so court dismisses that premature cause of action- would not have claim preclusive effective

- US Constitution Article III stands behind requirement of ripeness in federal court

-Failure to satisfy precondition of suit (certain hoops have to jump though- i.e. having to post bond)- don’t have claim preclusive effect

-On the merits-go to trial and win/lose, summary judgment, directed verdict, dismissal for failure to state a claim (now generally treated as on the merits unless court explicitly says its not)—have claim preclusive effect

**New Material- Issue Preclusion**

-Not about stuff should have done and didn’t do (this is claim preclusion)

-About what was done (issue was brought up and actually litigated and decided)

-If in earlier case an issue was actually litigated and decided, litigated fairly and fully, and essential to the decision then the earlier determination of the issue precludes re-litigation of the same issue by someone who was a party or in privity w/ party in the earlier litigation

***Little v. Blue Goose Motor Coach***

-Blue Goose suing Little (in justice of peace court) for negligence… judgment for P and found that Little was negligent

-State law required P to show that D negligent and also that P was not contributory negligent

-2nd lawsuit: Little sued Blue Goose in city court for recklessness/wanton negligence and ordinary negligence (would be a compulsory counterclaim if 1st case brought in federal court but no compulsory counterclaim rule in 1st court)

-Trial court rejected issue preclusion but appellate concluded that issue preclusion applies

-Little is precluded from relitigating issue that was already decided in previous action - Little was found negligent in 1st suit so must be held contributorily negligent in 2nd

-Contributory negligence is NOT a defense for recklessness, so how is that action barred

-Already relitigated that Blue Goose was not negligent in 1st suit

- so issue of BG’s recklessness is barred by issue preclusion

-Little privity issue: 2nd action actually brought by wife b/c husband died where 1st lawsuit was brought against husband- determined the parties were in privity

-Wives not in privity w/ husband-relevant fact is that she was the executor of his estate

**Why have issue preclusion?**

-Efficient b/c issue already decided so why go through it again- already had chance to argue and present evidence

 -Consistency b/c could otherwise have two contradictory rulings on the same issue

-But can still have this if new lawsuit brought by a different party but at least issue preclusion reduces this

 -Perpetuates errors- if 1st determination in error then perpetuates

-Special worries that party that is issue precluded when didn’t have incentive to litigate vigorously in 1st lawsuit

-I.E. company sued by P for 10 cents b/c product defective-don’t put up much fight and then P wins… new people come in and want to take advantage… company possibly wasn’t adequately motivated to litigate lack of defect vigorously

**Needs to be same issue**

-Not about what should have brought up… if not actually litigated and decided can bring up in 2nd suit

-If too discriminating about scope of an issue, then will never be able to apply issue preclusion b/c too narrow – the issue will always be said to be different

- so there is some flexibility about what is the same issue

- assume D found not negligent when P argued that he was negligent because he was speeding

- that will bar P from relitigating D’s negligence even if his new argument ius that D was negligent because he was looking the other way

- the issue – D’s negligence – is the same

--What is same issue- a little bit of wiggle room

-Got new evidence showing that issue was determined wrongly in 1st trial- too bad… don’t want them to wiggle out b/c then wouldn’t really have issue preclusion

-Put finality to issue even if determination of issue was wrong

***Jacobson v. Miller***

-P sues two people for installments on rent. D1 doesn’t deny that signed the lease but says that D2 was actually using- D1 loses.

-Allegation of execution in the P’s complaint – D admits it in the answer and offers different defense.

-2nd suit for new installments (new transaction)- D now challenges execution of lease even though admitted last time but now wants to deny

 -Is an admission actually litigating/deciding?

 -Admissions are not actually litigation/decision so not binding

-May be strategic in admitting b/c if denied then would have to litigate-choosing battles… cutting down on litigation by admitting and encouraging efficiency

-Problem with this-if D had denied that signed lease in 1st action then P would have leased to someone else… P relied on D admitting

-Admission can sometimes induce reliance and that reliance can be unfair

**What is considered actually litigated and decided**

-D introduces contributory negligence at trial. At trial no evidence for or against contributory negligence is offered by either side- finds for P

 -Would be issue precluded from relitigating P’s negligence

-Summary judgment is issue preclusive-based on evidence on each side that no reasonable jury could find in favor of non-movant

-Default judgment (have claim preclusion effect) about findings- not issue preclusive

-Consent judgment- you beat me up and I sue you and we settle you give me $10K and I won’t sue you

 -Would be breach of contract if turned around and sued

-Parties also often ask for consent judgment from court in settlement agreement so it will be a judgment so will claim preclude

-Consent judgment is giving extra force to settlement agreement- consider what the intentions of the parties… put into agreement if want but if not then would be unfair to consider the consent judgment to have issue preclusive effect

-If D drafting consent judgment- say no issue preclusion effect

**Issue must be essential to the judgment**

***Cambria v. Jeffery***

-1st suit J sued C and found J contributory negligent and C was negligent… judgment for C b/c J contributory negligent

-2nd suit C sues J for negligence (no compulsory counterclaim rule in 1st court)

 -Trial Court Judge ruled for J b/c already found C was negligent in 1st case

-Found not binding on 2nd suit b/c C’s negligence was not essential to the 1st case judgment

-If no determination about C’s negligence in 1st suit, C would still win b/c J was contributory negligent

-Figure out who won and what factual finding necessary to get to that judgment-necessary that J was contributory negligent

-To find for C in 1st suit wasn’t necessary to find C negligent, necessary to find if J was contributory negligent so that only finding of J’s contributory negligent is binding in subsequent suit

**Why have essential requirement for issue preclusion?**

-Finder of fact may have no real incentive to give good weight to the non-essential issues b/c know it is non-essential… finder of fact might not be taking it seriously b/c know it’s not essential

-Sometimes courts will have more flexible approach to determine if fact finder was taking it seriously even if issue not essential

**Example:** P sues D for interest on note. D alleges fraud in execution of note and release of obligation to pay interest. P wins. P then sues for principal. D brings up fraud in execution of note. Is D issue precluded?

-Was finding of both issues brought by D in 1st case necessary to rule in favor of P? YES- both of those were essential to judgment so when D brings up fraud in 2nd case then D is issue precluded

**Example:** P sues D for interest on note. D alleges fraud in execution of note and release of obligation to pay interest. D wins on both grounds. P then sues for principal. D brings up fraud in execution of note. Is P issue precluded?

-Were both essential for D? NO b/c either would have worked… neither is essential b/c either is sufficient

**When no finding is essential b/c either would be sufficient: ways of handling:**

 -1st Restatement: both preclusive… seems to be unfair

 - Some case law-neither binding

-Would incentivize to only bring up one issue to argue your point b/c then otherwise all issues you bring up and you win wouldn’t be issue preclusive

-2nd Restatement- neither preclusive unless appellate determination- determination of whether issue was taken seriously

**Example:** P sues D for interest on note. D alleges fraud in execution of note and release of obligation to pay interest. D wins on both grounds. P then sues for subsequent interest. D alleges fraud in execution of note and release of obligation to pay interest.

 -Bring up both offered by D & we know one of them is good

-If two different determinations on same issue w/ same parties in different litigation- which one is preclusive?

-Last in time rule: last determination is preclusive—to incentivize P to bring up in 2nd decision and if not then considered that you waived it

-If issue preclusion determined by a court then that is issue precluded!