Lect 25

Claim Preclusion – the transactional standard

Commercial Box

Both actions grew out of a single contract to supply ammunition boxes.

1st - commercial box recovered damages that resulted from a change in the destination of the boxes

2nd  - action brought to recover deductions wrongfully made by the buyer for prompt payment – actually not promptly paid

* DCt held claim preclusion applied
* Ct App held no claim preclusion – different “causes of action”
* The question is not whether they are different causes of action, but different transactions

Consider following simpler case

P sues D for breach of contract – the product sent to P was defective. P asks for damages.

May P sue later for the amount that D overcharged P for the product?

* No – claim precluded
* So it is probably the case that a suit for too little payment and a suit for the increased difficulty of performance under the same contract concern the same transaction

What explains the Ct App’s decision then?

* comm. box testified that at the time of the first action the buyer had represented that if the action were confined solely to the change-of-destination question “there would be more likelihood of payment.”
* D *consented* to separate actions

Change of LAW

P sues D (a municipality) for employment discrimination on the basis of sex under Title VII of the Civil Rights Act of 1964. Judgment for P with inj relief, but no compensatory damages, since it was held they are not available under Title VII

Subsequently the Supreme Court decides that compensatory damages are available against municipalities under 42 USC 1983

P sues D under 1983 for compensatory damages for the past employment discrimination.

Claim precluded? YES –

* It would be catastrophic if claim preclusion could be avoided due to subsequent changes in the law – judgments could always be revisited
* P should have brought the novel argument that changed the SCt’s mind herself

exceptions to claim preclusion

1. African-American students as a class bring suit against school board for racial discrimination. The court holds that segregated schools is compatible with the 14th Amendment and enters judgment for the defendant. Afterward in Brown v Board of Education, the United States Supreme Court in another action between different parties strikes down as unconstitutional segregated education. The plaintiff class brings a new action. Claim precluded?

No –

Rest (2d) Judg 26(f) Exceptions to Splitting a Claim
It is clearly and convincingly shown that the policies favoring preclusion of a second action are overcome for an extraordinary reason, such as the apparent invalidity of a continuing restraint or condition having a vital relation to personal liberty or the failure of the prior litigation to yield a coherent disposition of the controversy.

P sues D for mild asbestosis caused by asbestos exposure. P receives damages. Years later, he develops deadly mesothelioma, a cancer caused by asbestos. P sues D for this harm. Claim precluded?

Here courts are in conflict – some hold the P claim precluded, although often the relevant law allows an action for the risk of cancer and the P did not take advantage of that action at the time of the first suit

Others hold that the 26(f) from the 2nd Rest. applies

BUT – when one gets beyond asbestosis cases, it is quite common for a P to be claim precluded from bringing suit for later appearing injury

More on the scope of a claim

P sues D Railroad alleging that the conductor was negligent in starting the car while P was disembarking and that as a result P broke his arm. After judgment for P, P brings a new action against D alleging that after disembarking from the car he fell into a trench negligently left by D beside the road and broke his leg.

Here the overlap in time and place recommends that they concern the same transaction, although the harm and the wrongdoing are different

Adjudication on the merits

§ 20. Judgment For Defendant—Exceptions To The General Rule Of Bar
(1) A personal judgment for the defendant, although valid and final, does not bar another action by the plaintiff on the same claim:
(a) When the judgment is one of dismissal for lack of jurisdiction, for improper venue, or for nonjoinder or misjoinder of parties; or
(b) When the plaintiff agrees to or elects a nonsuit (or voluntary dismissal) without prejudice or the court directs that the plaintiff be nonsuited (or that the action be otherwise dismissed) without prejudice; or

(c) When by statute or rule of court the judgment does not operate as a bar to another action on the same claim, or does not so operate unless the court specifies, and no such specification is made.
(2) A valid and final personal judgment for the defendant, which rests on the prematurity of the action or on the plaintiff's failure to satisfy a precondition to suit, does not bar another action by the plaintiff instituted after the claim has matured, or the precondition has been satisfied, unless a second action is precluded by operation of the substantive law.

Dismissals that are w/o claim preclusive effect

lack of PJ, lack of SMJ, improper venue, nonjoinder of parties

voluntary dismissal

prematurity of action – eg not ripe

failure to satisfy precondition for suit, eg service, posting bond

what about failure to state a claim

* Presumptively with preclusive effect in federal court
	+ That is, preclusive unless ct says it isn’t

Counterclaims

*Rule 13. Counterclaim and Crossclaim

(a) Compulsory Counterclaim.
    (1) In General.  A pleading must state as a counterclaim any claim that — at the time of its service — the pleader has against an opposing
party if the claim:
        (A) arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim; and
        (B) does not require adding another party over whom the court cannot acquire jurisdiction.
    (2) Exceptions.  The pleader need not state the claim if:
        (A) when the action was commenced, the claim was the subject of another pending action; or
        (B) the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the
        pleader on that claim, and the pleader does not assert any counterclaim under this rule.*Purpose is efficiency

* Parties are already litigating against each other and the evidence overlaps
* What happens when you have two court systems – which law do you use

Assume NY does not have a compulsory counterclaim rule.
•    P sues D in NY state court
•    D fails to bring a cause of action against P that concerns the same T or O as P’s claim against D
•    D subsequently sues P in federal court on the cause of action he refrained from bringing in the New York suit
•    Is D barred from bringing the cause of action anyway?

No – use NY law

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•    P sues D in federal court
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•    Is D barred from bringing the cause of action anyway?

Yes – use federal law

 exceptions to Comp CC rule

 the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.

- if P sues D in federal court in a quasi in rem action and D makes a limited appearance (pretty rare now), the D does not have to bring what would otherwise be compulsory counterclaims unless the D choses to counterclaim permissively, in which case the compulsory counterclaim rule applies

- P sues D in state court for battery.
- While that action is proceeding D sues P in federal court for D's damages from the same brawl.
- Is P required to bring his battery action in the federal court as a compulsory counterclaim to D's federal suit against P?

- no – this exception “(A) when the action was commenced, the claim was the subject of another pending action” applies

- but why isn’t D prohibited from bringing an action against P in federal court in the first place?

- the state court where P is suing D may not have a compulsory counterclaim rule…

* P sues D in California state court for breach of a contract to pay for securities
- D fails to join an action against P for violation of federal securities law that concerns the same transaction or occurrence as P's action against D
- California has a compulsory counterclaim rule.
- Subsequently D brings an action in federal court in California against P for violations of federal securities law
- P claims the action is barred under California's compulsory counterclaim rule
- What result?
* Not barred – the federal securities law action has exclusive federal SMJ and California preclusion law would surely not consider an action precluded by a Ca. judgment if it could not have been brought in the proceedings that led to the judgment
1. Officer P sues arrestee D in California state court for battery in connections with P's assert of D. California has a compulsory counterclaim rule.
- Must D join in his answer his federal civil rights action against P concerning P's actions in the arrest?

YES – same transaction
-  If D brings the counterclaim, may P remove?

NO – Ps may not remove

- If D brings the counterclaim, may D remove?

NO – No one has to look to the well pleaded complaint – what P is suing D for (Mottley)

As a result….

1. Officer X knows that he is likely to be sued under federal civil rights law by Y, someone he arrested. He feels that a state court would be more favorable to him than a federal court. How might X use the compulsory counterclaim rule (assuming it applies in state court) to ensure a state court forum for Y’s federal civil rights action?

X can sue Y in state court on a state law cause of action (eg battery) concerning which the federal civil rights action is a compulsory counterclaim. Y will have to bring it and Y will not be able to remove.

* P sues D in federal court
•    D makes pre-answer motion to dismiss for failure to state a claim
•    D is granted motion
•    Subsequently D sues P in federal court on cause of action that concerns same T/O as P’s earlier claim against D
•    P asserts defense that D is precluded from bringing action because it was a compulsory counterclaim in the earlier suit?
•    Barred? No – only a pleading (an answer) must state a counterclaim
* If you never submit a pleading you have no compulsory counterclaim obligation
* if you answer you must bring them up (a reason to submit a preanswer motion rather than an answer)
* - BUT if the P’s action gets dismissed early, you can request that the court dismiss your compulsory counterclaims w/o prejudice

The transaction/occurrence standard

Williams v. Robinson

- case is before D.D.C.

Plaintiff?

 - Williams the alleged adulterer

Defendant?

 - Robinson the husband

- what is suit for

 - libel and slander (R claiming W committed adultery)

What does D do in response?

 - argues that the libel action was a compulsory CC in earlier suit

- what was the earlier suit??

 - Mrs. Robinson filed suit against husband (Mr. Robinson) for maintenance

 - in what ct?

 D.D.C.

 - note how strange it is to have family matters in federal court but it used to be that DC district ct was the only trial court in DC. Now there are separate “state” and federal courts there.

- note that family law actions might have diversity jurisdiction

- but federal courts will not take them – this is a judicially created family law exception to diversity SMJ

 - Robinson counterclaimed in his answer asking for a divorce on ground of adultery and joined Williams

 - Williams answered

 - but didn’t assert slander and libel action as counterclaim

 - can you have a compulsory counterclaim to a counterclaim? Yes

- was Mr. Robinson’s action against Mrs. Robinson a compulsory or permissive counterclaim

 - one reason it was permissive...

 - if it was compulsory, then Mr. Robinson would never be able to sue for divorce again

Back to whether defamation action concerned the same transaction as the divorce action

 - not a compulsory counterclaim

 - what is the transaction for adultery action (the adultery)

 - what is the transaction for the libel case (the speaking of the adultery)

- but isn’t the compulsory counterclaim rule about evidentiary overlap?

 - the two actions would be about the same issue – did adultery occur?

 - the witnesses would likely be the same

Green: this is a sign that evidentiary overlap is not dispositive

Permissive counterclaims

 - if P sues D, D may join any cause of action against P, not matter how unrelated