Lect 30

Issue preclusion

If in an 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 relitigation of the same issue by someone who was a party or in privity with a party in the earlier litigation

Little v Blue Goose Motor Coach

SCt Ill 1931

- Dr Little collided w/ a Blue Goose bus

- Blue Goose sued Little in justice of the peace ct under negligence for damages to the bus and got $139

- while that suit was going, Little brought a personal injury action in city ct of E. St. Louis

- died and executrix (wife) became P

- alleged negligence & willful & wanton negligence (recklessness)

- Blue Goose claimed estoppel by verdict (issue preclusion) - denied

- judgment for P

- appealed

- reversed (issue preclusion applies)

- appealed

- affirmed (issue precl applies)

Different parties?

 - doesn’t matter – decedent is in privity with executor of estate

 - how will issue of Little’s negl decide the wife’s suit for negl on the part of the bus co?

 - he is contributorily negl

 - but she also alleges recklessness, to which contrib negl is not a defense

 - doesn’t that mean the issue of whether the bus co was reckless is still open?

 - no, was decided in earlier case as well because under Ill law the burden is on P to show he was not contrib negl

- since that was shown, Co could not have been reckless

Why is issue precl good?

- finality, efficiency, consistency

Why is it bad?

- 1st decision may not be right – issue preclusion expands the effect of the error

- burdened party may have had no idea that so much was riding on the litigation of the issue

1) Notice: must be the *same issue* – but some wiggle room

* P sues D for breach of a contract to buy 10 shares of the C Corp. every month for 2 years
* D introduces the defense of fraud, on the ground that at the time they entered into the contract P lied to D about the C Corp.’s oil assets
* D loses on that issue; judgment for P
* Subsequently D breaches the contract again
* P sues D and D introduces two defenses:
	+ statute of frauds (the contract was not in writing)
	+ fraud (at the time that they entered into the contract, P lied to D about the C Corp.’s coal assets)
* Is D issue precluded?
	+ not concerning statute of frauds – issue preclusion is about what was actually litigated, not what should have been
	+ would be precluded about fraud, even though coal assets were not litigated

Jacobson v. Miller SCt Mich 1879

P sued for installments on rent

- no denial of execution (D claimed other person was using the property)

 - in subsequent action for new installments, the execution of the leases was challenged

 - held that admission does not have issue preclusive effect

 - not actually litigated

 - plenty of reasons to admit even if you think it is not true

Problem: in some circumstances, might that not undermine the reliance that the P had on his earlier judgment?

* what if it had been determined that there was no execution in the first suit?
	+ the P would have gotten another tenant

Actually litigated and decided requirement

* P sues D for negligence
* D introduces the affirmative defense of contributory negligence in his answer
* At trial, no evidence for or against contributory negligence is offered by either side and the jury finds for P
* Would D be issue precluded from relitigating P’s negligence?
* Yes

default judgments?

 - could take there to be issue preclusion on every issue necessary for judgment

 - courts used to do that

 - now courts generally allow no issue preclusion

summary judgment? directed verdict?

 - yes issue preclusion

consent judgments?

- a consent judgment is a judgment issued by a court at the consent of the parties pursuant to a settlement agreement

 - shouldn’t have issue preclusive effect (unless that is part of the settlement agreement) but some courts allow it

 - so must be careful

- best to say in settlement agreement no issue precl effect

Another requirement for issue preclusion

Was it essential to the judgment?

- important because may not have been vigorously litigated or taken seriously by the finder of fact if not essential

- and appellate review may not be available if not essential

Cambria v Jeffery

SCt Mass 1940

Two autos, one owned by (Cambria) and driven by his servant and the other owned and driven by (Jeffrey) collided

in first suit Jeffrey sued Cambria for bodily injuries and auto damage

- ct found that both Jeffrey and the servant were negligent and denied recovery to Jeffrey because he was contributorily negligent

Subseq’ly Cambria sued Jeffrey for damage to auto

- jury found for Cambria

- judge entered verdict for Jeffrey on ground that negligence of both Jeffrey and Cambria’s servant had been determined

appealed

- reversed

- finding that servant was negligent was not necessary to judgment for Cambria, since all that was needed for that was that Jeffrey was contributorily negligent

Subseq’ly Mass SCt backtracked in the Home Owners Fed savings Case, saying that if an issue was treated as essential by the court even if not strictly essential it can have issue preclusive effect

* some courts take this approach

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?

Yes

- 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?

Alternative determinations – neither is necessary because each is sufficient

First Restatement - both preclusive

* problem – could be that one wasn’t taken seriously by the finder of fact

Halperen – (2d Cir 1970) neither preclusive

* problem – this discourages one to introduce multiple grounds for a judgment in one’s favor– plus one clearly was taken seriously by the finder of fact

2d Rest –

neither unless there has been an appellate court determination

- but this discourages appeals

* some courts systems will allow preclusive effect if the issue was treated as seriously by the finder of fact - careful process of decision

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
- Is P issue precluded? Yes

- this is different, each finding in the first would also be sufficient in the second

* P and D contract for D to deliver coal to P monthly
* D breaches
* P sues D in California
	+ D argues that the contract is invalid, D loses on issue
* D breaches again
* P sues D in Nevada
	+ D argues that the contract is invalid, P does not mention issue precl.
	+ D wins on issue
* D breaches again
* P sues D in California
* Which determination has issue preclusive effect?
* last in time

Why use last in time rule?

* in our example it would encourage D to argue issue preclusion

P and D contract for D to deliver coal to P monthly
- D breaches
- P sues D in California
- D argues that the contract is invalid, D loses on issue
- D breaches again
- P sues D in Nevada
- D argues that the contract is invalid
- P brings up issue preclusion, but the Nevada courts fail to give the Ca. determination FF&C
- the USSCt does not take cert.
- D wins on issue
- D breaches again
- P sues D in California
- Which determination has issue preclusive effect?

Here harder but still the later judgment has preclusive effect. Cal. ct must respect Nevada determination of issue