Scope of a claim – the transactional test

Ex. 1: 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.

*Answer: Claim precluded; arises out of same transaction.*

Ex. 2: B owes A $500 on an obligation that matured on February 1

A visits B on June 1 and requests payment, whereupon B commits an unprovoked assault upon A; A sues B on the debt and recovers

May A maintain a second action against B based on the assault?

*Answer: Separate transactions under the Transaction Test. There is not an obligation to sue the D for all wrongs against you; they must’ve been part of the same “transaction” to be precluded.*

Ex 3: D buys goods at P store on credit during January, February and March

In April P sues D for the debt incurred in January if

May P later sues for the debt incurred on February or March?

*Answer: If there’s a running account, you have the duty to sue for the entirety of the account; falls under the same transaction using test; claim precluded.*

*There might not be claim preclusion in this case if at the time the action was brought in April the February and March debts were not in arrears – this is an example where the scope of a transaction takes into account business understanding or usage*

**Privity**

- guardian/ward

- trustee/beneficiary

- executor/ decedent

* Examples where someone who was not a party to earlier litigation is precluded in subsequent litigation

Ex. 1: P as guardian of X sues D for negligence in an accident in which X and D were involved

P loses (D not negligent)

X, upon obtaining maturity, then sues D for negligence in connection with the same accident

Precluded?

*Answer:* *Yes, this is binding because P is acting for X as the guardian on the first lawsuit.*

* *X is claim precluded*

Ex. 2: P sues D to determine whether P has an easement to D’s property

P wins

D sells the property to X

X finds P on his property and sues P in ejectment

P defends on the ground of the easement

Is X claim/issue precluded?

*Answer: Yes, because X is a SUCESSOR OF INTEREST, and is bound by the previous litigation of D with regards to the property.*

P as guardian of X sues D for negligence in an accident in which P, X and D were involved

X loses (D not negligent)

P then sues D in individual capacity for negligence

Precluded? NO

*Answer: General rule, just because there’s one transaction doesn’t mean that all parties have to sue together. There has to be a relationship of privity in order to bind the parties. In this example, P is not precluded because there are different harms to P and X, and P was suing as the guardian for X, and would not be barred from suing on his own. P could have joined his claim with X’s claim, but he did not have to. There is no issue or claim preclusion.*

*\* There is no privity relationship between parents/children, husbands/wives.*

water from river flowing from D’s property down to P’s is flooding P’s property  
P sues D to get D to build a dam  
P wins  
X, who knew about the suit but did not intervene, sues D to get D to take down the dam because water backing up from the dam is going on X’s property

there is a cutting-edge doctrine in some states of precluding X in such cases – (like what Congress did by statute in civil rights cases)

* It is there to keep D from, being subject to inconsistent obligations
* This is a narrow exception to the view that only a party or someone in privity with a party in earlier litigation can be precluded in a subsequent action

**Exceptions to Claim Preclusion**

From the 2nd RSoJ

1. The parties have agreed in terms or in effect that the plaintiff may split his claim, or the defendant has acquiesced therein
2. The court in the first action has expressly reserved the plaintiff's right to maintain the second action
3. The plaintiff was unable to rely on a certain theory of the case or to seek a certain remedy or form of relief in the first action because of the limitations on the subject matter jurisdiction of the courts or restrictions on their authority to entertain multiple theories or demands for multiple remedies or forms of relief in a single action, and the plaintiff desires in the second action to rely on that theory or to seek that remedy or form of relief.

P brings a state antitrust action against D in state court

Judgment for P

P then brings a federal antitrust action concerning the same transaction in federal court – precluded?

*Answer: Not precluded; P can bring the federal antitrust claim only in federal court (SMJ).*

P brings a quasi in rem action against D for $2000 in unpaid lawyer’s fees in Oregon state court.

The value of the property is $1000

Oregon allows limited appearances and D makes such an appearance.

Judgment for P for $1000

P then brings an in personam action against D in D’s domicile (Ca) for the remaining $1000

precluded?

*Answer: Not precluded; P could not bring the extra $1,000 in Oregon state ct because there was a PJ requirement that was not met; the remaining $1,000 claim could not have been brought before.*

1. The judgment in the first action was plainly inconsistent with the fair and equitable implementation of a statutory or constitutional scheme, or it is the sense of the scheme that the plaintiff should be permitted to split his claim

Ex. 1: African-Americans as a class sue city for racially segregating school

this is pre-*Brown* and the plaintiffs lose

*Brown* is decided

*Ps are not claim precluded to sue again.*

* + (e) For reasons of substantive policy in a case involving a continuing or recurrent wrong, the plaintiff is given an option to sue once for the total harm, both past and prospective, or to sue from time to time for the damages incurred to the date of suit, and chooses the latter course
    - Ex: temporary vs. permanent nuisance
      * if Temporary allowed to sue up until particular point
      * if Permanent must sue for future damages
    - Hypo: 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?
      * Set aside question of whether the later action is barred by the statute of limitations, which is also a possible problem
      * State law is conflicted on this but by and large finality as most important!
      * some states allow an exception using…
      * (F) 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.
      * In general, suits for damages that arise later from the same transaction are barred

**Issue Preclusion**

* Precludes relitigation of the same issue by someone who was a party or in privity with a party in the earlier litigation
* Requirements
  + Actually litigated and decided
  + Litigated fairly and fully
  + And essential to the decision
    - Not always necessary that there was a final valid judgment on the merits as long as the issue itself has been decided
      * Ex: issue of PJ out was actually decided from an earlier lawsuit that is still going on can be binding on the same party in a subsequent lawsuit

**Felger v. Nichols**

* + Nichols sues Felger for lawyer’s fees
  + Felger brings up the defense that Nichols’s work was inadequate
  + Judgment for Nichols
  + Felger sues Nichols for malpractice
  + Nichols successfully brings up issue preclusion
    - Why not claim preclusion?
      * Different party suing
    - Why not compulsory counterclaim rule?
      * MD doesn’t have the compulsory counterclaim rule
    - Same Issue?
      * It could imagine that the inadequacy that was at issue in Nichols’s defense was different from the inadequacy at issue in a malpractice action
      * But the court concluded, probably reasonably, that they were the same
    - Actually litigated and decided?
      * Hypo: - P sues D for negligence  
        - D admits negligence but 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  
        - D subsequently sues P for his damages in accident  
        - can D be issue precluded from relitigating P’s negligence?
      * Yes – the fact that D brought it into issue means that it was actually litigated and decided, even though D offered no evidence in its favor
        + It would not have been actually litigated and decided if D had never brought up contributory negligence as a defense
      * Default Judgment issue preclusive?
        + Used to be, but not anymore, claim preclusive effect but not issue preclusive effect as no issues were litigated or decided
      * Summary judgment?
        + Issues in summary judgment are actually litigated and decided
      * Has to be in same issue – though it is true that you cannot be issue precluded for an issue that you did not bring up in the earlier litigation, sometimes the scope of an issue that was actually litigated and decided is understood broadly
        + 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 and so was invalid); 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?

statute of frauds: not precluded because was not litigated and decided previously

Issue preclusion is about things you did say, NOT things you should have said

Green: but issue of fraud would have been considered litigated, even though the particular question of fraud is somewhat different, or else parties would just wiggle out of preclusion by drawing fine discriminations between issues

* + - * + What if D admitted there was a signed contract in the first suit? That is still not binding because it was not actually litigated and decided

Not bound by admissions in previous litigation

If you were then you would be very disinclined to make admissions