Scope of Claim

* Remember not all states have the transactional standard

*River Park, Inc. v. City of Highland Park*

P alleges that D (a city) waited on approval of permit for improvements on property so bank would foreclose on P so that D could purchase the property.

2 lawsuits:

1st one brought in federal court - Cause of Action- civil rights action §1983.

2nd one brought in Ill. State Court - Cause of Action- Breach of implied contract, tortious interference with contract, abuse of government power.

Was there SMJ for state law actions in previous lawsuit in fed court? Yes, supplemental.

Real problem- claim preclusion

Is this an action they should have brought in earlier proceedings?

The Illinois supreme court tries to answer the question of the scope of a claim under Illinois law

But this is a mistake –

interjurisdictional claim preclusion…

P sues D in state court in Georgia for breach of contract  
- Georgia preclusion law allows separate suits in law and equity  
- judgment for D, there was no contract  
- P then sues D in state court in California for quantum meruit  
- California preclusion law does not allow separate suits in law and equity

Choice of law- whose preclusion do we use? – Use the preclusion law rendering court (the court that rendered the judgment, that is Georgia) –

this is required here by full faith and credit clause. Give same preclusive effect as rendering state court.

P sues D in federal court in Illinois under federal civil rights law  
- federal law uses the transaction approach  
- judgment for D  
- P then sues D in state court in Illinois under Illinois law  
- which preclusion law applies?

Federal preclusion law applies – this probably follows from the Supremacy Clause

* This is the River Park case, so the Illinois supreme court was wrong to think the matter was determined by Illinois law

P sues D in federal court in Georgia under Georgia state law for breach of contract  
- Georgia preclusion law allows separate suits in law and equity  
- judgment for D, there was no contract  
- P then sues D in state court in California for quantum meruit  
- California uses the evidence approach   
- which preclusion law to use? federal? Georgia? California?

We know the California law does not apply, because one must look to the law of the rendering court

But the rendering court was a Federal Court sitting in diversity

That brings up an Erie problem, which we will discuss later: Is the preclusive effect of the judgment of a Federal Court sitting in diversity determined by Federal preclusion law or the preclusion law of the forum state (in this case Georgia)?

Notice that there is no Erie problem in the River Park case, because the earlier judgment was of a Federal Court entertaining a Federal question action

But let us return to the River Park case

* The Illinois supreme court tries to determine whether to use the transactional test or the evidence test

Evidence Test – the scope of the claim includes only causes of action that would involve the same evidence

Using the transactional test what isthe relevant transaction?

– application for permit and delay in providing it, bank foreclosure and city buying property

* Notice that under the transactional test one looks to something like a common core of operative fact
* So one can say that under the transactional test any state law action that would have supplemental jurisdiction concerning a Federal action would also be part of the same transaction and so precluded if it was not brought
* But they are different considerations – speak of the transactional test when you are talking about claim preclusion

Is it possible that we would not have preclusion if we used evidence test? – the evidence might not be the same for the Federal and state law actions – e.g. for the Federal action you have to show there is a due process right being violated that is not necessary for state law actions.

Green: If there is any doubt “is this within scope of claim or not?” – Just BRING IT IN.

Then you ask can court what they think, and they can dismiss it without prejudice if they think it is not part of the same claim

* Don’t wait to have the court in the second lawsuit determine whether it should have been brought in the first
* Claim preclusion is the scariest thing because it completely bars action.

Primary Rights Test

* This is an even more narrow understanding of a claim – where a claim is tied to a particular cause of action, allowing multiple lawsuits concerning the same transaction

Claim preclusion in a jurisdiction is common law, made up by courts. There is a restatement on it. The restatement (2d) of judgments – which adopts the transactional standard

Rest. (2d) of Judgments  
§ 24. Dimensions Of “Claim” For Purposes Of Merger Or Bar—General Rule Concerning “Splitting”  
(1) When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of merger or bar the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.  
(2) What factual grouping constitutes a “transaction”, and what groupings constitute a “series”, are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.

P sues D for breach of contract – the product sent to P was defective  
P asks for damages and gets a judgment  
may P sue later for the amount that D overcharged P for the product?

No. part of the same transaction. It must be brought with the first or will be lost.

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