Civil Procedure

Session 21 - © National Paralegal College

Civil Procedure: LGL-507

CLASS TWENTY-ONE

CHAPTER 14: 14.1 – 14.8

CLAIM PRECLUSION – RES JUDICATA

* **Text in this outline was derived from the class text, which is**
  * **copyghted by the Authors ,**
  * **(FRIEDENTHAL-MILLER)**

* **Slides prepared by Adjunct Professor Leonard Saphire-Bernstein For NJU**

This Chapter

* This Chapter examines the rules and principles governing the binding effect of a judgment entered in one action on a subsequent proceeding—the doctrines of former adjudication.
* (609)

FORMER ADJUDICATION

* Analysis
* Sec.
* § 14.1 Overview and Terminology
* § 14.2 Distinguishing Between Res Judicata and Collateral Estoppel—
* Claim and Issue Preclusion
* A. RES JUDICATA—CLAIM PRECLUSION
* § 14.3 General Principles Underlying Res Judicata
* § 14.4 The Scope of Res Judicata—What Is a Claim or Cause of Action
* § 14.5 The Scope of Res Judicata—Some Applications
* § 14.6 The Scope of Res Judicata—The Effect of Res Judicata on
* Defendant's Assertions
* § 14.7 Requirements for the Application of Res Judicata
* § 14.8 Exceptions to the Application of Res Judicata

Former adjudication may be broken into two

* Former adjudication may be broken into two basic concepts, often called “res judicata” and “estoppel by judgment.” This division goes back to the beginnings of the common law. As used presently, the two terms refer to two ways that a judgment may preclude a future action. Res judicata prevents a plaintiff from suing on a claim that already has been decided; it also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment.

Estoppel by judgment

* Estoppel by judgment precludes relitigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action.
* (609-610)
* [Stare decisis: see below.]

When a claimant wins

* When a claimant wins a judgment, all possible grounds for the cause of action asserted by the claimant are said to be merged into that judgment and are not available for further litigation. A party who loses the first suit is said to be barred by the adverse judgment from ever raising the same cause of action again, even if that losing party can present new grounds for recovery. (610)

Claim-splitting

* Claim-splitting thus is prohibited by both merger and bar.
* (610)

*The Restatement Second of Judgments, for example, uses “res judicata” as a general term, the equivalent of former adjudication. Building on terminology suggested by Professor Vestal, the Restatement suggests that res judicata then may be divided into two parts: “claim preclusion,” corresponding to traditional res judicata, and “issue preclusion,” the analog of estoppel by judgment (611)

Distinctions

* Before turning to an examination of the workings and scope of issue and claim preclusion, it is important to distinguish these doctrines from three related, but different, concepts: stare decisis, double jeopardy, and law of the case.
* (611)
* Stare decisis describes the effect of previous judicial decisions on present litigation. Stare-decisis principles, also referred to as the doctrine of precedent, dictate that like cases should be decided alike by courts in a single jurisdiction. (611)

Stare decisis

* Stare decisis, on the other hand, applies equally to all litigants, even those having no connection with the precedent-setting lawsuit (612)

Second distinction

* A second distinction is that stare decisis applies only to questions of law; former adjudication precludes litigation on questions both of law and fact. Former adjudication protects the judgment that is the result of rules of law applied to a specific factual situation. (612)

Stare decisis

* Stare decisis, although wider in scope than former adjudication, is far less strict in its application. A judgment between specific litigants, once final, almost never is altered. As precedent, however, a case may be overruled directly. (612)

Even an Error

* Even when a judgment is recognized to be in error, it will not be reconsidered if it comes within the ambit of former adjudication. (612)

Double jeopardy

* Double jeopardy depends on the concept of "jeopardy," which is unique to criminal cases. Jeopardy attaches to a criminal proceeding when the accused is in imminent danger of conviction. Once this has occurred, double jeopardy forbids the prosecution from renewing the same charges in a second proceeding no matter how the case was dealt with in the original court. (613)

Law of the case

* Law of the case refers to the principle that issues once decided in a case that recur in later stages of the same case are not to be redetermined. (613)
* In practice, the doctrine is not enforced with the rigor that attends the rules of res judicata and collateral estoppel. As noted by the Supreme Court, it "merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit on their power." (613)

Three differences

* There are three characteristic differences between the two doctrines. Res judicata prevents relitigation of claims; collateral estoppel ends controversy over issues. Res judicata applies regardless of whether there has been an adversary contest on a particular matter; collateral estoppel operates only when an issue has been litigated fully. Res judicata precludes only subsequent suits on the same cause of action; collateral estoppel may preclude relitigation of the same issues in later suits on any cause of action.
* (614-615)

Cromwell v County of Sac

* *Cromwell v. County of Sac.* (US Supct, 1876)
* Cromwell held four bonds issued by the county in 1860 in order to build a courthouse. When some of the coupons on those bonds reached maturity, Cromwell brought suit against the county to compel payment on them. The county resisted payment, alleging that the bonds had been issued fraudulently. (615)

Supreme Court Determinations

* Supreme Court which determined (1) that because of the fraudulent inception of the bonds, they were void against the county except in the hands of a bona-fide holder who had taken them for value before maturity, and (2) that Cromwell had not shown that he was a bona-fide holder of the bonds in question. (615)

Cromwell, continued

* When the bonds matured, Cromwell brought another action. The trial court held this second action to be precluded by the earlier suit, but the Supreme Court reversed. In analyzing the effect of the earlier decision on the second action, Justice Field, writing for the Court, carefully distinguished between the effects of res judicata and collateral estoppel. Res judicata, which would have been an absolute bar to the subsequent action, did not apply because each bond and the interest coupons attached to it constituted a separate cause of action. (615)

Applying Collateral Estoppel

* To determine how collateral estoppel applied, Justice Field noted that “the inquiry must always be as to the point or question actually litigated and determined in the original action, not what might have been thus litigated and determined.” (615)

Broader Effect of Collateral Estoppel

* Thus, collateral estoppel may have a much broader effect than res judicata in that a judgment may be applied to preclude relitigation of an issue whenever it appears in any other action. This broad scope is dangerous because an issue may resurface in unexpected contexts, presenting a risk of unhappy surprise. An issue that appeared trivial in one action may be crucial in a later suit, and an unwary litigant may regret the earlier, lax handling of it. (615)

Issues Precluded

* In addition, the issue precluded must be one that was necessary to the prior judgment, assuring that the rendering court recognized its determination to be significant and worthy of close attention. (616)

Reasons behind Res Judicata

* To understand res judicata, it is necessary to understand why it is desirable that once a judgment is reached on one claim, no further action on the same controversy should be allowed. (616)

Interests of the Judicial System

* The interest of the judicial system in preventing relitigation of the same dispute recognizes that judicial resources are finite and the number of cases that can be heard by the courts is limited. (616)

Stability of Judgment

* Once a final judgment has been rendered, the prevailing party also has an interest in the stability of that judgment. (616)
* In some cases, the public at large also has an interest in seeing that rights and liabilities once established remain fixed. (616)

Value of Res Judicata

* As the Supreme Court has observed, “res judicata thus encourages reliance on judicial decision, bars vexatious litigation, and frees the courts to resolve other disputes.” (617)

Danger of Harsh Results

* Despite the valuable policies promoted by res judicata, its application may lead to harsh consequences in some cases. A prior judgment ends litigation, not only "as to every ground of recovery that was actually presented in the action, **but also as to every ground which might have been presented.**" This characteristic, more than any other, distinguishes res judicata from its allied doctrine, collateral estoppel. (617)

Extends beyond what has been litigated

* Because the scope of res judicata extends beyond what actually has been litigated, it prevents the plaintiff from fragmenting a case into many separately prosecuted claims in order to harass the defendant with the expense of litigation.
* (617)

What might have been presented

* Because what "might be presented" in an action is not always evident during litigation, the parties may discover after trial that claims not presented—perhaps not even contemplated—have been foreclosed by the judgment. Res judicata can preclude a plaintiff from pursuing an otherwise meritorious claim that never was litigated because of a seemingly minor procedural error or because a lawyer failed to anticipate at the time of the first action the effect that the judgment would have on future litigation. (617)

Preclusion despite error

* A second feature of res judicata that leads to harsh results is that it forecloses relitigation of claims regardless of whether the original decision was correct. (617)
* Decisions that plainly are wrong and that would be reversed on appeal, were that route available, are valid final judgments for res-judicata purposes.(617)

Court-made rule

* The rules of res judicata have been formulated almost entirely by courts; very few statutes or constitutional provisions provide any specific guidance. In general, the common-law rules that have developed fall into two categories: first, those defining the scope of a cause of action and second, those pertaining to the nature of the original 618decision. (617-618)

Final, on the merits, by a competent forum

* These rules look to the form of the first proceeding and require the first judgment to be a final, not provisional, judgment; to be on the merits, not based on a preliminary or jurisdictional matter; and to be rendered by a court jurisdictionally competent to determine all parts of the plaintiff's cause of action. (618)

An affirmative defense

* Res judicata is an affirmative defense that the court ordinarily will not raise on its own initiative. Therefore, it is not strictly accurate to say that res judicata prohibits relitigation of the same cause of action because the defendant in the second action may waive the defense and consent to retrying the action. (618)

Danger of waiver

* Res judicata may be waived explicitly or implicitly. For example, a party explicitly may waive future invocation of res judicata during the original lawsuit. In this way, the parties can control the litigation's scope, deliberately removing parts of a cause of action from consideration and expressly stipulating that they are not to be considered within the scope of the judgment. (618)

Unintentional Waiver

* The defendant also may waive the defense unintentionally. By actions taken at the first trial, the defendant sometimes is found to have waived implicitly the right to assert a later res-judicata defense. For example, if the plaintiff, having brought two separate suits for the same cause of action, attempts to consolidate them into one and the defendant objects successfully, the defendant may not complain later that the plaintiff has split the cause of action. By preventing consolidation, the defendant implicitly waived the defense of res judicata. (618)

Untimely raised

* Waiver also may occur if the defendant fails to raise the defense soon enough. The question of what constitutes the timely interposition of the defense depends on the circumstances of each case. The simplest case is one in which the first trial is completely finished before the second action begins. In that situation, the defendant must plead the prior judgment in the first responsive pleading. (618-619)

Innocent Misrepresentation

* Even innocent misrepresentation may prevent the application of res judicata. For example, in Vineseck v. Great Northern Railway Company, plaintiff, a Pole who spoke very little English, was injured while working for the defendant railway. A company doctor treated him for leg and head injuries and assured him that his blurred vision was only temporary.

Vinseck v Great Northern R'wy Co

* Plaintiff sued the railway and recovered for the leg injury only, believing that the head injury was trivial. Later, the seemingly minor head injury caused the plaintiff to become permanently blind. Even though there was no proof that the railroad, through its doctor, intended to mislead the plaintiff, the court allowed the plaintiff to bring a second action for the head injury that led to his blindness.

Vineseck Hoding

* The railroad, the court held, could not object to the plaintiff's splitting of the cause of action because its doctor had helped encourage him to do so. (619)

Inadvertant Failure to Raise

* Equally clear is that when the plaintiff through her own carelessness has overlooked some claim that should have been brought in the first case, she cannot have a second chance. (619-620)

Harsh results / Need for Certainty

* This admittedly harsh result is supported by the systemic need for certainty and finality to litigation. (620)

Units of Res Judicata: “A Claim”

* The basic unit of litigation to which res judicata applies is a cause of action or claim. A valid and final judgment on the merits of a cause of action is treated as conclusive as to the parties’ rights and accorded binding effect in all subsequent lawsuits involving the same cause of action.

Merger and Bar

* Merger and bar apply not only to what was litigated, but also to all aspects of the cause, as well as to all defenses, that might have been raised with respect to the cause of action adjudicated in the original lawsuit. Thus, it is crucial to define the meaning of "cause of action" in order to understand the operation of the res judicata. (620)

Identical Complaints, certainly

* A few things are certain: Identical complaints raise the same cause of action, and claims arising from different transactions or occurrences are distinct causes of action. But under what circumstances a single transaction or occurrence can give rise to two or more separate causes of action is not so easily agreed upon. (621)

Transactional Approach

* The tests or definitions that the courts and commentators have proposed represent two schools of thought. The transactional approach—the more contemporary of the two—is geared to maximizing efficiency consistently with individual justice. The other approach gives res judicata a narrower berth and focuses on whether the primary right or type of injury is the same in both actions. (622)

“No decision subsequent would contradict the first decision”

* Some courts recognize separate causes of action when they conclude that no decision in the second action would contradict the judgment in the first action. This test singles out and emphasizes the importance of the stability and consistency of judgments, insisting only that once a final judgment is rendered, no later action be allowed to undermine it. (622)

‘Schuykill Fuel’ standard

* A leading case applying this test is Schuykill Fuel Corporation v. B. & C. Nieberg Realty Corporation. In Schuykill, Judge (later Justice) Cardozo declared that the “decisive test” for determining whether two causes of action are the same for purposes of res judicata is “whether the substance of the rights or interests established in the first action will be destroyed or impaired by the prosecution of the second.” (622)

Reformation of Contract after Recovery Under Contract?

* Judge Cardozo held that plaintiff's second action seeking reformation of a contract was not barred by an earlier action in which the plaintiff had recovered under the document as written. Although the former judgment would be conclusive as to the meaning of the contract's terms, it was not conclusive as to whether the contract should be reformed because "nothing heretofore determined nor any right secured thereby is retracted or diminished." (622)

Annulment after Separation?

* According to the court, a decision in the pending annulment action declaring the marriage invalid would undermine and devitalize completely the earlier separation judgment by depriving it of the very basis upon which it was rendered. The inconsistent determination would result in the alteration or dissolution of the status and concomitant rights and interests already declared to exist. (623)

Legal Rights and Wrongs?

* Another test that has been used focuses attention on the conceptual framework of legal rights and legal wrongs that were involved in the first action. Although this test is narrower in application than the transactional approach, it is intended to be broad enough to prevent repetitious lawsuits based on the multiplication of grounds for the same wrong or injury. (623)

Not facts but violated rights

* A cause of action does not consist of facts, but of the unlawful violation of a right which the facts show. The number and variety of the facts alleged do not establish more than one cause of action so long as their result, whether they be considered severally or in combination, is the violation of but one right by a single legal wrong. (624)

Distinguish by Statute?

* Another way of distinguishing legal rights is by looking to the statutes that embody them. Statutory codes often provide a convenient way of organizing legal rights into discrete units, and thus each statute may be thought of as creating a single cause of action. (624)

Judicial Economy not well served under “Identity of Causes”

* The judicial economy objective underlying res judicata would be impaired if the factfinding effort undertaken in the original action were duplicated by a subsequent lawsuit. Thus, courts often proclaim that “to determine if the first [action] is res judicata to the second, the test to be applied is whether there is identity of facts essential to the maintenance of both cases or whether the same evidence would sustain both.”

Grouping Underlying Facts

* This definition of a cause of action reflects an attempt to group the underlying facts in some functional way, a concern that stems from the nineteenth century code reforms. (625)

Example: repeated removal of obstructions?

* An action for removal of an obstruction placed on a right of way allegedly owned by the plaintiff was barred by a prior action in which the same relief had been sought, even though the obstructions whose removal was sought in the two actions had been built at different times. The court found that there was a sufficient overlap of evidentiary requirements because the basic controversy in both actions was the defendant's right to obstruct. (626)

Last test: Restatement (2d) of Judgments

* The last test defining the scope of res judicata is favored by the Restatement Second of Judgments, which declares that the claims extinguished by a first judgment shall include “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.” (626)

Broad effect; the modern trend

* The test accords a broad res-judicata effect and represents the modern trend toward defining claims or causes of action in terms of actual occurrences. A transaction or series of closely connected transactions is the basic unit of litigation, regardless of the variations in the legal theories, primary rights, grounds, evidence, or requested remedies. (626-627)

Same-transaction test

* The same-transaction test for res judicata is pragmatically equivalent to a compulsory-joinder rule: It requires the plaintiff to plead all transactionally related claims in one complaint under threat of precluding any subsequent action for the unasserted claims. Under a compulsory-counterclaim rule, the defendant must forgo all counterclaims arising out of the same transaction or occurrence unless the defendant asserts the counterclaims in the answer.

Balancing compulsion on both parties

* Therefore, a rule imposing a similar compulsion upon the plaintiff arguably is eminently fair in balancing the relative positions of plaintiffs and defendants. Since the Federal Rules provide for compulsory counterclaims, free joinder of claims, and liberal amendment of pleadings, the same-transaction test is especially appropriate in the federal courts and in those states that have adopted comparable rules. (627)

Same event / same remedy = same claim?

* In another case, a federal district court ruled that a prior action in which the plaintiff unsuccessfully contended that her removal from her job was arbitrary was res judicata in a second suit based on a new allegation that the reason given for her dismissal was fraudulent. The court held that the two suits involved the same cause of action because they both “deal with the same event * * * and seek the same remedy.”

Alternate Ground of Recovery should have been asserted in First Suit

* The court went on to note that "fraud is nothing more than an alternate ground for recovery that should have been asserted in plaintiff's first lawsuit." (627-628)

Contract as Identifying Single Claim?

* Generally is appropriate to use a contract as defining the cause of action because by agreeing to its terms the parties themselves have established the boundaries of their own controversy. (629)

Breach of Contract Judged to be Entire: One Cause of Action

* The breach of a contract judged to be entire will support only one cause of action because a promise to do one thing can be broken only once. A contract that is several, on the other hand, is a compound of different promises that may be broken or performed individually and thus it may support more than one cause of action. (629)

Entire contract → one cause of action?

* It remains true that an entire contract will support only one cause of action, but today an installment contract like the one in Pakas would be considered to be several. A single unsatisfactory installment does not breach the entire contract unless it impairs the value of the whole; the buyer may bring an action solely for defective past installments, without affecting the contract for the future. A subsequent breach would give rise to a separate cause of action. (629)

Rule of Accumulated Breaches

* Rule of Accumulated Breaches." Under this rule a suit for breach of a continuing contract merges all claims that arose prior to the time suit is brought. Thus, if someone contracts to buy coal each month for a year, the contract generally would be considered divisible, and a suit for damages based on the fact that the first shipment failed to meet the contract's requirements would not bar a second suit if the next installment also proves inadequate.

All past claims in a single action

* But, if the plaintiff receives three unsatisfactory shipments before suing, all three claims must be brought in one action; suing on any one alone would merge the other two claims and preclude later litigation based on them.

Negotiable Instruments

* Negotiable instruments and other specialized contracts have developed their own special rules. Separate negotiable instruments always may be sued upon separately. Because each periodic interest-coupon of a bond is deemed a separate instrument, a person holding a bond may bring successive suits, one for each coupon. (630)

Single Tortious Act?

* To most courts, a single tortious act such as in an automobile accident case is a natural litigation unit that is dealt with most efficiently in one action. (631)

Subrogation Exception

* Subrogation-exception to the general rule. When a property-damage claim has been subrogated to an insurer, litigation or settlement of that claim does not prevent the victim from pursuing his own claim for personal injuries. (631)

Divide your torns

* A tort must be divided into two components: tortious act and injury. In general, when a single act results in several distinct injuries, a single cause of action arises. (631)

Single Injury

* Conversely, when a single injury can be traced to several different wrongful acts, there is still only one cause of action (631)

Ongoing Nuisances

* A suit for damages caused by an ongoing nuisance is treated as conclusive of all claims up to the time suit is brought. An earlier judgment does not preclude a subsequent action for damages that accrue later, however. (632)

All potential remedies sought in a single action

* With the unification of law and equity, it now is possible to seek both legal and equitable remedies in one action, and res judicata demands that all the potential remedies for a single cause of action be sought in one proceeding or be lost.

Limits on suits

* Consequently, for example, after losing a suit for rescission of a contract based on a fraud theory, one cannot bring another suit for damages sustained on account of the fraud. And the plaintiff who failed to prove a breach in a contract damages action no longer can bring a second suit in equity for reformation of the same contract. (633)

One exception to general application of RJ

* The one exception to the general applicability of res judicata to successive claims presenting legal and equitable remedies is suits to enjoin wrongs of a continuing nature, such as a continuing nuisance or trespass. (633)

Damages vs later Injunction?

* A recovery of accrued damages for a continuing wrong still may not preclude a later request for an injunction (633)

Declaratory Judgment / Injunctive Relief

* An analogous problem is presented when a plaintiff sues first for declaratory relief and later seeks coercive or injunctive relief based on the same conduct of the defendant. Most commonly, the injunctive claim will not be deemed merged or barred by the declaratory judgment, even when the plaintiff could have sought coercive relief in the original suit (633-634)

Scope of Res Judicata

* § 14.6 The Scope of Res Judicata—The Effect of Res Judicata on Defendant's Assertions
* (634)

Application to Defendants' Claims

* Applying the rules of res judicata to defendant's claims poses special considerations because the defendant's role in litigation is different from that of the plaintiff. (634)

Three general Principles

* The res-judicata effect of any judgment that is entered may depend on which of these two litigation postures the defendant adopts. Briefly, three general principles can be stated:
* Every available defense must be asserted in the first suit.

Three Principles, continued

* (2) Defendant need not assert any counterclaim, crossclaim, or third-party claim unless required to do so by specific statutory provision.
* (3) Once asserted by the defendant, the determination of a counterclaim, cross-claim, or third-party claim will be accorded the same res-judicata effect that it would have had as an original complaint. (634)

Allowed Claim-Splitting

* The other circumstance when the defendant may be precluded from raising defenses involves situations in which for policy reasons the plaintiff is allowed to split the cause of action. Some states, for example, provide expedited procedures for landlords to repossess their property from nonpaying tenants. (635)

State requirements

* Second, some state courts require that certain counterclaims be brought even in the absence of a statutory rule, thereby effectively establishing a common-law compulsory counterclaim. Illustratively, a Georgia court barred a tenant's claim for damages based on the landlord's failure to repair the property because the tenant did not assert it as a counterclaim in a prior action by the landlord for nonpayment of rent. (636)

Permissive Counterclaims?

* A permissive counterclaim—one not covered by either a statutory or common-law compulsory counterclaim rule—is not barred for failure to assert it during the plaintiff's action. (636)

Defenses vs Counterclaims

* Since defenses are subject to different rules than are counterclaims for purposes of res judicata, the distinction between the two can be critical. A recurring problem is when the same facts available as a defense in the original proceeding are asserted by the defendant as the basis for affirmative recovery in a separate lawsuit.

Used or Unused Defence: Shields and Swords

* The question becomes whether a used or unused defense now may be asserted as a claim. This problem often is expressed by medieval imagery: can facts that were, or might have been, used as a “shield” in one action be made into a “sword” in a later action? (636-637)

Raised in Defense, or Never raised?

* To analyze this question, one must distinguish cases in which the facts being asserted by the original defendant as the basis for affirmative recovery were raised as a defense to the first action from cases in which those facts never were introduced as a defense, although they could have been. (637)

Second Use of the Same Facts?

* In the first instance, some courts have held that a second use of the same facts is precluded. For example, in Mitchell v. Federal Intermediate Credit Bank, a potato farmer in South Carolina found that his claim against a bank for $9,000 was forfeited because the facts upon which it was based had been the basis of his defense in a prior action. (637)

Mitchel v Fed Funds

* The bank had loaned the farmer $9,000, using the expected proceeds from the farmer's potato crop as security. When sold, the crop yielded $18,000. Although the bank received this money, it sued the farmer on the $9,000 note and the farmer successfully raised the bank's receipt of the $18,000 as a defense. When the farmer later attempted to recover the excess $9,000, the court held that the farmer's entire cause of action had been merged when it was asserted defensively. (637)

§ 14.7 Requirements for the Application of Res Judicata

* In order for a judgment to be given binding effect, the court must find that it meets three requirements: The judgment must be valid, final, and on the merits. Each of these requirements is explored in this section. (638)

Challenge to Validity of Judgment?

* A challenge to a judgment's validity is a challenge to the authority of the first court to have decided the case. It does not simply suggest error in the first proceeding. Even though the earlier judgment may have been based upon an unconstitutional statute or judicial rule, it will be given full binding effect. (638)

Based on Invalid Rules or Procedures?

* Similarly, full res-judicata effect will be given to judgments based on invalid judicial rules or invalid judicial procedures, so long as there was a fair opportunity to raise the issue of their validity in the first proceeding or on appeal. (638)

Deference Accorded to Trial Court

* In general, a prior judgment will be given full res-judicata effect even though it later appears that the judgment-rendering court acted beyond its subject-matter jurisdiction if that court made a determination that it had jurisdiction. This is due, in large measure, to the principle that a court has jurisdiction to determine its jurisdiction. (638)

Federal and State Claims

* A situation in which plaintiff has claims under both the state and federal antitrust laws arising from the same underlying facts presents a paradigm case raising these concerns. In this situation, the state court would not be competent to adjudicate the federal claim, because federal jurisdiction over antitrust claims is exclusive.

United States v. Nysco Laboratories

- 318 F.2d 817 (2d Cir. 1963)
- Whether a judgment is final on appeal is determined by the law of the jurisdiction in which the judgment was entered.
- Federal
  - Once a judgment is entered, it is deemed to be final even though an appeal may be pending. In such jurisdictions, *res judicata* attaches immediately upon entry of the judgment.
- State
  - In many states, the taking of an appeal automatically postpones finality until the appeal is determined.

State Anti-trust claims

* The state-antitrust claims, however, may be litigated either in a state or federal court. If the plaintiff is permitted to sue first in the state court on the state claim, and later in the federal court on the federal claim, the policies of res judicata are subverted by permitting plaintiff to split the cause of action. On the other hand, if res-judicata effect is given to the state-court judgment, the congressionally declared exclusivity of federal jurisdiction over the federal claim may be undermined. (640)

But when plaintiff sues first....

* The converse set of facts does not yield the same result, however. If the plaintiff first sues in federal court on the federal claim alone, whether res judicata will bar a later state claim in the state court depends on whether plaintiff can assert the state claim in federal court. Unless there is diversity of citizenship between the parties, there is no federal-question basis for subject-matter jurisdiction over the state claim.

Common nucleus?

* Nonetheless, the federal court can exercise discretion to assert supplemental jurisdiction over that claim because it arises from the same "common nucleus of operative facts." When it clearly is open to the plaintiff to advance a state-law theory as well as one based on federal law in the federal action, a plaintiff who fails to do so will be barred from maintaining a second action in state court (640)

Challenge Lack of Jurisdiction?

* The validity of a judgment also may be challenged on the ground that the first court lacked personal jurisdiction over the defendant. As was true with subject-matter jurisdiction, however, if the first court determines that it possesses jurisdiction, the judgment will be given res-judicata effect; the defendant cannot relitigate the jurisdiction question. (642)

Interlocutory Order NG

* An interlocutory order generally never is accorded res-judicata effect because by its nature it either leaves some issues for determination in subsequent litigation or requires the completion of certain acts or conditions before the entry of judgment. (643)

Finality Requirement

* Two major problems attend the finality requirement. One is the effect of an appeal on the finality of the trial court's judgment, and the other is whether to treat declaratory judgments and injunction decrees as final for res-judicata purposes. (643)

Effect of Appeal - 1

* Most courts treat a judgment as final for res-judicata purposes if it conclusively disposes of the lawsuit in the rendering court, notwithstanding that an appeal has been taken or the time to appeal has not expired. This is true regardless of whether an opportunity to appeal was foregone deliberately or an attempt to appeal did not succeed because of a failure to meet procedural requirements.

Effect of Appeal - 2

* Further, just as a pending appeal or the availability of one does not defeat the finality of a judgment, neither does a motion for new trial or to vacate the judgment destroy a judgment's finality. (644)

Finality: Declaratory Judgment?

* The finality requirement also poses some difficulties when the first action involves a declaratory judgment. The Federal Declaratory Judgment Act specifically provides that a judgment under that statute has the force and effect of a final judgment or decree. However, the Act also authorizes a second action for “further relief” based on the declaratory judgment.

Recognizing Right to "Further relief"

* Thus, res judicata is not strictly applicable because the statute specifically recognizes the right of multiple actions. The preclusive effect of a declaratory judgment, therefore, is more akin to collateral estoppel, preventing relitigation of issues that actually were contested and were necessary to the judgment rendered. (644-645)

On the Merits

* Traditionally, the third and final requirement for res judicata is that the judgment must be “on the merits.” In general terms, a judgment is considered to be on the merits if it is a disposition based on the validity of the plaintiff’s claim rather than on a procedural ground. (645)

After full trial

* Judgments entered after full trial plainly are on the merits, as are summary judgments and judgments entered on a motion for a directed verdict or for a judgment as a matter of law. The area that has posed the most difficulty in applying this requirement involves voluntary dismissals or nonsuits. (646)

Failure of Plaintiff to Prosecute

* There is a split of opinion, however, as to cases in which the plaintiff simply fails to prosecute the case after filing the complaint. In actions brought in the federal courts, Federal Rule 41(b) provides that these dismissals are treated as involuntary dismissals on the merits unless the trial court specifies otherwise. But state courts differ as to whether a dismissal for failure to prosecute constitutes a judgment on the merits (646)

Involuntary Dismissals

* Involuntary dismissals also may result because of a lack of jurisdiction or venue or of the failure to join an indispensable party. A dismissal on any of those grounds does not operate as an adjudication on the merits. Furthermore, trial courts do not have discretion to dismiss on those grounds with prejudice. (647)

Dismissals of Premature Suits, Etc.

* Along similar lines, dismissals of a premature suit or of an action in which plaintiff has failed to satisfy a precondition to suit typically do not bar a second action after the claim has matured or the precondition has been satisfied. (648)

Hard to Distinguish

* In part because it is not always easy to articulate the distinction between dismissals based on a pleading insufficiency and dismissals on the merits, many jurisdictions reject this distinction and simply rule that a dismissal for insufficient pleading precludes a second action.

12(b)(6) motions

* In the federal courts, a Federal Rule 12(b)(6) dismissal for failure to state a claim upon which relief may be granted generally will be treated as a judgment on the merits unless the court specifies that it is without prejudice. (649)

Leave to Amend

* The harshness of this approach is ameliorated by giving the plaintiff an opportunity to amend the complaint before final judgment is entered. Failure to use that opportunity will result in the dismissal being entered with prejudice. (649)

Default Judgments / Consent Judgments

* Two other forms of judgments have raised some questions concerning whether they should be treated as on the merits: default judgments and consent judgments. The issue arises because neither of these two judgments is the result of full litigation. Nonetheless, a default judgment is treated as an adjudication on the merits, commanding res-judicata effect. (649)

Martin v. Wilks

- 490 U.S. 755 (1989)
- The City of Alabama and the Jefferson County Personnel Board (Petitioners), had entered into a consent judgment with black firefighters setting goals for hiring blacks and promoting them.
- Subsequently, white firefighters (Respondents), nonparties to the aforementioned consent judgment, brought a reverse discrimination lawsuit against the Petitioners.

Martin v. Wilks – Facts

- Petitioners responded that the consent decrees in the earlier suits brought by blacks mandated the procedures followed and precluded the current suit.
- The District Court held that the earlier consent decrees were a defense to the white firefighters' suits.
- The Court of Appeals reversed, holding that because the white firefighters were not parties to the earlier litigation, their claims could not be precluded.

Martin v. Wilks – Issues

- Whether a consent decree, which mandated affirmative action could preclude another suit challenging the validity of the subject matter brought by persons not party to the prior action.

Martin v. Wilks – Ruling

- No. It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in which he was not a party.
- This rule is part of our deep-seated tradition that everyone be afforded his day in court.

Martin v. Wilks – Explanation

- Petitioners argued that because Respondents failed to intervene in the initial proceedings, their present challenge to the consent decrees constituted a collateral attack.
- The Supreme Court opined that a party seeking judgment binding on another could not obligate that person to intervene, rather that party needed to be joined as dictated by the Federal Rule of Civil Procedure (FRCP) 19.
- It accordingly calls for mandatory joinder in circumstances where a judgment rendered in the absence of a person may leave those persons who are already parties, subject to a substantial risk of incurring inconsistent obligations.

§ 14.8 Exceptions to the Application of Res Judicata

* As has been discussed, applying the rules of claim preclusion, particularly to bar the litigation of matters that were omitted in an earlier proceeding, represents a decision that judicial economy concerns must predominate over the important goal of achieving individual justice. In some situations, however, additional policies would be undercut were the normal rules of res judicata to apply. (650)

Existing Statutory Scheme?

* The intention of an existing statutory scheme to allow repetitive suits also has been held to permit relitigation. For example, a landlord who brings summary proceedings to repossess property from a tenant will not be precluded from a later action for payment of the past rent due if the statutory scheme gives the landlord a choice between an expedited procedure to evict and a regular action in which all claims could be combined. (651)

Changes in the Law

* Although changes in law usually do not warrant the denial of claim preclusion, the inflexible application of merger and bar rules may be inapposite when there is a major change in constitutional principles as applied to areas of continuing conduct that have broad public importance.

After Supreme Court Rulings

* Thus, a second suit on the same claim to enjoin an allegedly racially discriminatory system of state-school tuition grants was allowed when in the interim the Supreme Court had struck down a similar system in a different action. Similar conclusions have been reached in cases involving desegregation. (651)

Monday – Issue Preclusion (Collateral Estoppel)

CLASS 22 Monday, March 26	Former Adjudication – Issue Preclusion (Collateral Estoppel)
Reading	Friedenthal – Chapter 14.9-14.15
Case/Law/Rule	*Parklane Hosiery v. Shore*, 439 U.S. 322 (1979)
Assignment	5 – Preclusion Exercise
Exam	None