Res Judicata in Louisiana: A Synthesis of Competing Interests

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In Louisiana, res judicata melds two conflicting policy concerns. As Judge Learned Hand has said, res judicata:

must be treated as a compromise between two conflicting interests: the convenience of avoiding a multiplicity of suits and the adequacy of the remedies afforded for conceded wrongs.1

In a close case, these competing interests can drive a court’s application of res judicata.

Res judicata’s purpose is to promote judicial efficiency and final resolution of disputes by preventing needless litigation.2 It thus serves the important public policy of conserving judicial resources by barring relitigation of matters already decided. Louisiana’s res judicata framework further promotes judicial efficiency by requiring parties to assert in one proceeding all claims arising out of the same transaction or occurrence.3 Perhaps more importantly, res judicata preserves the finality of judgments by precluding cases that seek merely to overturn an adverse judgment.

However, res judicata can also reinforce poor decisions or deny a litigant his day in court. Although courts have held that application of res judicata is not discretionary,4 they have often rationalized a narrow construct to avoid an inequitable result,5 reasoning that where there is doubt, res judicata should not bar a suit.6

Courts also have noted that though denial of a res judicata exception will diminish judicial efficiency and increase litigation, “[t]hose harms are sometimes preferable to the loss of plaintiff’s substantive rights without the merits being decided.”7 As the Louisiana Supreme Court has reasoned:

[w]hile res judicata is a useful tool, it should not be used as a scythe applied mechanically to mow down claims where the party asserting the claim is not at fault for the lack of adjudication of that claim in the first suit.8

Understanding the conflicting interests built into Louisiana’s res judicata framework, as well as its statutory exceptions, is vital to a successful foray into the doctrine. Here, we explore when and how res judicata has been applied to further those competing interests.

Louisiana’s Res Judicata Framework

Res judicata in Louisiana is effected through code articles and statutes; effective Jan. 1, 1991, that framework was amended by the Legislature to be more akin to federal and common law.9 Before the amendment, Louisiana res judicata was narrower than under federal and common law.10 Common law res judicata focused on the extinguishment of the cause of action, whereas Louisiana precluded a second suit only if it involved the same parties, the same cause, and the same object of demand as the prior suit.11 Current law is more in line with common law and bars relitigation of matters arising from the same “transaction or occurrence” as a previous suit.12 When instituting a civil action, “[a] party shall assert all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation.”13 If a plaintiff asserts claims arising out of the same transaction
or occurrence in multiple concurrent suits, a defendant can have all but the first dismissed. Likewise:

[t]he defendant in the principal action, except in an action for divorce under Civil Code Article 102 or 103, shall assert in a reconventional demand all causes of action that he may have against the plaintiff that arise out of the transaction or occurrence that is the subject matter of the principal action.

As a consequence:

Except as otherwise provided by law, a valid and final judgment is conclusive between the same parties, except on appeal or other direct review, to the following extent:

1. If the judgment is in favor of the plaintiff, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and merged into the judgment.

2. If the judgment is in favor of the defendant, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action.

3. A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

Further, if a defendant does not except to multiple concurrent lawsuits arising out of the same transaction or occurrence, 

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By bringing Louisiana res judicata in line with the federal system, the amendment embodies two related concepts — claim preclusion and issue preclusion. The former is what earlier Louisiana cases described as res judicata, while the latter, which was not previously recognized in Louisiana, is what earlier federal cases described as collateral estoppel. In distinguishing the two concepts, the United States Supreme Court noted:

Claim preclusion generally refers to the effect of a prior judgment in foreclosing successive litigation of the very same claim, whether or not relitigation of the claim raises the same issues as the earlier suit. Issue preclusion generally refers to the effect of a prior judgment in foreclosing relitigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment, whether or not the issue arises on the same or different claim.

Each type of preclusion applies in slightly different circumstances to bar relitigation without denying judicial recourse.

Claim Preclusion

For claim preclusion to apply, (1) the parties must be identical in both suits, or in privity; (2) the prior judgment must have been rendered by a court of competent jurisdiction; (3) there must be a final judgment on the merits; and (4) the same claim or cause of action must be involved in both cases.

Identity of the parties is required, but the requirement is not literal. Some decisions interpret identity broadly: “Identity of the parties exists whenever the same parties, their successors, or others appear, so long as they share the same ‘quality’ as parties;” such nonparties are deemed “privies” of the parties. A nonparty is deemed a “privy” when: (1) the nonparty is the successor in interest of a party; (2) the nonparty controlled the prior litigation; or (3) the nonparty’s interests were adequately represented by a party to the action who may be considered the ‘virtual representative’ of the nonparty because the interests of the party and the nonparty are so closely aligned. Courts have found identity of the parties where they were not actually identical, including a husband and wife, a corporation and its president, a corporation and members of its board, the Office of Family Support and the mother of a child in a previous paternity suit, LIGA as successor of an insurance company, and different representatives of the same class in a subsequent class action.

However, courts have also realized that:
a party nor in privity with the party therein contravenes due process.31

Courts are more reluctant to find identity of the parties if it results in the imposition of liability against a nonparty.32

Other decisions have narrowed the identity test, holding that if the parties are identical, there also must be “identity of capacity” for a second suit to be precluded.33 For example, breach of fiduciary duty claims against a party in her individual capacity were not precluded based on a prior suit against the same party in her capacity as executrix.34

A prior judgment must be valid; that is, among other things, it must have been rendered by a court of competent jurisdiction.35 If the court did not have subject matter jurisdiction, such as a city court judgment involving ownership or title to immovable property,36 or a court’s judgment on a matter over which an administrative agency has exclusive statutory jurisdiction,37 the judgment cannot have preclusive effect.38

A judgment also must be final — dispose of the merits in whole or in part — to have preclusive effect.39 The preclusive effect of a judgment attaches when it is signed, and any subsequent action is barred unless the judgment is reversed on appeal.40 “A final judgment from which there can be no appeal acquires the authority of the thing adjudged.”41

Finally, claim preclusion requires that the same claim or cause of action be involved. This means that a plaintiff must assert all rights and claim all remedies arising out of the “transaction or occurrence.”42 Because of the extinguishment and merger of claims under La. R.S. 13:4231, a party must reserve any claim not addressed in a final judgment. Any claim not so reserved, such as a post-judgment claim for attorneys’ fees, may be barred.43

The legal effect of the silence of a judgment on any part of a demand that might have been allowed under the pleadings is a rejection of such part of the demand, which tacit rejection has the force and effect of res judicata against subsequent suit for such part of the demand.44

**Issue Preclusion**

By its amendment to La. R.S. 13:4231, the Legislature also adopted the principle, new to Louisiana, of issue preclusion, which “serves the interest of judicial economy by preventing relitigation of the same issue between the same parties.”45 Even where claim preclusion does not apply, issue preclusion may bar a subsequent suit.46 For example, a criminal proceeding could preclude a subsequent civil action...
over the same issue. However, unlike claim preclusion, Louisiana’s res judicata statute does not merge all issues between the parties at final judgment; it is limited to dispositive issues actually litigated. In this respect, issue preclusion is narrower than claim preclusion.

Issue preclusion under Louisiana law requires that (1) the parties are identical; (2) the issues are identical; (3) the issue was actually litigated and determined in the prior litigation; and (4) the issue was essential to the disposition of the claim in the prior action.

Like claim preclusion, Louisiana issue preclusion requires identity of the parties. This differs from many states and federal law, which allow non-mutual issue preclusion where the party to the first action had the same incentive to advance a position as the party against whom issue preclusion is being asserted. Louisiana law dictates that parties should not be held liable based on issue determinations in proceedings in which they did not participate. For example, defendants who were not parties to a prior criminal child support proceeding were not precluded from relitigating issues regarding the decedent’s paternity in a later wrongful death and survival action.

However, the identity requirement may be relaxed when asserted as a defense based upon an allocation of fault in delictual actions. For example, in *Williams v. City of Marksville*, the Louisiana 3rd Circuit acknowledged that, although Louisiana’s res judicata statute still requires mutuality, or identity of the parties:

... even though not formally joined in the suit, for all intents and purposes, even a nonparty is treated as if s/he is a party for the purpose of allocating a percentage of fault to that “party” in order to reduce the percentage of fault allocated to the actual litigants and it stands to reason for purposes of res judicata. However, this does not mean that a nonparty is responsible if cast in judgment since to do so would violate that person’s due process rights by binding the nonparty without giving that person an opportunity to be heard. [Footnotes omitted.]

Thus, if a nonparty’s fault is pleaded as an affirmative defense in the first suit, and zero fault is allocated to that nonparty, a plaintiff may be precluded from relitigating that issue against the nonparty in a subsequent suit. However, if fault is allocated to the nonparty, a successful plaintiff cannot thereafter use res judicata to prevent the nonparty from arguing its percentage of fault.

The second and third criteria require that the issue be identical and actually litigated and determined in a prior litigation. These criteria require specific proof of the issues litigated and determined in the prior suit; without it a court might not apply issue preclusion because of the notion that res judicata is not invoked absent all essential elements.

Exceptions

As in federal law, there are several exceptions to res judicata application, but in Louisiana, they are statutory:

A. A judgment does not bar another action by the plaintiff:
   (1) When exceptional circumstances justify relief from the res judicata effect of the judgment;
   (2) When the judgment dismissed the first action without prejudice; or,
   (3) When the judgment reserved the right of the plaintiff to bring another action.

B. In an action for divorce under Civil Code Article 102 or 103, in an action for determination of incidental matters under Civil Code Article 105, in an...
action for contributions to a spouse’s education or training under Civil Code Article 121, and in an action for partition of community property and settlement of claims between spouses under R.S. 9:2801, the judgment has the effect of res judicata only as to causes of action actually adjudicated.\(^{62}\)

While subparts (A)(2), (A)(3), and (B) are fairly straightforward, the breadth of subpart (A)(1) provides discretion to decline preclusion.\(^{63}\) However, such relief should be granted only in truly exceptional circumstances.\(^{64}\) The exception is not intended to apply where the plaintiff has simply failed to assert a claim through oversight or lack of preparation.\(^{65}\) “It is designed to protect those drawn into error by an awkward factual or legal scenario, not those who can allude to no circumstance to justify their inaction below.”\(^{66}\) Still, this exception lends authority to the notion of not using the res judicata “scythe” to deny a litigant his rights.

Convoluted factual or legal scenarios have qualified as exceptional circumstances to justify the exception.\(^{67}\) Exceptional circumstances also have been found when the plaintiff’s interests in the prior suit were poorly represented, whether by the party’s attorney or otherwise.\(^{68}\) A pro se litigant’s lack of representation, however, is not an exceptional circumstance.\(^{69}\)

**Conclusion**

*Res judicata* in Louisiana synthesizes two competing interests — avoiding multiple suits and ensuring adequate remedies. These competing interests provide courts flexibility to allow parties their day in court while conserving judicial resources. Whether the battleground is claim preclusion, issue preclusion, or a statutory exception, the underlying principles typically can guide a case to a predictable result. But in a close case, the competing interests also can allow the practitioner to frame an argument (or the court to frame a decision) in either direction. Thus, while the 1991 amendment has served the goal of providing legislative guidance, the body of law accumulated since 1991 (and federal decisions on the same issue) makes clear that the underlying tension in *res judicata* will spawn additional arguments and diverse decisions in the years to come.

**FOOTNOTES**

4. Avenue Plaza, L.L.C. v. Falgoust, 96-