ILLINOIS LAW MANUAL

CHAPTER X
SETTLEMENTS & RELEASES

F. *RES JUDICATA*/COLLATERAL ESTOPPEL

The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand, or cause of action. Nowak v. St. Rita High School, 197 Ill. 2d 381 (2001); Mount Mansfield Insurance Group, Inc. v. American International Group, Inc., et al, Ill. App. Ct. 1st Dist. March 30, 2007. The doctrine encompasses not only matters that were actually litigated in the prior case, but also all matters that should or could have been litigated. Woolsey v. Wilton, 298 Ill. App. 3d 582 (3rd Dist. 1998). The rule is founded upon the principle that litigation should have an end and that no person should be unnecessarily harassed with the multiplicity of suits. Altair Corp. v. Grand Premier Trust, 318 Ill. App. 3d 57 (2nd Dist. 2000).

In deciding whether to apply the doctrine of *res judicata*, courts consider three elements:

1) whether the parties or their privies in the first lawsuit are the same as in the second;

2) whether the cause of action is the same;

3) whether there was a final judgment on the merits in the first cause of action.

Dowrick v. The Village of Downers Grove, et al, 362 Ill. App. 3d 512 (2005); Cabrera v. First National Bank of Wheaton, 324 Ill. App. 3d 85 (2nd Dist. 2001).

With respect to the first element, the same parties requirement needs little explanation or analysis. Parties to the same contract, shareholders of corporations, and subsequent purchasers of real estate have been held to be "in privity." Leow v. AB Freight Line, 175 Ill. 2d 176 (1997).

In determining whether the identity of action element is satisfied, "cause of action" is defined by facts which give plaintiff a right to relief. Two tests are used to determine whether causes of action are the same for *res judicata* purposes. Under the "same evidence test," *res judicata* bars the second suit if evidence needed to sustain the second suit would have sustained the first or if the same facts were essential to maintain both causes of action. Don Saffold Ent. v. Concept I, 316 Ill. App. 3d 993 (1st Dist. 2000).

Under the "transactional test" for determining whether causes of action are the same for *res judicata* purposes, inquiry is made to determine whether both suits arise from the same transaction, incident, or occurrence. Id. Asserting different theories of relief does not circumvent the transactional test if a single group of operative facts gives rise to relief. Id.

Finally, the judgment in the first cause of action must have been "on the merits," i.e., one that is conclusive of the rights of the parties. A dismissal "without prejudice" is not considered conclusive of the rights of the parties. Robertson v. Winnebago County Forest Preserve Dist., 301 Ill. App. 3d 520 (2nd Dist. 1998). However, the following are considered judgments on the merits for purposes of the *res judicata* analysis:

- A dismissal with prejudice of a complaint pursuant to a settlement agreement, People Ex Rel. Ulrich v. Bosmann, 279 Ill. App. 3d 36 (1st Dist. 1996);
- a dismissal with prejudice for want of prosecution, Horwitz v. Alloy Automotive Co., 992 F.2d 100 (7th Cir. 1993);
- an involuntary dismissal of an action, Slavov v. Marriott Intern, Inc., 990 F. Supp. 566 (ND IL 1998).

If these elements are satisfied, the doctrine of *res judicata* will bar the "second action." *Res judicata* can be pled as an affirmative defense (735 ILCS 5/2-613(d)) or form the basis for an involuntary dismissal with prejudice (735 ILCS 5/2-619(a)(4)).

Collateral estoppel is a doctrine related to *res judicata*. The doctrine of collateral estoppel applies when a party participates in two distinct cases arising out of different causes of action and a pivotal fact of both cases has been adjudicated against that party in a prior case. Department of Transp. v. Chicago Title and Trust Co., 303 Ill. App. 3d 484 (1st Dist. 1999). Essentially, the doctrine of collateral estoppel bars re-litigation of issues of ultimate facts that have been determined by valid and final judgment. People v. Terrell, 185 Ill. 2d 467 (1998).

For collateral estoppel to apply, the following requirements must be met:

1) The issues must be identical;
2) A final judgment on the merits must have been obtained in a previous adjudication;
3) The party against whom estoppel is asserted must have been a party or in privity with a party to the prior adjudication. Additionally, the decision on the issue must have been necessary for judgment in the first litigation and the person to be bound must have actually litigated the issue in the first suit.

Cree Development v. Mid America Advertising, 324 Ill. App. 3d 534 (5th Dist. 2001).