Lee Burgess: Welcome to the Bar Exam Toolbox podcast. Today, we're talking about claim and issue preclusion, as part of our "Listen and Learn" series. Your Bar Exam Toolbox hosts are Alison Monahan and Lee Burgess, that's me. We're here to demystify the bar exam experience, so you can study effectively, stay sane, and hopefully pass and move on with your life. We're the co-creators of the Law School Toolbox, the Bar Exam Toolbox, and the career-related website CareerDicta. Alison also runs The Girl's Guide to Law School. If you enjoy the show, please leave a review on your favorite listening app, and check out our sister podcast, the Law School Toolbox podcast. If you have any questions, don't hesitate to reach out to us. You can reach us via the contact form on BarExamToolbox.com, and we'd love to hear from you. And with that, let's get started.

Lee Burgess: Welcome back! In this podcast, we're going to discuss one of the newest additions to the MBE portion of the bar exam: civil procedure. Civil procedure on the bar exam is divided into several different areas, including, 1) jurisdiction and venue; 2) pretrial procedures; 3) motions; 4) law applied by federal courts; 5) jury trials; 6) verdicts and judgments; and 7) appealability and review. Civil procedure is typically a class you would have taken during your first year of law school – possibly even your first semester – so it's normal that you may need to brush up on certain aspects of the subject.

Lee Burgess: Today we're going to dive directly into the particularly sticky subtopic of claim and issue preclusion, also known as res judicata and collateral estoppel. To fully understand our rules and how they operate, we're going to start with a hypothetical. Our first hypothetical will center on res judicata. Take notes on the following hypothetical as you listen, and also remember that you can read the hypo in the linked transcript on the page – especially if you're in your car and you can't take notes while you're driving. Okay, here we go:

Lee Burgess: "Paul is seriously injured in a car accident when his car, a new model from Dallas, Inc., became overheated and the engine exploded. Paul sues Dallas Inc. for strict products liability. The case is tried and judgment is entered for Dallas, Inc.

Lee Burgess: A year later, Paul sues again. Paul contends that the court in the first suit erroneously excluded critical evidence from his expert on the proper way to manufacture car engines, and, had the court allowed the evidence to come in, he would have won his case. Paul also asserts an additional cause of action for negligence because of how Dallas manufactured the engine. In response, Dallas, Inc. asserts res judicata. What's the result?"

Lee Burgess: To answer this question, let's review what claim preclusion is, and our rules regarding claim preclusion. Claim preclusion – or res judicata – prevents parties in an action from later re-litigating any claim that was or could have been raised in that action. We want to emphasize the "claim" part here for claim preclusion, as issue preclusion is governed by a different rule.

Lee Burgess: Our rule for claim preclusion has four distinct elements, which we'll review here and dive into in more detail. First, the parties must be identical or in privity. Second, the judgment in the prior action must have been rendered by a court of competent jurisdiction. Third, the prior action must have been concluded by a final judgment on the merits. And finally, the same claim must be involved in both actions.

Lee Burgess: Okay, so what does it mean for our parties to be identical or be in privity? Identical parties are what it sounds like: The parties to the second action are the same exact parties as those to the first action. Typically, the parties must be identical, but we have an exception when the parties are in sufficient privity with each other. There are six different situations where the Supreme Court has held that parties are in sufficient privity with each other, but you won't need to know each of those exceptions to answer our question at hand.

Lee Burgess: Next, let's take a look at what it means to have a final judgment on the merits. A final judgment is one which ends the litigation on the merits and leaves nothing for the court to do but execute a judgment. Be wary of any decisions that adjudicate only some but not all claims, and those decisions which are informal.

Lee Burgess: Lastly, what does it actually mean to have the same claim? A claim that arises out of the same transaction or occurrence as the previously litigated claim. So, we're not looking for the same cause of action; we're looking behind the pleading as to what gave rise to the litigated claim.

Lee Burgess: Now that we have all of the rules that we need, let's jump into your hypo. Can Dallas successfully plead res judicata, even though there may have been an error in the judgment and Paul is bringing a new cause of action?

Lee Burgess: In fact, Dallas can! First, let's talk about the parties. Here, we don't have an issue with our first element of the rule – that the parties need to be identical or in privity. The parties are identical in both cases – they each involve a lawsuit between Paul and Dallas, Inc. Next, there isn't anything in our fact pattern that suggests the verdict wasn't rendered by a court of competent jurisdiction.

Lee Burgess: But what about the third element, that the prior action must have been concluded by a final judgment on the merits? Remember, a judgment just needs to be final and address the merits of the case. It doesn't actually matter whether Paul is right about the evidentiary issue! In our hypo, the facts specifically state that the case was tried and a judgment was entered. That's all we need for a final judgment on the merits.

Lee Burgess: Lastly, do we have the same claim, even though Paul is now bringing a negligence claim? It does. In both cases, we're dealing with the same transaction or occurrence – why and how the car that Dallas manufactured ended up blowing up on Paul. In sum, Dallas meets each element necessary to successfully assert the defense of res judicata.

Lee Burgess: Now, let's take a look at another hypothetical that involves a related issue – collateral estoppel, or issue preclusion.

Lee Burgess: "As Paul is driving down the highway with a new car he decided to buy from Casual Cars Co, he collides with Bob who is driving in the opposite direction. Paul's new car is totaled, and Bob and his passenger, Dave, each suffer broken bones. Paul sues Bob, alleging that the car accident was the result of Bob's negligence. Bob countersues, alleging that it was in fact Paul's negligent driving that caused the accident. The case went to trial, and the jury found that Paul's negligent driving caused the car accident. Judgment was entered for Bob.

Lee Burgess: A few months later, Dave, the passenger in Bob's car, brings a negligence claim against Paul, seeking damages for the many injuries he suffered. Is Paul precluded under collateral estoppel from denying that he was negligently driving?"

Lee Burgess: To answer our new car hypo, we need to review our rules for issue preclusion. Unlike claim preclusion, issue preclusion precludes a party from retrying a specific issue if there has been a final judgment on the merits by a court of competent jurisdiction.

Lee Burgess: Again, we have four core elements that we must meet to invoke issue preclusion. First, we need a valid and final judgment in the first action. Second, the issue must be identical to the issue decided in the prior action. Third, the issue must have been actually litigated, determined, and essential to the prior action. Finally, the party against whom enforcement is sought must have a full and fair opportunity to litigate the issue in the first action.

Lee Burgess: Let's dive into what it means to have the same issue. This is distinct from the claim. Issue preclusion can be used even if a second lawsuit contains a new claim. When you think issue, think factual issue. For instance, an issue could be whether a product was up to contract specifications, or whether someone's conduct breached a duty of care.

Lee Burgess: Next, we must be able to determine that the issue was actually litigated and decided in the prior action. For instance, if we sue for breach of contract on several grounds, and the jury only returns a general verdict, then we won't know which issues were actually decided!

Lee Burgess: And finally, what does it mean for the party to have a full and fair opportunity to litigate the issue in the first action? When we have identical parties, this element is easily resolved. But when the parties are different, we get into the murky territory of non-mutual collateral estoppel. In other words, the use of collateral estoppel between a different set of parties in the second lawsuit.

Lee Burgess: In the past, courts maintained a "mutuality" requirement, where only a party in the prior action could assert collateral estoppel. Today, there's a jurisdiction split, with the majority of jurisdictions having abandoned the mutuality requirement. So, in the majority of jurisdictions, a litigant who was not a party to a prior case may use collateral estoppel offensively in a new lawsuit against the party who lost on the decided issue in the first case, unless allowing the use of collateral estoppel would be unfair.

Lee Burgess: Okay, let's take these rules and apply them to resolve our hypo. We definitely had a valid and final judgment on the merits in the first issue. The facts tell us that the jury rendered a verdict and judgment was entered. Next, we have an identical issue—whether Paul was driving negligently. The issue was definitely litigated and essential to the prior action. Bob countersued Paul for negligence and the jury found that Paul's negligent driving caused the accident.

Lee Burgess: Lastly, we need to look at whether Paul had a full and fair opportunity to litigate the action. In this case, we're in the strange territory of non-mutual collateral estoppel, because Dave was not actually a party to the first suit. Instead, he wants to use the finding of the first suit against Paul to his benefit. In the majority of jurisdictions today, this type of offensive non-mutual collateral estoppel is allowed. Paul, having been sued by Ben for negligence, had every incentive to fully litigate whether he had been driving negligently. Nothing in the facts suggest it would be unfair to enforce the decision in the previous case.

Lee Burgess: In sum, after going through each element, we can conclude that Dave can use the doctrine of collateral estoppel offensively against Paul on the issue of negligence.

Lee Burgess: And with that, we're out of time! Hopefully you found these examples to be helpful reminders of how to tackle res judicata and collateral estoppel questions. If you're studying for the bar right now, I would definitely encourage you to practice additional res judicata and collateral estoppel questions on your own. Not sure where to find them? Well, if you're taking the UBE or California bar exam, our Brainy Bar Bank tool, which you can find on BarExamToolbox.com, can help you out.

Lee Burgess: I also want to take a minute to remind you to check out our blog at BarExamToolbox.com, which is full of useful tips to help you prepare and stay sane as you study for the bar exam. You can also find information on our website about our courses, tools, and one-on-one tutoring programs to support you as you study for the UBE or California bar exam. If you enjoyed this episode of the Bar Exam Toolbox podcast, please take a moment to leave a review or rating on your favorite listening app. We'd really appreciate it. And be sure to subscribe so you don't miss anything. If you are in law school, you might also like to check out our popular Law School Toolbox podcast as well. If you have any questions or comments, please don't hesitate to reach out to myself or Alison at lee@barexamtoolbox.com or alison@barexamtoolbox.com. Or you can always contact us via our website contact form at BarExamToolbox.com. Thanks for listening, and we'll talk soon!

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