
Verdicts and Judgments

1. If the court grants the company's motion, what is the likely explanation?

A motorcyclist was involved in a collision with a truck. The motorcyclist sued the truck driver in state court for damage to the motorcycle. The jury returned a verdict for the truck driver, and the court entered judgment. The motorcyclist then sued the company that employed the driver and owned the truck in federal court for personal-injury damages, and the company moved to dismiss based on the state-court judgment.

- **Claim preclusion (res judicata) bars the motorcyclist's action against the company**
- Issue preclusion (collateral estoppel) establishes the company's lack of negligence
- The motorcyclist violated the doctrine of election of remedies
- The state-court judgment is the law of the case

Note:
Once a final judgment on the merits has been rendered on a particular cause of action, the claimant is barred by claim preclusion (res judicata) from asserting the same cause of action in a later lawsuit. When the claimant wins the earlier lawsuit, the cause of action is said to have been "merged" into the judgment. When the defendant wins, the claimant is said to be "barred" by the earlier adverse judgment. Both terms simply mean that the claimant cannot sue again on the same cause. Before merger or bar apply, it must be shown that: (i) the earlier judgment is a valid, final judgment "on the merits"; (ii) the cases are brought by the same claimant against the same defendant – it is not enough that the same litigants were also parties in the previous case (it must be the same configuration of parties); and (iii) the same cause of action or claim is involved in the later lawsuit.

Claim and issue preclusion generally apply to bind only persons who were parties to the original action, not "strangers" to the original action. However, there are exceptions to this general rule. If someone is closely linked enough to a party in the original action that there is a substantive legal relationship between them, that person may be bound by the first result for preclusive purposes, just as if that person had been a party in the original action. The substantive legal relationship puts them in privity with each other, which allows the non-party to be bound by the original action.

A judgment binds the plaintiff or defendant (or their privies) in subsequent actions on different causes of action between them (or their privies) as to issues actually litigated and essential to the judgment in the first action. This conclusive effect of the first judgment is called issue preclusion (or collateral estoppel). Note that issue preclusion is narrower than claim preclusion. Claim preclusion focuses on the scope of a cause of action and bars the claimant from asserting a second case. Issue preclusion, in contrast, focuses on the narrower issue that was litigated and determined in the first case, and that is relevant in the second case.

A is correct. Claim preclusion prevents a claimant from splitting his cause of action; when the claimant loses a judgment, all possible grounds for relief arising out of the same transaction or occurrence are barred in future litigation between the same parties. Because the motorcyclist's personal injury and property damage claims arise out of the same accident, they are part of the same cause of action and he should have brought them in one action. Although claim preclusion typically operates to prevent re-litigation between the same parties, it also operates in favor of entities that are in privity with the parties. Here, because the company is in privity with the truck driver (based on the employer-employee relationship), the company cannot be found liable for the driver's acts if he is not found liable. Therefore, the first judgment extinguishes the claim against the company as well.

B is incorrect. It is true that the same negligence issue that was presented against the truck driver is being presented in the action against the company and that that issue was actually litigated in the first action - two requirements for the application of issue preclusion. However, the jury's general verdict for the truck driver does not necessarily establish that he was free from negligence. It may instead reflect the jury's conclusion that the motorcyclist was more negligent than the truck driver. This may prevent the application of issue preclusion. In addition, the court is not likely to base its ruling on issue preclusion because that defense will be utilized only if claim preclusion is unavailable.

C is incorrect. The election-of-remedies doctrine was a pleading limitation at common law and under some early codes that prevented a plaintiff from presenting alternative or inconsistent claims when the plaintiff had a choice among inconsistent remedies. For example, a plaintiff who was fraudulently-induced to enter into a contract had to elect either to sue under the contract for damages or to disaffirm the contract and seek rescission. The Federal Rules reject this doctrine and allow for alternative and inconsistent allegations in a complaint. Even if the doctrine were applicable, it would be inapposite here because there is no inconsistency between the motorcyclist's claims for personal injury and property damages, and the question presented is one addressed to preclusion, not pleading.

D is incorrect. Law of the case prevents the re-determination of issues that are decided in a case but that recur in later stages of the same case. For example, issues decided on appeal are binding on the trial court if the case is remanded to the trial court for further action. While there was only one accident here, there are two separate actions, one in the state court and one in the federal court. Therefore, the law-of-the-case doctrine is inapplicable.

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2. What is the buyer's best argument for persuading the appellate court to reverse the judgment?

A manufacturer sued a buyer in federal court for failing to make timely payments under the parties' sales contract. The case was tried to the court solely on documentary evidence. Immediately after the close of the evidence, the judge announced from the bench, "Judgment shall be entered for the manufacturer," and judgment was so entered. The buyer has appealed the judgment.

- The judgment is clearly erroneous because it was based solely on documentary evidence
- The manufacturer was required to file proposed findings and conclusions before the trial court ruled
- The trial court erred because it announced the judgment without giving the parties an opportunity to submit proposed findings and conclusions
- **The trial court erred by not providing findings and conclusions**

Note:
In both federal and state litigation, the party who loses at trial generally has the right to appeal the adverse judgment. Generally, only final judgments are reviewable on appeal. Under Federal Rules of Appellate Procedure (FRAP) 3 and 4, an appeal may be taken by filing a notice of appeal with the district court within 30 days from the entry of the judgment. The federal court system applies the final judgment rule. 28 U.S.C. § 1291. The basic concept is that an appeal is allowed only after all the issues involved in the suit have been finally determined by the trial court. A final order is one that disposes of the whole case on its merits, by rendering final judgment not only as to all the parties but as to all causes of action involved.

An order for a new trial is not considered a final judgment in the federal system. See Gospel Army v. Los Angeles, 331 U.S. 543 (1947) (finding that "for a judgment of an appellate court to be final and reviewable for this purpose, it must end the litigation by fully determining the rights of the parties, so that nothing remains to be done by the trial court . . . . Thus, where the effect of the state court's direction is to grant a new trial, the judgment will not be final").

If the case reaches a jury, either party may move for a judgment as a matter of law, also referred to as a directed verdict, which has the effect of taking the case away from the jury and determining the outcome as a matter of law. Federal Rule of Civil Procedure (FRCP) 50(a)(1) states that if a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may resolve the issue against the party and grant a motion for judgment as a matter of law against the party, on a claim or defense that under the controlling law can be maintained or defeated only with a favorable finding on that issue.

D is correct. A judge may enter a judgment as a matter of law against a party on any issue whenever there are sufficient facts to resolve the issue, and the party has been fully heard on the issue. The judge may enter judgment as a matter of law against a party on that claim or defense if the issue is dispositive. The judgment must be supported by findings of fact and conclusions of law.

In this case, at the close of evidence, the judge made a judgment as a matter of law against the buyer. The evidence was solely documentary; therefore, the judge had all the information in the record and did not need to assess the credibility of any witnesses. The judgment was given at the close of evidence, and both parties had been heard on the issues. Thus, the judge was properly able to make a judgment as a matter of law. However, the judgment must be supported by findings of fact and conclusions of law. Therefore, the best argument the buyer can make to the appellate court is that the judge erred by not providing adequate findings for her conclusion.

A is incorrect. There is no rule that a judgment cannot be based on solely documentary evidence. Additionally, "clearly erroneous" is not the proper standard of review. Questions of fact may be reversed on appeal if clearly erroneous, with some dereference given to the trial court. Jury verdicts may also be set aside as erroneous if they are inconsistent or irreconcilable. Neither case applies to these facts.

B is incorrect. The manufacturer was not required to file proposed findings and conclusions before the court ruled. The judge merely needed to wait until the party ruled against had been fully heard on the issue. The judge properly waited until the close of evidence, after both parties had been fully heard.

C is incorrect. Neither party was required to file proposed findings and conclusions before the court ruled. The judge merely needed to wait until the party ruled against had been fully heard on the issue. The judge properly waited until the close of evidence, after both parties had been fully heard.

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3. Is the court likely to grant the plumber's motion?

Sixty days after the court's order denying the motion to dismiss, the company asked the clerk to enter default, and the clerk did so. The company applied to the court for the entry of a default judgment and notified the plumber three days before the default judgment hearing. After an ex parte hearing in which the court received evidence on the damages amount, the court entered a default judgment for the full amount sought. Ten days later, the plumber filed a motion to set aside the default judgment. A company incorporated and headquartered in State A sued a plumber domiciled in State B in a federal court in State A, alleging that the plumber had negligently installed pipes in a manner that resulted in $250,000 in damage to the company's headquarters building. In response to the complaint, the plumber filed a motion to dismiss for lack of personal jurisdiction. The court denied the motion. Thereafter, the plumber did not file an answer or any other response to the company's action.

- No, because the court could fix the amount of damages even without hearing the plumber's evidence
- No, because the plumber failed to plead or otherwise defend against the company's action
- **Yes, because the plumber was not given adequate notice of the hearing on the company's application for the entry of a default judgment**
- Yes, because the State A federal court lacked personal jurisdiction over the plumber as a State B citizen

Note:
A default judgment is a judgment, with the same effect as any other judgment, that is entered because the defendant did not oppose the case. If a party against whom a judgment for relief is sought has failed to plead or otherwise defend, and that fact is made to appear by affidavit or otherwise, the clerk must enter the default of that party. Once the default has been entered, the party may not proceed with the action until the default has been set aside by the court. Fed. R. Civ. P. 55.

An entry of default may be set aside for "good cause shown." Although not specifically required by the rules, a majority of courts will require that the defendant have a meritorious defense. A default judgment may be set aside as provided in Federal Rule of Civil Procedure (FRCP) 60 (relief from judgments).

C is correct. If a party against whom relief is sought has failed to plead or defend, the clerk of the court must enter a default of that party. A default means that there has been no answer within the required time period. Even after a default has been entered, the damages may still be determined by a default judgment after a hearing on damages. If the defendant has appeared but not answered, he must be notified at least seven days before the hearing for default judgment. In this case, the clerk properly entered a default against the plumber. However, because the plumber appeared by filing a motion to dismiss, he was entitled to notice seven days before a hearing. The company notified the plumber just three days before the default judgment hearing. As such, the default judgment should be set aside because the plumber was not given proper notice.

A is incorrect. It is true that a court could fix the amount of damages, even without hearing the plumber's evidence. However, in this instance, the plumber was not given the proper notice before the hearing.

B is incorrect. Because the plumber failed to plead or otherwise defend against the company's action, a default may be entered against the plumber. However, the plumber was entitled to notice seven days before the hearing on damages.

D is incorrect. The federal court sitting in State A would have jurisdiction over the plumber because the work in question, the installation of the pipes, was done in State A.

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4. Should the federal court give preclusive effect to the state court judgment?

The plaintiff then filed the same claim against the defendant in federal court, invoking diversity jurisdiction. The defendant has asserted the defense of res judicata (claim preclusion) in its answer. A plaintiff filed a tort action in state court but then failed to prosecute the action. The defendant moved to dismiss the action, and the court granted the motion in an order that stated: "The defendant's motion to dismiss is granted, and this action is dismissed with prejudice." The court accordingly entered judgment for the defendant.

- No, because the judgment was entered by a state court, not a federal court
- No, because the state court did not rule on the merits in its dismissal
- **Yes, because a dismissal with prejudice operates as a judgment on the merits**
- Yes, because a judgment for failure to prosecute operates as a judgment on the merits under the Federal Rules of Civil Procedure

Note:
Once a final judgment on the merits has been rendered on a particular cause of action, the claimant is barred by claim preclusion (res judicata) from asserting the same cause of action in a later lawsuit. When the claimant wins the earlier lawsuit, the cause of action is said to have been "merged" into the judgment. When the defendant wins, the claimant is said to be "barred" by the earlier adverse judgment. Both terms simply mean that the claimant cannot sue again on the same cause. Before merger or bar apply, it must be shown that: (i) the earlier judgment is a valid, final judgment "on the merits"; (ii) the cases are brought by the same claimant against the same defendant – it is not enough that the same litigants were also parties in the previous case (it must be the same configuration of parties); and (iii) the same cause of action or claim is involved in the later lawsuit.

Federal Rule of Civil Procedure (FRCP) 41(b) governs the question of whether claim preclusion should bar a plaintiff whose initial suit ended in an involuntary dismissal from proceeding with a subsequent suit on the same claim. FRCP 41(b) establishes that an involuntary dismissal generally will bar a subsequent suit, but both the Rule and court decisions create exceptions where claim preclusion does not apply.

FRCP 41(b) provides three grounds for ordering an involuntary dismissal: (i) failure of the plaintiff to prosecute; (ii) failure of the plaintiff to comply with the FRCP or any order of court; and (iii) failure of the plaintiff to show by the close of his evidence a right to relief based upon the facts and the law.

FRCP 41(b) further specifies that all 41(b) dismissals and "any dismissal not provided for in this rule" are to operate as adjudications on the merits except for four types of dismissals. The four exceptions are: (i) dismissal for lack of jurisdiction; (ii) dismissal for improper venue; (iii) dismissal for failure to join a party under Rule 19; and (iv) dismissal that the court in its order specifies to be without prejudice.

Although the Erie decision made it clear that there is no general federal common law in the United States, there are still particular instances in which federal common law is applied. In particular, federal common law can be binding when a federal court sitting in diversity issues a judgment, and a state court must later decide claim preclusion effect that earlier judgment should be given. In Semtek Int'l Inc. v. Lockheed Martin Corp., the Supreme Court decided that under federal common law, a diversity judgment should have whatever preclusive effect that similar judgment issued by the state court in which the diversity court sits would have. Thus, the second state court must apply federal common law to determine how and whether it is bound by the prior diversity judgment.

Semtek notably also held that as a matter of federal common law, the dismissal has whatever effect on later action in other courts as such a dismissal would have if had been issued by the state where the federal diversity court sat.

C is correct. On the defendant's motion or on its own motion, a court may order an involuntary dismissal against a plaintiff for failure to prosecute. An involuntary dismissal is with prejudice and operates as an adjudication on the merits. Once there has been a final judgment on the merits for a cause of action, claim preclusion bars the claimant from asserting the same cause of action in a later lawsuit. In this case, the state court decision operates as a final judgment on the merits and consequently bars the claim from being brought again.

A is incorrect. The federal court will still be precluded from hearing the case, even though the first case was brought in state court. When the second case is brought in a different jurisdiction, it can raise questions of choice of law. The second court should apply the claim preclusion rules of the original jurisdiction.

B is incorrect. An involuntary dismissal against a plaintiff for failure to prosecute is with prejudice and operates as an adjudication on the merits.

D is incorrect. The Supreme Court has held that the FRCP do not govern whether a judgment is "on the merits" for purposes of claim preclusion. (The Rules declare some situations that are considered "on the merits" for appeal.) Jurisdictions may take different views on whether a particular dismissal is "on the merits" for claim preclusion. Because the original case was decided in state court, the second court (here, the federal court) is required to look to the state court's preclusion rules when deciding if the case can be brought. Therefore, in this case, it does not matter if the judgment was "on the merits" under the FRCP. The federal court should look to the state rules.

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5. Should the state court look to federal or state law to decide the effect of the judgment?

The manufacturer's attorney has moved to dismiss the state court action on the basis of res judicata (claim preclusion). The parties in the federal action reached a court- approved settlement, and the court entered judgment dismissing the action with prejudice. A car manufacturer produced a car that was sold nationwide. Problems with the car's brakes allegedly caused several accidents and injuries. Two individual buyers of the car each filed a class action, in different states, against the manufacturer, asserting the same products liability claims on behalf of all buyers nationwide. One class action was filed in federal court and the other was filed in state court.

- **Federal law, because the judgment was entered in federal court**
- Federal law, because the judgment was the result of a nationwide action governed by the federal class action rule
- State law, because the judgment is being asserted in a state court
- State law, because there is no general federal common law and preclusion is a common law doctrine

Note:
Once a final judgment on the merits has been rendered on a particular cause of action, the claimant is barred by claim preclusion (res judicata) from asserting the same cause of action in a later lawsuit. When the claimant wins the earlier lawsuit, the cause of action is said to have been "merged" into the judgment. When the defendant wins, the claimant is said to be "barred" by the earlier adverse judgment. Both terms simply mean that the claimant cannot sue again on the same cause. Before merger or bar apply, it must be shown that: (i) the earlier judgment is a valid, final judgment "on the merits"; (ii) the cases are brought by the same claimant against the same defendant – it is not enough that the same litigants were also parties in the previous case (it must be the same configuration of parties); and (iii) the same cause of action or claim is involved in the later lawsuit.

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FRCP 41(b) provides three grounds for ordering an involuntary dismissal: (i) failure of the plaintiff to prosecute; (ii) failure of the plaintiff to comply with the FRCP or any order of court; and (iii) failure of the plaintiff to show by the close of his evidence a right to relief based upon the facts and the law.

FRCP 41(b) further specifies that all 41(b) dismissals and "any dismissal not provided for in this rule" are to operate as adjudications on the merits except for four types of dismissals. The four exceptions are: (i) dismissal for lack of jurisdiction; (ii) dismissal for improper venue; (iii) dismissal for failure to join a party under Rule 19; and (iv) dismissal that the court in its order specifies to be without prejudice.

Although the Erie decision made it clear that there is no general federal common law in the United States, there are still particular instances in which federal common law is applied. In particular, federal common law can be binding when a federal court sitting in diversity issues a judgment, and a state court must later decide claim preclusion effect that earlier judgment should be given. In Semtek Int'l Inc. v. Lockheed Martin Corp., the Supreme Court decided that under federal common law, a diversity judgment should have whatever preclusive effect that similar judgment issued by the state court in which the diversity court sits would have. Thus, the second state court must apply federal common law to determine how and whether it is bound by the prior diversity judgment.

Semtek notably also held that as a matter of federal common law, the dismissal has whatever effect on later action in other courts as such a dismissal would have if had been issued by the state where the federal diversity court sat.

A is correct. Preclusion cases involve two cases, so often choice of law issues arise when the second case is brought in a different jurisdiction. In Semtek International, Inc. v. Lockheed Martin Corporation, 531 US 497 (2001), the court held that federal common law governs the claim-preclusive effect of a dismissal by a federal court sitting in diversity. Therefore, in a preclusion case, where the first case was decided in federal court and the second case is filed in a different jurisdiction, a federal court sitting in diversity will apply federal preclusion laws. Here, the first case was decided in federal court, using federal law. Thus, the state court, hearing the second case, should apply federal preclusion laws to determine if case two can proceed.

B is incorrect. This is not how a choice of law analysis operates. When the first case was decided in federal court, the second court should apply federal preclusion laws.

C is incorrect. Here, the first case was decided in federal court using federal law. Therefore, the state court, hearing the second case, should apply federal law to determine if case two will be precluded. It does not matter that the judgment is in state court.

D is incorrect. Although it is true that federal general common law rules do not govern state claims, it may be used in federal courts. The call of the question, however, is specifically asking which law, federal or state, should be applied. The state court first must decide which to apply, state or federal preclusion law. Then the state court must analyze that law.

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6. May the clerk enter a default judgment?

A builder brought a federal diversity action against a homeowner for breach of contract, seeking $115,000 in damages. The homeowner answered and counterclaimed for $93,000 in damages for breach of warranty. Four weeks later, when the homeowner had not received any responsive pleading from the builder, the homeowner moved for entry of default and a default judgment on the counterclaim. After the clerk entered default, the homeowner asked the clerk to enter a default judgment.

- **No, because only the court can enter a default judgment under these circumstances**
- No, because the builder's time to respond has not expired
- Yes, because the builder has failed to defend himself against the counterclaim
- Yes, because the damages the homeowner seeks are a sum certain

Note:
A is correct. A clerk may enter a default judgment only when the amount sought is a sum certain and the defaulting party has failed to appear. Fed. R. Civ. P. 55(b)(1). Here, the builder is the original plaintiff in the action and appeared when filing the original complaint. Consequently, the clerk is precluded from entering a default judgment.

B is incorrect. A plaintiff has 21 days to respond to a counterclaim. Fed. R. Civ. P. 12(a)(1)(B). Here, four weeks have passed, therefore, the builder's time to respond has expired.

C is incorrect. A clerk may enter a default judgment only when the amount sought is a sum certain and the defaulting party has failed to appear. Fed. R. Civ. P. 55(b)(1). The builder's failure to defend against the counterclaim is the basis for the entry of default, not the basis for the entry of a default judgment.

D is incorrect. A clerk may enter a default judgment only when the amount sought is a sum certain and the defaulting party has failed to appear. Fed. R. Civ. P. 55(b)(1). Here, the clerk is precluded from entering a default judgment regardless of whether the homeowner's damages are a sum certain.

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7. Is the court likely to grant the motion?

An accounting firm brought a federal diversity action against a former client for failing to pay for the firm's audit of the client's financial statements. After the client answered, the parties settled, and the court dismissed the action with prejudice. The client subsequently sued the firm for negligently performing the audit. The firm moved to dismiss the negligence action on the basis of res judicata (claim preclusion).

- No, because the firm's negligence was never raised or decided in the first action
- No, because the first action was resolved by settlement
- Yes, because the court dismissed the first action with prejudice
- **Yes, because the negligence claim was transactionally related to the claim in the first action and should have been asserted as a counterclaim**

Note:
*D is correct. If a counterclaim arises out of the same transaction or occurrence as one of the plaintiff's claims, it is a compulsory counterclaim and must be pleaded or it will be barred. Here, the client's negligence claim arose out of the same audit that was the subject of the dispute in the first action. The client's failure to assert the negligence claim in the first action as a compulsory counterclaim means it will be precluded in future litigation. Therefore, the court is likely to grant the firm's motion to dismiss based on compulsory counterclaim principles. *

Moreover, claim preclusion applies only if the earlier case and the latter case are brought by the same claimant against the same defendant. It is not sufficient for claim preclusion that the same litigants were also parties and privies in the first case, like they are here, the parties must have been in the same configuration as in the prior lawsuit. In this question, the accounting firm sued the client in the first action, and then the client sued the accounting firm in the second action. Because the configuration of the parties in the second suit does not match the first, claim preclusion does not apply.

A is incorrect. Claim preclusion prevents the presentation of claims that ought to have been asserted and decided in an earlier action, not just those that were asserted. Here, the client should have asserted the negligence claim in the first action as a compulsory counterclaim because the claim that the client asserted in the second action (negligence) arose out of the same audit that was the subject of the dispute in the first action.

B is incorrect. Once a final judgment on the merits has been rendered on a particular cause of action, the claimant is barred by claim preclusion from asserting the same cause of action in a later lawsuit. Dismissal with prejudice pursuant to a settlement agreement constitutes a final judgment on the merits for the purposes of claim preclusion. See Arizona v. California, 530 U.S. 392, 414 (2000); 18A Wright, Miller & Cooper, Federal Practice and Procedure § 4443. Here, the judgment entered as the result of the settlement is entitled to preclusive effect under compulsory counterclaim principles.

C is incorrect. A dismissal with prejudice in a first action may be preclusive of a second action if the claims in the second action arise out of the same transaction as the first action. By itself, the fact that the first action was dismissed with prejudice is not sufficient to determine that claim preclusion applies.

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8. Should the court grant the editor's motion to dismiss?

The writer timely refiled the lawsuit in State B, which has a longer statute of limitations. In State B, an involuntary dismissal is considered an adjudication on the merits for purposes of claim preclusion. Then, the editor filed a motion to dismiss. A writer from State A filed a jurisdictionally valid diversity action against an editor from State B in State A federal court. The writer sought $125,000 in damages regarding a contract dispute. The writer's lawsuit was involuntarily dismissed because the State A statute of limitations for the writer's claim had run. In State A, an involuntary dismissal is not considered an adjudication on the merits for purposes of claim preclusion.

- No, because the writer's lawsuit is not barred under State B's statute of limitations
- **No, because State A law does not treat dismissals on grounds of statute of limitations as an adjudication on the merits for purposes of claim preclusion**
- Yes, because State B law treats dismissals on grounds of statute of limitations as an adjudication on the merits for purposes of claim preclusion
- Yes, because federal law holds that involuntary dismissals operate as an adjudication on the merits

Note:
Once a final judgment on the merits has been rendered on a particular cause of action, the claimant is barred by claim preclusion (res judicata) from asserting the same cause of action in a later lawsuit. When the claimant wins the earlier lawsuit, the cause of action is said to have been "merged" into the judgment. When the defendant wins, the claimant is said to be "barred" by the earlier adverse judgment. Both terms simply mean that the claimant cannot sue again on the same cause.

Before merger or bar apply, it must be shown that:

(i) the earlier judgment is a valid, final judgment "on the merits";

(ii) the cases are brought by the same claimant against the same defendant – it is not enough that the same litigants were also parties in the previous case (it must be the same configuration of parties); AND

(iii) the same cause of action or claim is involved in the later lawsuit.

Federal Rule of Civil Procedure (FRCP) 41(b) governs the question of whether claim preclusion should bar a plaintiff whose initial suit ended in an involuntary dismissal from proceeding with a subsequent suit on the same claim. FRCP 41(b) establishes that an involuntary dismissal generally will bar a subsequent suit, but both the Rule and court decisions create exceptions where claim preclusion does not apply.

FRCP 41(b) provides three grounds for ordering an involuntary dismissal:

(i) failure of the plaintiff to prosecute;

(ii) failure of the plaintiff to comply with the FRCP or any order of court; AND

(iii) failure of the plaintiff to show by the close of his evidence a right to relief based upon the facts and the law.

FRCP 41(b) further specifies that all 41(b) dismissals and "any dismissal not provided for in this rule" are to operate as adjudications on the merits except for four types of dismissals. The four exceptions are:

(i) dismissal for lack of jurisdiction;

(ii) dismissal for improper venue;

(iii) dismissal for failure to join a party under Rule 19; AND

(iv) dismissal that the court in its order specifies to be without prejudice.

Although the Erie decision made it clear that there is no general federal common law in the United States, there are still particular instances in which federal common law is applied. More simply put, occasionally the federal court is free to disregard state law in making judicial interpretations.

Federal common law may apply even when the basis for the federal district court's jurisdiction was diversity. In particular, federal common law can be binding when a federal court sitting in diversity issues a judgment, and a state court must later decide claim preclusion effect that earlier judgment should be given.

In Semtek Int'l Inc. v. Lockheed Martin Corp., the Supreme Court decided that under federal common law, a diversity judgment should have whatever preclusive effect that similar judgment issued by the state court in which the diversity court sits would have. Thus, the second state court must apply federal common law to determine how and whether it is bound by the prior diversity judgment.

Semtek notably also held that as a matter of federal common law, the dismissal has whatever effect on later actions in other courts as such a dismissal would have if it had been issued by the state where the federal diversity court sat.

B is correct. The preclusive effect of a federal court's involuntary dismissal of a diversity lawsuit is determined, as a matter of federal common law, by the law of the state in which the federal court that issued the dismissal is located.

Here, the facts indicate that in State A, an involuntary dismissal does not operate as an adjudication on the merits, which means the writer's lawsuit may go forward in State B because the State A federal court's dismissal is not an adjudication on the merits under State A law.

A is incorrect. The second lawsuit's timeliness under State B's statute of limitations may be necessary for the lawsuit to move forward, but it is not sufficient on its own. This answer ignores the prior judgment from State A and the preclusive effect of that judgment must be analyzed when considering the motion to dismiss. Because the first lawsuit was terminated by an involuntary dismissal, federal common law requires State B's federal court to determine whether that dismissal was on the merits. State A law is applicable and holds that the first judgment is NOT on the merits, as stated above.

C is incorrect. The preclusive effect of a federal court's involuntary dismissal of a diversity lawsuit is determined, as a matter of federal common law, by the law of the state in which the federal court that issued the dismissal is located. Therefore, it is State A's preclusionary law that is dispositive here, not State B's. It is of no consequence that State B's law treats involuntary dismissals as an adjudication on the merits.

D is incorrect. This misstates the federal rule on involuntary dismissals. Not every involuntary dismissal acts as an adjudication on the merits, and federal common law will determine which state law to apply. Here, State B's federal court must apply State A's law regarding the preclusive effect of involuntary dismissals, which is that they are NOT considered an adjudication on the merits.

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9. Is the court likely to preclude the car manufacturer from litigating the merits of the teacher's negligence claim?

Shortly thereafter, the court issued a default judgment against the manufacturer. After the default judgment was entered, a teacher filed suit against the same manufacturer in federal court in State B. The teacher sought damages on the same negligence theory put forward in the accountant's lawsuit against the manufacturer. An accountant properly filed a diversity lawsuit against a car manufacturer in State A federal court. The accountant sought compensation under a negligence claim for damages he suffered when the ignition of his car malfunctioned. After the accountant obtained many documents and emails through discovery indicating the manufacturer's longstanding awareness of ignition problems, the manufacturer stopped participating in the litigation.

- Yes, because of the entry of a default judgment against the manufacturer in the accountant's case
- Yes, because application of non-mutual offensive issue preclusion would be unconstitutional
- No, unless State A law permits non-mutual offensive issue preclusion
- **No, despite the entry of a default judgment against the manufacturer in the accountant's case**

Note:
A judgment binds the plaintiff or defendant (or their privies) in subsequent actions on different causes of action between them (or their privies) as to issues actually litigated and essential to the judgment in the first action. This conclusive effect of the first judgment is called issue preclusion (or collateral estoppel). Note that issue preclusion is narrower than claim preclusion.

For issue preclusion to apply:

(i) the judgment must have been final;

(ii) the issue actually litigated; AND

(iii) it must have been essential to the judgment.

Unlike claim preclusion, a full trial on the merits is almost always necessary to satisfy the "actually litigated" requirement.

D is correct. Issue preclusion applies when a judgment binds the plaintiff or defendant in subsequent actions on different causes of action between them as to issues actually litigated and essential to the judgment in the first action.

Here, there will not be issue preclusion because the issue of the car manufacturer's negligence was not litigated and determined in the first case. Rather, the court issued a default judgment against the car manufacturer.

A is incorrect. Issue preclusion may only apply to issues actually litigated and determined in a previous lawsuit. Here, because the car manufacturer stopped responding in the accountant's suit, issue preclusion does not apply because the issues were not actually litigated.

B is incorrect. The car manufacturer will not be precluded from litigating this issue, regardless of whether non-mutual offensive issue preclusion would be constitutional on these facts.

C is incorrect. The car manufacturer will not be issue-precluded, regardless of whether State A law permits non-mutual offensive issue preclusion, because there is no issue preclusion on these facts for reasons apart from non-mutuality.

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10. Will preclusion prevent litigation of the negligence claim in the doctor's lawsuit?

A biker filed a lawsuit against a driver in state court in State A, seeking compensation for damages incurred in a collision. The driver defended on the ground of contributory negligence, a full defense under State A law. The jury rendered a general verdict for the driver, thereby not identifying its specific findings. A doctor, who was also injured in the same collision, subsequently filed a jurisdictionally valid diversity lawsuit against the driver in State A federal court.

- Yes, the driver will be precluded from relitigating the issue of his negligence because of the first lawsuit
- Yes, the doctor will be precluded from relitigating the issue of the driver's negligence because of the first lawsuit
- No, issue preclusion will not apply because of the first lawsuit, but claim preclusion may apply
- **No, neither issue preclusion nor claim preclusion will apply because of the first lawsuit**

Note:
"Claim preclusion" (also known as "res judicata") means that a court's final judgment is conclusive against the same parties in any further, identical cause of action between the parties.

When a plaintiff tries to relitigate the same claim against the same defendant in a later action, under claim preclusion, this claim is said to have "merged" with the first claim and the plaintiff is precluded. When a defendant tries to relitigate the same claim against the same plaintiff, this claim is said to be "barred" by the earlier adverse judgment and the defendant is precluded.

Under claim preclusion, regardless of whether merger or bar applies, the second claim is precluded if:

the first action had a valid, final judgment "on the merits";the two claims are brought by the same claimant against the same defendant in the same configuration (it is not enough that the same litigants were also parties in the previous case); ANDthe second lawsuit involves the same cause of action or claim as the first lawsuit."Issue preclusion" (also known as collateral estoppel) means that issues litigated and determined in a first lawsuit are binding on the parties involved should those issues arise in any subsequent proceeding. The first judgment binds the plaintiff or defendant (or their privies) in subsequent lawsuits involving other causes of action that involve the same issues.

Issue preclusion is a narrower doctrine than claim preclusion because it only precludes relitigation of issues that were relevant to the first lawsuit, not entire causes of action.

Issue preclusion prevents a party from relitigating the same issue in a subsequent lawsuit if:

the judgment in the first action was final;the issue was actually litigated; ANDthe issue was essential to the judgment.Who invokes issue preclusion? Traditionally, issue preclusion required "mutuality," meaning only parties (or privities) could take advantage of a prior judgment in a later lawsuit.

However, most courts no longer follow the doctrine of mutuality. In certain situations, nonparties (people who were NOT present in the first lawsuit) may invoke issue preclusion against a party from the first lawsuit. This arises in the form of non-mutual collateral estoppel ("non-mutual" because only one of the parties was present in the first suit).

Non-mutual collateral estoppel is said to be either "offensive" (using prior judgment as a "sword" later) or "defensive" (using a prior judgment as a "shield" later).

Defensive non-mutual collateral estoppel (someone who was not present in the first lawsuit using that first judgment to avoid liability in a second lawsuit) will only be permitted if the precluded party had a full and fair opportunity to litigate the issue in the first lawsuit.

Offensive non-mutual collateral estoppel (someone who was not present in the first lawsuit using that first judgment to obtain relief against someone who was a party in the first lawsuit) is rare, but permitted in some circumstances.

D is correct. Neither issue preclusion nor claim preclusion will apply to the second action between the doctor and the driver. Issue preclusion will not apply because the doctor was not a party to the previous case, nor was he in privity with a party.

Moreover, the jury rendered only a general verdict for the driver, without any specific findings, and therefore it is unclear whether any essential issue was fully litigated in the first action that has been raised in the second action.

Claim preclusion will also not apply because it requires the parties to be identical in the subsequent action, including the same configuration of the plaintiff and defendant. Here, the doctor was not a party to the first action and the biker was not a party to the second action.

A is incorrect. The driver will not be precluded from re-litigating the issue of his negligence because, in the first lawsuit, there is no evidence that the jury made any specific findings whatsoever.

The jury could have either determined that the driver was not negligent or that the biker was contributorily negligent. As such, without any indication that the driver's negligence was both fully litigated AND essential to the first judgment, issue preclusion will not apply.

B is incorrect. It is incorrect that the doctor will be precluded from re-litigating the issue of the driver's negligence because, as explained above, issue preclusion does not apply. Due to the jury's general verdict in the first case, there is no evidence that the issue was fully litigated or that it was essential to the final judgment.

C is incorrect. This answer is only partially correct. Although there will be no issue preclusion, there will also be no claim preclusion. As stated above, the second case between the doctor and the driver is not subject to claim preclusion because the doctor was not a party to the first case, which means the configuration of the parties was not identical, as required for claim preclusion to apply.
