

A motorcyclist and her friend collided with an automobile at an intersection. The motorcyclist sued the automobile driver in a state court in State A to recover for damages to her motorcycle and personal injuries. The friend did not join this suit. The jury returned a verdict for the automobile driver, specifically finding that she was not negligent. The court entered a final judgment consistent with the verdict.

Three months later, the friend brought a diversity action in a federal court in State B against the automobile driver to recover damages for the personal injuries he sustained in the collision. The automobile driver defended on the ground that the prior judgment established that she was not negligent.

State A permits mutual and nonmutual issue preclusion. State B permits only mutual issue preclusion.

Is the automobile driver likely to succeed in her defense?

- A. No, because State B does not permit nonmutual issue preclusion.
- B. No, because the friend was not a party to the first action.
- C. Yes, because State A permits nonmutual issue preclusion.
- D. Yes, because the jury specifically found that the automobile driver was not negligent.

Explanation:

Issue preclusion (ie, collateral estoppel) is a defense that bars the relitigation of issues that were actually litigated, determined, and essential to a valid final judgment. There are two types of issue preclusion:

- **Mutual** – which **allows parties** from the first action to assert issue preclusion in the second action
- **Nonmutual** – which **allows nonparties** from the first action to assert issue preclusion in the second action

Both types of issue preclusion **can be asserted** against **parties to the first action** or their privies, absent limited **exceptions**. However, they **cannot be asserted** against a **nonparty to the first action** because it would deprive that party of the opportunity to fully and fairly litigate his/her claims and defenses.

Here, the motorcyclist sued the automobile driver in the first action. The jury specifically found that the automobile driver was not negligent, and the court entered a judgment in her favor. The friend then sued the automobile driver in the second action. Since the friend was not a party to the first action, the automobile driver cannot assert issue preclusion against him (**Choice D**). Therefore, this defense is unlikely to succeed.

(Choices A & C) Since the judgment was entered by a state court in State A, the federal court in State B must apply State A's **preclusion law**. Although State A allows nonmutual issue preclusion, it cannot be asserted *against* the friend since he was not a party to the first action.

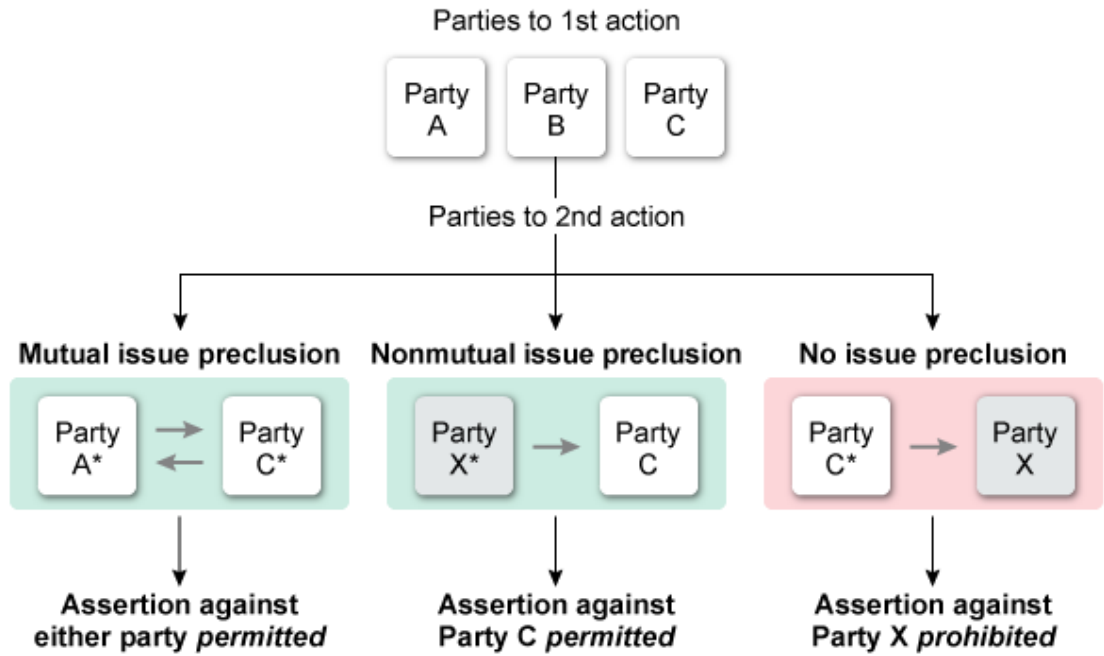
Educational objective:

Issue preclusion (ie, collateral estoppel) bars the relitigation of issues that were actually litigated, determined, and necessary to a valid final judgment. This doctrine can only be asserted against parties to the first action because they have had an opportunity to fully and fairly litigate their claims/defenses.

References

- Restatement (Second) of Judgments § 27 (Am. Law Inst. 1982) (defining issue preclusion).
- Taylor v. Sturgell, 553 U.S. 880, 893 (2008) (stating that a nonparty is not bound by a judgment because each person has the due process right to have his/her day in court).

Assertion of issue preclusion



*Party asserting issue preclusion