

A federal agency sued a corporation in a federal court in State A. The agency claimed that the corporation intentionally issued false and misleading advertisements in violation of federal law. At the conclusion of trial, the court found that the advertisements were false and misleading and entered a declaratory judgment in favor of the agency.

A group of consumers then filed a class action in a federal court in State B against the same corporation to recover damages suffered as a result of the false and misleading advertisements. The corporation demanded a jury trial. The group moved for partial summary judgment, asserting that collateral estoppel (issue preclusion) prevents the corporation from relitigating whether the advertisements were false and misleading.

How will the federal court likely rule on the group's motion for partial summary judgment?

- A. Deny the motion, because the corporation is entitled to a jury trial on this factual issue.
- B. Deny the motion, because the group was not a party to the first action.
- C. Grant the motion, because offensive nonmutual collateral estoppel is permitted.
- D. Grant the motion, because the law-of-the-case doctrine applies.

Explanation:

Collateral estoppel

(ie, issue preclusion)

Mutual v. Nonmutual	Mutual	<i>Parties</i> from first action assert collateral estoppel in subsequent action against other parties from first action
	Nonmutual	<i>Nonparties</i> from first action assert collateral estoppel in subsequent action against parties from first action
Defensive v. Offensive	Defensive	<i>Defendant</i> in second action asserts to <i>avoid</i> relitigating issue from first action
	Offensive	<i>Plaintiff</i> in second action asserts to <i>establish</i> issue from first action. Not permitted if: <ul style="list-style-type: none">• plaintiff could have easily joined first action• defendant had little incentive to vigorously defend in first action• second action affords procedural opportunities unavailable in first action <i>or</i>• inconsistent findings on issue exist

Collateral estoppel (ie, issue preclusion) precludes the relitigation of an issue that was actually litigated, determined, and essential to a valid final judgment. There are **two types** of collateral estoppel:

- **Mutual** – where **parties** from the first action assert collateral estoppel in a subsequent action against other parties from the first action
- **Nonmutual** – where **nonparties** from the first action assert collateral estoppel in a subsequent action against parties from the first action **(Choice B)**

Both types are permitted in federal court, and both can be used in a defensive or offensive manner. **Defensive estoppel** is **used by a defendant** in the second action to **avoid relitigating an issue** from the first action. **Offensive estoppel** is **used by a plaintiff** in the second action to **establish an issue** from the first action—with limited exceptions (see table above).

Here, a federal court entered a declaratory judgment in favor of the federal agency after finding that the corporation's advertisements were false and misleading. A group of consumers then filed a class action against that corporation. The group (*nonparty* in first action) moved for partial summary judgment on the ground that the prior judgment

established that the advertisements were false and misleading. Since *offensive nonmutual* collateral estoppel is permitted in federal court, the motion will likely be granted.*

*None of the exceptions apply here since (1) it is difficult to join a federal agency's suit, (2) there is a great incentive to defend against allegations by the federal government, (3) both actions were brought in federal court, and (4) no inconsistent findings exist.

(Choice A) In *Parklane Hosiery Co. v. Shore*, the Supreme Court held that preventing the relitigation of factual issues through collateral estoppel does not violate the Seventh Amendment [right to a jury trial](#).

(Choice D) The law-of-the-case doctrine prevents relitigating legal issues that have been decided at successive stages of the same case—eg, trial court must apply appellate court's legal determinations on remand—not *different* cases (as seen here).

Educational objective:

Collateral estoppel can be asserted by parties (mutual) or nonparties (nonmutual) to the first action against parties to the first action either (1) *defensively*, when used by a defendant in the second action to *avoid* an issue or (2) *offensively*, when used by a plaintiff in the second action to *establish* an issue.

References

- *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 329–31 (1979) (explaining how nonmutual collateral estoppel applies in federal courts).
- Restatement (Second) of Judgments § 27 (Am. Law Inst. 1982) (defining issue preclusion).