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SECOND

JUDGMENTS 2d

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As Adopted and Promulgated

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... .” If the judgment is under appeal, the party may bring to the attention of the appellate court the nullification of the prior judgment, and the appellate court should then grant proper relief through reversal of the judgment appealed from. See *Butler v. Eaton*, 141 U.S. 240, 11 S.Ct. 985, 35 L.Ed. 713 (1891).

TOPIC 2. PERSONAL JUDGMENTS

TITLE A. IN GENERAL

§ 17. Effects of Former Adjudication—General Rules

A valid and final personal judgment is conclusive between the parties, except on appeal or other direct review, to the following extent:

- (1) If the judgment is in favor of the plaintiff, the claim is extinguished and merged in the judgment and a new claim may arise on the judgment (see § 18);
- (2) If the judgment is in favor of the defendant, the claim is extinguished and the judgment bars a subsequent action on that claim (see § 19);
- (3) A judgment in favor of either the plaintiff or the defendant is conclusive, in a subsequent action between them on the same or a different claim, with respect to any issue actually litigated and determined if its determination was essential to that judgment (see § 27).

These general rules are subject to exceptions: as to Subsections (1) and (2), see §§ 20 and 26; as to Subsection (3), see § 28.

Cross-reference to Restatement, Second, of Conflicts. This Section, like the whole of the present Restatement, is concerned mainly with the res judicata effects of a judgment upon later actions in the courts of the same state. Effects in the courts of a sister state are dealt with in Restatement, Second, Conflict of Laws §§ 93–121. Attention is invited particularly to the discussion of the problem of merger in interstate situations, summarized herein at § 18, Comment *d*.

See Appendix for Court Citations and Cross References

Comment:

a. *Merger (Subsection (1))*. When a valid and final personal judgment is rendered in favor of the plaintiff, the claim is generally *merged* in the judgment. This means that the claim, whether it was valid or not, is extinguished, and the judgment with new rights of enforcement thereof is substituted for the claim. Merger is dealt with in greater detail in § 18. Compare the exceptions to the general rule against splitting of claims in § 26.

b. *Bar (Subsection (2))*. When a valid and final personal judgment is rendered in favor of the defendant, the judgment is generally a *bar* to a subsequent action on the claim. It is sometimes said that there is an “estoppel by judgment,” but that term is not used in the Restatement of this subject. If the original claim was valid, it is extinguished by the judgment; if it was not valid, the effect of the judgment is conclusively to establish its invalidity. The general rule as to bar is dealt with in greater detail in § 19, and the exceptions to the general rule in § 20.

c. *Issue preclusion (Subsection (3))*. A valid and final personal judgment, whether in favor of the plaintiff or of the defendant, has a further effect—that of issue preclusion. In a subsequent action between the parties, the judgment generally is conclusive as to the issues raised in the subsequent action if those issues were actually litigated and determined in the prior action and if their determination was essential to the judgment. When the subsequent action is on a different claim, this effect of the judgment is sometimes designated a *collateral estoppel*. It is also sometimes called an “estoppel by verdict,” but that phrase is not used in this Restatement; it is misleading, since it is not a verdict but the judgment that is conclusive upon the parties.

When an issue is actually litigated and determined in an action, the determination is also generally conclusive in any subsequent action between the parties on the same claim. This effect of the judgment is sometimes designated a *direct estoppel*. Ordinarily, after a judgment is rendered in an action, the claim is extinguished by the judgment’s bar or merger effect, and therefore it is impossible to maintain a subsequent action on the claim. But there are exceptions. For example, when a judgment for the defendant is based on lack of jurisdiction, improper venue, or nonjoinder or misjoinder of parties, the plaintiff is not pre-

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cluded from maintaining another action on the claim (see § 20 (1)). Also, when the defendant interposes a counterclaim on which an affirmative judgment in his favor is not permitted to be rendered, and he obtains judgment on the counterclaim, he is not precluded from subsequently maintaining an action on his claim to secure further relief (see § 21(2)). See also the exceptional interstate situations referred to in § 18, Comment *d* below, where after judgment upon a claim there may be a subsequent action upon that claim in a sister state.

d. Erroneous judgment. The general rules stated in this Section are applicable to a valid (see §§ 1–12) and final (see § 13) judgment, even if it is erroneous and subject to reversal. If the judgment is erroneous, the unsuccessful party's remedy is to have it set aside or reversed in the original proceedings. Such a remedy may be sought by a motion for a new trial or other relief in the court that rendered the judgment, or by an appeal or other proceedings for review of the judgment in an appellate court.

c. Relief from judgment. Questions as to the right to relief from a judgment obtained by fraud or the like are dealt with in Chapter 5.

e. Effect of judgment on persons who were not parties. Questions as to the effect of a judgment upon persons who were not parties to the action in which the judgment was rendered are dealt with in Chapter 4.

REPORTER'S NOTE

(§ 45, Tent. Draft No. 1.) *Scope.* The corresponding § 45 of the first Restatement stated the same general rules as to merger, bar, and issue preclusion (collateral and direct estoppel), but applied only to personal judgments rendered in actions to recover money. Section 46 of the first Restatement went on to state that the same rules applied to personal judgments in actions not for the recovery of money—notably judgments in actions to compel the defendant to do or refrain from doing acts other than paying money—except that in such cases there was said to be no *merger* of the claim in the judgment. The present Section extends to all personal judgments, without the previous exception as to merger. See § 18, Comments *b* and *c*, and Reporter's Note thereon.

Comment c. For cases applying issue preclusion in a subsequent action on the same claim, see, e.g., *Acree v. Air Line Pilots Ass'n*, 390 F.2d 199 (5th Cir. 1968), cert. denied, 393 U.S. 852, 89 S.Ct. 88, 21 L.Ed.2d 122 (1968); *Clouatre v. Houston Fire & Cas.*

See Appendix for Court Citations and Cross References

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