

### Fact Pattern:

Bobby was a regular customer at Big-Mart. During a recent visit to Big-Mart, Bobby purchased several two-liter bottles of Big-Mart brand cola. As with most colas, this cola was quite carbonated. Bobby sped home (i.e., traveling in excess of the speed limit) with the bottles because he was late for his daughter's birthday party. One of the bottles exploded during his return trip home, seriously injuring Bobby and damaging his automobile.

The next day, Bobby brought sued against Big-Mart in state court. Bobby's Complaint contained only one cause of action – negligence. Specifically, Bobby alleged that Big-Mart was negligent in storing the carbonated beverage, which in turn caused the bottles to explode, which in turn led to his injuries. Big-Mart denied negligence and the case proceeding through discovery and regular pre-trial procedures.

On the eve of trial, Big-Mart moved to amend their Answer to claim that Bobby could not recover because he acted negligently in driving his car too fast. The trial judge refused to allow Big-Mart to amend its Answer. The case was tried without a jury. The trial judge entered judgment in favor of Big-Mart, explicitly finding that Big-Mart was not negligent in the way the bottles were stored.

Bobby did not appeal this judgment. Instead, he filed a lawsuit against Big-Mart in the same state court. In his new Complaint, Bobby became creative and alleged three causes of action: (1) intentional torts; (2) negligence for damage to his automobile when the same bottle in the first action exploded; (3) negligence for damage to his refrigerator and drywall. Apparently, after judgment had been entered in the first case, another one of the cola bottles Bobby had purchased the same day exploded in his house damaging his refrigerator and drywall. Bobby's theory regarding the property damage was that Big-Mart was negligent in storing the carbonated beverages, which in turn caused the bottles to explode, which in turn led to his property damage.

### Questions:

You are a new hotshot attorney in the law firm that has represented Big-Mart for many years. You want to argue that the judgment in the earlier case prevents Bobby from litigating any of the claims that he has brought in this new lawsuit.

1. What motion should you bring on behalf of Big-Mart to present this argument to the court?
2. Assuming the proper Motion is filed, how should the Court rule?

Please discuss each new cause of action separately.

### Example Answer:

#### Motion to Dismiss or a Motion for Summary Judgment

The Motion that should be brought is either a Motion to Dismiss or a Motion for Summary Judgment.

#### Cause of Action I

Pursuant to Res Judicata/Claim Preclusion, a claim which has been litigated to a final judgment on the merits cannot be relitigated by the parties [after final judgment on merits, Plaintiff is barred from bringing same cause of action in later suit where issue was raised or could have been raised and involves same parties or those in privity]. Res Judicata operates to prevent litigation of every issue that was raised or may have been raised in the prior litigation.

In order for Res Judicata to apply, the following three conditions must be met: (1) there must have been a final judgment on the merits; (2) the parties in the second suit must be the same or in privity with the parties in the first suit; (3) both suits must involve the same subject.

Here, there was a final judgment on the merits. Specifically, a bench trial ensued, which resulted in a judgment in favor of Big-Mart. The fact that Bobby may have appellate rights does not negate the first element. Additionally, the parties in the first lawsuit are the same parties in this lawsuit. Cause of Action I alleges an additional theory of liability, i.e., an intention tort. Nevertheless, both theories of liability are based upon the same incident and there have been no facts to warrant a new action. Pursuant to Res Judicata, Bobby was required to pursue all available tort theories in the original action otherwise they are barred. Consequently, Cause of Action I is barred.

#### Cause of Action II

Big-Mart should also raise a Res Judicata Motion in response to Cause of Action II.

In Cause of Action II, Bobby is seeking property damage for his car. The prior cause of action has been litigated to a final judgment. Pursuant to Res Judicata, the parties must bring forward their whole case.

Here, Bobby's claim of damage to his car by the carbonated cola occurred from the first explosion thereby rendering it the same underlying event. Consequently, the damage to Bobby's car from the initial incident must have been addressed in the first suit for it to be litigated. Therefore, Bobby would be

successful in barring Cause of Action II from litigation based on the theory of Res Judicata.

### Cause of Action III

Res Judicata is not likely to bar Cause of Action III because the cause of action that was litigated in the first action was the bottle that exploded in Bobby's car. Cause of Action III involves a second carbonated bottle. Accordingly, Cause of Action III does not involve the same subject matter or the same cause of action.

Collateral Estoppel/Issue Preclusion prohibits re-litigation of issues of fact that were previously adjudicated. Collateral estoppel makes the prior determination of an issue conclusive if the issue was litigated and determined on the merits in the original action. For collateral estoppel to be effective, the following two conditions must be met: (1) the issue of fact must have been actually litigated and decided in the first case; and (2) the issue of fact must have been essential to the judgment. That is, the judgment must have depended on the way that the common issue was decided.

In the first case, Big-Mart's negligence was litigated and a judgment was reached by the trial judge on the merits of the case. The decision regarding Big-Mart's lack of negligence was essential for there to be a judgment in Big-Mart's favor. In order for Bobby to prevail on Cause of Action III, the issue of negligence must be decided in a way contrary to the first lawsuit. Therefore, because the issue of fact was already litigated once, Big-Mart's Motion based on collateral estoppel would bar Bobby from litigating Cause of Action III.