

Committee on Judiciary  
Reference Paper

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SUBJECT: COLLATERAL ESTOPPEL --  
Survey of Oregon Cases

ORS 43.160: That only is determined by a former judgment, decree or order which appears upon its face to have been so determined or which was actually and necessarily included therein or necessary thereunder.

"Collateral estoppel" refers to rule preventing relitigation of particular issue or determinative fact which was necessary to prior decision of different cause of action, as compared with "res judicata" which usually refers to rule preventing relitigation of same cause of action.

Bahler v. Fletcher, 257 Or 1, 474 P2d 329 (1970)

Principles of collateral estoppel and res judicata are not to be applied in the abstract and have validity only if their application will carry out policy which such principles were designed to express.

Griffin v. City of Roseburg, 255 Or 103, 464 P2d 691 (1970)

Doctrine of collateral estoppel (ORS 43.160) prevents relitigation of issue between same parties.

State v. George, 253 Or 458, 455 P2d 609 (1969)

Collateral estoppel requires identity of parties, or their privies, together with identity of one or more issues necessarily disposed of in earlier of two actions.

Wolff v. DuPuis, 233 Or 317, 378 P2d 707 (1963)

The doctrine of collateral estoppel grants finality only to facts which were actually or necessarily adjudicated in the prior action.

Gaul v. Tourtellotte, 260 Or 14, 488 P2d 416 (1971)

Test of whether judgment in one case operates as collateral estoppel in a second case is whether given issue was necessary to determination made in first case.

Ira v. Columbia Food Co., 226 Or 566, 360 P2d 622  
(1961)

Theory of collateral estoppel is available in criminal cases.

State v. Tremblay, 4 Or App 512, 479 P2d 507 (1971)

Matters which follow by necessary and inevitable inference from an adjudication because the judgment could not have been rendered without determining them are as effectually concluded thereby as though specifically and in terms adjudicated.

State v. Dewey, 206 Or 496, 292 P2d 799 (1956)

(Re criminal cases.) Where the second prosecution is for another offense, the previous judgment is conclusive only as to those matters which were in fact in issue and actually or necessarily adjudicated. Thus an acquittal of the charge of seduction does not adjudicate the question of sexual intercourse, although that was one of the issues in the case, since the acquittal might have been due to the failure to establish other facts essential to a conviction.

State v. Dewey, Id. (Citing 2 Freeman on Judgments  
1365 (5th ed.))

Although defendant had previously been tried for sale of same marihuana and case had been dismissed on grounds of entrapment, the doctrine of collateral estoppel was not applicable and did not preclude conviction of possession of marihuana where, under the facts, it would have been possible for the officer to have entrapped defendant into a sale and the defendant could nevertheless have been guilty of possession without being entrapped into that crime.

State v. Harp, 6 Or App 85, 485 P2d 1123 (1971)