

THE HENDERSON PRINCIPLE: SOURCE CODE OF FINALITY, RES JUDICATA, CLAIM PRECLUSION AND ABUSE OF PROCESS

I. INTRODUCTION:

1. These are oft quoted but less understood, and in case of Henderson, little known, but vital and interconnected aspects in law. This is a modest attempt to unravel the source code of these valuable principles. Acknowledgment is due to valuable inputs derived from case authorities, Wiki as well as modest understanding of the author.

II. CONCEPTS:

2. **Rule of Finality** is source of certainty in law. **Finality**, in law, is **the concept that certain disputes must achieve a resolution from which no further appeal may be taken, and from which no collateral proceedings may be permitted to disturb that resolution.** A judgment has to be held valid, operating and binding until set aside. Unless this happens the exercise of judicial power would yield no adjudication of right and liability to which immediate effect could be given. **The importance of finality is intimately connected to the concept of *res judicata* ("a thing decided").** "**Res judicata pro veritate accipitur**" is the full latin maxim.

3. **CPC 1908** defines the concept of RES JUDICATA.

"11. Res Judicata

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former

suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

There are 8 explanations appended to this provision basically to explain the scope of the provision.

3.1. For Res judicata to operate there must be a judgment on merit on same claim between same party or their privies.

3.2. *Res judicata* is set up as an estoppel against their opponent's claim or defence and/or as the foundation of their own claim or defence. It cannot be re-litigated by those bound by the judgment, except on appeal.

4. **CLAIM PRECLUSION**: Basically this means that the same parties cannot approach the same court again for adjudication of the same issue. It is **Claim preclusion** : barring of a suit from being brought again on a legal cause of action that has already been finally decided between the parties. This is used interchangeably with res judicata.

5. And finally, **abuse of process** occurs where the court's process is used for a ulterior purpose. In a legal context abuse of process occurs where the court's process is used for a purpose or in a way that is significantly different from its ordinary and proper use (*Att General v Barker*).

III. TYPES of res judicata:

6. There are two species of *res judicata*, namely **cause of action estoppel** and **issue estoppel**:

- **Cause of action estoppel** prevents a party to an action from asserting or denying, as against the other party, the existence or non-existence of a particular cause of action, the existence or non-existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties (or their privies).
- **Issue estoppel** arises where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided, and in subsequent proceedings between the same parties (or their privies) involving a different cause of action to which the same issue is relevant, one of the parties (or their privies) seeks to re-open that issue.

IV. BASIS of RES JUDICATA AND FINALITY RULE:

7. The doctrine is based on 3 Roman law maxims:

1. **Nemo debet lis vexari pro eadem causa:** *no man should be vexed twice for the same cause*
2. **Interest publicae ut sit finis litium** : *it is in the interest of the State that there should be an end to a litigation*
3. **Re judicata pro veritate occipitur:** *a judicial decision must be accepted as correct*

V. When can finality be disturbed:

8.

- a. A mistake or fundamental misapprehension
- b. A fundamental piece of evidence or law overlooked

VI. SOURCE CODE: THE HENDERSON ABUSE

(Henderson v Henderson (1843) 3 Hare 100, 67 ER 313)

9. What is the Henderson principle?

9.1 It is a long established principle of English law that **parties to a litigation are required to bring their whole case at once rather than re-litigating the same subject matter**, concerning the same parties, in serial litigation. This is a very interesting concept, which in my view concretises the concepts of finality, res judicata and abuse of process. The case remains good law, and is still cited. Case facts make for engrossing reading.

9.2 In 1808 two brothers, Bethel and Jordan Henderson, became partners in their father's business which had operations in both Bristol and Newfoundland. In 1817 the father, William Henderson left the business and subsequently (on a date not recorded in the case) died. Subsequently in March 1830 Jordan Henderson also died, and he was survived by his widow, Elizabeth Henderson and their children, Joanna and William.

9.2.1 Jordan Henderson died intestate and his wife was appointed as his administrator. In 1832, Elizabeth Henderson brought legal proceedings in the Colonial Court in Newfoundland against her former brother-in-law, Bethel, alleging that he had not paid certain sums to her and her children

which were due under the will of the older William Henderson. She also brought separate proceedings claiming he had failed to provide an account as executor of the will of the older William Henderson, and that he had failed to account for the interest in the partnership held by her late husband. In the end three sets of proceedings were joined, heard and determined by the courts in Newfoundland, and Bethel Henderson was ordered to pay the sum of £26,650 to his former sister-in-law and her family.

9.2.2 Elizabeth Henderson then brought subsequent proceedings in England to try and enforce the debt. In those proceedings Bethel Henderson sought to resist the claim, alleging that the decree of the Colonial Court was irregular. He further alleged that in fact it was the late Jordan Henderson who had drawn sums from the partnership in excess of his entitlement, and that accordingly it was Elizabeth Henderson who (as administrator of Jordan's estate) owed money to him. However, Bethel Henderson had not sought to advance any of these claims in the legal proceedings in Newfoundland.

9.2.3 The Vice Chancellor refused to allow Bethel Henderson to impugn the proceedings of the Colonial Court by seeking an injunction to restrain enforcement. He held that any action to challenge that judgment could only be made by way of appeal.

9.2.4 He also refused to allow the separate claim of Bethel Henderson against the widow. **It was held that:**

“where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the

same subject of litigation in respect of matter[s] which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. ‘

9.3 This was held to apply not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.

10.A proportioned reading of Henderson Abuse: *Vico Limited and Others v. Bank of Ireland and Others*[2016] IECA 273

The rule in *Henderson v. Henderson*, was later considered by the Court of Appeal in *Vico Limited and Others v. Bank of Ireland and Others*[2016] IECA 273] where the Court adopted the explanation of the rule given by Cooke J. in the in *Re: Vantive Holdings & Others and the Companies Acts 1963-2006*[2009] IEHC 408, at paras. 32 to 33. The principle was given a much more workable interpretation:

“The rule in Henderson v. Henderson is to the effect that a party to litigation must make its whole case when the matter is before the court for adjudication and will not afterwards be permitted to reopen the matter to advance new grounds or new arguments which could have been advanced at the time. Save for special cases, the plea of res judicata applies not only to issues actually decided but every point which might have been brought forward in the case. In its more recent application this rule is somewhat mitigated in order to avoid its rigidity by taking into consideration circumstances

*that might otherwise render its imposition **excessive, unfair or disproportionate.***”

11. A pioneering illustration: **The Slegaby Estate Limited and Samuel George Alder v Lloyds Bank International**

Limited (ORD 14/0027, judgment dated 16 March 2015), the Isle of Man High Court of Justice (His Worship the High Bailiff)

Key principles forming basis of decision:

1. Once a cause of action has been held to exist or not, that outcome may not be challenged by either party in subsequent proceedings ("**cause of action estoppel**"). The bar is absolute in respect of all points decided unless fraud or collusion is alleged;
2. Even where the cause of action is not the same as in the later action, if some issue necessarily common to both was decided on the earlier occasion then the decision is binding on the parties ("**issue estoppel**");
3. The preclusion of a party raising in subsequent proceedings matters which were not but could and should have been raised in earlier ones (*Henderson v Henderson* 3 Hare 100, per Wigram QC at 114 to 116) (the "**Henderson v Henderson principle**"); and
4. The existence of a general procedural rule against abuse of proceedings ("**abuse of process**").

12. Detailed reference for rule of finality in Indian context can be had from **Garikapatti Veeraya vs N. Subbiah Choudhury** on 1st February, 1957

Equivalent citations: 1957 AIR 540, 1957 SCR 488 [5 judge bench.Ruling 4:1]

VII.Applicability in income tax

13.As a general rule, the principle of **res judicata is not applicable to tax related proceedings**. An assessment of particular year is final, complete and binding in relation to the assessment year in which the decision is given.But there are certain aspects like status of assessee,method of accounting which,accepted over the years cannot be allowed to be disturbed without substantial cause.There have been observations which clarify that this is not an omnibus universal rule.

13.1 The following may be usefully referred:

1.Rule of Finality: Parshuram Pottery Works Co. Ltd Vs ITO 106 ITR 1(SC).

2.Res Judicata: C.I.T Vs Hindustan Motors Ltd 192 ITR 619(Cal).

3.Abuse of Process: CIT v.Kisan Ratilal Choksey Share And Securities (P.) Ltd [2014] 368 ITR 485 (Bombay)