

## On Applicable Laws and Objective Scope of *Res Judicata* (summary)

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There has been theoretical controversy in Japan on the objective scope of *res judicata* of a final and binding judgment; does it preclude the following litigations only of the same legal claim or also of other claims arisen from the dispute itself? Influenced by German doctrines, the traditional theory supports the former view whereas the recent theory, aiming at resolving a dispute at one chance, shows preference to the latter.

However, the controversy has limited its scope to the cases where only the Japanese law is applied although a plaintiff may file separate actions based on different applicable laws on one dispute. That is, a plaintiff may start two litigations for one dispute in two countries whose rules on conflict of laws are different. Another example is that when legal claims under different applicable laws concur from one dispute, such as breach of contract and tort, a plaintiff may split these claims and file actions respectively. In addition, a plaintiff who has already lost his case may maneuver the connecting factor and ask for, in the posterior litigation, the application of another substantive law on the same dispute. Here, we face a question whether the prior judgments successfully preclude posterior litigations by its *res judicata* and hence resolve one dispute in one trial or not. But few have discussed this question so far.

The author of this treatise argues that, regardless of which theory on the objective scope of *res judicata* we support, a prior judgment applying a certain law does not have the authority, by its *res judicata*, to preclude any following litigations under other laws. This is because any factual allegation by a plaintiff does never constitute cause of action of a legal claim before the application of a certain substantive law, and *res judicata*, a binding power, is given to the judgment only after the factual allegation was examined from the viewpoint of the law, not any other laws. Moreover, there are cases where we might as well give remedy to the plaintiff who, for some reasons, could not enjoy the advantages of the favourable applicable law at the prior litigation.

Thus the author suggests that posterior litigations be precluded not by *res judicata* of the prior judgment but by the principle of good faith and trust (Art. 2 of the Code of Civil Procedure), or, in case of recognition of posterior foreign judgments, by the principle of

public order (Art. 118 (iii) of the Code of Civil Procedure). Through the application of these general principles, we can expect that the judges take variety of circumstances of the case into due consideration and give a fit decision for it.