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Country	
England & Wales	
I. JUDGMENTS	
The concept, form, structure and terminology of judgments	<p>The term judgment encompasses any decision given by a court on questions at issue between the parties in proceedings properly before the court. Presently the distinction between a judgment and an order is unclear, the Civil Procedure Rules 1998 (CPR) failing to provide either a clear definition or usage of either term. In common usage though, a judgment is a final decision of the Court, while an order is any other decision.</p> <p>Several distinct classifications of judgment are readily identified. “Judgments <i>in rem</i>” resolve disputes as to the status of some particular subject matter and therefore takes effect <i>erga omnes</i>, while “judgments <i>in personam</i>” take effect only between the parties before the Court. Further “final” judgments can be distinguished from “interlocutory” judgments, as can “money” judgments (i.e. judgments on either liquidated or unliquidated claims) from “non-money judgments” (such as injunctions, order for specific performance). Finally judgments can be distinguished by the circumstances in which they were given e.g. consent, default, summary etc.</p> <p>Judgments, and the reasons for the decision, may be delivered immediately following the end of the hearing (<i>ex tempore</i>) or be reserved and issued after further consideration. In this latter case a judgment will only become binding once it has been formally handed down by the Court. In cases of urgency, the Court may render judgment, reserving reasons to be given at a later date. After the judgment has been handed down, the formal record of the judgment must be drawn up and perfected by sealing. The record of the judgment may be drawn up by the Court or by the parties.</p> <p>The CPR provides that all judgments and orders must state the name and judicial title of the person who made it, the date it was given and the judgment must be sealed by the Court (CPR r.40.2(2)). The English judiciary are afforded considerable latitude as to the structure, style, form and content of the reasons for judgment. Guidance for more junior judges is offered by the Judicial Studies Board, who stress that while there is no need to deal with every argument, the judge must make clear the principles which underlie and justify the decision. The Court of Appeal has discussed the obligation imposed by Art 6 ECHR to provide reasons for a decision, in particular stressing that any judgment must enable an appellate court to understand why the Judge reached his decision.</p>
The final determination and findings on issues of fact and law	<p>While the term “judgment” encompasses both the decision of the Court and the reasons given for that decision, the right of appeal lies against only the decision and as such a party may not challenge a finding a fact of law or in the reasons for the decision without challenging the decision itself.</p>
The binding character of a judgment	<p>A judgment takes effect from the day it was given by the Court, unless the Court provides that it should take effect from some later date. The House of Lords has greater scope as to the point in time from which its judgments should take effect from including being able to direct that its judgments take effect from an earlier date. A special rule applies as regards judgments given against States in default of their appearance; in which case judgments do not take effect until 2 months after service on the State of the judgment and evidence in support of an application for permission to enter judgment. The operation and effect of a judgment is not suspended by the possibility of or an actual appeal.</p> <p>The most common ways a judgment may be reversed are by an appeal or by an application to set aside a judgment for fraud or exceptionally by a Court amending a judgment which it has handed down but which has yet to be perfected by sealing or in the Court of Appeal by the need to recall a decision in order to remedy “real injustice” or where the House of Lords has rendered an order which causes injustice to a party through no fault of thereon, thereby subjecting them to an unfair procedure.</p>

<p>Judgments that are capable of having preclusive effects</p>	<p>In principle any judgment may generate preclusive effects between the parties provided four conditions are met. First, the judgment must be a judicial decision, i.e. an adjudication on particular matters, and not simply an administrative decision or a disposal by act or agreement of the parties without any determination by a court. Second, the decision must have been made by a person competent to render the judgment. Third, the judgment must be final i.e. the issue has been conclusively determined such that the decision cannot be reopened by the Court. Finally, the judgment must be “on the merits”, that is based upon finding of facts and the application (explicitly or otherwise) of principles of law to those facts, and not simply a result of a technical objection or want of prosecution. Default and consent judgments may be “final” and “on the merits” for these purposes.</p>
<p>II. PRECLUSIVE EFFECTS</p>	
<p>CLAIM PRECLUSION</p>	
<p>Existence and nature of claim preclusive effects</p>	<p>English judgments may have claim preclusive effects in four different ways. First, a judgment may make lawful an action which would otherwise be unlawful; second, judgments <i>in rem</i> may by altering the status of a person or thing provide or preclude an answer to a claim. Third, a judgment creates a new cause of action which is substituted for the original cause of action by the doctrine of “merger” and fourth, by debarring a party from subsequently challenging the judgment through the doctrine of “cause of action estoppel”.</p>
<p>Policies underlying claim preclusive effects</p>	<p>Two policy considerations underlie claim preclusion: that the public interest lies in the end to litigation, that no party should be troubled twice by the same cause of action. Art 6 ECHR has also been influential recently both in supporting and in opposing claim preclusive effects.</p>
<p>Conditions for claim preclusive effects</p>	<p>There must be a (1) final decision (2) of a court (3) of competent jurisdiction (4) which determines a claim on the merits. (cf I.D). Moreover in the case of both merger and cause of action estoppel the “same cause of action” must be being attempted to again be re-litigated between the parties.</p> <p>The doctrine of merger operates to extinguish all rights of the successful Claimant arising from the earlier cause of action, and instead merges these rights into the rights conferred by the judgment, to create an obligation of a higher nature. To determine whether a second action involves the “same cause of action” as the first, the Court inquires whether the same set of facts which entitled the claimant to an action in the first action underlie the second action. This can lead to similar cases being treated very differently. Merger will not apply where (1) the party had no opportunity in the first action of obtaining the relief sought in the second action or (2) the question in the second action could not have been decided in the former suit or (3) if in fact it was decided it was unnecessary to the decision. Merger affects any person entitled to bring a claim to enforce the cause of action which is superseded by the judgment.</p> <p>Cause of action estoppel arises where the “same cause of action” is attempted to be relitigated after it has already been determined by a prior action involving the “same parties” and the “same subject matter”. The estoppel operates to preclude litigation both of matters which were and matters which could have been raised in the first proceedings to establish or refuse the cause of action relied upon.</p>
<p>Invoking claim preclusive effects</p>	<p>A party wishing to invoke a claim preclusive effect, whether through operation of the doctrine of merger or cause of action estoppel, must generally plead and prove the judgment on which he relies.</p>
<p>Exceptions to claim preclusive effects</p>	<p>Cause of action estoppel is, generally speaking, absolute unless fraud or collusion are alleged such as to justify setting aside the earlier judgment. Fraud must be proved by fresh evidence of matters which impeach the judgment and which could not have been discovered by the party with reasonable diligence before the judgment was delivered. Judgments by consent may be impeached on the additional grounds of incapacity, want of authority, mistake and uncertainty. Finally, cause of action estoppel may be “waived” as a result of agreement or via counter-estoppel.</p> <p>The discovery of new facts, even those which could not have been discovered at the time of the first action, will not affect the operation of cause of action estoppel. The Court of Appeal has ruled that the “special circumstances” exception, which applies to issue estoppel, does not apply to cause of action estoppel, though the Court of Appeal has recently expressed disquiet with this position. Further cause of action estoppel still operates both where the decision from which the</p>

	estoppel stems is under appeal and where the legal basis for the decision has been undermined by a subsequent decision in other proceedings.
Claimant and Defendant	A successful Claimant may be precluded from re-litigating the same cause of action by operation of the doctrine of merger, while an unsuccessful Claimant and Defendant may be prevented by cause of action estoppel from asserting or, as the case may be, denying the same cause of action as decided in an earlier decision. However in order to be bound a party must have the same right and character in both proceedings; thus if a party acts in his own right in the first action but as a representative in the second he will not be bound.
Other participants	This issue is most likely to arise in the context of issue preclusion, though the same rules apply in this context too. Thus while some confusion exists over the issue, it would appear that estoppel is capable of operating as between co-defendants even if no claim is brought between them.
Represented persons	<p>The CPR provide both for representative parties and Group litigation orders.</p> <p>A party may be represented by another in five situations. First, where more than one person has the same interest in a claim, the Court may direct that the claim be continued by or against a person with the same interest as representative for the others. Second, the CPR allow for the representation of interested persons who cannot be ascertained in certain types of proceedings. Unless the Court orders otherwise any judgment in either of these two cases will bind all persons represented in the claim. Third, actions brought by or against trustees will bind the beneficiaries, unless the Court expressly provides otherwise. Fourth, where a deceased person lacks a personal representative and the Court appoints one to act on his behalf, or permits the claim to proceed in his absence, then any judgment will still bind the deceased. Fifth, where a company is entitled to a remedy and an action is begun by one of its members to obtain it for the company, then any judgment given in respect of the claim will bind both the individual seeking it and the company. These are termed "derivative claims".</p> <p>Group litigation orders provide for the resolution by one or more test claims of common issues which have arisen in multiple claims. All claims covered by the order are entered onto a register, which clearly specifies the issues which are to be dealt with. A judgment given in a claim on the group register binds all parties to claims on the register and the Court may provide the extent to which the judgment will bind parties subsequently entered on the register.</p>
Persons connected to the Claimant, Defendant, and other participants	<p>Cause of action extends to all persons deemed privy to the parties by blood, title or identity of interest. Real care must be taken in each case to ensure that there is a real privity of interest; thus an injunction granted against the Defendant's predecessor in title with respect to nuisance did not bind the Defendant.</p> <p>"Privity of interest" has been given a flexible definition, such that the test now appears to be that in successive proceedings between A and B and A and C, C will be bound by and benefit from the earlier judgment where there is a sufficient degree of identity between B and C that it is "just" that the earlier judgment should enure to C's benefit and that the earlier judgment should bind C.</p>
Strangers	<p><i>In personam</i> judgments will generally only bind parties or their privies and not strangers to the action. A wide definition of "parties" has been adopted to include any person who could have intervened in proceedings but chose not to, thereby in effect narrowing the class of "strangers" who are deemed not to be bound by a judgment.</p> <p>However a judgment may still have preclusive effects even against strangers as regards the resolution of questions of public/general interest, in bankruptcy, administration and patent cases and where there has been acquiescence or contract. These exceptions are in practice of very limited significance in cases falling within the scope of this study.</p> <p>A more significant exception is that provided by the Civil Liability (Contribution) Act 1978, which precludes a party in contribution proceedings from denying a liability established by judgment in proceedings brought by the injured third party. Strangers may be bound in other specific circumstances to earlier judgments to which they were not a party/privy by specific legislation.</p>
ISSUE PRECLUSION	
Existence and nature of issue preclusive	By the doctrine of "issue estoppel" judgments are capable of having issue preclusive effects so as to preclude the re-opening of issues of law or fact which have already been determined in an

effects	earlier action. An “issue” is taken to be one of the conditions for establishing a cause of action. However, it has been stressed that parties would not be estopped to relitigate a fact which had previously been determined, where the existence or non-existence of the fact was not necessary for the cause of action to be established. This guidance has been suggested to be unhelpful and perhaps more useful is the later ruling on the issue in where it was established that while issue estoppel applies to decisions as to the legal consequences of particular facts as well as to the resolution of facts which have legal consequences, it has no wider effect. Further it is suggested that determinations on a pure point of law have no issue preclusive effect but bind through the operation of the principle of <i>stare decisis</i> .
Policies underlying issue preclusive effects	The policies underlying issue estoppel (and factual estoppel) are the same as those underlying cause of action estoppel and the doctrine of merger
Conditions for issue preclusive effects	The basic conditions for issue preclusive effect are essentially the same as for claim preclusive effect and operates to preclude re-litigation both of points which were and points which could have been adjudicated on in earlier proceedings to support a finding on a particular issue. Courts will though proceed cautiously in determining the scope of an earlier judgment’s issue preclusive effect, requiring any issue to be actually and necessarily determined by the earlier action. Determining whether an issue is the same in both cases has proven complex in negligence claims, where different actions based on the same facts often aim to draw fundamentally different legal conclusions from each other. Courts have though taken a broad approach, in favour of treating these issues as identical. A judgment retains its preclusive effect even if the legal basis for it is subsequently show to be wrong.
Invoking issue preclusive effects	Issue estoppel, like cause of action estoppel, must be pleaded in the appropriate manner by the party wishing to rely on it i.e. usually in a party’s statement of case but can be added later by amendment.
Exceptions to issue preclusive effects	Issue estoppel may be challenged on the grounds of fraud and collusion and can be neutralised by agreement or counter estoppel by representation. Further, and unlike cause of action estoppel, issue estoppel may be inoperative where “special circumstances” exist which would make it unjust not to do so. Examples of “special circumstances” include a subsequent change in the law undermining the earlier decision or the discovery of new evidence which entirely changes the nature of an aspect of the case and which could not have been reasonably discovered before judgment.
Claimant and Defendant	In this context, issue estoppel applies in the same way as cause of action estoppel
Other participants	See under cause of action estoppel above.
Represented persons	In this context, issue estoppel applies in the same way as cause of action estoppel
Persons connected to the Claimant, Defendant, and other participants	In this context, issue estoppel applies in the same way as cause of action estoppel
Strangers	Generally strangers are not bound by the determination of issues in litigation to which they weren’t party, though a limited exception is provided by the Civil Liability (Contribution) Act 1978.
WIDER PRECLUSIVE EFFECTS	
Existence and nature of wider preclusive	Wider preclusive effects are taken to mean rules precluding the raising of claims or issues which though not deemed determined by an earlier judgment are in some sense related to determined

effects	<p>claims or issues. Two doctrines appear to give judgments wider preclusive effect: waiver by election and abuse of process. It is suggested, however, that these doctrines operate on different and broader bases than the judgment itself and do not truly involve preclusive effects of judgments.</p> <p>Waiver by election provides that where a claimant has several inconsistent and alternative claims against a defendant, he will, on electing to pursue one cause of action, be deemed to have waived the others. However in these situations it is the Claimant's election rather than the resulting judgment which has the relevant preclusive effect.</p> <p>The doctrine of abuse of process is founded upon Wigram VC's decision in <i>Henderson v. Henderson</i> as interpreted in Lord Bingham's more modern decision in <i>Johnson</i>. Lord Bingham stressed that while similar to <i>res judicata</i>, the doctrine of abuse of process is clearly distinct, premised upon a broad merits-based judgment encompassing the public and private interests raised by the case to determine whether one party's conduct is an abuse of process such as to preclude further litigation. The critical issue is generally whether a second claim has been brought which could have been raised in the first action, such that the second action now appears to be an abuse of process. The "abuse" may though be an attempt in the second proceedings to collaterally attack a judgment which has already been rendered or, more widely, the conduct of a party as a whole in the two proceedings (whether there has been a judgment in the first action or not). Abuse of process is a broad doctrine and can be raised even in proceedings not involving the same parties or their privies.</p>
Policies underlying wider preclusive effects	The policy considerations underlying waiver by election and abuse of process are similar to those underlying cause of action and issue estoppel, namely the public interest in the finality of litigation. The former doctrine is also concerned with the substantive objective of securing a legally coherent outcome to litigation, and the latter (as Lord Bingham noted in <i>Johnson v Gore Wood</i>) with efficiency and economy in litigation procedure.
Conditions for wider preclusive effects	See "existence and nature" above.
Invoking wider preclusive effects	A party wishing to rely on waiver by election in later proceedings must plead and prove the other party's conduct amounting to an irrevocable election. A party claiming that proceedings are an abuse of process should apply promptly to strike out the proceedings on that ground
Exceptions to wider preclusive effects	See "existence and nature" above.
Claimant and Defendant	See "existence and nature" above.
Other participants	See "existence and nature" above.
Represented persons	Abuse of process can operate against persons who were not parties or privy to the judgment, and therefore can also operate against represented persons. Cf. <i>Ashmore v. British Coal Corp.</i>
Persons connected to the Claimant, Defendant, and other participants	See "existence and nature" above.
Strangers	See "existence and nature" above.
III. PRECLUSIVE EFFECTS OF JUDGMENTS WITHIN THE BRUSSELS/LUGANO REGIME	
RECOGNITION	
Judgments recognised	Interlocutory decisions, designed simply to organise the conduct of litigation are not considered

	<p>capable of recognition under the Brussels Regime. However interlocutory decisions which resolve issues of substance clearly do fall within the Brussels Regime. Judgments rendered where there has been no service of Court documents on the Defendant will not be recognised under the Brussels Regime nor will judgments which declare enforceable an arbitral award. A judgment by consent or a default judgment are also deemed to be “judgments” for these purposes and are therefore capable of being recognized under the Brussels Regime.</p>
Procedural aspects of recognition	<p>No formal steps need to be taken to secure recognition, though a Party seeking to rely on a foreign judgment’s preclusive effect must probably plead such in their statement of case. Further while recognition is automatic, it is still open for the Court to consider whether the foreign judgment is a “judgment” within the meaning of Art 33(1) BR and whether any of the grounds for refusing recognition in Arts 34 and 35 exist. Further Art 37 allows for a Court to stay proceedings in which recognition is sought, while the judgment sought to be recognized is on appeal in its state of origin.</p> <p>Art 33(2) provides a procedure whereby an interested party may raise the issue of recognition of a judgment as the main and even the sole issue in a dispute. Art 33(3) by contrast allows a Court seised of proceedings to resolve as an incidental question the recognition of a judgment on which the outcome of the proceedings depend. These procedures are rarely used.</p>
Exceptions to the rule (grounds for non-recognition)	<p>The primary focus of English Courts as regards non-recognition in this context are the provisions in Art 34(3)-(4), as opposed to the public policy exception in Art 34(1). Public policy will only exceptionally be relevant. Thus in <i>Interdesco S.A. v. Nullifire Limited</i> the Court held that where a judgment was challenged on public policy grounds, it was preferable for the issue to be resolved by remedies available in the foreign jurisdiction and it would only be if none were available that English Courts would consider the issue.</p> <p>Art 34(3) regarding irreconcilable judgments has been, in contrast to Art 34(4), the subject of some decisions though these have cast very little light on the applicable principles.</p>
Effects of recognition	<p>The little discussion there has been by English Courts on the meaning and effect of recognition has been inconsistent and inconclusive. In <i>Berkeley Administration Inc v. McClelland</i>, Dillon LJ held that certain preclusive effects flowed from the fact of recognition under the Brussels Convention, so long as the “same cause of action” and the “same parties” within the meaning supplied by the ECJ in <i>Gubisch v. Palumbo</i> were involved. Hobhouse LJ in contrast recognised both cause of action and issue estoppel operating separately from recognition, and his reasoning seemed to suggest English law should determine when either of these preclusive effects were engaged.</p> <p>Subsequent judgments have done little to clarify the issue and a range of views have been expressed by commentators in this field. Dicey, Morris and Collins argue that a judgment recognized under the Brussels Regime must be given the same preclusive effect as in the state of origin. By contrast Kaye suggests that the effect of a recognized judgment is to be determined by the laws applicable under general rules of private international law. Similarly, Briggs considers the preclusive effects of judgments as flowing from the application of English law principles. Finally Barnett concludes that recognition of a judgment under the Brussels Regime imports the claim preclusive effects of the state of origin though probably not any issue preclusive or wider preclusive effect.</p>
CLAIM PRECLUSION WITHIN THE BRUSSELS/LUGANO REGIME	
Existence and nature of claim preclusive effects	<p>Recognized judgments may have claim preclusive effects. Two distinct situations should be distinguished.</p> <p>First an English Court would, applying the ECJ’s decision in <i>De Wolf v. Cox</i>, probably rule that where a party has obtained a judgment enforceable under the Brussels Regime, he cannot bring proceedings in another Member State with the same cause of action and parties as led to the judgment already obtained.</p> <p>Second it is clear that Member State judgments can preclude parties from re-litigating claims which have already been determined. The controversy exists over the basis upon which and the law by reference to which the claim preclusive effects of a judgment are to be determined. On</p>

	<p>balance, the better view may be that recognition of a Member State judgment imports with it the claim preclusive effects of that judgment under the Member State's law. This view seems to have the implicit support of the decisions in <i>The Tsakemolen (No.2) Air Foyle Ltd v. Center Capital</i>. In contrast Dillon LJ in <i>Berkeley Administration</i> (see above) seemed to advocate an autonomous regime by which to determine claim preclusive effects.</p>
Policies underlying claim preclusive effects	<p>The underlying policy considerations appear under whichever view of claim preclusion is taken to be the overriding effect of EC law and the objective of free movement of judgments within the EU.</p>
Law applicable to claim preclusive effects	<p>This question has been addressed under "existence and nature of claim preclusive effects under the Brussels/Lugano Regime" above. The better view may be that the English courts will apply the rules of claim preclusion of the Contracting/Member State of origin of a judgment</p>
Conditions for claim preclusive effects	<p>Taking the above view, the conditions for claim preclusive effect must be taken from the law of the judgment's state of origin. On the view of Dillon LJ in <i>Berkeley Administration</i>, by contrast, a judgment's preclusive effects will depend on the second action being between "the same parties" and the "same cause of action", using those terms as defined by the ECJ. Alternatively claim preclusive effects could be determined by reference to English Law principles, subject to some slight modifications.</p>
The identity of claims in the Brussels/Lugano Regime	<p>The phrase "same cause of action" is used in both Art 21 and Art 34(2) of the Brussels Regulation, though English Courts have largely considered the concept in the former context. The key decision of the ECJ on Art 27, <i>The Tatry</i> followed a reference by the English court provided that the term "same cause of action" must be read to include the concept of both "same object" and "same cause of action" and that an action <i>in personam</i> brought by the shipowner and an action <i>in rem</i> against the ship may have the same cause of action. The ECJ also provided that a claim for damages and a declaration of non-liability may also on the facts be the same cause of action.. The concept of "same cause of action" is therefore given an independent autonomous meaning and differs fundamentally from when it is used in English law.</p>
The identity of parties in the Brussels/Lugano Regime	<p>Like "same cause of action", the term "same parties" appears in multiple articles of the Brussels Regulation, and again Courts have mainly considered it in the context of Art 27 on <i>lis alibi pendens</i>. Generally Courts have taken a broad approach to the concept, looking to the substance of the situation (e.g. <i>Re Cover Europe Ltd</i>). Lawrence Collins LJ, in his recent decision in <i>Kolden Holdings Ltd v. Rodette Commerce Ltd</i> stressed that the term "same parties" has an independent autonomous meaning and that Court must look to the substance of the matter; thus though parties must be "identical" that identity is not destroyed by the mere fact of there being separate legal entities involved. A key consideration is whether two parties have identical and indissociable interests. Finally Lawrence Collins LJ stressed that a decision against one party must be <i>res judicata</i> as against the other (applying English law to determine this issue).</p>
Invoking claim preclusive effects under the Brussels/Lugano Regime	<p>Since the judgment must be recognized by the English Court, the usual manner is for the issue of recognition to be raised in a Party's statement of case, though exceptionally Art 33(2) might be used.</p>
Exceptions to claim preclusive effects under the Brussels/Lugano Regime	<p>On the view taken above, English Courts could rely on any exception recognised in the law of the judgment's state of origin. It is unclear what the position is where national exceptions overlap with exceptions provided in the Brussels Regime on non-recognition. In the alternative, following Dillon LJ's view only the exceptions recognized in the Brussels Regulation would be operative.</p>
Persons affected by claim preclusive effects	<p>Again on the view taken above, the persons covered by the preclusive effect of a judgment must be determined by reference to the law of the state of the judgment's origin. If Dillon LJ's view applies then preclusive effects cover the "same parties", as that phrase has been interpreted by the ECJ in the Brussels Regime context.</p>

<i>ISSUE PRECLUSION WITHIN THE BRUSSELS/LUGANO REGIME</i>	
Existence and nature of issue preclusive effects	Judgments recognized under the Brussels Regime may have issue preclusive effects. However the legal basis for these effects is unclear. The limited judicial practice on the point suggests that English Courts either approach the issue on the basis of English rules of issue estoppel (e.g. <i>Berkeley Administration Inc v McClelland</i> per Hobhouse LJ and Stuart Smith LJ) or as matter of impression as to what points were in fact decided in the Court of the Member State. There are equally widespread views amongst commentators on the issue and as such the position cannot be conclusively stated.
Policies underlying issue preclusive effects	See "policies underlying claim preclusive effects under the Regime" above
Law applicable to issue preclusive effects	See "existence and nature of issue preclusive effects under the Regime" above
Conditions for issue preclusive effects	See the same as regards claim preclusive effects under the Regime above. Further English Courts are liable to very cautious in accepting that a particular issue has already been determined by a foreign judgment.
Invoking issue preclusive effects under the Brussels/Lugano Regime	See the same with regard to claim preclusion under the Regime above.
Exceptions to issue preclusive effects under the Brussels/Lugano Regime	See the same with regard to claim preclusion under the Regime above.
Persons affected by issue preclusive effects	See the same with regard to claim preclusion under the Regime above.
<i>WIDER PRECLUSION</i>	
Existence and nature of wider preclusive effects	It is assumed that there is no difference between foreign judgments and English judgment as regards wider preclusive effects, save perhaps if a Member State were to attribute, inherent to the judgment, wider preclusive effects under its law. In that case there might be an argument that this effect should be imported as part of the process of recognition. This possibility aside, it is suggested that English Courts simply apply the broad merits based approach adopted in <i>Johnson v. Gore Wood</i> to determine if there has been an abuse of process having regard to the circumstances surrounding the earlier action, whether in England or abroad.
Policies underlying wider preclusive effects	See the equivalent section above with regard to Part II and the same section with regard to claim preclusion above.
Law applicable to	See the existence and nature of wider preclusive effects in the Regime above.

wider preclusive effects	
Conditions for wider preclusive effects	See the section concerning the existence and nature of issue preclusion under the Regime above.
Invoking wider preclusive effects	See “conditions for issue preclusive effects” under the Regime above.
Exceptions to wider preclusive effects	See “existence and nature of issue preclusive effects” under the Regime above.
Persons affected by wider preclusive effects	See “existence and nature of issue preclusive effects” above.
AUTHENTIC INSTRUMENTS/COURT APPROVED SETTLEMENTS	The Brussels Regime does not seem to require the imposition of preclusive effects upon authentic instruments or court approved settlements.
IV. PRECLUSIVE EFFECTS OF THIRD STATE JUDGMENTS	
	Third state judgments may be recognized outside the Brussels Regime either by common law principles or depending on the State by certain statutes. The doctrine of merger does not apply in this context, rather s.34 of the Civil Jurisdiction and Judgments Act 1982 lays down a procedural bar. Recognition at common law of a third state judgment requires that the Court rendering the judgment was competent to do so and gave a final and conclusive decision on the merits. That the decision is contrary to public policy, or was obtained by fraud or in a manner contrary to natural justice or is irreconcilable with an earlier validly recognized decision are all grounds to refuse recognition. To establish issue or cause of action preclusion, after the judgment has been recognized, a party must show that there is again the same parties with the same cause of action/same issue between them.

France	
I. JUDGMENTS	
The concept, form, structure and terminology of judgments	<p>The concept of 'judgment' is not defined in the French procedural code; academically, a judgment is considered a legal act created by an impartial body which applies a rule of law to give an answer to a claim. Under French law, a tribunal must meet three criteria: (1) there must be a legal statute which allows its creation; (2) it must be an impartial body with independent judges; and (3) judgment to a legal claim must be provided. It is possible that a body which is considered a tribunal under the ECHR may not be considered as such under French law. The new French Code of procedural law provides for the formal requirements of a judgment which include basic requirements such as the name of the court, judges, the clerk, the representation of the public prosecutor, and the date. The judgment must be signed by the judge and the clerk in order to make the judgment official. Regarding the legal content of a judgment, first it must state the claims of the parties and their grounds. Furthermore, it must be reasoned and the reasons must take into account all the claims and grounds, else the judgment will be reversed. Lastly, the judgment must include the <i>dispositif</i> which is likened to the operative part. One should note that judgments concerning findings of fact or other judgments from which no immediate appeal is available, do not have to state the reasons.</p>
The final determination and findings on issues of fact and law	<p>Two distinctions are drawn in French procedural law regarding this issue. The first is that between the reasons (<i>motif</i>) and the holding (<i>dispositif</i>); both are contained within the same judgment. The second distinction is between the objective or relief of the claim ('<i>objet</i>' or '<i>prétention</i>') and the reasons ('<i>fondement</i>', '<i>moyen</i>', or '<i>causes</i>') of the claim, which may be factual or legal. Questions of admissibility, jurisdiction, or applicable law must be answered before disposition of the substantive claims.</p>
The binding character of a judgment	<p>In France, there are two types of preclusive effect: <i>autorité de la chose jugée</i> and '<i>force de chose jugée</i>'. A judgment receives the former preclusive effect in the sense that it is not possible to lodge the same claim in the court of first instance. It will have such an effect from its pronouncement and will be capable of execution and enforcement, as long as no appeal has been lodged. If an appeal has been lodged, the judgment cannot be executed until the appellate process is exhausted. The judgment will receive the <i>force de chose jugée</i> and be considered irrevocable and therefore capable of having preclusive effects if the following two conditions are fulfilled: (1) the party against whom the judgment is enforceable receives notification of the execution, and (2) the judgment is not subject to any review staying its execution.</p>
Judgments that are capable of having preclusive effects	<p>The following judgments are capable of having preclusive effects in France: (1) judgments which decide all or part of the main issue in the claim; (2) those ruling upon a procedural plea; (3) judgments for peremptory declaration of inadmissibility or any other incidental application (e.g. judgments dealing with pleas relating to statutes of limitations or <i>res judicata</i> issues). The following judgments are not capable of having preclusive effects: (1) non-definitive judgments (<i>jugement avant-dire droit</i>), and (2) summary interlocutory orders (although such may be given provisional preclusive effects if the result of contentious, and not <i>ex parte</i>, proceedings). Furthermore, neither (1) administrative orders; (2) measures of judicial administration which deal with court work and the scheduling of proceedings; nor (3) judicial contracts will have preclusive effect.</p>
II. PRECLUSIVE EFFECTS	
CLAIM PRECLUSION	
Existence and nature of claim preclusive effects	
Policies underlying claim preclusive effects	<p>The policy underlying the concept of preclusive effects is that of truth. It centers on combining two opposing ideas: the need for stability and human fallibility.</p>

Conditions for claim preclusive effects	The prevailing test for whether a judgment will have claim preclusive effect is the triple identity test. This requires that the second action involve (1) the same parties; (2) the same relief; and (3) the same legal grounds. However, the triple identity test has, of late, not been strictly adhered to, and instead, there is a growing trend which focuses on the general concept of the first set of proceedings as a whole. If new factual circumstances arise between the first and second action, a new claim between the same parties will be admissible.
Invoking claim preclusive effects	Party may invoke the claim preclusive effects of a prior judgment at any time during the proceedings, although he or she may be subject to a penalty if this occurs at the end of the proceedings and the invoking party had been aware of the judgment for some time. Additionally, the court may decide of its own motion to raise the issue of preclusion, but it is not obliged to do so. If a prior judgment is successfully invoked for its claim preclusive effects, the opponent's claim will be considered inadmissible.
Exceptions to claim preclusive effects	There are no exceptions to the claim preclusive effects of a judgment.
Claimant and Defendant	
Other participants	A judgment's claim preclusive effects apply to all the parties in the action, including those parties who have intervened, and those third parties who have been brought into the action usually for purposes of indemnification. A judgment will also be binding against the universal successor of a party.
Represented persons	While no US-style class actions exist in France, French law distinguishes between several types of representative actions. First, there is what is considered the usual representation which may be either legal, judicial, or contractual. In these cases, the judgment will have preclusive effects on the represented party. Additionally, French law provides for an action of joined representation, e.g. a consumer association representing several consumers. In such cases, only the consumers, and not the association itself, are bound by the judgment. Furthermore, there are situations whereby representation is implicit in a judgment. For instance, a judgment condemning a debtor binds his creditors who cannot make a third party application. There are also collective means of redress, e.g. via labour unions or associations usually in the context of consumer or environmental law. In these actions, the judgment will bind the union or the association, but will not preclude future personal actions by the members. Lastly, there is a category of actions called substitutive actions that may take place in situations involving corporate law, e.g. where a small group of shareholders may bring an action against the chairman in the place of the company. In these cases, _____.
Persons connected to the Claimant, Defendant, and other participants	The general principle in French law is that a judgment may not have an effect on a third party. However, some judgments have absolute effect in that they apply erga omnes. This occurs typically in relation to judgments in nationality, intellectual property and filiation litigation. The judgment does not have res judicata in the strictest sense, but rather it has a substantive effect in that it must be taken into account by the third party. See also the portions relating to successors and creditors in the previous response.
Strangers	The discussion above in question 9 is applicable in this instance as well. Generally, a judgment will not have claim preclusive effects on strangers capable of making a third party application. Furthermore, a third party may make a motion to set aside a prior judgment provided that the third party has an interest in the litigation and he was neither a party nor represented in the first action.
ISSUE PRECLUSION	
Existence and nature of issue preclusive effects	Only the explicit holdings of a French judgment have preclusive effect. The reasons must not be taken into account. This rule contradicts the traditional rule which held that reasons were capable of having issue preclusive effect if they were necessary to support the holdings.
Policies underlying issue preclusive effects	The French rule that only the holdings are to have preclusive effects is based on a policy of increasing foreseeability and legal certainty.

Conditions for issue preclusive effects	Because only the holdings have res judicata effect, the conditions are formal. However, a court's judgment regarding its own jurisdiction over a case will have res judicata whether or not it is in the holdings.
Invoking issue preclusive effects	The previous judgment is simply invoked and its holdings have preclusive effect. There is no problem of proof.
Exceptions to issue preclusive effects	See previous response.
Claimant and Defendant	Nothing to add.
Other participants	Nothing to add.
Represented persons	Nothing to add.
Persons connected to the Claimant, Defendant, and other participants	Nothing to add.
Strangers	Nothing to add.
<i>WIDER PRECLUSIVE EFFECTS</i>	
Existence and nature of wider preclusive effects	The French doctrine of abuse of process does not prevent a claimant from bringing a second action; however, it may subject him to pay damages to the defendant and a fine to the State if he has abused his right to sue.
Policies underlying wider preclusive effects	The policy in support of wider preclusion in France is largely to do with the protection of the defendant from harassing claims. However, wider preclusion is interpreted narrowly in order to preserve the public right to file suit.
Conditions for wider preclusive effects	See above.
Invoking wider preclusive effects	See above.
Exceptions to wider preclusive effects	A suit for defamation based on proven facts is not an abuse of process, nor is it an abuse of process to bring successively two actions where the relief pursued is different.
Claimant and Defendant	
Other participants	
Represented persons	
Persons connected to the Claimant, Defendant, and other participants	

Strangers	
III. PRECLUSIVE EFFECTS OF JUDGMENTS WITHIN THE BRUSSELS/LUGANO REGIME	
RECOGNITION	
Judgments recognised	Article 25 of the Convention and 32 of the Regulation are applied strictly in France and therefore, all judgments contained therein are recognised. However, the court of cassation decided that a judicial settlement is not a decision under the Convention.
Procedural aspects of recognition	According to French law, a petition for recognition under the Brussels Regime must be presented to the chief clerk of the high court in duplicate by a lawyer. The petition must include a copy of the foreign judgment and in some cases, a foreign certificate establishing its enforceability. Notice of the clerk's decision must be given to the applicant who may refer the matter to the president of the high court for review in the event of a refusal. Refusals must be well-reasoned. The clerk's decision must also be served to the defendant who may challenge it in a court of appeal. The proceedings under the Lugano Convention are very similar.
Exceptions to the rule (grounds for non-recognition)	French courts have had to adjudicate the rule of prohibition of review in Article 36 of the Brussels Regulation. The public policy exception in Article 34(1) [27(1) of the Convention] is strictly interpreted in line with <i>Hoffman v Krieg</i> and is rarely successful and rarely invoked. There have been several holdings regarding this exception (1) the foreign judgment must be reasoned; (2) a mechanism for appeal must exist in the rendering country; (3) the rights of the defendant must be taken into consideration when making the decision whether or not to recognise the foreign judgment; and (4) a contract between a French citizen and a foreign lawyer regarding fee sharing is not considered contrary to the public order. Furthermore, the exception in Article 34(2) [27(2)] has been applied in several French cases.
Effects of recognition	In France, a foreign judgment will have the same effects as it has in its country of origin as long as those effects are no more than an equivalent French judgment would have in France. Sometimes it is necessary, in order to distinguish between a request for enforcement and mere recognition, to issue an exequatur order in the foreign court. This serves as a sort of judicial guarantee of the foreign judgment; such guarantee will have the same preclusive effects in France as a comparable French judgment. If a judgment is not yet enforceable in its country of origin, the French courts may suspend the decision on recognition.
CLAIM PRECLUSION WITHIN THE BRUSSELS/LUGANO REGIME	
Existence and nature of claim preclusive effects	A foreign judgment has claim preclusive effects in France. Such a judgment may be invoked to prevent a new claim in French litigation and may not be the basis for a new French judgment. The court may, although it is not obliged to, raise the issue of preclusion of its own motion.
Policies underlying claim preclusive effects	The policies considered above are applicable within this context. There is also a general policy of mutual trust in Europe.
Law applicable to claim preclusive effects	There is some conflict regarding this issue in that there has been no uniform practice in the courts. Some courts apply the law of the state of origin, while others invoke only French law. It has recently been suggested that foreign law should only be consulted in order to determine whether the judgment may still be challenged.
Conditions for claim preclusive effects	Please refer to domestic law.
The identity of claims in the Brussels/Lugano Regime	Please refer to domestic law.

The identity of parties in the Brussels/Lugano Regime	Please refer to domestic law.
Invoking claim preclusive effects under the Brussels/Lugano Regime	Please refer to domestic law.
Exceptions to claim preclusive effects under the Brussels/Lugano Regime	There are no known exceptions.
Persons affected by claim preclusive effects	Please refer to domestic law.
<i>ISSUE PRECLUSION WITHIN THE BRUSSELS/LUGANO REGIME</i>	
Existence and nature of issue preclusive effects	There is nothing specific under the Brussels/Lugano Regime.
Policies underlying issue preclusive effects	There is nothing specific under the Brussels/Lugano Regime.
Law applicable to issue preclusive effects	There is no case law on this subject matter; presumably internal procedural law would be applied in conjunction with foreign law, although the foreign judgment could not receive more effect than it would have in France.
Conditions for issue preclusive effects	Please refer to domestic law.
Invoking issue preclusive effects under the Brussels/Lugano Regime	Please refer to domestic law.
Exceptions to issue preclusive effects under the Brussels/Lugano Regime	Please refer to domestic law.
Persons affected by issue preclusive	Please refer to domestic law.

effects	
<i>WIDER PRECLUSION</i>	
Existence and nature of wider preclusive effects	Please refer to domestic law.
Policies underlying wider preclusive effects	Please refer to domestic law.
Law applicable to wider preclusive effects	Please refer to domestic law.
Conditions for wider preclusive effects	Please refer to domestic law.
Invoking wider preclusive effects	Please refer to domestic law.
Exceptions to wider preclusive effects	Please refer to domestic law.
Persons affected by wider preclusive effects	Please refer to domestic law.
<i>AUTHENTIC INSTRUMENTS/COURT APPROVED SETTLEMENTS</i>	A commercial act authenticated by a business panel that actively checks the content of the act will be considered an authentic act that is enforceable in France if it is enforceable in its country of origin.
<i>IV. PRECLUSIVE EFFECTS OF THIRD STATE JUDGMENTS</i>	
	A foreign judgment can have both material and normative effects in France. The material effects of a foreign judgment concern the evidence, the determinations of fact, and the title effect of the judgment. The normative effects deal with the judicial decision itself, i.e. the judgment will have a substantive effect and a preclusive effect in France. The party seeking to invoke the foreign judgment must prove that it has res judicata and has been served. The judgment will then be subject to special considerations, such as whether there was proper jurisdiction in the rendering court. In some instances, a foreign judgment will need an exequatur; if there is no exequatur, the judgment will not have claim preclusive effect in France. There are three procedural situations in which a foreign judgment may be invoked: (1) invocation in French proceedings initiated by the same opposing party as in previous proceedings; (2) to prove the judgment's res judicata effect; and (3) to disprove the judgment's res judicata effect and prevent exequatur proceedings in France.

Germany	
I. JUDGMENTS	
The concept, form, structure and terminology of judgments	<p>German law recognises three types of judicial decisions: Urteile (judgments), Beschlüsse (orders) and Verfügungen (procedural directions). Only Urteile and Beschlüsse can have res judicata effect. [The provisions on judgments can be found in §§ 300-329 ZPO]</p> <p>A German judgment typically comprises five elements: A formal heading (containing docket number, name of parties, name of counsel etc.), the legal ruling ("Tenor") which constitutes the operative part of the judgment, a statement of facts (containing the claims raised, arguments of the parties and all relevant facts upon which the decision is based), the grounds for the for the decision and, at the end of the judgment, the signatures of the judges who made the ruling.</p> <p>§313 ZPO requires that the Court provides a clear, complete and comprehensive explanation for its decision. Further Art 103(1) Grundgesetz provides a constitutional right to be heard, such that a Court must address essential parts of the factual allegations of one party to a question which is central to the case. Finally §139 ZPO imposes extensive obligation on German Courts to engage with the parties and provide the opportunity for both sides to supplement and amend their pleadings as appropriate given the view the Court has taken of the case.</p> <p>Some terminology can be usefully identified: condemnatory judgments order a defendant to do or not do something, while constitutive judgments create, change or end legal rights or relationships and declaratory judgments pronounce the existence or non-existence of a legal relationship (§256 ZPO). All three types are capable of res judicata effect. Contradictory judgments based on contentious proceedings are contrasted with non-contradictory judgments, e.g. judgments in default, judgment by defendant's acceptance of the claim. Interlocutory judgments, which cannot have res judicata effect, must be distinguished from final judgments which can. Interlocutory judgments bind the Court that issued it and do so from the moment of being issued. In contrast final judgements can have substantive res judicata effect but will only do so once there is no further possibility of ordinary appeal. Finally judgments with reservation must be distinguished from those without. The former are incapable of substantive res judicata effect (§302, 599 ZPO) and instead have inner-procedural force.</p>
The final determination and findings on issues of fact and law	<p>In terms of the actual judgment, the determination of the claim and the findings of fact are kept in distinct sections of the judgment: the Tenor dealing with the former and the Tabestand and the Entscheidungsgründe dealing with the latter. This clearly demarcated distinction becomes material at the execution stage (the executive organs focusing solely on the Tenor) and for res judicata. Per §322(1) ZPO judgments are only capable of substantive res judicata effect to the extent they decide the demands expressly raised in the statement of claim/counterclaim. §308 ZPO precludes the court awarding anything which has not been specifically demanded and as such the res judicata effect of the judgment is similarly limited to the issues actually decided in the Tenor.</p> <p>Nonetheless the facts and the determination of the claim are linked to the extent that the demand for relief can only be understood by looking to the facts upon which the claim is based. Further it is recognised that the Tenor may be interpreted with a view to the reasons (and therefore the facts) underpinning it, where the operative part is unclear. (BGH NJW 1985, 2022).</p> <p>On appeal the Court cannot generally look to the facts determined by the lower court unless there are concrete circumstances which cast doubt at the correctness of the factual determination, requiring a new determination of the facts (§529(1) No. 1 ZPO)</p>
The binding character of a judgment	<p>A judgment can only acquire binding effect if it has been formally pronounced (OLG Brandenburg NJW-RR 1996, 766 (767)) and it is no longer subject to ordinary appeal. As such German law recognises four forms of binding effect which a judgment can acquire. First a judgment will bind the court which has issued it even if subject it is subject to appeal. This is termed inner-procedural binding effect (§318 ZPO). Second a judgment can acquire formal res judicata either by no ordinary appeal being available or by the time period for appeal lapsing (§705 ZPO) Third a judgment can acquire substantive res judicate effect if it meets the conditions in §705 ZPO and is a form of judgment capable of such effects (§322 ZPO). Finally a judgment may have certain effects as a result of a provision of substantive law, e.g. according to §775(1) No.4 BGB the</p>

	<p>guarantor may request release from his guarantee if the creditor has obtained an enforceable judgment against him. The effects of judgments as a result of substantive law have nothing to do with res judicata, but rather rooted in the relevant provisions of substantive law.</p> <p>Once a judgment has obtained formal/substantive res judicata, a judgment can only exceptionally be challenged by either an action for nullification or restitution (§§578-580) or a motion for restoration to one's original legal position (§§233 seq. ZPO). In the event that a judgment is reversed in this manner and a subsequent judgment was premised on the reversed judgment (though this a largely theoretical possibility) §580 ZPO provides that an action for restitution arises. In the event that two judgments are rendered on the same subject matter between the same parties, the majority view is that the earlier judgment takes precedence (BGH NJW 1981, 1517 (1518); BAG NJW 1986, 1831 (1832)).</p>
<p>Judgments that are capable of having preclusive effects</p>	<p>Most judgments are capable of having substantive res judicata effect per §322 ZPO. The scope of res judicata is, though, narrow and covers neither preliminary matters nor elements of the judgment's reasoning. Should a party wish for the judgment to have broader res judicata effect, he must seek an additional declaratory judgment to create res judicata over matters which were only incidentally relevant for the decision in the main action (e.g. in an action for contractual damages, the defendant may seek not only a dismissal of the action for damages, but also a declaratory finding that the contract is invalid, thereby extending res judicata to the question of validity of the contract, § 256 (2) ZPO).</p> <p>Judgments which are incapable of having preclusive effects under §322 ZPO include interlocutory judgments, since such judgments do not finally determine the outcome of the litigation, judgments with reservations, i.e. judgments which are based entirely on documentary evidence such that a Court may reserve any defence of the other party which cannot be evidenced by written documents, settlements and terminations of a case by a withdrawal of the complaint (§269 ZPO) since in both cases no judgment is issued.</p>
<p>II. PRECLUSIVE EFFECTS</p>	
<p>CLAIM PRECLUSION</p>	
<p>Existence and nature of claim preclusive effects</p>	<p>German judgments can have claim preclusive effects, but of a limited scope, extending only to the procedural claims (Streutgegenstand) which the parties lay before the court. German law distinguishes, in the claim preclusive effect context, between substantive res judicata (materielle Rechtskraft) and Interventionswirkung which relates to the effect of third-party notice and joinder of third parties. Rechtskraft is governed by §322(1) ZPO, and is limited to the Streutgegenstand of the proceedings i.e. the plaintiff's petition of relief and the circumstances from which the Claimant derives his right to claim the relief.</p> <p>The preclusive effect of judgments is taken to be from the last oral hearing before the court (§296a ZPO), and as such res judicata only bars proceedings which are based on facts which could have been entered in the earlier proceedings. Objections based on new facts are not precluded by res judicata.</p>
<p>Policies underlying claim preclusive effects</p>	<p>The desire to avoid re-litigation and promote "legal peace" between parties are stand as the main policy considerations for claim preclusive effect. However in determining the doctrine's scope, these considerations are balanced with the need to promote legal certainty (by ensuring a rule which clearly defines the scope of claim preclusive effect) and respect party autonomy and expectations.</p>
<p>Conditions for claim preclusive effects</p>	<p>The conditions for claim preclusive effect are "same cause of action" (§322(1) ZPO) and "same parties" (§325(1) ZPO)</p> <p>§322(1) ZPO limits the preclusive effects of judgments to the "Streitgegenstand" which comprises two elements: (1) the specific request for relief sought by the Claimant (Antrag) and (2) the essential facts which the Claimant would have established to obtain the relief in default of the Defendant's appearance (Lebenssachverhalt). Further claim preclusion extends only as far as the procedural claim extends: thus if the claimant only sued for partial damages, he is not precluded from re-litigating for the remainder. German law therefore takes a narrow definition of "same claim".</p>

	<p>Claim preclusive effects will not cover findings of fact, even if these are contained in the reasons of the judgment and the judgment is based upon them; nor are findings of law or defences raised by the Defendant (save set offs (per §322(2) ZPO)) covered and thus either can be raised again in a future action between the parties. However it is recognized that claim preclusive effect will extend to the “contradictory opposite” e.g. if C recovers damages from D, this judgment precludes D from later trying to recover the money paid by claiming that C has been unjustly enriched.</p>
<p>Invoking claim preclusive effects</p>	<p>Claim preclusive effects of a judgment must be considered by the Court ex officio irregardless of the stage of proceedings (§322(1) ZPO). Should dispute arise as to the existence/content of an earlier judgment, which will be rare, the burden of proof relies on the party attempting to invoke preclusive effects. Where the Court determines that a claim is barred by the preclusive effects of an earlier decision the Court will issue a judgment stating that the new action is procedurally inadmissible. Equally if the earlier judgment only decides an element of the present proceedings, the Court will take that particular element as finally determined and may not deviate from that determination. This does not amount to issue preclusion, but rather recognition that an earlier final judgment has already specifically determined a material element of the second claim.</p>
<p>Exceptions to claim preclusive effects</p>	<p>It is clearer to discuss the “limits” to claim preclusive effects rather than “exceptions” to it. Four limits exists. First objective limits, that is the restriction of claim preclusive effects to the Streitgegenstand. Second temporal limits, such that preclusive effect takes effect only from the date of the last oral hearing before the court; material having emerged since then not being covered by the earlier judgments preclusive effect. Third subjective limits i.e. the definition of “same parties”. Fourthly a category of limits termed “piercing the res judicata” which encompasses (1) actions for reopening the proceedings (§§578-580 ZPO), (2) actions for annulment (§323 ZPO) and (3) in exceptional circumstances actions in substantive tort law based on §826 BGB which provides that where a judgment has been immorally acquired and is contrary to substantive law it can be set aside. Further §§233 seq. ZPO provides that where a party through no fault of his own was prevented from entering a timely appeal, he can claim to be reinstated to his earlier situation.</p> <p>As to actions for reopening the proceedings (§§578-580 ZPO), §578 seq. ZPO provides for a reopening of a judgment where either “a particularly serious lack of correct procedure” or “an obvious disintegration of the correctness of the judgment” is evidenced. §580 provides an action for restitution available in a broader series of cases enumerated in §578. However an action under §580 will only be available if the issue it raises could not have been addressed during the first proceedings or on appeal.</p> <p>Based on these general principles, the limits of claim preclusive effect can be readily determined. For example where a case was dismissed due to it being voluntarily withdrawn, no res judicata effect ensues, since the Court issues no judgment in this case, but only a cost order (§269 ZPO). Equally if recognizing claim preclusive effect would be contrary to public policy this can be dealt with either by the actions for reopening proceedings, in particular §580 ZPO recognizes that a violation of ECHR rights triggers an action for restitution, or by §826 BGB. Outside these provisions there is no general notion that a judgment cannot be relied upon because it is an abuse of process or procedurally unreasonable, though that said claims incorporated in judgments are nonetheless subject to general substantive law restraints which apply to all rights. As such concepts such as estoppel and forfeiture (§242 BGB) may operate as substantive (unlike the other limits which are merely procedural) limits to the preclusive effect of a decision.</p> <p>If a Court violates a jurisdictional or procedural limit in issuing a judgment, this will not normally affect the judgment’s preclusive effects (save in the case of very grave errors), though parties obviously have recourse to appeal</p>
<p>Claimant and Defendant</p>	<p>Both parties are prevented from bringing fresh proceedings against the same party based on the same claim (Streitgegenstand). The Court must consider of its own motion the effect of an earlier judgment and must dismiss the new proceedings as inadmissible via a procedural judgment if the subsequent claim is in breach of res judicata. If the subsequent claim concerns an element which has been finally determined by an earlier decision, the court will be bound by that earlier decision.</p>
<p>Other participants</p>	<p>Preclusive effects extends only to the parties, their legal successors (§325(1) ZPO) and co-claimants/defendants (§322(1) ZPO). Where a party wishes to extend the effect of a judgment he can issue a third party notice to achieve preclusive effect different from res judicata termed “Interventionswirkung” (§§74(3), 68 ZPO), the effect of which is preclude the third party from later asserting arguments contrary to the first judgment. Claim preclusive effects based on §68 ZPO</p>

	<p>must be considered by the Court ex officio at whatever stage of the proceedings it is raised. Interventionswirkung is broader than res judicata (i.e. §322(1) ZPO) in that it precludes the third party questioning the factual or legal basis of the Court's decision (BGH NJW 1992, 1698 (1699)). It does not however extend to factual or legal findings unnecessary to the earlier decision.</p>
Represented persons	<p>Only two concepts of group representation are recognized in German law: association or interest group complaint and model proceedings established by the Capital Markets Model Case Act (KapMuG). The former is usually found in the fields of consumer and unfair competition law, where a typical case involves a group/association as claimant suing for injunctive relief. In the consumer law field, the preclusive effects of a judgment are modified by §§9-11 Unterlassungsklagengesetz (injunctive suit act). Crucially §11 provides that any third party can invoke an earlier judgment wherein the Court ruled that certain contract terms used by the Defendant were unlawful, in its litigation against the Defendant. §11 has broader effect than res judicata per §322 ZPO in that it also gives preclusive effect to the essential reasons for the earlier judgment. However a Court will not, as with §322 ZPO, consider the earlier judgment ex officio but will only do so after a party claims the effect.</p> <p>"Model proceedings" under KapMuG consist of situations of ten or more suits for violation of securities law which involve identical issues. In this situation §§7, 14 and 16 KapMuG allows for a stay on the individual proceedings and a common question to be referred to the Oberlandesgericht. This judgment will bind all the plaintiffs in all the individual disputes.</p> <p>In both types of group representation the nature of the preclusive effect is procedural</p>
Persons connected to the Claimant, Defendant, and other participants	<p>§325(1) ZPO provides that preclusive effect extends only to the parties, their legal successors (where succession took place after or while the litigation was pending) or a party acquiring possession of the thing involved in the litigation (where transfer occurred after or while litigation was pending and unless the transferee took in good faith without notice §325(2)). Extending res judicata effects to non parties is termed "Rechtskrafterstreckung", the legal basis for which is §§325-327 ZPO or a special provision outside the ZPO</p> <p>As such given the general rule in §325(1) ZPO, preclusive effect does not extend to sureties of debts where the creditor has obtained judgment against the debtor, companies (if they are independent legal entities) within the same corporate group, assignees where the assignment took place before pendency of the suit or other family members where judgment has been obtained against another family member. Partners are however bound by judgments against the partnership (§§128, 129 HGB).</p>
Strangers	<p>As a result of § 325 (1) ZPO, the majority opinion in German civil procedure limits the effect of res judicata to the parties and their legal successors and does not accord any res judicata effect in relation to third parties</p>
ISSUE PRECLUSION	
Existence and nature of issue preclusive effects	<p>Beyond the effects of §322(1) set out above, German judgments do not have preclusive effects. The res judicata is limited to the procedural claim (Streitgegenstand) decided in the earlier proceedings, incidental findings of law or fact are not binding for later proceedings. However, if an element which was indeed part of the procedural claim (Streitgegenstand) of an earlier action comes up as an incidental question in later proceedings (e.g. an earlier declaratory judgment ruled on the ownership of certain property, the issue of ownership comes then up in later proceedings for damages concerning that property), the court in the later action is bound as far as the incidental question is concerned (see the Präjudizialitätswirkung as described in the Swiss report). However, this effect stems from claim preclusion because the prejudicial question was part of the claim in the earlier proceedings, it does not amount to a concept of issue preclusion comparable to the Anglo-American doctrine in German law. As such it is not possible to provide answers to the rest of this section.</p>
Policies underlying issue preclusive effects	N/A

Conditions for issue preclusive effects	N/A
Invoking issue preclusive effects	N/A
Exceptions to issue preclusive effects	N/A
Claimant and Defendant	N/A
Other participants	N/A
Represented persons	N/A
Persons connected to the Claimant, Defendant, and other participants	N/A
Strangers	N/A
<i>WIDER PRECLUSIVE EFFECTS</i>	
Existence and nature of wider preclusive effects	<p>Abuse of procedure renders a claim inadmissible (§242 BGB), though in practice the importance of this doctrine is limited. In the res judicata context two concepts related to abuse of process can be noted. First §580 No.4 ZPO (action for restitution cf.above) precludes res judicata if the other part has been convicted of a criminal act in relation to the proceedings, most notably procedural fraud. Second §826 BGB exceptionally allows for res judicata to be dispensed with based on a substantive law action in tort. Thus if the judgment is incorrect in substantive law, which the judgment creditor knew, and was obtained in an offensive manner against public policy, §826 BGB will be engaged.</p> <p>However a general extension of res judicata based on abuse of process has not developed, though some commentators suggest on the basis of §242 BGB (prohibition of abuse of rights) that such could be developed. As such it is not possible to provide useful answers to the rest of this section</p>
Policies underlying wider preclusive effects	N/A
Conditions for wider preclusive effects	N/A
Invoking wider preclusive effects	N/A
Exceptions to wider preclusive effects	N/A
Claimant and Defendant	N/A
Other participants	N/A

Represented persons	N/A
Persons connected to the Claimant, Defendant, and other participants	N/A
Strangers	N/A
III. PRECLUSIVE EFFECTS OF JUDGMENTS WITHIN THE BRUSSELS/LUGANO REGIME	
RECOGNITION	
Judgments recognised	<p>The following have been recognized as judgments under the Brussels Regieme: execution orders, provisional measures so long as these were not granted in ex parte proceedings , cost orders provided a specified amount is stated in the order, provisionally enforceable foreign judgments – though the German court may opt to require security for enforcement until any appeal has been heard.</p> <p>The following will not be recognized under the Brussels Regime: Court order to collect court fees owed to the state since such concerns a public law claim and is therefore outside the scope of the Brussels regime, Decisions issued by other organs as courts, judgments from third countries e.g. a judgment of a member state which simply recognizes a third state judgment can't be recognized via the Brussels regime.</p> <p>It is unclear whether evidentiary orders should be regarded as judgments within Art 32 BR</p>
Procedural aspects of recognition	<p>Recognition of foreign judgments takes effect without any special procedure and may be decided incidentally in a lawsuit. In addition German law provides, as recognized in Art 33(2) BR, for a special procedure by which recognition can be sought in §25, 26 AVAG. In practice this procedure seems little used as there is no case law on the provision. A key distinction between the two methods for recognition is that where recognition is an incidental question the Court must ex officio decide if a ground of non-recognition exists, whereas in the procedure under Art 33(2) BR the grounds for non-enforcement can only be raised on appeal.</p>
Exceptions to the rule (grounds for non-recognition)	<p>The grounds for non-recognition are rarely engaged (only five reported decisions). While a frequent problem for German Court's is the lack of specificity of foreign judgments, German Courts will often remedy this defect by using information either from the reasoning or the from external sources to give the judgment sufficient certainty. Further German courts have held that a lack of reasoning in a judgment will not render it unrecognisable. However where the imprecision is so grave that the judgment cannot be recognized, German courts will refuse to recognize it. Thus if a judgment as to costs only states which party must bear the cost but says nothing as to the amount, the judgment will not been enforced.</p> <p>Judgments which violate the right to be heard under the German Constitution or which violate the right to a fair legal process per Art 6 ECHR or which have been obtained by fraud will not be recognized. However the German Courts will still recognize judgments even where there have been procedural irregularities. Thus an Italian default judgment issued in a procedure with different mandatory rules to German civil procedure was still recognized, the BGH stressing only severe infringements of the rule of law would amount to a violation of public policy justifying non-recognition.</p> <p>German Court are well aware of their duty not to review the substance of foreign decisions per Art 36 BR; such being borne out in the case law</p>
Effects of recognition	<p>The effect of recognition is termed "Wirkungserstreckung" (extension of judgment effects) and means that any effect that the judgment has under the state of origin's procedural law have to be extended to Germany, even if such goes beyond the German conception of res judicata. The only limit is the ordre public per Art 34 BR.</p>
CLAIM PRECLUSION	

<i>WITHIN THE BRUSSELS/LUGANO REGIME</i>	
Existence and nature of claim preclusive effects	Yes. The details (scope, parties bound etc.) depend on the procedural law of the state of origin
Policies underlying claim preclusive effects	The policy considerations are those considerations which led the European legislator to promulgate the BR.
Law applicable to claim preclusive effects	Claim preclusive effects of judgments recognized under the Brussels Regime follows from the conclusion that the judgment is recognised under the Brussels Regulation in conjunction with the rules of the State of Origin concerning the claim preclusive effects of the judgment (per Art 33 as interpreted in Hoffmann v. Krieg).
Conditions for claim preclusive effects	If the requirements for recognition under the BR are met, a foreign judgment will be given exactly the same effects it has under its domestic law. If it has been repealed and therefore lost all its effects, necessarily there are no effects which could be extended to Germany. If there are doubts what the effects under foreign law are, the German law has to determine ex officio the content of the foreign law, if necessary with the help of expert evidence.
The identity of claims in the Brussels/Lugano Regime	The identity of claims has to be determined by applying the law of the state of origin of the judgment. Further due to ECJ jurisprudence, German courts give the "identity of claims" in Art 27 BR a broader meaning than that which applies in national law. cf pp.69 for case law
The identity of parties in the Brussels/Lugano Regime	German Courts determine the identity of parties using the law of the state of origin of the judgment.
Invoking claim preclusive effects under the Brussels/Lugano Regime	Claim preclusive effects follow automatically from recognition under the Brussels Regime and such effects must be regarded by the German Court ex officio even if the preclusive effects must be pleaded under the law of the state of origin of the judgment.
Exceptions to claim preclusive effects under the Brussels/Lugano Regime	The judgment will be subject to the same limits and exceptions to claim preclusive effects as apply under the law of the state of origin of the judgment as well as the exceptions to preclusive effect recognized in Arts 34, 35 BR. Finally the Bundesgerichtshof has recently held that parties may bring additional substantive objections against foreign judgments which arose after the rendering of the foreign judgment via § 12 AVAG.
Persons affected by claim preclusive effects	This is determined by the law of the state of origin of the judgment
<i>ISSUE PRECLUSION WITHIN THE BRUSSELS/LUGANO REGIME</i>	
Existence and nature	If foreign judgments have issue preclusive effects under the law of their state of origin, these effects will be extended to Germany under the doctrine of "extension of effects"

of issue preclusive effects	(Wirkungserstreckung). Since as there is no difference made between claim preclusive effects and issue preclusive effects by the doctrine of "extension of effects", the same answers to questions III C 2-7 apply here.
Policies underlying issue preclusive effects	The policy considerations are those considerations which led the European legislator to promulgate the BR.
Law applicable to issue preclusive effects	Issue preclusive effects of judgments recognized under the Brussels Regime follows from the conclusion that the judgment is recognised under the Brussels Regulation in conjunction with the rules of the State of Origin concerning the issue preclusive effects of the judgment. (per Art 33 as interpreted in Hoffmann v. Krieg)
Conditions for issue preclusive effects	If the requirements for recognition under the BR are met, a foreign judgment will be given exactly the same effects it has under its domestic law. If it has been repealed and therefore lost all its effects, necessarily there are no effects which could be extended to Germany. If there are doubts what the effects under foreign law are, the German law has to determine ex officio the content of the foreign law, if necessary with the help of expert evidence.
Invoking issue preclusive effects under the Brussels/Lugano Regime	Issue preclusive effects follow automatically from recognition under the Brussels Regime and such effects must be regarded by the German Court ex officio even if the preclusive effects must be pleaded under the law of the state of origin of the judgment.
Exceptions to issue preclusive effects under the Brussels/Lugano Regime	The judgment will be subject to the same limits and exceptions to issue preclusive effects as apply under the law of the state of origin of the judgment as well as the exceptions to preclusive effect recognized in Arts 34, 35 BR. Finally the Bundesgerichtshof has recently held that parties may bring additional substantive objections against foreign judgments which arose after the rendering of the foreign judgment via § 12 AVAG.
Persons affected by issue preclusive effects	This is determined by the law of the state of origin of the judgment
WIDER PRECLUSION	
Existence and nature of wider preclusive effects	Judgments are given the same effects they have in their state of origin. Whether wider preclusive effects based on a notion of procedural abuse would be recognised in Germany therefore depends on whether such effects would be qualified as part of the effects of the foreign judgment to be recognised under Art. 33 BR or whether such effects would be regarded to fall into a category of abuse of process independent of Art. 33 BR, e.g. as a form of tort. I am not aware of any German case law on this point. It may be added that the other side of abuse of process, i.e. an exception to instead of an extension of res judicata, is recognised under German law because (procedural) fraud in the foreign proceedings makes a judgment unenforceable under Art. 34 No. 1 BR
Policies underlying wider preclusive effects	
Law applicable to wider preclusive effects	
Conditions for wider	

preclusive effects	
Invoking wider preclusive effects	
Exceptions to wider preclusive effects	
Persons affected by wider preclusive effects	
<i>AUTHENTIC INSTRUMENTS/COURT APPROVED SETTLEMENTS</i>	It is generally understood that authentic instruments or court approved settlements have no res judicata effect and no preclusive effects. Judgments by consent are thought not to fall under Art. 57, 58 BR, but rather to be recognised as judgments under Art. 32 seq. BR
<i>IV. PRECLUSIVE EFFECTS OF THIRD STATE JUDGMENTS</i>	
	Outside the Brussels Regime, judgments are recognized under §328 ZPO. The main differences between the two schemes of recognition are that under §328 ZPO the foreign court must have jurisdiction over the claim according to German standards, the foreign judgment must be final and their must be reciprocity. The effect of recognition of third state judgments is unclear, one position favours applying the same approach as under the Brussels regime, while another contends that the judgment should only have the same effect that a German judgment in the case would have.

Netherlands	
I. JUDGMENTS	
The concept, form, structure and terminology of judgments	<p>The major sources of Netherlands civil procedure law are the Code of Civil Procedure and the Judicial Organisation Act. Other rules are contained in specific acts such as the Civil Code and the Constitution. Civil procedure law in the Netherlands has undergone a recent revision; however, Supreme Court decisions prior to the revision are still quite relevant to the report and will be referred to, as will the holdings of the lower courts of factual instance.</p> <p>In the Netherlands there are two types of civil proceedings depending on whether they are commenced by summons or by petition. This report will focus on those judgments deriving from proceedings commenced by summons (<i>vonnissen</i>).</p> <p>Division of jurisdiction among the 19 judicial districts in the Netherlands is hierarchical as well as geographical, and in some cases, courts may only have the subject matter jurisdiction to hear specific types of cases.</p> <p>Actions in civil and commercial matters are instituted by the service of a summons on the defendant who will then present the claimant with an answer that will include the defendant's pleading. Neither the claimant nor the defendant is required to state his legal cause of action; this will be determined independently by the court. It is sufficient that the parties set forth the factual circumstances of the claim and request a remedy, to which the court is bound. The claimant may amend both the cause of action and relief claimed in his pleadings until the judgment is rendered and the defendant may not object to the amendment. Under the 2002 revision, civil cases are generally restricted to one written phase which is followed by a compulsory personal appearance so that the court may assess whether settlement is possible or obtain any new information it may need to decide the matter. The parties may also be asked to present oral arguments, or they may request such an opportunity. The parties will also be given a chance to issue a reply and a rejoinder, and may be given permission to file other writings, in the discretion of the court. The court may, at any time, request further information or clarification regarding issues which may have a bearing on the case. If the court decides to include information from other case files which, for example, may have involved the same parties, the court should notify the affected party and allow the party an opportunity to respond.</p> <p>A 'judgment' in the Netherlands is a court's written decision (<i>beslissing</i>) that meets the formal requirements of the Code of Civil Procedure and is distinguished from a court's rendition of its judgment in public which does not produce binding effect. Judicial decisions essentially fall under three categories: (1) procedural orders, declarations, and instructions; (2) procedural directions; and (3) findings on the merits. Instructions and procedural directions are not included within the scope of this report, as they are incapable of having preclusive effect. The content of judicial findings may further be distinguished according to whether they are conditional or definitive, or findings on only part of the claim, and not the whole.</p> <p>The court's findings in the reasons culminate in the judgment's operative part which may be (1) condemnatory; (2) declaratory; or (3) constitutive. Declaratory and condemnatory relief can be claimed separately, however only in special circumstances justified by the protection of the claimant's rights.</p> <p>The Code of Civil Procedure sets forth the elements for a valid judgment which include basic requirements such as the name of the parties and their representatives, a statement of the reasons, and the operative part. The requirements may change depending on the type of judgment that has been rendered. The court has the opportunity to correct evident mistakes in judgments, even if the judgment already has the status of <i>res judicata</i>.</p> <p>The Constitution provides that a judgment must state the reason on which it is based. Failure to state the reasons for judgment is grounds for cassation. The case law of the ECtHR with regard to Article 6(1) ECHR and the proper administration of justice and the extent to which the requirement to state reasons applies has been influential in the Netherlands.</p> <p>Court policy dictates how and when it will make its findings; for this reason, it is difficult to divide judgments into clearly defined categories. However, Netherlands law and doctrine typically refers to 10 types of judgments which may be found within the Code of Civil Procedure.</p>

<p>The final determination and findings on issues of fact and law</p>	<p>The Code of Civil Procedure distinguishes between the court's findings of fact, findings of law constituting the reasoning of the judgment, and its operative part. The court may only observe facts that have been presented by the parties or that have come to its attention during the proceedings. By contrast, the court must define the claimant's legal cause of action of its own motion; where the parties reasonably could not foresee the outcome of the case due to the court's choice of legal grounds, they may appeal the decision.</p> <p>The operative part of the judgment is thought of as the service of justice and is decisive as to the availability and type of enforcement measures, as well as the judgment's appealability. The operative part must follow logically from the reasons which serve to clarify it. The judgment need only state the reasons which support the ultimate decision contained therein.</p> <p>An appeal against judgments rendered at first instance in proceedings commenced by summons is possible in nearly all cases and both findings of fact and law are open to review.</p>
<p>The binding character of a judgment</p>	<p>Courts may be bound by judicial findings both within the same proceedings (<i>procesgelding</i>) and in relation to other proceedings (<i>gezag van gewijsde van vonnissen</i>). Findings with regard to a court's subject matter jurisdiction, however, are not binding on other courts within the same proceedings where the former court did not have jurisdiction.</p> <p>A court's decision acquires legal effect immediately upon its rendition in public. This legal effect determines the existence of other legal effects, including the judgment's preclusive effect. There is a limited system for means of recourse against judgments in order to preserve the policy of putting an end to litigation. Therefore, if the ordinary means for appeal are not used or are unsuccessfully used, even an erroneous judgment will have legal effect between the parties and it will acquire the status of <i>res judicata</i>. In the event where two inconsistent judgments have been rendered, the judgment rendered last in time will prevail in terms of legal effect between the parties.</p> <p>The preclusive effect of a judgment under the Code of Civil Procedure does not, as such, prevent new actions between the same parties concerning the same claim. This approach is rooted in the belief that judgments are not a source of substantive civil rights the effects of which are procedural in nature.</p> <p>The doctrine of <i>res judicata</i> does not operate by itself; other rules and doctrines moderate the right of parties to bring civil actions and their conduct in the course of and after the proceedings. The most relevant doctrines are: (1) the requirement of a sufficient interest to bring an action; (2) the principle of due process; and (3) the prohibition of the abuse of process.</p> <p>In addition to the preclusive effect of a judgment, the following effects of judgments are distinguished in Netherlands law: (1) the enforcement effect (<i>executoriale kracht</i>); (2) the constitutive effect (<i>constitutieve kracht</i>); and (3) the evidential effect (<i>bewijskracht</i>).</p>
<p>Judgments that are capable of having preclusive effects</p>	<p>Any Netherlands judgment is capable of having preclusive effect if it is (a) "rendered in contentious proceedings"; (b) "rendered on the merits of the claim"; and (3) "irreversible". Although proceedings commenced by petition are usually non-contentious, the decisive factor is whether any contentious issues (both factual or legal) have been decided within the petition proceedings. In this sense, judgments in petition proceedings are capable of having preclusive effect, specifically in relation to judgments on maintenance obligations. Furthermore, judgments in criminal proceedings involving a finding on the merits of a tort claim in the course of the criminal proceedings, will have binding effect in other proceedings between the same parties.</p> <p>The following judgments are considered 'on the merits' and therefore capable of having preclusive effects: (1) default judgments; (2) granting judgments; and (3) certain dismissals, e.g. judgments denying a claim for lack of evidence.</p> <p>For a judgment to have binding effect in a subsequent case, it must be irreversible and therefore have the status of <i>res judicata</i> (<i>kracht van gewijsde</i>). Judgments become <i>res judicata</i> when they can no longer be challenged by ordinary means of recourse (<i>gewone rechtsmiddelen</i>). Upon appeal, the entire case may be subject to review; however, in practice, review is generally restricted to the grievances of the appellant. Therefore, those findings which are not reviewed on appeal, are considered final.</p> <p>Judgments in summary proceedings generally do not prevent subsequent litigation on the same claim, nor do they affect the final decision in prior proceedings; thus they are incapable of having preclusive effects.</p>
<p>II. PRECLUSIVE EFFECTS</p>	

CLAIM PRECLUSION	
Existence and nature of claim preclusive effects	<p>Claim preclusion in the Netherlands states that findings in relation to a contentious legal relationship, contained in a judgment that has the status of <i>res judicata</i>, have binding effect on the same parties in other proceedings. Claim preclusion refers to the factual, and not the legal, cause of action or type of relief claimed. Whether or not a judgment will have claim preclusive effect in a particular instance depends on the specific features of Netherlands civil procedure. These features are the following: 1) both the claimant and the defendant in a civil action are required – at first stage of the proceedings – to plead their case; (2) a Netherlands court must decide the whole claim and nothing but the claim; (3) the claim for relief, as well as its cause of action, can be amended by the claimant until the judgment is rendered; (4) in civil proceedings, the parties are obliged to state - completely and truthfully - the relevant facts for the court's final decision on the claim; (5) a Netherlands court must restrict itself to an evaluation of the claim on the basis of the facts as stated by the parties; and (6) a Netherlands court must - out of its own motion - determine the appropriate legal cause of action for the claim.</p> <p>Parties are bound by a court's finding on the claim in a previous judgment, even if they are able to present new facts or evidence after the first judgment acquired <i>res judicata</i> status, and even if a different legal cause of action is put forward in the second proceedings.</p> <p>It is important to note that claim preclusion does not prevent new actions on the same claim; rather, it prevents the unnecessary repetition of irreversible judicial findings on claims by stipulating their binding effect on other proceedings between the same parties.</p>
Policies underlying claim preclusive effects	<p>In Netherlands law, the two main justifications for the binding effect of judicial findings between the same parties in other proceedings are: (1) the requirement of legal certainty by ensuring the finality of judgments, and (2) the prevention of irreconcilable judgments. Supplementary justifications include public interest considerations such as civil justice resource economy, which requires the prevention of the waste of resources caused by the needless repetition of final judicial findings.</p>
Conditions for claim preclusive effects	<p>The following conditions apply before a judgment obtains claim preclusive effect in the Netherlands: (1) the judgment must be (a) rendered in "contentious proceedings" , (b) rendered "on the merits" , and (c) "irreversible" ; (2) the preclusive effect must be (a) "actually invoked" , (b) invoked in "other proceedings" , and (c) invoked between the "same parties"; and (3) the case in which the preclusive effect is invoked must concern the "same claim".</p>
Invoking claim preclusive effects	<p>The parties, and not the court, are responsible for invoking the claim preclusive effect of a prior judgment. In fact, courts are explicitly prohibited from doing so on their own motion. The plea of <i>res judicata</i> must also be clear in order for it to be considered by the court; it may not be deduced from the fact that a party has unmistakably presented the same claim as in an earlier case. The rationale behind such a rule is due process (i.e. the parties' right to a fair trial) and party autonomy. <i>Res judicata</i> is considered an affirmative defence that may be set forth at any time during the proceedings. Once the court accepts the claim preclusive effect of a judgment, it will dismiss the repetitive claim (<i>ontzegging van de vordering</i>).</p>
Exceptions to claim preclusive effects	<p>The following are considered exceptions to the claim preclusive effects of a judgment: (1) a change of circumstances that would have led the court to a different decision had it occurred before the final judgment; (2) revocation of a judgment due to fraud, falsity, or the withholding of decisive documents, or amendment or annulment of a judgment because of an interested third party who was previously uninvolved in the case; (3) party agreement to set aside a judgment's binding effect; (4) the inability to plead <i>res judicata</i> once a case has been reversed and referred for another hearing; (5) violations of due process, such as the failure to plead <i>res judicata</i> in such a way so as to allow the defendant to defend himself adequately; and (6) pleas of <i>res judicata</i> that may constitute an abuse of process.</p>
Claimant and Defendant	<p>Where one of the parties brings a new case regarding the same claim, several scenarios may arise depending upon, first, whether or not the first judgment has acquired the status of <i>res judicata</i>, and second, which party is filing the second action. For example, where a judgment has obtained <i>res judicata</i> status and the successful claimant seeks a new finding on the same claim, the court is likely to dismiss the case based on the claimant's insufficient legal interest or conduct amounting to an abuse of process. Where a judgment has not yet become <i>res judicata</i> because, for example, the time for appeal has not yet passed, and the unsuccessful claimant seeks a separate re-evaluation of the claim, the court should dismiss the case with reference to the limited system for means of recourse against judgments.</p>

<p>Other participants</p>	<p>In the event that multiple claimants and defendants are involved in the case, the application of Article 236 Rv requires a particularly close examination of the findings contained in the resulting judgment, namely, the preclusive effect of judgments applies only to the parties directly implicated by a finding.</p> <p>The preclusive effect of judgments also extends to third parties who become involved in the proceedings as parties. This may occur through joinder, intervention, impleader, or notice by summons. It is unclear whether courts have the power to join parties <i>ex officio</i>, however in some cases, there is an obligation to join third parties owing to the indivisibility of the legal relationship concerned in the case.</p>
<p>Represented persons</p>	<p>There are two rules in force regarding mass representative actions in the Netherlands. The first is for collective actions brought by representative organizations in their own name. In such cases, the judgment is binding only on the organization and the defendant, not on the individuals whom are represented by the organization, although such a judgment will carry a certain persuasive effect.</p> <p>The second set of rules relates to collective settlements where defendants and representative organizations seek to reach a settlement out of court. The parties to such an agreement can jointly petition the court for approval and a declaration of the agreement's binding nature, even on non-parties who have an opt-out option. A court approved settlement agreement is not capable of having preclusive effect within the meaning of Article 236 Rv, since its binding effect in other proceedings is in principle strictly contractual.. This applies between the parties to the agreement and in relation to non-parties who did not opt out. This may not be strictly the case upon an examination into whether any contentious issues had been decided within the proceedings. If such issues have been decided, the court's decision in the petition proceedings may be capable of having preclusive effect between the parties to the proceedings.</p>
<p>Persons connected to the Claimant, Defendant, and other participants</p>	<p>Netherlands law distinguishes between the person who is formally the party to the proceedings (<i>formele procespartij</i>) and the person whose interests are legally represented and who is ultimately bound by the court's decision (<i>materiële procespartij</i>). Where there is a representative party in an action, the person being represented will be considered a party to the proceedings who will be bound by the judgment. This can be exemplified by the situation where a company is a party in legal proceedings, but its majority shareholder, who was not a formal party, is bound by the judgment. A similar situation is applicable to members of a community of ownership.</p> <p>Netherlands preclusion law is also applicable to those persons who succeed the original parties. However, preclusion will only affect the successors where succession takes place after the judgment has been rendered. Furthermore, legal successors who are considered <i>bona fide</i> successors will be protected against the preclusive effect of a judgment if they were not aware of the judgment against their predecessor, and the circumstances were such that they were not obliged to be aware of the judgment.</p> <p>The preclusive effect of a judgment does not extend to (1) minority shareholders of a company involved in legal proceedings; (2) partners of a partnership; (3) persons who are jointly and severally liable for a debt; and (4) persons in whose interest a collective action was brought.</p>
<p>Strangers</p>	
<p>ISSUE PRECLUSION</p>	
<p>Existence and nature of issue preclusive effects</p>	<p>The doctrine of res judicata in Netherlands law includes issue preclusion with regard to essential findings in relation to a contentious legal relationship, contained in a judgment that has the status of res judicata. Specifically, the relevant findings are those which the establish the issues which must be determined by the court on its own motion, or those relating to issues that the parties have drawn to the court's attention. The scope of issue preclusion depends largely on the key features of Netherlands civil procedure, as discussed above in relation to the existence and nature of claim preclusive effects.</p> <p>Four types of findings are outside the scope of issue preclusion under Netherlands law: (1) unessential findings; (2) findings exclusively on the facts; (3) findings exclusively on the law; and (4) findings outside the court's subject matter jurisdiction.</p>
<p>Policies underlying issue preclusive effects</p>	<p>Please see the policies with regard to claim preclusion above.</p>

Conditions for issue preclusive effects	The following conditions apply before a judgment obtains claim preclusive effect in the Netherlands: (1) the judgment must be (a) rendered in contentious proceedings, (b) rendered on the merits, and (c) irreversible; (2) the preclusive effect must be (a) actually invoked, (b) invoked in other proceedings, and (3) the case in which the preclusive effect is invoked must concern the same issue. Additionally, the issue must be essential for the court's finding on the claim. There must also be an identity of issues, which is determined by the court after a comparison of the issues before it with those explicit and implicit findings on matters of fact and law which were essential to the first court's finding on the claim.
Invoking issue preclusive effects	The parties, and not the court, are responsible for invoking the issue preclusive effect of a prior judgment. In fact, courts are explicitly prohibited from doing so on their own motion. The plea of res judicata must also be clear in order for it to be considered by the court; it may not be deduced from the fact that a party has unmistakably presented the same issue as in an earlier case. The rationale behind such a rule is due process (i.e. the parties' right to a fair trial) and party autonomy. Res judicata is considered an affirmative defence that may be set forth at any time during the proceedings. Acceptance by the court of the issue preclusive effect of a previous judgment implies that a finding on the issue decided by the previous court is followed without re-evaluation of the merits.
Exceptions to issue preclusive effects	The exceptions which apply with regard to the claim preclusive effect of judgments are applicable in the context of issue preclusion.
Claimant and Defendant	Issue preclusion may prevent a claimant or defendant from challenging findings in subsequent proceedings, whether in support of a claim or as part of a defence to a claim. This mainly occurs in the situation where a party seeks a new finding on an issue and his opponent invokes the issue preclusive effect of a judgment as a defence. Where this is the case, the court should, in principle, decide the issue in accordance with the finding in the first judgment. Where the opponent does not invoke issue preclusion, the court may not apply issue preclusion. Furthermore, in situations where the claimant claims a declaration that an earlier finding was erroneous, or that legal acts performed in accordance with the first judgment should be made undone, the court should dismiss the case with reference to the limited system for recourse against judgments.
Other participants	Please see 'Other participants' with regard to claim preclusion.
Represented persons	Please see 'Represented persons' with regard to claim preclusion.
Persons connected to the Claimant, Defendant, and other participants	Please see the equivalent section above with regard to claim preclusion.
Strangers	
WIDER PRECLUSIVE EFFECTS	
Existence and nature of wider preclusive effects	The doctrine of res judicata under Netherlands law prevents the consideration of matters of fact or law and claims of relief that could or should have been raised previously in relation to the same factual cause of action. Where res judicata is inapplicable and a judgment is not capable of having preclusive effects, Netherlands civil procedure may still affect the parties' behaviour in a way similar to preclusion by preventing frivolous or vexatious litigation in three different ways: (1) where the claimant lacks a sufficient interest to bring the action; (2) where the claimant's conduct toward the defendant is unfair and inequitable so as to amount to a breach of due process; and (3) where the claimant's actions constitute a violation of the prohibition of an abuse of process. The third consideration may also preclude a party from raising new issues in subsequent proceedings on the same claim.
Policies underlying wider preclusive effects	The policies served by the application of the wider preclusive effects of judgments are to ensure that cases are brought for the right purpose and that the parties' conduct towards each other is fair and just at all times during the proceedings.
Conditions for wider	Parties must have a sufficient individual or public interest to bring an action. In addition, the

preclusive effects	requirements of due process must be respected so that the principle of good faith is preserved among the parties. Finally, the prohibition of the abuse of process is considered a tort which will allow the aggrieved party to claim relief by means of preventative actions or actions for redress.
Invoking wider preclusive effects	The court will, <i>ex officio</i> , invoke a party's lack of sufficient interest, or due process violations; it may also do the same with regard to an abuse of process, but in practice the interested party will usually raise the issue explicitly.
Exceptions to wider preclusive effects	N/A
Claimant and Defendant	N/A
Other participants	N/A
Represented persons	N/A
Persons connected to the Claimant, Defendant, and other participants	N/A
Strangers	N/A
III. PRECLUSIVE EFFECTS OF JUDGMENTS WITHIN THE BRUSSELS/LUGANO REGIME	
RECOGNITION	
Judgments recognised	<p>The term 'judgment' under the BR encompasses any judgment rendered by a court or tribunal of a Member State, irrespective of its name, including a decree, order, decision or writ of execution, as well as the determination of costs and expenses by an officer of the court.</p> <p>Judicial decisions fall within the scope of Article 32 irrespective of whether they are final or provisional, terminate a dispute in whole or in part, concern substantive or procedural issues.</p> <p>The court or tribunal of a Member State must decide on the issues between the parties on its own authority, excluding thus court settlements, and it is important, before a judicial decision is recognised in another MS, that an effective remedy was available to the debtor in order to contest the decision in the MS of origin.</p> <p>In light of the ECJ's decision <i>Solo Kleinmotoren v Boch</i>, the Netherlands variety of court settlements cannot be characterised as 'judgments' within the meaning of Article 32 BR, unlike judgments containing interlocutory decisions (<i>tussenbeslissingen</i>) that assess the legal relationships of the parties, enforcement orders (such as the German <i>Vollstreckungsbefehl</i>) in absence of an objection to this order and orders for the reimbursement of costs (such as the German <i>Kostenfeststellungsbeschluss</i>). The Netherlands language version of Article 32 supports the view that only the final order, and not the reasoning, falls within the meaning of 'judgment'.</p> <p>Moreover, Dutch commentators have drawn the attention on a possible inconsistency between the German and the English and Netherlands language versions of the ECJ's ruling <i>Denilauler v Couchet Frères</i> that recognised an exception to the recognition of default judgments. As regards foreign judgments delivered in non-Member States, which are not subject to the Brussels Regulation's chapter on enforcement, it should be noted that the Netherlands variety of '<i>actio iudicati</i>' proceedings governed by Articles 431(1) and (2) Rv prohibits enforcement of such judgments in the Netherlands, but parties can obtain an enforceable Netherlands judgment on the basis of the foreign judgment.</p>
Procedural aspects of recognition	Pursuant to the BR and the 'BR Implementation Act 2003' (<i>Uivoeringswet EG-Executieverordening</i>), foreign judgments within the scope of Article 32 are automatically recognised in the Netherlands where the party seeking recognition presents a copy of the judgment that satisfies the conditions necessary to establish its authenticity. The decision on the declaration of recognition may be appealed in accordance with Article 43 BR. Netherlands case-law is ambiguous on the question whether courts may consider the grounds for non-recognition out of their own motion during such an appeal. Recognition may be requested as the principal

	<p>issue of a dispute (<i>erkenning ten principale</i>) or as an incidental question (<i>tussenvordering</i>), and it is assumed that an applicant may request only partial recognition of a foreign judgment. BR provides for the staying of recognition procedures and of procedures that constitute the means of recourse against declarations of enforceability of judgments recognised. Whereas no case-law has been identified in relation to the former procedure under Article 37(1) BR, several cases pertaining to the latter procedure under Article 46 highlight the exceptional character of that provision and interpret the meaning of the term 'ordinary appeal'.</p>
<p>Exceptions to the rule (grounds for non-recognition)</p>	<p>Netherlands courts have applied the public policy exception under Article 34(1) BR strictly, in accordance with ECJ case-law. When striking the balance between Article 34(1) and Article 36 prohibiting a review of a foreign judgment as to its substance, Netherlands courts will appraise foreign judgments to ensure that due consideration was given to Netherlands fundamental principles of due process, for instance, the right of each party to be heard. They will not, however, review the merits of the decision for the foreign court, insofar as it is clear that the foreign court indeed considered the relevant issues and arrived at a reasoned decision. Another factor that Netherlands take into account is the question of whether a party actually availed himself of all means of appeal in the country of origin before invoking public policy. In practice the most significant ground for the non-recognition involves the situation under Article 34(2) BR where a judgment whose recognition is sought was given in default of appearance, while the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence. Several relevant Dutch cases can be identified, most of which involve an application of Article 27(2) BC and not of the new formulation provided by Article 34(2) BR. In <i>Rb Arnhem 27 September 1987</i>, the court held that it is for the domestic court to ascertain whether or not due notice of the defendant occurred, independently from the conclusion reached on that point by the court in the state of origin. Article 34(2) BR is not triggered in the event of a mere formal irregularity or where the defendant failed to commence proceedings to challenge the default judgment. Crucial is instead whether the defendant's rights of defence were adversely affected. The final ground for non-recognition applies, by virtue of Article 34(3) and (4) BR, where the judgment for which recognition is sought is irreconcilable with a judgment given in a dispute between the same parties in the MS of recognition or an earlier judgment of another MS or in a third state involving the same cause of action and between the same parties. The ECJ has held that it is irrelevant for the purpose of those provisions whether the judgments at issue have been rendered in proceedings for interim measures or in the main proceedings, and that the term 'irreconcilability of judgments' refers to the effects of judgments, and not, for instance, to requirements of admissibility and procedure. Relevant Netherlands judgments relating to that ground of non-recognition include <i>Rb Arnhem 26 July 2001</i> and <i>Rb Rotterdam 21 August 2007</i>.</p>
<p>Effects of recognition</p>	<p>Once recognised, a judgment has the same effects in the Netherlands as it would have in its country of origin.</p>
<p>CLAIM PRECLUSION WITHIN THE BRUSSELS/LUGANO REGIME</p>	
<p>Existence and nature of claim preclusive effects</p>	<p>Judgments recognised in accordance with the Brussels/Lugano regime are capable of having claim preclusive effects in the Netherlands.</p>
<p>Policies underlying claim preclusive effects</p>	<p>The policy underlying that existence of claim preclusion is the principle of mutual trust in legal systems and courts between MS.</p>
<p>Law applicable to claim preclusive effects</p>	<p>The Hoge Raad has ruled that, pursuant to the BR, the scope of the authority and the effect of judgments, i.e. the question which findings have preclusive effect and additionally which persons are influenced, are determined by the law of the state of origin. The decisions of lower Netherlands courts on the interpretation and application of foreign law when determining the scope of the preclusive effect of judicial decisions cannot, moreover, be challenged in cassation. There are however limits to the preclusive effects of foreign judgments, which is illustrated by the ECJ's judgment in <i>Lucchini</i> where the Court ruled that the application of the relevant provision before the national court would have frustrated EC law. Given that the content of decisions which are to be recognised within the Brussels regime is potentially as wide-ranging as the subject-matter of the BR and may include for instance procedural and not only substantive relief, the law</p>

	<p>applicable to the effects of a judgment therefore determines more than merely its preclusive effects. However, while the procedure for obtaining an enforcement order for foreign judgments is governed by the BR, the execution itself of that judgment takes place in accordance with the procedural rules of the state where recognition is sought, including those on legal remedies, as far as the effectiveness of the Brussels scheme is not impaired.</p>
Conditions for claim preclusive effects	N/A. See answer above, Part III.B.3
The identity of claims in the Brussels/Lugano Regime	<p>A comparison of different language versions of Article 27 BR makes clear that this provision applies to two actions that (1) are between the “same parties”, (2) have the “same subject-matter” (the end that an action has in view) and (3) rely on the “same cause of action” (the facts and the legal rule invoked as the basis for a claim for relief). Where such actions are brought in the courts of different Member States, any court other than the first court on the case must out of its own motion stay its proceedings until the jurisdiction of the first court is established. The ECJ held in <i>Gubisch</i> that the rationale of the relevant chapter of the BR is to prevent in the interest of proper administration of justice parallel proceedings before courts of different Member States and conflicting decisions. Case-law shows that Netherlands courts generally adhere closely to the ECJ’s interpretation. For instance, in <i>Rb Rotterdam</i> 26 September 2007, the court interpreted the term “same claim” as involving the requirement of the same subject-matter and the same cause of action, defining the “same subject-matter” as the identical aim of both proceedings and referring to the “same cause of action” as the facts and the rule of law relied upon in the basis of the action.</p>
The identity of parties in the Brussels/Lugano Regime	<p>Apart from an identity of the cause of action and the subject-matter, the same parties must be involved in parallel actions in different Member States. In <i>Drouot</i>, The ECJ has clarified that the condition of identity of parties is satisfied where there is such a degree of identity between the interests of the parties involved in the parallel proceedings that a judgment delivered against one of them would have the force of <i>res judicata</i> against the other (for instance where an insurance company defends proceedings in the name of its insured but not where their interests diverge). In the Netherlands judgment <i>Rb Rotterdam</i> 21 August 2007, the court adopted the same approach and ruled, referring to the ECJ’s ruling <i>Drouot</i> that the same parties are involved if their interests are identical and indissociable. The ECJ also held in <i>Tatry</i> that the procedural role of each party in the two actions is irrelevant, e.g. the claimant in the first action may be the defendant in the second. The same interpretation was also apparent in the Netherlands judgment <i>Rb Breda</i> 27 August 2003.</p>
Invoking claim preclusive effects under the Brussels/Lugano Regime	<p>The claim preclusive effects of a judgment follow automatically from its recognition under the Brussels/Lugano Regime. Accordingly, the only condition to be met is the satisfaction of the procedural requirements for automatic recognition.</p>
Exceptions to claim preclusive effects under the Brussels/Lugano Regime	
Persons affected by claim preclusive effects	
ISSUE PRECLUSION WITHIN THE BRUSSELS/LUGANO REGIME	
Existence and nature of issue preclusive	<p>Owing to the fact that in the Netherlands, the Hoge Raad has ruled that the effect of recognition under the Brussels/Lugano Regime is determined by the law of the state of origin, that law will apply with regard to the existence and scope of issue preclusion. Therefore, it is foreign law that</p>

effects	will determine the responses below.
Policies underlying issue preclusive effects	
Law applicable to issue preclusive effects	
Conditions for issue preclusive effects	
Invoking issue preclusive effects under the Brussels/Lugano Regime	
Exceptions to issue preclusive effects under the Brussels/Lugano Regime	
Persons affected by issue preclusive effects	
<i>WIDER PRECLUSION</i>	
Existence and nature of wider preclusive effects	Owing to the fact that in the Netherlands, the Hoge Raad has ruled that the effect of recognition under the Brussels/Lugano Regime is determined by the law of the state of origin, that law will apply with regard to the existence and scope of wider preclusion. Therefore, it is foreign law that will determine the responses below.
Policies underlying wider preclusive effects	
Law applicable to wider preclusive effects	
Conditions for wider preclusive effects	
Invoking wider preclusive effects	
Exceptions to wider preclusive effects	
Persons affected by wider preclusive	

effects	
AUTHENTIC INSTRUMENTS/COURT APPROVED SETTLEMENTS	
IV. PRECLUSIVE EFFECTS OF THIRD STATE JUDGMENTS	
	<p>Recognition of a foreign judgment is a precondition to its having binding effect in the Netherlands; however, recognition is not a guarantee that such a judgment will have binding effect. Netherlands courts decide on a case-by-case basis whether and to what extent a foreign judgment can have binding effect between the parties. Generally, three conditions must be fulfilled before a judgment will be recognised in the Netherlands: (1) the foreign judgment must have been rendered by a court with appropriate jurisdiction according to accepted international legal standards; (2) the judgment must not be manifestly contrary to Netherlands public policy; and (3) the foreign judgment must abide by the fundamental principles of due process under Netherlands law. Contrary to what many believe, finality is not a fourth condition for recognition, although a foreign judgment that is not irreversible can only have a limited binding effect in the Netherlands. Typically, where a foreign judgment has not yet become irreversible, Netherlands courts will stay their proceedings and await the outcome of the foreign case. Case law indicates that Netherlands courts, when determining the whether and to what extent a foreign judgment has binding effect in the Netherlands, will refer to Netherlands law.</p> <p>Where an action for enforcement of a foreign judgment has been brought in the Netherlands, the courts will first evaluate whether the judgment can be recognised and then decide whether and to what extent the judgment is binding between the parties.</p> <p>A foreign judgment that is not recognised may still be accorded evidential effect by Netherlands courts.</p>

Romania	
I. JUDGMENTS	
The concept, form, structure and terminology of judgments	<p>There are three types of Romanian judgment: <i>Sentinta</i>, a judgment on the merits at first instance, <i>Decizie</i>, a judgment rendered on appeal, and <i>Incheiere</i>, a term which covers any other type of judgment.</p> <p>The term "<i>hotarare judecatoreasca</i>" is synonymous with the English term judgment – i.e. a final determination of the dispute with <i>res judicata</i> effects. It is an umbrella term covering <i>sentinta</i> and <i>decizie</i>.</p> <p>A Romanian judgment consists of three main parts: <i>Practica</i>, which includes administrative details, as well as information as to the object of claim and the arguments and evidence used by the parties, <i>Considerente</i>, the reasoning of the Court, and <i>Dispozitiv</i>, the decision of the Court. Judgments must also contain the ways to appeal and the term in which an appeal may be lodged.</p>
The final determination and findings on issues of fact and law	<p>Determinations must be supported by legal/factual reasoning. Where this is not the case or where the reasoning contradicts the decision reached, the decision can be annulled. Appeal Courts can review the findings of fact and law of lower Courts.</p>
The binding character of a judgment	<p>For a Romanian judgment to have binding effect it must contain the four required elements, the court issuing it must have subject matter and territorial jurisdiction over the dispute and have tried the case on the merits.</p> <p>In the event of an appeal, the judgment retains its binding character until it is set aside. If the same issue is re-litigated between the same parties and <i>res judicata</i> is not raised, then an expedited appeal process is engaged to enable a higher court to annul the second judgment.</p>
Judgments that are capable of having preclusive effects	<p>Judgments rendered at first instance (<i>sentinta</i>) have preclusive effect. This effect is temporary till either the judgment is confirmed on appeal or the period for lodging an appeal elapses. Final judgments (<i>decizie</i>) have full preclusive effect as soon as they are rendered. <i>Incheieri</i> have preclusive effect as to the matter settled by the Court in such acts. Provisional judgments, in contrast to definitive judgments which resolve the merits of a case, do not have preclusive effects.</p>
II. PRECLUSIVE EFFECTS	
CLAIM PRECLUSION	
Existence and nature of claim preclusive effects	<p>Romanian judgments, obtain <i>res judicata</i> status as soon as they are rendered and even if they are not final. A second claim based on the same cause of action, having the same object and between the same parties would be precluded.</p>
Policies underlying claim preclusive effects	<p>Two policy considerations operate to justify giving judgments preclusive effect: first that a claim can only be finally settled once and second the need to avoid irreconcilable judgments.</p>
Conditions for claim preclusive effects	<p>To engage the preclusive effect of a judgment it must be shown that litigation has the same object (the court looks to the substance and not the form of the action), is based on the same cause of action, that is the same legal basis, and is between the same parties as in the original litigation (who need not have the same roles in the second claim as in the first).</p>
Invoking claim preclusive effects	<p><i>Res judicata</i> can be raised at any stage during the proceedings, including in an appeal hearing. The burden of proof lies with the party alleging the doctrine applies. If successful the action will be rejected by a formal judgment of the court.</p>

Exceptions to claim preclusive effects	Two exceptions to the preclusive effects of judgments exist. First, an annulment of a final judgment is permitted where either one of the parties was not adequately served with process or where the Court's rules on exclusive jurisdiction have been infringed. This exception is only available if ground for annulment was not raised on appeal nor could have been raised on appeal. Second a final judgment can be revised or annulled where new information, unavailable at the trial, or evidence of fraud emerges.
Claimant and Defendant	Even though the Romanian Legal system does not expressly regulate the res judicata effects of judgments, it is generally recognized that judgments entail such effects by inference from the definition of res judicata and the exceptions to res judicata. However in theory a party could relitigate the same issue against the same parties again, should no interested party or the judge ex officio raise the res judicata principle. On raising the principle the second claim is automatically rejected
Other participants	Preclusive effects extend to any person with a close connection between the object of the claim and the cause of action of the original claim. As such this covers co-claimants/defendants and third parties and interveners in the original proceedings
Represented persons	The Court is provided with the power to order multiple co-claimants/defendants to be represented at trial. Any ensuing judgment has substantive preclusive effects towards each represented party.
Persons connected to the Claimant, Defendant, and other participants	Since there must be identity of parties for a judgment to have preclusive effect, generally judgments have no preclusive effect against non-parties. If however a non-party is deemed to share the legal identity of a party, then they will be bound by the judgment. As such, successors, co-debtors and spouses (where the judgment relates to common property acquired during marriage) will be bound by judgments even if they were not parties to the proceedings. Indeed it is suggested that whenever there is a substantial connection between the non-party and a party to proceedings, preclusive effects may follow.
Strangers	Claim preclusive effects do not extend to persons not connected in a legally relevant way to the parties in the proceedings.
ISSUE PRECLUSION	
Existence and nature of issue preclusive effects	Formally previous judgments have issue preclusive effect with regard to issues of law only. But in practice since the operative part of a judgment is presumed to be true, the judge in the second action is bound not to contradict this reasoning and is to that extent there may be limited issue preclusive effects.
Policies underlying issue preclusive effects	Two policy considerations are material: first that a claim can only be finally settled once and second the need to avoid irreconcilable judgments.
Conditions for issue preclusive effects	Since the preclusive effect of judgments is inferred from doctrine and case law, it is not clear what specific conditions must be met to invoke issue preclusive effects, only that a party must have an interest in litigating the disputed right.
Invoking issue preclusive effects	Res judicata can be raised at any stage during the proceedings, including in an appeal hearing. The burden of proof lies with the party alleging the doctrine applies. If successful the action will be rejected by a formal judgment of the court. Obviously in this context no need to establish same parties/cause of action/ object.
Exceptions to issue preclusive effects	Two exceptions: an annulment of a final judgment is permissible where either one of the parties was not adequately served with process or where the Court's rules on exclusive jurisdiction have been infringed. This exception is only available if ground for annulment was not raised on appeal nor could have been raised on appeal. Second a final judgment can be revised or annulled where new information, unavailable at the trial, or evidence of fraud emerges.

Claimant and Defendant	Even though the Romanian Legal system does not expressly regulate the res judicata effects of judgments, it is generally recognized that judgments entail such effects by inference from the definition of res judicata and the exceptions to res judicata. However in theory a party could relitigate the same issue against the same parties again, should no interested party or the judge ex officio raise the res judicata principle. On raising the principle the second claim is automatically rejected.
Other participants	Preclusive effects extend to any person with a close connection between the object of the claim and the cause of action of the original claim. As such this covers co-claimants/defendants and third parties and interveners in the original proceedings
Represented persons	The Court is provided with the power to order multiple co-claimants/defendants to be represented at trial. Any ensuing judgment has substantive preclusive effects towards each represented party.
Persons connected to the Claimant, Defendant, and other participants	Since there must be identity of parties for a judgment to have preclusive effect, generally judgments have no preclusive effect against non-parties. If however a non-party is deemed to share the legal identity of a party, then they will be bound by the judgment
Strangers	Issue preclusive effects of judgments can be envisaged to extend to non-parties where the legal issue they litigate is materially the same as in an earlier decision.
WIDER PRECLUSIVE EFFECTS	
Existence and nature of wider preclusive effects	A party cannot act in bad faith by harassing another party by claiming a right without a legitimate interest. Showing that a previous related claim has been resolved can be an important aspect of establishing bad faith.
Policies underlying wider preclusive effects	The law recognises subjective legal rights, the aim of which is the protection of those that can claim a legitimate interest. The provisions on abuse of process aim at upholding this policy consideration. Their aim is to ensure that subjective procedural rights are exercised within the scope conferred upon them by law
Conditions for wider preclusive effects	The claim must be in bad faith or is based on a grave error, bordering fraud, with the intention to cause material or immaterial damage, or the opposing party has been coerced to abandon its rights or to make concessions
Invoking wider preclusive effects	The wider preclusive effects may be invoked by way of a procedural exception aiming at either the rejection or the annulment of the abusive claim. It may be raised not only by the interested party but also by the judge, ex officio.
Exceptions to wider preclusive effects	Two exceptions are recognized – annulment of judgment or a alteration of judgment.
Claimant and Defendant	Abusive claims may be rejected by the Court and thus when raising a related issue of fact and/or law amounts to an abuse of process it can be rejected.
Other participants	Other participants, such as co-claimants co-defendants, as well as voluntary or mandatory interveners are prohibited from exercising their procedural rights in bad faith.
Represented persons	In their procedural conduct, represented persons are bound by the same rules applicable to the main parties or to other participants. As a result, they may raise related claims or seek the determination of related issues of fact and/or law in subsequent proceedings, provided that their conduct is not in bad faith.

Persons connected to the Claimant, Defendant, and other participants	Persons connected to the parties, such as heirs or co-debtors, may raise related claims or request the determination of related issues of fact and/or law as long as these acts are exercised in good faith.
Strangers	Under Romanian law, wider preclusive effects do not extend to persons not connected in a legally relevant way to the parties in the proceedings.
III. PRECLUSIVE EFFECTS OF JUDGMENTS WITHIN THE BRUSSELS/LUGANO REGIME	
RECOGNITION	
Judgments recognised	While Romania only acceded to the European Union on 1 st January 2007, it had previously recognized and enforced judgments from other Member States as if the Brussels Regulation was in effect (<i>law no. 187/2003</i> entered into force 16 th May 2004). Under this quasi-Brussels Regulation regime, Romanian courts took a wide definition of “judgment” including Court decrees and orders. The Lugano Convention is not yet applicable in Romania.
Procedural aspects of recognition	Because of Romania’s recent accession to the Brussels Regime, a clear body of case law has not yet developed. However some indication of procedure can be gleaned from the Romanian legislation (<i>law no. 187/2003</i>) implementing the Brussels regulation, though the legality of these measure are questionable. A literal reading of <i>Art 1(1)</i> of the implementing provisions suggests that automatic recognition of judgments in line with Art 33(1) of the Brussels Regulation may not be possible. Case law will clarify this. Both methods of challenging recognition in Art 33 of the Brussels Regulation are available under Romanian law. Art 34 and 35 Brussels Regulation on the refusal of recognition are liable to be read literally, since there is no Romanian case law on these articles.
Exceptions to the rule (grounds for non-recognition)	Again a lack of case law precludes a full answer. Under the previous quasi-Brussels Regulation regime (<i>law no. 187/2003</i>) there was a three year time limit to request the execution of foreign judgments.
Effects of recognition	Again lack of case law precludes a full answer. Currently foreign non-EU judgments are deemed to have the same preclusive effects as Romanian judgments (<i>law no. 105/1992</i>) and presumably EU judgments will be given the same effect. Whether the Romanian Courts will follow the ECJ approach in <i>Hoffmann v. Krieg</i> is as yet unclear.
CLAIM PRECLUSION WITHIN THE BRUSSELS/LUGANO REGIME	
Existence and nature of claim preclusive effects	Since foreign judgments are deemed to have the same preclusive effects as Romanian judgments (<i>law no. 105/1992</i>), foreign judgments will have res judicata effects from the moment they are rendered. This again assumes the Romanian courts will not adopt the decision in <i>Hoffmann v. Krieg</i>
Policies underlying claim preclusive effects	Since at this point in time under Romanian law the effects of a recognized foreign judgment are similar to those of a Romanian judgment, the policies underlying such are also similar
Law applicable to claim preclusive effects	<i>Law no. 105/1992</i> : a foreign judgment will have similar claim preclusive effects as a Romanian judgment. This is the main rule of Romanian private international law, as applicable to judgments originating outside the European Union. This rule is applicable a fortiori to judgments recognized based on the Brussels Regulation regime, at least insofar as Romanian courts have not adopted a different approach. After having been recognized, Romanian law on claim preclusive effects of judgments will be

	applicable, namely <i>article 1201 Civil Code & article 166 Code of Civil procedure.</i>
Conditions for claim preclusive effects	The conditions are the same as for Romanian judgments i.e. same persons/ object/ cause of action
The identity of claims in the Brussels/Lugano Regime	While there is no specific case law on this point, it would seem that given that the three elements needed to establish identity of claims under the Brussels Regulation are similar to those used under Romanian law, the considerations used to decide the preclusive effect of Romanian judgments will be the same as those used for EU judgments
The identity of parties in the Brussels/Lugano Regime	No relevant court decisions specifically on the identity of parties under the Brussels Regime. Presumably the same standard used when assessing the identity of this element for Romanian judgments will be applied for judgments originating in EU Member States.
Invoking claim preclusive effects under the Brussels/Lugano Regime	Preclusive effects of EU judgments can be raised in a similar fashion to the preclusive effects of Romanian judgments
Exceptions to claim preclusive effects under the Brussels/Lugano Regime	The preclusive effect of EU judgments is limited by <i>Arts 34 & 35 (1) Brussels Regulation</i> , in that if the judgment is not recognized at all on the basis of one of these articles, the judgment will have no preclusive effect.
Persons affected by claim preclusive effects	Since foreign judgments have the same effect as Romanian judgments the position is the same as for Romanian judgments. However if the legal relationship between the parties bound by the judgment is governed by foreign law, Romanian courts will look to that foreign law to decide if a relationship which engages the preclusive effect of the judgment exists.
ISSUE PRECLUSION WITHIN THE BRUSSELS/LUGANO REGIME	
Existence and nature of issue preclusive effects	Again the position will be unclear till the Romanian Courts decide whether to follow <i>Hoffmann v. Krieg</i> . Until then foreign judgments will have similar effects to Romanian judgments and as such obtain preclusive effect as soon as rendered even if they are not final.
Policies underlying issue preclusive effects	Two policy considerations operate to justify giving judgments preclusive effect: first that a claim can only be finally settled once and second the need to avoid irreconcilable judgments.
Law applicable to issue preclusive effects	<i>Law no.105/1992</i> : a foreign judgment will have similar issue preclusive effects as a Romanian judgment. This is the main rule of Romanian private international law, as applicable to judgments originating outside the European Union. This rule is applicable a fortiori to judgments recognized based on the Brussels Regulation regime, at least insofar as Romanian courts have not adopted a different approach.
Conditions for issue preclusive effects	Since the preclusive effect of judgments is inferred from doctrine and case law, it is not clear what specific conditions must be met to invoke issue preclusive effects, only that a party must have an interest in litigating the disputed right.

Invoking issue preclusive effects under the Brussels/Lugano Regime	Foreign judgments have similar preclusive effects as Romanian ones. As such <i>res judicata</i> can be raised in the same way as for national judgments.
Exceptions to issue preclusive effects under the Brussels/Lugano Regime	An action for annulment or amendment is available against a Romanian judgment which has recognized an EU judgment but not against the EU judgment itself. The preclusive effects of EU judgments can only be affected by <i>Arts 34 & 35(1) Brussels Regulation</i> .
Persons affected by issue preclusive effects	Foreign judgments have the same preclusive effects as Romanian judgments, the only notable difference being the potential for foreign law, rather than Romanian law, to be used to determine the existence of the relevant relationship between the parties.
WIDER PRECLUSION	
Existence and nature of wider preclusive effects	Foreign judgments have similar effects as Romanian judgments, such that subsequent related claims may be barred as abuse of process.
Policies underlying wider preclusive effects	Two policy considerations operate to justify giving judgments preclusive effect: first that a claim can only be finally settled once and second the need to avoid irreconcilable judgments
Law applicable to wider preclusive effects	<i>Law no. 105/1992</i> : a foreign judgment will have similar issue preclusive effects as a Romanian judgment. This is the main rule of Romanian private international law, as applicable to judgments originating outside the European Union. This rule is applicable a fortiori to judgments recognized based on the Brussels Regulation regime.
Conditions for wider preclusive effects	The claim must be in bad faith or is based on a grave error, bordering fraud, with the intention to cause material or immaterial damage, or the opposing party has been coerced to abandon its rights or to make concessions
Invoking wider preclusive effects	The wider preclusive effects may be invoked by way of a procedural exception aiming at either the rejection or the annulment of the abusive claim. It may be raised not only by the interested party but also by the judge, ex officio.
Exceptions to wider preclusive effects	
Persons affected by wider preclusive effects	Co-Claimants/Defendants, interveners, represented parties and persons connected to the parties, e.g. heirs or co-debtors.
AUTHENTIC INSTRUMENTS/COURT APPROVED SETTLEMENTS	No case law enabling a clear answer. However, one would expect that preclusive effects will extend to authentic instruments and court (approved) settlements, provided that such are declared enforceable in Romania. Such declaration upon their enforceability would imply their recognition and thus their preclusive effects.
IV. PRECLUSIVE EFFECTS OF THIRD STATE JUDGMENTS	
	Third state judgments will have similar preclusive effects as Romanian judgments (and therefore EU judgments), subject to them meeting conditions imposed by <i>law. no. 105/1992</i> (of which three

	are mandatory, while the remaining three are more permissive in nature). Romanian Courts cannot review the substance of the foreign judgment.
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<p>Scotland</p>	<p>PARTIALLY COMPLETE</p>
<p>I. JUDGMENTS</p>	
<p>The concept, form, structure and terminology of judgments</p>	<p>An order of a Scottish Court in a Civil matter is termed “a decree”. A “decree in terms” is a court’s findings as regards the matters put before the court by the parties. An “extract decree” provides a succinct statement of the court’s order and is used for the purposes of execution of the judgment.</p> <p>“Interlocutor” refers to any order or decision of the court as recorded in the minutes of the proceedings. These deal with the issues before the court and range in content from procedural orders to matters of substance and to ultimately the final decision on the merits of the case. In some situations, generally where evidence has been led or legal argument heard, an interlocutor may have to be accompanied by a note setting out the reasons for the decision.</p> <p>The information contained in a judgment will depend on the subject matter of the case, though certain formal requirements (details of Court, name of parties etc..) must be complied with</p>
<p>The final determination and findings on issues of fact and law</p>	<p>Most Scottish judgments contain findings in fact and law. The pleadings made to the court set out the areas of fact and law which are relevant to the remedy sought. Clearly the pleadings are of great significance since it is on this basis that the Court determines whether the action is competent, relevant and there is sufficient factual basis for the action. Any admission of fact made in the pleadings is taken as definitively probative of the matter admitted. Pleadings of law may either be preliminary, addressing such issues as no jurisdiction, no title to sue etc..., or pre-emptory, going to the facts or merits of the case. This latter kind will require supporting averments of fact and law, though in some situations such as pleas of <i>forum non conveniens</i> or <i>lis alibi pendens</i> such may be required in the former also.</p>
<p>The binding character of a judgment</p>	<p>It is well and long established that Scottish judgments are capable of having preclusive effect. However <i>res judicata</i> in Scottish law is a unified system and as such distinctions between issue or claim preclusion are of little assistance.</p> <p><i>Res judicata</i> will apply where there has been (1) a judgment (2) on the merits (3) in <i>foro contentioso</i> (i.e. there has been contested litigation between the parties which has been resolved by the adoption of a sufficient and suitable procedure) (4) between parties and (5) that judgment has become final.</p> <p>An earlier final judgment’s preclusive effects can then be engaged where there is subsequent litigation involving identical subject matter, the same parties and the same <i>media concludendi</i> (i.e. same grounds of action in fact and law).</p> <p>A final judgment generally refers to a case which has been resolved by a proper judicial determination of the subject matter based on evidence. Further the period for appealing the decision must have elapsed.</p> <p>Whether a judgment deals solely with preliminary matters then whether such a judgment possesses <i>res judicata</i> effect depends on what precisely was decided between the parties and the subject matter of the subsequent litigation. Generally where there has been no proof of matters, <i>res judicata</i> is unlikely to follow.</p> <p>While it is clear that preclusive effects only entail on a judgment being pronounced in <i>foro contentioso</i>, the exact definition of this term is not clear. It is clear that a decree in absence (i.e. a decree where no defence is lodged) will not be <i>in foro contentioso</i> (except perhaps after the effluxion of time). Similarly where an order is pronounced dismissing the case with no consideration of the issues then <i>res judicata</i> will not apply; nor will it apply where the Court gives a decision of a procedural nature which does not dispose of the merits of the case. However it should be noted that decrees by default (i.e. where the defendant fails to participate in proceedings), can have preclusive effect.</p>
<p>Judgments that are capable of having preclusive effects</p>	

II. PRECLUSIVE EFFECTS

II. PRECLUSIVE EFFECTS	
CLAIM PRECLUSION	
Existence and nature of claim preclusive effects	<p>It is well recognized that Scottish judgments can have preclusive effects. The following conditions must be satisfied for such effect to entail;</p> <p>(1) The prior determination must be made by a competent tribunal.</p> <p>(2) The prior determination must be pronounced <i>in foro contentioso</i> without fraud or collusion. As such a settlement agreed in an earlier case cannot have preclusive effects. However much debate has existed over which Court order's will be deemed to <i>in foro contentioso</i>. Thus, the Court determined that a decree of dismissal would not found a plea of <i>res judicata</i> since the issues on the merits were not generally decided in such decrees. However the guiding principle in this area is clearly the notion that Scottish Courts will not uphold a <i>res judicata</i> plea where it is clear that issues raised in the second action were not the subject of a final judicial determination.</p> <p>(3) The subject matter of the two actions must be the same. In determining whether the same subject matter is involved, Scottish Courts will look to the substance rather than the form of matters and simply inquire "What was litigated and what was decided in the earlier action?" (Cf. <i>Grahame v. Secretary of State for Scotland</i> 1951 S.C. 368). Scottish Courts have also made clear that there is a clear distinction between this requirement and requirement (4) below as to identity of <i>media concludendi</i>. Further it seems to be the case that the question of identity of subject matter should not be compared to the English concept of issue estoppel; a concept which has been repeatedly denied as forming part of Scottish law.</p> <p>A concept similar to and which has been equated with <i>res judicata</i>, is the plea of "competent and omitted", which provides that where issues being raised in a subsequent action were known and could have been raised in the first action, a party can seek to exclude them by this plea. In <i>Dickinson</i> Lord McCluskey seemed to indicate that the plea of "competent and omitted", should be understood as just an aspect of the broader principle of <i>res judicata</i>. A further plea which is conversely linked to <i>res judicata</i> is that of <i>res noviter veniens ad notitiam</i> which provides that where new material matters of fact or evidence emerge which through no fault of the applicant he had no knowledge of at the time of the action, then, if to exclude them would amount to the prevention of justice, the decision can be reopened.</p> <p>(4) The <i>media concludendi</i> (i.e. the grounds of action) must be the same as in the earlier action. Thus a subsequent action will not be stopped for violating <i>res judicata</i> where the second action involves different subject matter or different grounds or where new matters are introduced. or where the legal arguments used have a different basis in law. However just because an issue can be pleaded differently under common law and statute does not mean that this requirement will not be met.</p> <p>(5) The parties to the second action must be identical with or represent the parties in the first action or have the same interest. There is however little case law on this point and few exceptions. The main exception relates to judgments <i>in rem</i> which affect status and therefore have effect <i>erga omnes</i>. While no formal procedure exists in Scottish law for group or representative actions, it is clear that in some circumstances these can take place and preclusive effect will extend to all those represented or forming part of the group.</p>
Policies underlying claim preclusive effects	
Conditions for claim preclusive effects	
Invoking claim preclusive effects	
Exceptions to claim preclusive effects	
Claimant and	

Defendant	
Other participants	
Represented persons	
Persons connected to the Claimant, Defendant, and other participants	
Strangers	
<i>ISSUE PRECLUSION</i>	
Existence and nature of issue preclusive effects	
Policies underlying issue preclusive effects	
Conditions for issue preclusive effects	
Invoking issue preclusive effects	
Exceptions to issue preclusive effects	
Claimant and Defendant	
Other participants	
Represented persons	
Persons connected to the Claimant, Defendant, and other participants	
Strangers	
<i>WIDER PRECLUSIVE EFFECTS</i>	
Existence and nature of wider preclusive effects	
Policies underlying	

wider preclusive effects	
Conditions for wider preclusive effects	
Invoking wider preclusive effects	
Exceptions to wider preclusive effects	
Claimant and Defendant	
Other participants	
Represented persons	
Persons connected to the Claimant, Defendant, and other participants	
Strangers	
III. PRECLUSIVE EFFECTS OF JUDGMENTS WITHIN THE BRUSSELS/LUGANO REGIME	
RECOGNITION	
Judgments recognised	
Procedural aspects of recognition	
Exceptions to the rule (grounds for non-recognition)	
Effects of recognition	
CLAIM PRECLUSION WITHIN THE BRUSSELS/LUGANO REGIME	
Existence and nature of claim preclusive effects	
Policies underlying claim preclusive effects	

Law applicable to claim preclusive effects	
Conditions for claim preclusive effects	
The identity of claims in the Brussels/Lugano Regime	
The identity of parties in the Brussels/Lugano Regime	
Invoking claim preclusive effects under the Brussels/Lugano Regime	
Exceptions to claim preclusive effects under the Brussels/Lugano Regime	
Persons affected by claim preclusive effects	
<i>ISSUE PRECLUSION WITHIN THE BRUSSELS/LUGANO REGIME</i>	
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Policies underlying issue preclusive effects	
Law applicable to issue preclusive effects	
Conditions for issue preclusive effects	
Invoking issue preclusive effects under the	

Brussels/Lugano Regime	
Exceptions to issue preclusive effects under the Brussels/Lugano Regime	
Persons affected by issue preclusive effects	
<i>WIDER PRECLUSION</i>	
Existence and nature of wider preclusive effects	
Policies underlying wider preclusive effects	
Law applicable to wider preclusive effects	
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Persons affected by wider preclusive effects	
<i>AUTHENTIC INSTRUMENTS/COURT APPROVED SETTLEMENTS</i>	
<i>IV. PRECLUSIVE EFFECTS OF THIRD STATE JUDGMENTS</i>	
<i>Relevant Case Law</i>	

Spain	
I. JUDGMENTS	
The concept, form, structure and terminology of judgments	<p>Rulings given by Spanish Courts are collectively known as judicial decisions (<i>resoluciones judiciales</i>). In civil matters Spanish Courts can render three types of judicial decision: (1) orders on procedural matters, the lowest ranking form of decision (<i>Providencias</i>), (2) orders, used to render the Court's ruling on preliminary matters (<i>Autos</i>) and (3) judgments, rulings which put an end to proceedings by determining the matters and claims in dispute (<i>Sentencias</i>).</p> <p>While, in principle, no legal reasoning or explanation need be provided for orders on procedural matters, the Civil Procedure Act (CPA) makes clear that both orders and judgments must clearly identify the facts, legal framework and the reasoning on which the decision is based. Further Art 208 para. 3 CPA imposes formal requirements with which the order/judgment must comply, including the place, the date, the name of the Judge(s) and the signature of the Judge(s); while Art 209 CPA mandates the form and structure which all judgments must take.</p> <p>The need to provide adequate reasoning to support Judicial decisions is made clear both by the CPA and more importantly the Spanish Constitution (SC), which provides at Art 120 para 3 that judgments should always contain a statement of the grounds on which they are based, while Art 24 para 1 guarantees citizens a right to effective protection from the judiciary, an aspect of which is the provision of reasons for decisions. In interpreting Art 24 para. 1 the Constitutional Court has held that it imposes an obligation both to provide reasoning and that that reasoning is sufficient and not merely arbitrary, unreasonable or the result of an obvious mistake. Further the obligation in Spanish law to provide reasoning is supplemented by Art 6 ECHR and the ECJ has provided guidance both in <i>Ruiz Torija v. Spain</i> and <i>Hiro Balani v. Spain</i> as to when a specific answer, adequately reasoned, must be provided in response to a submission.</p>
The final determination and findings on issues of fact and law	<p>Findings of law will often deal with different procedural issues and will be resolved before the trial on the substantive issues begins. Issues such as admissibility, jurisdiction, capacity of the parties, joinder, <i>lis pendens</i>, <i>res iudicata</i>, inappropriate type of proceedings for the matter or the amount of the claim and defective claim will therefore all be dealt with at the preliminary hearing stage. Thus findings of law of this kind will be resolved <i>in voce</i> in a preliminary hearing or by means of an order given after the preliminary hearing, in contrast to the substantive issues between the parties which must be resolved by a judgment and which, once the judgment has become final, obtain formal <i>res iudicata</i> effect.</p>
The binding character of a judgment	<p>Spanish law distinguishes between formal and substantive <i>res iudicata</i>. Art 207 para. 4 CPA defines formal <i>res iudicata</i>, and provides that once a defined period has expired without parties challenging a judicial decision, that decision becomes final. From that point on the judgment is deemed to have preclusive effect, i.e. substantive <i>res iudicata</i>. However, only judgments which are "on the merits" are capable of having substantive <i>res iudicata</i> effect. As such, in order for a judgment to have preclusive effect it must be both "on the merits" and final. A judgment will not be final where either an appeal is pending, or it is possible to appeal against it.</p> <p>Once a judgment has obtained preclusive effect it can only be challenged in a very limited number of ways. First, a party can seek a revision appeal (<i>recurso de revision</i>) before the Supreme Court. This is an exceptional remedy, which can be raised on narrow, specific grounds such as where the decision is shown to be based on false documents or as a result of bribery, violence or fraud. Second, where a judgment has been given against a Defendant involuntarily absent from proceedings as a result either of force majeure or because of the Defendant's ignorance in the existence of proceedings, then the Defendant can seek to persuade the Court to set aside the decision and re-examine the claim. Third, Art 228 CPA allows for the challenge of judgments on the grounds of procedural defects in the proceedings which raise constitutional issues (e.g. infringement of Art 24 para.1 SC). Finally, while Spanish law contains no express provisions to remedy a situation where inconsistent judgments are rendered it is thought by commentators that such judgments could be challenged either by constitutional protection appeal before the Constitutional Court or by revision appeal before the Supreme Court or indeed in some cases simply by ordinary proceedings. All, however, seem to concur that despite both judgments having obtained preclusive effect, a challenge should be available in this situation.</p>

<p>Judgments that are capable of having preclusive effects</p>	<p>Art 222 para. 1 CPA provides that a final judgment upholding or rejecting a claim will have substantive <i>res judicata</i> effects preventing later proceedings with an identical subject matter between the same parties.</p> <p>It has been questioned whether certain types of judgment are capable of having preclusive effect. It is recognised that judgments can be declaratory, condemnatory (i.e. ordering a party to do X) or constitutive (i.e. operating to create/change/end a legal status or relationship) and it while it was doubted whether constitutive judgments were capable of preclusive the majority of the case law and legal commentators now do recognise preclusive effects attaching to such decisions. A further distinction is drawn between “definitive” judgments (i.e. those that put an end to a claim) and “interlocutory” judgments, which resolve procedural and legal issues, delivered before the final order of the Court. These latter types of judgments do not have substantive <i>res judicata</i> effects, though they do have formal <i>res judicata</i> effects so as to bind the Court which issued them.</p> <p>Further distinction can be drawn between judgments on the merits of the case and judgments given without consideration of the merits (usually given where procedural pre-requisites have not been fulfilled). The preclusive effects of the latter type of judgment are controversial, some arguing that no substantive <i>res judicata</i> effects attach to such decisions, while others contend that such judgments do entail limited <i>res judicata</i> effects such that a later court is bound by the earlier Court’s determination of the procedural pre-requisites but not as regards the parties substantive claims (since such were not examined by the earlier Court).</p> <p>The manner in which proceedings end will affect whether any preclusive effects are triggered. Clearly where contested proceedings end after all procedural steps have been taken, then subject to the above rules, substantive <i>res judicata</i> effects entail. However, in cases of settlement between the parties which is only merely recorded by a Court order (<i>Auto</i>) or where proceedings are withdrawn, no substantive preclusive effects entail since the Court makes no ruling of its own on the merits. By contrast, where a claim is renounced and the Court renders judgment rejecting the claim or where the Defendant accepts the Claimant’s claim and the Court therefore moves straight to pronouncing on the merits of the dispute, preclusive effects do follow since in both cases the Court rules on the merits.</p> <p>Where a judgment instead of providing ordinary protection provides only summary protection (of a limited and provisional nature) rendered via summary proceedings, it is generally considered that it does not have substantive <i>res iudicata</i> effects. Nevertheless, distinguished legal writers consider that although after summary proceedings parties are allowed to bring new proceedings in regard to the same matters, the disputed issues already determined cannot be examined again in these fresh proceedings. This would mean the recognition of some kind of <i>res iudicata</i> effect for judgments given in summary proceedings.</p> <p>Finally, where a decision granting a preliminary injunction is rendered, such decisions are deemed not be capable of having preclusive effects. Nevertheless, if the circumstances existing at the moment when the judicial decision on preliminary injunctions is adopted do not change, the judicial decision becomes immutable. Therefore, if one of the parties tries to alter or modify the preliminary injunction by means of a new application, the <i>res iudicata</i> effect can be argued by the opponent. In that sense such decisions are capable of limited <i>res judicata</i> effect.</p>
<p>II. PRECLUSIVE EFFECTS</p>	
<p>CLAIM PRECLUSION</p>	
<p>Existence and nature of claim preclusive effects</p>	<p>Only final judgments deciding a claim on the merits are capable of substantive <i>res judicata</i> effect, preventing subsequent proceedings with identical subject-matter and parties. A judgment will be deemed final where the CPA provides for no appeal against, where the time period to appeal has elapsed without an appeal being lodged, where an appeal is dropped or where a Court refuses an appeal <i>ab initio</i>.</p> <p>Several theories have been proffered to explain the nature of claim preclusive effects. At present the best explanation is thought to be that offered by the “procedural theory”, which provides that the effect of <i>res judicata</i> is limited to the scope of the proceedings and does not affect any earlier, pre-existing substantive legal relations. In practice, <i>res judicata</i> is deemed to be essentially procedural in nature and hence is resolved as an issue at a preliminary hearing or at the start of the trial.</p>
<p>Policies underlying claim preclusive</p>	<p>The policy considerations underlying the claim preclusive effects of judgments are that (1) “no-one should be proceeded against twice in the same cause of action” (<i>non bis in idem</i>), (2) there is a clear public interest served in ensuring an end to litigation (3) on purely economic grounds,</p>

<p>effects</p>	<p>litigation should not be allowed to continue <i>ad infinitum</i> and (4) failing to recognise preclusive effects would be a breach of the fundamental right to effective judicial protection (Art 24 para. 1 SC).</p>
<p>Conditions for claim preclusive effects</p>	<p>Art 222 CPA only explicitly requires identity of subject matter before preclusive effects are engaged. However, it is clear from both legal commentary and case law that the triple identity test of same parties, cause of action and subject matter are in fact needed before claim preclusion will operate.</p> <p>The Supreme Court has provided guidance as to the definition of “same cause of action”, stressing that the Court should compare the essential facts or title which underlie the basis of the claim to determine if the same cause of action is in issue. As such many commentators limit the scope of <i>res judicata</i> to the operative part of the judgment and not to defences raised, legal considerations or proven facts. But all facts making up the claim which it was possible to argue up to the last moment of preclusion and declarations as to the existence of legal relations are covered. So too, in a situation where a claim could have been based on various sets of facts, then, even if the Claimant only opts for one of them, all claims based on all permeations of the facts are covered. Further while debate exists as to the extent to which defences raised by the Defendant are included, Art 222 para 2 CPA makes clear that the defences of setting off of credits and absolute nullity of the legal transaction on which the claim is based are covered.</p> <p>As to the meaning of “same parties”, the general rule is that “party” refers to the natural or legal person who was a party to the first proceeding. This general rule is, however, subject to a number of exceptions which extends the concept more broadly (these are considered in more detail below). The procedural positions of the parties in both claims is taken to be irrelevant.</p> <p>For an issue to be included within the <i>res judicata</i> effect of the decision, the material/pleadings must be introduced to the Court at the very latest before the period for passing judgment begins (20 days from the end of an ordinary trial or 10 days from the end of oral proceedings. Where some new material does arise, which was entirely unforeseeable at the time of judgment, after judgment has been given a party may be able to reopen proceedings on the same subject matter with out being precluded from doing so by virtue of <i>res judicata</i>. Similarly where the factual circumstances underlying the earlier judgment have materially altered, a second claim on the subject matter may be available.</p>
<p>Invoking claim preclusive effects</p>	<p><i>Res judicata</i> must be raised by the parties in their pleadings (i.e. claim or defence). However, since <i>res judicata</i> is a question of public interest, Courts are entitled to raise the issue <i>ex officio</i> and can raise at any stage of the proceedings they deem it appropriate. In order to establish that <i>res judicata</i> should be engaged, parties can rely on a certificate of the earlier judgment or indeed a copy of the previous judicial proceedings.</p> <p>Parties can appeal against a decision holding that a second claim is barred by <i>res judicata</i> and should lodge such a motion within 5 days of judgment. If however it is decided that proceedings can be considered then a party has first a right to request the Court to reconsider its decision. If the appeal for reconsideration is rejected, the question may only be raised again in an appeal to a higher court against the judgment which definitively resolves the proceeding.</p>
<p>Exceptions to claim preclusive effects</p>	<p>There are several generally accepted exceptions to the claim preclusive effects of judgments.</p> <p>As has been stated above judgments must be on the merits to have preclusive effects. However, where a claim is dismissed for pre-maturity, that decision while still deemed on the merits and entitled to preclusive effects, only retain such effects while the factual circumstances giving rise to the judgment remain the same. Once however these change i.e. the claim matures, the judgment loses its preclusive effects. Where a claim is dismissed due to insufficient evidence, the failure to prove a particular fact will only affect the content of the operative part of the judgment and will not affect the effects of <i>res judicata</i> deriving from the judgment.</p> <p>Judgments on solely procedural issues will generally not have substantive <i>res judicata</i> effects, though those decisions which end proceedings due to a lack of a procedural requirement are thought to have <i>res judicata</i> effects limited to the procedural questions forming the subject matter of the decision (e.g. a ruling as to jurisdiction).</p> <p>Orders issued by the Court recognising a formal settlement between the parties do not have preclusive effect. Therefore, in fresh proceedings the allegation of the existence of the settlement will not put an end to the proceedings. Nevertheless, the court will issue the new decision taking into account the content of the aforementioned settlement.</p> <p>Where recognising claim preclusive effect would be contrary to public policy then a party may seek to cancel the effect of a final judgment using one of the exceptional methods of challenge</p>

	<p>noted above (i.e. revision appeal, hearing granted in default of Defendant appearance or nullity of proceedings).</p> <p>Finally, where additional evidence or a change in circumstances arise a judgment may lose its claim preclusive effects.</p>
Claimant and Defendant	<p>The general rule is that preclusive effects are limited to the persons who were parties to the original proceedings. As such Claimants and Defendants are prevented from re-litigating the same claim again. Since a judgment will not obtain preclusive effect until it is no longer possible to lodge an appeal, if a second action on the same subject matter and between the same parties is brought during that period, the Courts will resolve the situation by reference to the doctrine of <i>lis alibi pendens</i> (and not <i>res judicata</i>).</p>
Other participants	<p>Since co-claimants/defendants are deemed to be parties to the proceedings, it is clear that <i>res judicata</i> extends to them. Further where standing is exceptionally granted to a person other than the holder of the right for bringing the corresponding proceeding via Art 10 CPA, then such a person is also covered by a judgment's preclusive effect, even though not a party to the original proceedings.</p> <p>Where third parties intervene preclusive effects may follow. If a third party voluntarily intervenes and by Art 13 CPA is allowed to join proceedings then as a party to the proceedings he will be bound by the decision and its <i>res judicata</i> effects. However, this general rule as regards voluntary intervention is subject to an exception as regards simple adhering voluntary intervention. In this situation the third party is considered to have only an indirect interest in the litigation and as such is awarded a position subordinate to that of the party he acts with, such that the <i>res judicata</i> effects of the judgment issued in the proceedings do not apply to him.</p> <p>If a third party is forced to intervene involuntarily by one of the parties in the proceedings, preclusive effects do still entail since the intervening party is treated as a full party in the proceedings.</p>
Represented persons	<p>Art 11 CPA provides for the protection of collective and diffuse interests by group/representative litigation. Para. 1 provides for associations of consumers to have standing to defend the rights and interests of their members and the general interests of consumers/users. Para. 2 governs the protection of collective interests, such that where a harmful effect prejudices a groups of consumers easily/perfectly determined then the CPA gives standing to either a groups of affected persons, a legally constituted entity the object of which is to defend the collective interests or the association of consumers themselves to defend those interests. Finally, para. 3 allows for the protection of consumers damaged by a harmful act but who are not easily determined, by any association of consumers deemed representative. The definition of "representative" in the context of para 3, is furnished by the Royal Legislative Decree 1/2007.</p> <p>The preclusive effects of judgments rendered in representative proceedings are defined by Art 222 para. 3 CPA, which provides that all consumers affected by a group action will be bound by a judgment issued in the proceedings, whether they were involved as a party or not. Given the wide preclusive effects that entail from such proceedings, Art 15 CPA imposes obligations as to the publicising of the existence of the claim, ensuring that consumers are given the opportunity to take part.</p>
Persons connected to the Claimant, Defendant, and other participants	<p>Third parties not formally a party to the proceedings, but legally connected to the Claimant/Defendant can be affected by a judgment's preclusive effects. Art 222 para.3 CPA explicitly recognizes two situations. First, Art 222 extends the <i>res judicata</i> effects of judgments to the heirs and assignees of the parties; though where the predecessor litigated on a title already transferred, thereby lacking standing to do so, any judgment will not affect his successor. Second, Art 222 provides for the extension of preclusive effects to all shareholders entitled to bring an action of challenge of corporate resolutions. The judgment issued in the challenge proceeding will affect all of the shareholders, whether or not they have challenged the resolution, as this can only be valid or void and has to be so for all of the shareholders.</p> <p>Art 222 does not explicitly refer to any other situations though it has long been the case that <i>res judicata</i> will also extend to other connected persons. Thus in situations of joint and several liability, it was held that the various defendants could not raise <i>res judicata</i> to preclude a Claimant's recovery until the Claimant had recovered in full. Some debate existed over the scope of the positive effects of <i>res judicata</i> in these situations, with some arguing that subsequent Defendants were barred from raising common defences already raised and dismissed by the Court in the first proceedings, while others argued for a broader effect such that subsequent Defendants were also barred from raising common defences which could have been raised in the</p>

	<p>first proceedings but weren't.</p> <p>In cases of indivisible obligations or of co-ownership claims, mandatory rules as to joinder apply such that all relevant parties are required to be parties to the original proceedings and as such it is not possible to talk of extension of <i>res judicata</i> effect in this context.</p> <p>Companies within the same corporate group will not, generally, be bound by a judgment affecting one company within that group, since all the companies are distinct legal persons. However, in some circumstances, generally where fraud is involved, the Court may pierce the "corporate veil" and look beyond the form of the parties to their substantive identity.</p> <p>Finally, in situations of surety and principal debtor, the creditor naturally has the option to proceed against either party. Where he opts to sue first the principal debtor and is then forced to sue the surety, the surety may only invoke the positive effects deriving from the proceedings between the creditor and the principal debtor and not any negative/exclusive effects.</p>
Strangers	<p>As a general rule persons who are were not parties to in proceedings or connected in a legally relevant way to the parties are not bound by the claim preclusive effects of any judgment. However, there are some situations in which strangers may benefit from an earlier judgment. Thus if an earlier judgment determines on marital status, marriage, affiliation, paternity, incapacity and reinstatement of capacity, then that determination may be relied upon by strangers in subsequent proceedings. Further if there are legal relations subordinate to or dependant on principal relations dealt with in proceedings in which a final judgment has been given, these may be indirectly affected by the results of the earlier proceedings, and therefore indirectly affect strangers.</p>
ISSUE PRECLUSION	
Existence and nature of issue preclusive effects	<p>The positive/prejudicial effect of <i>res judicata</i> is governed by para. 4 of Art 222 and provides that Court must abide by a previous decision where it is necessary to decide on a claim for which the previous judgment is a conditioning or prejudicial factor.</p>
Policies underlying issue preclusive effects	<p>The policy considerations underlying issue preclusive effect are the need to avoid undue repetition of litigation and to ensure the harmony of judgments. Further Art 24 para.1 SC (right to effective judicial protection) has been held to be a further policy consideration influencing issue preclusive effect.</p>
Conditions for issue preclusive effects	<p>Art 222 para. 4 CPA indicates that two conditions must be met before issue preclusive effects are engaged. First, there must be a connection of identity between the two proceedings, though full identity is not needed and second parties to both proceedings must be the same, i.e. there is identity of parties or <i>res judicata</i> applies to them. The Supreme Court has made clear that where these conditions are met the binding effect of the earlier decision extends not only to the operative part of the judgment but also to those elements of the decision which condition the ruling and which are necessary for the logical determination of the claim.</p>
Invoking issue preclusive effects	<p>The existence of <i>res judicata</i> must be raised by parties in their pleadings and the issue will be dealt with at a preliminary hearing. In the alternative <i>res judicata</i> can be raised by the Court <i>ex officio</i>.</p>
Exceptions to issue preclusive effects	<p>See the comments included in the fifth Section of "A. Claim preclusion".</p>
Claimant and Defendant	<p>See the comments included in the sixth Section of "A. Claim preclusion".</p>
Other participants	<p>See the comments included in the seventh Section of "A. Claim preclusion".</p>
Represented persons	<p>See the comments included in the eighth Section of "A. Claim preclusion".</p>

Persons connected to the Claimant, Defendant, and other participants	See the comments included in the ninth Section of "A. <i>Claim preclusion</i> ".
Strangers	See the comments included in the tenth Section of "A. <i>Claim preclusion</i> ".
<i>WIDER PRECLUSIVE EFFECTS</i>	
Existence and nature of wider preclusive effects	Art 11 para. 2 of the Judiciary Act (JA) allows Courts to reject proceedings which are a clear abuse of rights or involve evasion of law or procedures. Evasion of law is defined in para. 4 Art 6 Civil Code as where a party legitimately uses a rule of law (the rule of coverage) as a means to pursue a result prohibited by law or contrary to it. It is also clear that procedural evasion of any kind is a form of evasion of law. The doctrine of abuse of rights is expressly provided for in Art 7 section 2 CC. Further Art 400 CPA has been introduced with the aim of preventing the repetition of litigation by requiring that where a claim may be based on different facts or legal arguments all of which are know of at the time the claim is brought, then all must be argued at that time, since the Claimant will not be entitled to reserve arguments and then raise them in later proceedings.
Policies underlying wider preclusive effects	N/A
Conditions for wider preclusive effects	N/A
Invoking wider preclusive effects	N/A
Exceptions to wider preclusive effects	N/A
Claimant and Defendant	N/A
Other participants	N/A
Represented persons	N/A
Persons connected to the Claimant, Defendant, and other participants	N/A
Strangers	N/A
III. PRECLUSIVE EFFECTS OF JUDGMENTS WITHIN THE BRUSSELS/LUGANO REGIME	
<i>RECOGNITION</i>	
Judgments recognised	The following may all be recognized under art 32 BR: judgments relating to the obligations/duties of the parties in the proceedings (in contrast to mere procedural decisions which are not), judgments which strike out a claim or declare a claim inadmissible for jurisdiction (even if procedural), judgments given in default, judgments on costs, judgments on the existence/ validity of a choice of jurisdiction clause/agreement. However, judgments as to the applicability of the Brussels Regime, judgments which impose duties of co-operation on third parties, judgments with

	<p>which the parties cannot comply with voluntarily solely by themselves (e.g. because supervision of foreign public officials is needed) and judgments which contain anti-suit injunctions will not be recognised under the Brussels Regime.</p> <p>In principle, a court approved settlement is outside the scope of the Brussels Regime as no real judicial function is exercised. The Court is not asked to decide a claim, merely homologate what has been settled by the parties. However, where it is shown that the Court does not simply record an agreement but adopts a true judicial decision then that judgment is open to recognition.</p> <p>While interim measures are recognizable under the Brussels Regime, they can only be recognized where they were issued in fair and contested proceedings.</p> <p>A judgment will only be recognized if it has been issued by a judicial body i.e. Courts or public authorities specially created to carry out judicial functions. Thus decisions of religious courts or arbitration authorities are not covered. There are however some limited and specific exceptions as regards certain public authorities in Denmark and Sweden whose decisions can be recognized.</p>
<p>Procedural aspects of recognition</p>	<p>The general rule is that a foreign judgment recognized under the Brussels Regime has automatic effect without the need for judicial declaration or separate proceedings. Recognition is therefore presumed and can only be denied on one of the grounds contemplated by the Brussels Regime.</p> <p>Recognition can also be sought as a claim in its own right, such being provided for by Art 33(2) BR. The procedure for this application is laid out in the Brussels Regulation Art 38 and following. However, Spanish procedural law also impacts upon any Art 33(2) claim. Thus Spanish law requires that parties to a claim have capacity both to be a party (per Art 6 para.1 CPA) and procedural capacity i.e. capacity to validly bring the proceedings. In relation to foreign applicants, most commentators believe that their capacity will be determined by their national law.</p> <p>Further in Spain the intervention of a lawyer and a court agent is necessary (freely appointed by the parties or appointed as public defenders).</p> <p>Proceedings under Art 33(2) are commenced by submitting an application to the Court, which must comply with Art 399 CPA and therefore contain a heading, clearly identified legal submissions, a prayer, etc... The Spanish Court will render its decision in the form of an order and the Court can order both total and partial recognition of the foreign judgment. The various rights of appeal are governed by the Brussels Regulation.</p> <p>Incidental recognition of judgments, envisaged in Art 33(3) BR, takes place in the context of main proceedings and the procedure for which is governed by the procedural law of the Recognizing State. In Spain, in absence of specific rules, incidental recognition will be dealt with by way of the procedure for incidental questions of prior pronouncement (Article 391).</p> <p>Where the judgment loses force in its State of origin then it will also lose force in Spain. As such Spanish Courts are entitled to delay recognition of a judgment until the resolution of an appeal in the State of origin.</p>
<p>Exceptions to the rule (grounds for non-recognition)</p>	<p>Spanish Courts see the grounds for refusal of recognition provided in the Brussels Regime as a closed list which must be restrictively interpreted.</p> <p>As regards Art 34(1), which provides for the refusal of recognition on public policy grounds, Spanish Courts have interpreted this to apply only in exceptional cases where the foreign judgment conflicts in an unacceptable manner with a fundamental or basic principle of Spanish law. A foreign judgment can conflict with both a substantive as well as a procedural fundamental principle of Spanish law such as to merit refusal of recognition on public policy grounds; however the public policy ground does not permit the recognizing court to review the law applied by the Court of the state of origin. Art 6 ECHR provides an indispensable reference point for deciding whether the judgment breaches public policy.</p> <p>Art 34(4) provides for non-recognition due to the irreconcilability with an earlier judgment which was issued between the same parties in the same cause of action; though it should be noted that the Spanish version of the Regulation also refers to the need for identity of subject matter.</p>

Effects of recognition	Commentators believe that recognition validates a foreign judgment such that it is allowed to operate the force with which it possess in its State of origin inside the recognizing State. This is a view concurred with by the Spanish Courts, which give any judgment recognised under the Brussels Regime the same effects that it possesses in its State of origin. This is true even if the effect of the foreign judgment is not one recognized in Spain (provided that such effect is not incompatible with the public policy of Spain).
CLAIM PRECLUSION WITHIN THE BRUSSELS/LUGANO REGIME	
Existence and nature of claim preclusive effects	The foreign judgment is recognised with the effects that it possesses in the law of the State of Origin. As such whatever preclusive effects it has in its State of Origin it will have in Spain. This is true even if the foreign judgment recognised is one relating to a procedural question; though in practice this of little significance as Spanish Court will be applying their own procedural law rather than that of the State of Origin.
Policies underlying claim preclusive effects	The policy considerations underlying the Brussels Regime are the principals of mutual trust and the free circulation of judgments, as well as more generally promoting trust and confidence in the European Community and furthering and encouraging international trade.
Law applicable to claim preclusive effects	The determination of the specific effects of a judgment, once it has been recognized, are for the law of the State of Origin.
Conditions for claim preclusive effects	The conditions for recognition of foreign judgments are set by the law of the State of Origin. Thus the limits as to subject-matter, parties and time will all be determined by the law of the State of Origin. If the law of the State of Origin extends preclusive effects to pre-judicial questions which were determined incidentally to the proceedings, Spanish Courts will only give effect to such determinations where the Court of Origin had jurisdiction to resolve the issue. Similarly, a Spanish Court will not give effect to the law of the State of Origin which provides that a ruling as to set off has preclusive effect, if the Court of Origin did not have jurisdiction to hear the issue.
The identity of claims in the Brussels/Lugano Regime	The identity of claims is determined in accordance with the guidance provided by the ECJ in <i>Gubisch v. Palumbo</i> . As such where there is a substantial link between the causes of action, their subject matter and the parties, then there will be identity of claims (cf. Orders of the Supreme Court).
The identity of parties in the Brussels/Lugano Regime	In relation to the concept of 'same parties', legal writers indicate that it is not necessary for the parties to have the same procedural status in both proceedings See the case law cited in the previous section.
Invoking claim preclusive effects under the Brussels/Lugano Regime	Once the foreign judgment has been granted substantive <i>res iudicata</i> effect, the procedural treatment of this effect is determined by Spanish procedural law. Spanish law determines both the method of enforcing the negative function of <i>res iudicata</i> and the procedural treatment of its positive function. See therefore the comments made in the section ' <i>II. Preclusive effects of judgments; A. Claim preclusion (4. Invoking Claim Preclusion Effects); B. Issue Preclusion (4. Invoking Issue Preclusion Effects)</i> '.
Exceptions to claim preclusive effects under the Brussels/Lugano Regime	The foreign judgment is recognised with the procedural effects that it possesses in the law of the State of Origin and will therefore be subject to such exceptions as are recognised in that State. However, Spain recognizes an additional exception- that no preclusive effects can entail which are incompatible with fundamental principles of Spanish law (since such would amount to a breach of public policy).
Persons affected by	See comments made in the fourth section on ' <i>Conditions for Claim Preclusion Effects</i> ' in relation

claim preclusive effects	to the limits as to parties of substantive <i>res iudicata</i> .
<i>ISSUE PRECLUSION WITHIN THE BRUSSELS/LUGANO REGIME</i>	
Existence and nature of issue preclusive effects	See the comments included in the Section “B.1. Existence and nature of claim preclusive effects”.
Policies underlying issue preclusive effects	See the comments included in the Section “B.2. Policies underlying claim preclusive effects”.
Law applicable to issue preclusive effects	See the comments included in the Section “B.3. Law applicable to claim preclusive effects”.
Conditions for issue preclusive effects	See the comments included in the Section “B.4. Conditions for claim preclusive effects”.
Invoking issue preclusive effects under the Brussels/Lugano Regime	See the comments included in the Section “B.7. Invoking claim preclusive effects under the Brussels / Lugano Regime”.
Exceptions to issue preclusive effects under the Brussels/Lugano Regime	See the comments included in the Section “B.8. Exceptions to claim preclusive effects”.
Persons affected by issue preclusive effects	See the comments included in the Section “B.9. Persons affected by claim preclusive effects”.
<i>WIDER PRECLUSION</i>	
Existence and nature of wider preclusive effects	See the comments included in the Section “A. Recognition (4. Effects of recognition) and B. Claim Preclusion within the Brussels / Lugano Regime”.
Policies underlying wider preclusive effects	N/A
Law applicable to wider preclusive effects	N/A
Conditions for wider	N/A

preclusive effects	
Invoking wider preclusive effects	N/A
Exceptions to wider preclusive effects	N/A
Persons affected by wider preclusive effects	N/A
AUTHENTIC INSTRUMENTS/COURT APPROVED SETTLEMENTS	Settlements 'lack the authority of <i>res iudicata</i> , although they have executory force', though some writers take the view that 'judicial settlements may be the subject of recognition if, in accordance with the law of the State of Origin, they have the effect of substantive <i>res iudicata</i> ; however, the Regulation only refers to the executory effect'
IV. PRECLUSIVE EFFECTS OF THIRD STATE JUDGMENTS	
	<p>Foreign judgments can be recognised either under one of the Private International Law Treaties Spain has entered with other states, which provide their own autonomous schemes of recognition or in default of such a treaty or convention then under a domestic system of recognition provided in Arts 951-958 Former Civil Procedure Act (FCPA). This domestic system recognises recognition either by a system of reciprocity or by a system of conditions. In practice, the former is rarely used since it imposes more stringent standards on recognition and therefore foreign judgments will generally be recognised under the system of conditions in Art 954 FCPA. Art 954 imposes four conditions, which if met allow for the recognition of final judgments of foreign courts rendered in a bi-lateral private law claim.</p> <p>These are that, first, the judgment has been issued as a consequence of an action <i>in personam</i>. This has been interpreted to preclude recognition of any issue which falls within the exclusive international judicial competence of Spanish Courts (Cf Art 22 Para 1. JA). In most cases this condition will be met by the Court verifying there is a reasonable connection between the foreign court and the dispute or the parties. Second, the judgment must not have been issued in default of appearance. This has been read by the Supreme Court so as to refuse recognition where the Defendant's rights have been infringed by providing him with inadequate procedural safeguards. However, improper default by the Defendant will not preclude recognition, recognition being precluded only where the Defendant was not able to enforce his rights for reasons outside his control.</p> <p>Third, the obligation which must be complied with must not involve a violation of fundamental principles of Spanish Law. Thus while Courts will not look at the workings of the Court of Origin or the substantive the law which it applied to the merits of the case, Spanish Courts will not recognize judgments if recognition would involve a breach of the fundamental principle of Spanish Law. Fourth, the executory document meets both the conditions necessary in the State of Origin for it to be considered authentic and the corresponding Spanish conditions.</p> <p>Further the foreign judgment must be final, i.e. not open to further appeal under the procedural law of the State of Origin and must be rendered by a judicial body or at least a body which is (1) analogous to a Court (2) took a decision which would in Spain be taken by a Court (3) is a public not a private body and (4) the intervention of the body must be of a similar nature to that of the intervention of the Courts in Spain. Finally, it must not be irreconcilable with a previously issued or recognized judgment nor be inconsistent with any proceedings pending in Spain.</p> <p>Foreign judgments are only deemed to have been recognised after a declaration by Spanish Courts to that effect. The procedure to obtain such a declaration is set out in Arts 955 to 958 FCPA.</p> <p>Any recognized foreign judgment is given the same effects that it would have in the State of Origin. Recognition will therefore confer on foreign judgments substantive <i>res iudicata</i> effects of exactly the same nature and scope that they possess in their State of Origin. There are however certain limits to this effects, namely that any effect which is contrary to fundamental principles of Spanish Law will not be recognised. However, in this case, the rest of the judgment which is compatible will be recognised. Further note that the procedural treatment of substantive <i>res iudicata</i> effect will, since it's a procedural issues, be governed by the <i>lex fori</i> i.e. Spanish Law.</p>

Sweden	
I. JUDGMENTS	
The concept, form, structure and terminology of judgments	A Swedish judgment essentially consists of two parts: the ultimate order and the reasoning in support of the judgment. The judgment first sets forth basic information such as the name of the court, the date of the judgment, the court's location and the names of the parties and their counsel, the judgment's first page contains what is called the 'ultimate order' which may be likened to the operative part of a judgment. Many judgments also contain what is called a 'background' which summarises the factual, and sometimes procedural, history of the dispute. This is followed by a statement of the parties' claims, and then the sakframställan/utveckling av talan or the presentation of facts in controversy. The judgment then sets forth the reasoning behind it and leads to a conclusion. The reasoning is usually detailed but limited to what the court deems relevant. Practice in relation to provision of detailed reasoning does not seem to be influenced by the ECHR, nor has Sweden been found to have contravened its provisions.
The final determination and findings on issues of fact and law	Although in principle an analysis of the reasoning is unnecessary to interpret the ultimate order, one must study the parties' claims and grounds in order to determine the subject of the dispute. An appellate court may re-adjudicate the lower court's findings of issues and fact and law and is therefore not limited to review of legal questions.
The binding character of a judgment	A judgment becomes final once the period for appeal has lapsed and no appeal has been made. However, a judgment will be considered final for purposes of lis pendens in the sense that new litigation on the same matter as pending litigation cannot be commenced and the new litigation will be dismissed. A final judgment may be set aside by means of extraordinary appeal based on substantive defects or grave procedural errors; however, a final judgment is presumed valid until reversed by a higher court. If a second judgment has been based on a first judgment which is later reversed, the second judgment may also be reversed via extraordinary appeal based on substantive defect.
Judgments that are capable of having preclusive effects	The legal force of judgments cannot be determined solely by reference to the claims in the case, nor by reference only to the type of judgment. Whether or not Swedish judgments are capable of having preclusive effect often depends on the specific facts at issue. The following judgments are capable of having preclusive effect: (1) performance judgments; (2) declaratory judgments; (3) default judgments from which an appeal can no longer be lodged; (4) partial judgments; (5) intermediate judgments not relating specifically to the claimant's or defendant's claims or objects, or judgments regarding preliminary legal issues; (6) court-approved settlements; (7) liquidated damages judgments; (8) final decisions dismissing a case based on a procedural impediment or on res judicata; and (9) summary judgments.
II. PRECLUSIVE EFFECTS	
CLAIM PRECLUSION	
Existence and nature of claim preclusive effects	In Sweden, the terms 'legal force' and 'res judicata' are used synonymously. Legal force can either be negative or positive. Negative legal force is also called res judicata and means that the first judgment prevents the initiation of new litigation on the same matter. Negative legal force is considered procedural in nature. The court will render a decision dismissing the claim. Positive legal force means that a new judgment in subsequent litigation will be based on the legal relationship established in the first action. This is sometimes referred to as a judgment's 'prejudicial effect'. Although this bears some resemblance to issue preclusion, it is not issue preclusion in the strict sense because in order for an issue to gain positive legal force, the issue must have been part of the remedy sought, i.e. the issues must have been necessary for the court to arrive at its judgment because the reasoning of a judgment has no legal force in Sweden. Although the preclusive effects are procedural in nature, one may argue that the preclusion may be substantive in nature as well, owing to the fact that the parties' behaviour is influenced by a judgment.
Policies underlying	Claim preclusive effect is based on considerations of (1) party security (which may be likened to

claim preclusive effects	legal certainty); (2) public faith in the stability of judgments; and (3) judicial economy.
Conditions for claim preclusive effects	To trigger the claim preclusive effects of a Swedish judgment, two fundamental criteria must be satisfied: (1) the second case must concern the same 'matter at issue' as the first, and (2) the time for appeal must have passed without an appeal having been made. The term 'matter at issue' has been interpreted by the Swedish Supreme Court generally to focus on the remedy requested which means that the judgment will have preclusive effect in relation to all circumstances which can be alleged as support for the same remedies, regardless of whether they have actually been alleged. This preclusion also applies to quantitative changes in a claim with respect to the amount of damages requested. To determine what is the remedy claimed (or the 'concrete remedy'), one must look to the actual claim and the facts alleged in its support. The Supreme Court has interpreted legal force to include the same remedy and remedies which are alternative and financially equivalent to the remedy in the first action. Cumulative remedies, by contrast, do not preclude a subsequent action based on the same set of circumstances.
Invoking claim preclusive effects	A defendant who wishes to assert a procedural objection such as <i>res judicata</i> must do so in his statement of defence. However, he does not forfeit the right to object on such grounds later in the proceedings, but may be subject to increased liability for litigation costs. Theoretically, the court is <i>sua sponte</i> required to take notice of the prior judgment's <i>res judicata</i> effect, although in practice this is difficult without a party having entered an objection based on preclusion. The party raising the issue of preclusion generally has the burden to prove the legal force of the first judgment. Procedural impediments such as <i>res judicata</i> must be adjudicated by the court as soon as they become apparent to the court and thus may be passed upon as early as case preparation.
Exceptions to claim preclusive effects	The two most significant exceptions to the principle that non-appealed judgments are final are: (1) the extraordinary appeal, and (2) retrial due to subsequent facts (<i>facta supervenientia</i>). The extraordinary appeal may be based on either relief from substantive defects (<i>resning</i>), restoration of time expired (<i>återställande av försutten tid</i>), or relief from grave procedural errors (<i>domvilla</i>). There is no explicit public policy exception, although Swedish law indirectly contains an exception based on 'procedural reasonableness' which is based somewhat on Article 6 ECHR. <i>Facta supervenientia</i> can only be based on new legal facts (<i>rättsfaktum</i>), such as a change in law or a new decision by a public authority. Furthermore, it must be the case that inclusion of the new fact in the previous litigation would have led to a different result in the case. A legal fact is a fact decisive for the outcome of the case in the sense that a remedy is directly linked to it. In order to constitute <i>factum superveniens</i> , the fact must have occurred after the case was concluded and submitted for judgment. A fact that existed prior to judgment but was unknown to the parties does not constitute a <i>factum superveniens</i> , however, re-trial may be granted depending on the circumstances.
Claimant and Defendant	The claimant may be precluded from bringing fresh proceedings on the same claim or with respect to the same remedy (except for cumulative remedies). If the claimant attempts to do so, his case will be dismissed based on negative legal force. When a defendant loses a declaratory action, positive legal force prevents him from objecting to the legal relationship that was established by the declaratory judgment. He furthermore may not commence new litigation based on the same claim that would deprive the previous judgment of its effect. This is also true in performance actions. For the defendant, the outcome of the case can be decisive of whether his claims are precluded by the judgment. Specifically with regard to set-off claims, legal force will not bar the later adjudication of a defendant's counterclaim that was alleged but not litigated. If a new action was brought on the same claim against the same party while the first action is still pending, the court must dismiss the case based on <i>lis pendens</i> ; however, the court has the option to stay the second action pending the first judgment.
Other participants	The legal force of a judgment only binds the parties. There can be multiple parties to the litigation, e.g. co-claimants and co-defendants. Legal force is restricted to the party who has raised the claim and the party against whom the claim was raised. Parties are bound by the legal force of a judgment in the usual manner. One who was not originally a party to the action may become so via joinder. It is also possible for an additional person to enter the litigation by assuming an earlier party's claim. This is termed 'succession of parties'. The fact that these parties did not join the action until the litigation had begun does not affect the binding nature of legal force upon them. A party, regardless of how or when he became a party, is bound by legal force insofar as it pertains to a claim he has filed or that has been filed against him. A person may also intervene in an action alongside one of the original parties. However, the position of the intervenor is unique in that he does not become a party to the case and cannot therefore make any claims or motions on his behalf. An intervenor will not necessarily be bound by the judgment's legal force; whether he will be bound depends on his ground for intervention.

Represented persons	Sweden has had class action law since 2003 which operates according to an opt-in structure. To maintain a class action, the claims of the claimant and the members of the class must be based on common or similar circumstances. A class action judgment is binding on all class members who submitted an application to the court and therefore is not binding on those parties who did not submit an application even though they may have had claims which could have been included in the class action. Parties wishing to assert similar claims have three alternatives to filing a class action: (1) an individual party may bring a test case; (2) the group members may individually file actions which are later consolidated based on similar claims; and (3) the members may grant one member power of attorney who will then file an action for each class member. However, these alternatives are seldom used and oftentimes, claimants opt to transfer their claims to a company or association lacking assets of its own. When this happens, the transferors are not considered parties to the action, although often the transfer agreements entitle them to a share in the proceeds if the action is successful. However, the judgment will have legal force against the transferors as well as the representative transferees.
Persons connected to the Claimant, Defendant, and other participants	Legal force also binds third parties who are connected in a legally relevant way to the claimant or defendant. This can happen through a number of situations. For example, when a party transfers his rights to property to a third party, during litigation, the judgment will have legal force against the third party. Partners in a partnership are jointly and severally liable for the obligations of the partnership and so will be bound by a judgment rendered against the partnership. A judgment in a payment case between a debtor and creditor applies to the advantage, but not to the detriment, of the guarantor/third party. Finally, in company law, a shareholder generally has no liability for the obligations of the company; however, general liability may be imposed on certain shareholders based on whether the corporate veil has been pierced.
Strangers	Judgments may have legal force with respect to strangers, for example, in situations involving declarations of patent invalidity whereby such a judgment has universal legal force. This type of legal force is unilateral in the sense that if the claim is denied, other parties are not prevented from seeking such a declaration.
ISSUE PRECLUSION	
Existence and nature of issue preclusive effects	Please refer to the discussion regarding positive legal force contained within the discussion of claim preclusion above. Because issue preclusion does not exist in Sweden, per se, this section will remain unanswered.
Policies underlying issue preclusive effects	N/A
Conditions for issue preclusive effects	N/A
Invoking issue preclusive effects	N/A
Exceptions to issue preclusive effects	N/A
Claimant and Defendant	N/A
Other participants	N/A
Represented persons	N/A
Persons connected to the Claimant, Defendant, and other participants	N/A

Strangers	N/A
<i>WIDER PRECLUSIVE EFFECTS</i>	
Existence and nature of wider preclusive effects	There is no Swedish law equivalent to “wider preclusion”. “Abuse of process” is addressed instead, e.g., in that a party pursuing frivolous litigation can be compelled to pay the opposing party’s legal costs and in that the court may immediately enter judgment in the case if a claim is clearly unfounded
Policies underlying wider preclusive effects	N/A
Conditions for wider preclusive effects	N/A
Invoking wider preclusive effects	N/A
Exceptions to wider preclusive effects	N/A
Claimant and Defendant	N/A
Other participants	N/A
Represented persons	N/A
Persons connected to the Claimant, Defendant, and other participants	N/A
Strangers	N/A
<i>III. PRECLUSIVE EFFECTS OF JUDGMENTS WITHIN THE BRUSSELS/LUGANO REGIME</i>	
<i>RECOGNITION</i>	
Judgments recognised	Because there is very little Swedish case law regarding the Brussels Regime, the primary focus of Swedish literature has been on ECJ cases. However, there is some case law regarding the interpretation of the term ‘judgment’. For a decision to have binding effect it must have been issued by a court as defined under the Regulation. There have been conflicting court holdings as to whether an average adjustor (dispaschör) should be regarded as a court under the Lugano Convention. The Swedish Supreme Court has not yet decided this issue.
Procedural aspects of recognition	Articles 34 and 35 must be strictly interpreted. Generally, they are considered mandatory in that recognition in such cases must be denied. Furthermore, scholars have taken the position that these Articles must be considered sua sponte by the courts, although this does not mean that the court is required to enquire into whether circumstances constitute an impediment to recognition.
Exceptions to the rule (grounds for non-recognition)	Swedish courts are extremely restrictive in their application of public policy reservations. Whether or not the exception will apply is determined on a case-by-case basis with regard to whether the circumstances are manifestly contrary to public policy. Most Swedish public policy exceptions are worded in a way similar to the Brussels Regulation exception.

	<p>The Swedish Supreme Court has held that national policy exceptions and Article 10 of the European Convention are considered separate bases on which to deny recognition. In Sweden, it is generally presumed that a foreign judgment is compatible with the ECHR and it will normally be sufficient for a recognizing/enforcing court to conduct a superficial review of compatibility with the Convention where a judgment comes from a Convention state.</p> <p>There is a Swedish judgment on record as refusing to enforce a foreign judgment based on irreconcilability and the principle as stated in Hoffmann.</p>
Effects of recognition	<p>Although previously, a foreign judgment was accorded the same preclusive effects as a Swedish judgment would receive, In light of the Hoffmann case, a foreign judgment will be afforded the same legal force which it has in its country of origin. An opposing party can bring an action for a negative declaratory judgment in Sweden to defeat recognition of the foreign judgment.</p>
CLAIM PRECLUSION WITHIN THE BRUSSELS/LUGANO REGIME	
Existence and nature of claim preclusive effects	<p>See previous response.</p>
Policies underlying claim preclusive effects	<p>N/A</p>
Law applicable to claim preclusive effects	<p>See response above regarding the effects of recognition.</p>
Conditions for claim preclusive effects	<p>Nothing to add.</p>
The identity of claims in the Brussels/Lugano Regime	<p>No case law to report.</p>
The identity of parties in the Brussels/Lugano Regime	<p>No case law to report.</p>
Invoking claim preclusive effects under the Brussels/Lugano Regime	<p>There is no relevant case on in this regard; presumably in most situations, foreign judgments would be treated comparably to domestic judgments. In Sweden, it is likely that once a foreign judgment is recognised, it will also automatically be granted preclusive effects. It is thought to be the court's obligation to consider such issues <i>sua sponte</i>. However, it is up to the parties to bring a foreign judgment to the attention of the domestic court and this may be done at any time throughout litigation. Where uncertainties arise regarding the foreign judgment's authenticity or content, the court will likely ask the parties to submit relevant evidence to resolve the matter and if it must, enquire into the question on its own initiative. Courts can require the parties to submit evidence of foreign law and legal force which can be obtained through a variety of channels. In the rare event that evidence of foreign law cannot be located, courts should apply Swedish legal force rules.</p>
Exceptions to claim preclusive effects under the Brussels/Lugano Regime	<p>Please see 'exceptions to the rule (grounds for non-recognition)' above.</p>

Persons affected by claim preclusive effects	Please see 'effects of recognition' above.
<i>ISSUE PRECLUSION WITHIN THE BRUSSELS/LUGANO REGIME</i>	
Existence and nature of issue preclusive effects	Although this has not specifically been addressed in Swedish case law or literature, based on the Hoffmann case, where a foreign judgment would receive issue preclusive effects, it must also be given such effects upon recognition in Sweden.
Policies underlying issue preclusive effects	N/A
Law applicable to issue preclusive effects	Please see 'exceptions to the rule (grounds for non-recognition)' above.
Conditions for issue preclusive effects	Nothing to add.
Invoking issue preclusive effects under the Brussels/Lugano Regime	Presumably a party must invoke the positive legal force of a judgment.
Exceptions to issue preclusive effects under the Brussels/Lugano Regime	See III.A.6. [[there is no such part]]
Persons affected by issue preclusive effects	See 'Effects of recognition' above
<i>WIDER PRECLUSION</i>	
Existence and nature of wider preclusive effects	The wider preclusive effects of a foreign judgment under Hoffmann are not addressed in Swedish case law or literature, however the term seems to include some case law on Swedish legal force rules.
Policies underlying wider preclusive effects	N/A
Law applicable to wider preclusive effects	N/A

Conditions for wider preclusive effects	N/A
Invoking wider preclusive effects	N/A
Exceptions to wider preclusive effects	N/A
Persons affected by wider preclusive effects	N/A
<i>AUTHENTIC INSTRUMENTS/COURT APPROVED SETTLEMENTS</i>	Authentic instruments and court approved settlements under article 58 of the Brussels Regulation cannot be the subject of recognition and have no legal force. However, a judgment confirming a settlement shall be recognised as stated above.
<i>IV. PRECLUSIVE EFFECTS OF THIRD STATE JUDGMENTS</i>	
	Judgments from third states are recognised only if there is legal support for the recognition. Such support usually comes in the form of acts which are based on treaties. When a third state judgment is recognised, it is effectively transformed into a Swedish judgment which then becomes effective in Sweden.

Switzerland	
I. JUDGMENTS	
The concept, form, structure and terminology of judgments	<p>A judgment is the authoritative expression of a legally founded opinion by a court which aims at deciding a specific lawsuit. Although the terminology for the different types of judgments varies among the Cantonal Codes of Civil Procedure, generally a distinction is made between those judgments that put an end to proceedings before the court seized (<i>Endentscheid</i>) and those which do not (<i>Vor- und Zwischenentscheide</i>). <i>Endentscheid</i> may be contain either a final determination on the merits of the case (<i>Sachentscheid</i>) or dismiss the claim on procedural grounds (<i>Prozessentscheid</i> or <i>Nichteinretensentscheid</i>) depending more on the character of the judgment, rather than its denomination. <i>Sachentscheide</i> are distinguished according to whether they are condemnatory, declaratory or constitutive. They may also be rendered as a partial judgment (<i>Teilentscheid</i>) and are distinguished from judgments which terminate the proceedings based on the parties' consent (<i>Sachentscheidsurrogate</i>). Judgments which do not put an end to the proceedings (<i>Vor- und Zwischenentscheide</i>) either determine preliminary issues of a substantive nature, or concern preliminary procedural issues. Almost any of the above judgments can emerge from different types of proceedings.</p> <p>The form and structure of judgments also varies according to the applicable Cantonal Code of Civil Procedure. Generally, however, a final judgment will consist of the following elements: (1) the introductory part (<i>Rubrum</i>); (2) the prayers for relief of the claim (<i>Rechtsbegehren</i>); (3) the reasons for the decision (<i>Begründung</i>); and (4) the operative part (<i>Dispositiv; Urteilsformel</i>). The Federal Supreme Court has inferred from the constitutional guarantees of due process a right to be provided with the reasons for a judgment which is analogous to that in Article 6 ECHR. However, the requirements are not very high and several exceptions exist in most of the Cantonal Codes.</p>
The final determination and findings on issues of fact and law	<p>To determine the principal issue in the case (whether to award the claim - <i>Hauptfrage</i>), the court may have to decide on various preliminary issues (<i>Vorfragen</i>) which may be substantive or procedural. Such preliminary decisions may be subject to a formal interlocutory judgment; however, in the final judgment, the court's preliminary determinations are generally only included in the reasons. The operative part will only contain the decision on the principal issue. However, the different parts of a judgment may be consulted in order to interpret the operative part, for instance, in determining whether a judgment has preclusive effect. This occurs in particular where the judgment states only that the claim is dismissed.</p>
The binding character of a judgment	<p>In order for a judgment to become binding, it must be valid and final. A judgment is considered valid (<i>materielle Rechtskraft</i>) if it emerges from a court and the procedural requirements of notice have been satisfied. If these conditions are not fulfilled, the judgment will be deemed non-existent. A judgment will be considered null and void (<i>nichtiges Urteil</i>) if it suffers from severe procedural errors. This point can be raised by any party and any state authority must, of its own motion, consider nullity at any point in time. A court's lack of subject matter jurisdiction over the case will only lead to nullity in exceptional cases. In addition, a minority of Cantonal Codes will consider a judgment null and void if the court fails to provide reasons for its decision.</p> <p>A judgment is final (<i>formelle Rechtskraft</i>) if it can no longer be challenged by ordinary means of appeal. However, even if an appeal has been lodged, new proceedings between the same parties on the same claim may be excluded based on <i>lis pendens</i> (<i>Rechtshängigkeit</i>). A final judgment has binding effects on the court from the moment it has been rendered and the parties have been notified of the judgment, so the court is unable to alter the judgment. Extraordinary means of appeal do not usually delay the finality of a judgment. The judgment acquires preclusive effects once it is final. A reversal of a judgment on ordinary appeal does not usually affect the effects of <i>res judicata</i> since such a reversal would occur before the judgment is capable of having preclusive effects (i.e. before it is final). By contrast, a reversal on an extraordinary appeal removes the erroneous judgment and its preclusive effects retroactively. The problem of inconsistent judgments has not specifically been addressed by the Federal Supreme Court, but it is thought that the earlier judgment should prevail in the event that inconsistent judgments have been rendered.</p>
Judgments that are	<p>The preclusive effects of <i>res judicata</i> (<i>materielle Rechtskraft</i>) are generally reserved for judgments containing a final determination on the merits (<i>Sachentscheid</i>). Aside from</p>

<p>capable of having preclusive effects</p>	<p>determinations on the merits, the following types of judgments are capable of having preclusive effects: (1) judgments rendered in default of the defendant's appearance; (2) consent judgments (<i>Sachentscheidsurrogate</i>); and (3) partial judgments (<i>Teilentscheide</i>) which have finality. There is some controversy with regard to dismissals based on procedural grounds (<i>Prozessentscheid</i>). It appears that the extent of such a judgment's preclusive effects is limited to the denial of specific procedural requirements for the claim's admissibility upon which the judgment is based. Furthermore, accelerated proceedings which amount to a conclusive decision on the dispute will have full preclusive effects. By contrast, the following judgments are not capable of having preclusive effect: (1) dismissals based on the claimant's failure to appear; (2) decisions in non-contentious matters (<i>Entscheidungen der freiwilligen Gerichtsbarkeit</i>); and (3) judgments concerning provisional or protective measures (<i>vorsorgliche Massnahmen</i>).</p>
<p>II. PRECLUSIVE EFFECTS</p>	
<p>CLAIM PRECLUSION</p>	
<p>Existence and nature of claim preclusive effects</p>	<p>Judgments in Switzerland are capable of having preclusive effects. The effect of <i>res judicata</i> (<i>materielle Rechtskraft</i>) is to preclude parties from bringing fresh proceedings regarding the same claim as that in an earlier suit. Such effect is commonly referred to as <i>Ausschlusswirkung</i>. Although scholarly writers consider claim preclusion to be procedural in nature, the Federal Supreme Court has not ruled consistently on the matter.</p>
<p>Policies underlying claim preclusive effects</p>	<p>The policies underlying the claim preclusive effects of Swiss judgments are (1) adequate legal protection; (2) finality; (3) procedural economy; and (4) the operability of justice.</p>
<p>Conditions for claim preclusive effects</p>	<p>The conditions for claim preclusive effects are that the later proceedings must involve (1) the same parties, and (2) the same claim. The concept of same parties includes certain legal successors and a change of role between claimant and defendant in later proceedings. The identity of claims is determined by an interpretation of the operative part in the light of the judgment's reasons. Although several theories have been put forth to describe the notion of 'same claim', the prevailing theory among scholars is to consider the prayers for relief (<i>Rechtsbegehren</i>) along with the factual circumstances (<i>Lebenssachverhalt</i>) from which the claimed rights emerge (<i>Zweigliederiger Streitgegenstand</i>). The Federal Supreme Court has not clearly taken a position on the matter, although it seems to follow the prevailing scholarly theory and considers each case on a case-by-case basis. The relevant factual circumstances are determined according to an objective view and includes facts of which that the claimant may not even have been aware. If new material facts are discovered after the conclusion of the first case, a different claim will be assumed.</p>
<p>Invoking claim preclusive effects</p>	<p>Swiss courts must take into account the preclusive effects of a judgment on their own motion and at any time during the proceedings. However, in practice, whether a court considers preclusion will often depend on whether the defendant has pled <i>res judicata</i>. The courts are permitted to settle the issue of preclusion at an early stage and may even render a formal interlocutory judgment (<i>selbständiger Vor- oder Zwischenentscheid</i>) if the existence of preclusion is denied. If the court deems that the prior judgment does have claim preclusive effect, it must dismiss the proceedings before it on procedural grounds. Because the absence of preclusive effects is a negative procedural requirement in order for a claim to be admissible, the defendant carries the burden of proof in this regard. Any party who wishes to invoke an exception to the claim preclusive effects of a prior judgment must do so by means of extraordinary appeal rather than raising the issue at a preliminary stage in later proceedings.</p>
<p>Exceptions to claim preclusive effects</p>	<p>The method by which to defeat the preclusive effects of a judgment is via an extraordinary appeal in what is commonly referred to as <i>Revision</i>. The grounds for such an appeal depend on the applicable Cantonal Code; however, the Draft for a New Federal Code of Civil Procedure permits <i>Revision</i> on the following grounds: (1) discovery of material facts or crucial evidence that existed, but was unavailable at the time of the earlier proceedings; (2) where there is proof in criminal proceedings that the other party influenced the judgment; (3) where there is an assertion of invalid party consent; and (4) under certain other conditions, e.g. if the judgment violates the ECHR. The <i>Revision</i> is subject to a time-limit which begins to run at the time of discovery of the grounds for the exception, but which nonetheless absolutely expires upon the passing of 10 years past the judgment's acquisition of finality (<i>formelle Rechtskraft</i>). Furthermore, other exceptions to claim preclusion may apply depending on the type of judgment and its capability of having preclusive effects. A court may also, in exceptional circumstances, deny the preclusive effect of a judgment if a defence relating to <i>res judicata</i> constitutes an abuse of law.</p>

Claimant and Defendant	The claim preclusive effects of a judgment are limited to the parties in the prior litigation, including a change of roles as claimants and defendants. If the claimant brings the same claim against the same defendant again, the court must dismiss the claim on procedural grounds (<i>Nichteintretensentscheid</i>). Only where the judgment has already acquired finality (<i>formelle Rechtskraft</i>), will the dismissal be based on principles of res judicata; otherwise, the dismissal will be based on the principle of <i>lis pendens</i> .
Other participants	The claim preclusive effects of a judgment are restricted to the principal parties in the proceedings and are therefore binding upon any co-claimants, co-defendants, and any other participants who are granted the status of a principal party. New principal parties may enter pending litigation where a change of parties is permissible, in particular via universal legal succession (<i>Universalsukzession</i>). Furthermore, intervening parties may become subject to the judgment's preclusive effects where the intervener takes a position adverse to both parties (<i>Hauptintervention</i>). Where the intervener enters in support of either the claimant or defendant, res judicata does not apply; rather, a similar binding effect, which also comprises the essential reasons of the judgment, will be imposed.
Represented persons	There are no group actions in Swiss law. However, in some cases, consumer and industrial organisations may bring an action for relief in the public interest, but a judgment in such proceedings does not have preclusive effects. In exceptional cases, the law provides for specific types of representative actions, but the preclusive effects of such judgment extend only to the party in interest.
Persons connected to the Claimant, Defendant, and other participants	The claim preclusive effects of a judgment extend to certain legal successors of the parties. It is generally accepted that preclusive effects extend to the successor of a right, but it is unclear as to whether they extend to legal successors to a duty. Preclusive effects of judgments based on rights <i>in rem</i> are widely presumed to bind successors in interest to the property. The extension of preclusive effects has been discussed in relation to other persons connected to the parties, despite the Federal Supreme Court's statement on several occasions that a judgment will not bind persons who have not participated in the proceedings, even if they are involved in the disputed legal relationship. However, in determining whether the preclusive effects of a judgment should extend to such third persons, the Court recently took the position that an extension of preclusion should be assumed where it is necessary to the consistent realization of civil law and where it will not adversely affect the rights of the connected persons.
Strangers	Owing to the fact that the Federal Supreme Court does not, in principle, extend preclusive effects to third persons who are not involved in the disputed relationship, it is not surprising that this line of thought is applicable even more so with regard to strangers. For example, not even rights <i>in rem</i> are considered as extending to third persons. By contrast, declarations of the non-existence of an absolute right are binding <i>erga omnes</i> . Constitutive judgments have a binding effect which is distinct from that of <i>materielle Rechtskraft</i> and must be determined on a case by case basis, depending on which type of constitutive judgment is involved.
ISSUE PRECLUSION	
Existence and nature of issue preclusive effects	Only the principal issues (<i>Hauptfrage</i>) which were subject to the claim or counterclaim and constituted the matter in dispute determined by the judgment are capable of having issue preclusive effects where they are subsequently raised as a preliminary issue in later proceedings. Furthermore, a judgment is binding with respect to its principal issues if the issues are subsequently raised as a preliminary issue in later proceedings. Such effect is called <i>Präjudizialitätswirkung</i> and is considered to be a general effect deriving from the principle of res judicata (<i>materielle Rechtskraft</i>). The case law of the Federal Supreme Court and most scholars do not distinguish between the nature of the different effects and so it seems that issue preclusion is implicitly assumed to be of the same nature as claim preclusion. There has also been some discussion as to whether the issue preclusive effect of a judgment should be extended to cases where the determination of an issue is relevant for the existence of other adverse rights (<i>Gegenrechte</i>). The nature of such preclusion, however, is disputed. Some believe that the procedural nature of res judicata is extended while others deem it to be of a substantive law nature.
Policies underlying issue preclusive effects	Considering that the issue preclusive effect of a judgment is generally not distinguished from its claim preclusive effect, the same policy considerations as discussed above are applicable. However, those who believe that issue preclusion should be extended in the case of adverse rights draw upon the general principle of good faith (<i>Treu und Glauben</i>).

Conditions for issue preclusive effects	The conditions are the same as those in regard to claim preclusion.
Invoking issue preclusive effects	The method by which issue preclusion is invoked is the same as with claim preclusion. Of course, with regard to issue preclusion, the court need only decide the respective issue in the same way as previously decided, rather than dismiss the entire claim.
Exceptions to issue preclusive effects	The exceptions are the same as in claim preclusion. However, some scholars have pointed out that judgments recording a court approved settlement are not capable of having issue preclusive effect in the sense of <i>Präjudizialitätswirkung</i> .
Claimant and Defendant	Because the issue preclusive effect of a judgment does extend to preliminary issues, a court is not bound by factual findings and determinations of precedential legal relationships. If the claimant brings a different claim against the same party, the former judgment will – in principle – not have any effects in subsequent proceedings; however, the court in the second proceedings must decide the principal issues in the same way as the first court if, in the second set of proceedings, the issue is raised as a preliminary issue.
Other participants	The issue preclusive effects of a judgment, as far as they exist, are implicitly deemed to extend to other participants in the litigation to the same extent as claim preclusive effects.
Represented persons	To the extent that issue preclusive effects exist, they will be applied in the same way as in claim preclusion.
Persons connected to the Claimant, Defendant, and other participants	Please see the corresponding section regarding claim preclusion.
Strangers	Please see the corresponding section regarding claim preclusion.
WIDER PRECLUSIVE EFFECTS	
Existence and nature of wider preclusive effects	The wider preclusive effects of judgments are generally thought to derive from the principle of <i>res judicata</i> (<i>materielle Rechtskraft</i>) and consequently, its nature is not explicitly discussed. Wider preclusive effects are thought to preclude any means of attack or defence not put forward in earlier proceedings, although available at the time. This effect is known as <i>Präklusionswirkung</i> . The Federal Supreme Court has expressly recognised this effect with regard to factual allegations which already existed at the time of the earlier proceedings and which form part of the same claim, whether or not they were considered in the earlier proceedings and whether or not the claimant was aware of their existence. It is unclear whether wider preclusion extends to the legal arguments that could have been but were not raised during the first proceedings.
Policies underlying wider preclusive effects	The policies applicable to <i>materielle Rechtskraft</i> are applicable here.
Conditions for wider preclusive effects	The conditions applicable to <i>materielle Rechtskraft</i> are applicable here.
Invoking wider preclusive effects	The method by which one invokes wider preclusive effects is the same as with <i>materielle Rechtskraft</i> .
Exceptions to wider preclusive effects	The exceptions to wider preclusive effects are the same as those with regard to <i>materielle Rechtskraft</i> .
Claimant and Defendant	The claimant and defendant may be prevented by the wider preclusive effects of a judgment in relation to any factual allegations which form part of the same claim determined in an earlier judgment.

Other participants	Wider preclusive effects extend to other participants in the litigation to the same extent as the effect of <i>materielle Rechtskraft</i> (<i>Ausschlusswirkung</i>).
Represented persons	As discussed above, group actions are unknown in Swiss law. With regard to represented persons, the wider preclusive effects extend to the same extent as the effect of <i>materielle Rechtskraft</i> (<i>Ausschlusswirkung</i>).
Persons connected to the Claimant, Defendant, and other participants	Wider preclusive effects extend to persons connected to the Claimant, Defendant, and other participants in the litigation to the same extent as the effect of <i>materielle Rechtskraft</i> (<i>Ausschlusswirkung</i>).
Strangers	Wider preclusive effects extend to strangers to the same extent as the effect of <i>materielle Rechtskraft</i> (<i>Ausschlusswirkung</i>).
III. PRECLUSIVE EFFECTS OF JUDGMENTS WITHIN THE BRUSSELS/LUGANO REGIME	
RECOGNITION	
Judgments recognised	The meaning of 'judgment' in Article 25 of the Lugano Convention (LC) is ordinarily referenced in Swiss law, although it is generally construed in an autonomous manner with regard to ECJ case law. The concept is given a very broad interpretation in keeping with the spirit of the Convention as set forth in the Jenard Report. The scope is limited to judgments in civil and commercial matters, but includes decisions in criminal and administrative courts insofar as they determine civil claims. Enforceability in the state of origin is the sole condition for the recognition of foreign judgments as to their binding character. With regard to specific types of judgments, the following are capable of recognition in Switzerland: (1) decisions concerning the determination of costs; (2) provisional or protective measures that have complied with notification or service procedures; (3) <i>Sachentscheide</i> (final determinations on the merits); and <i>Teilentscheid</i> (part judgments). It is unclear whether consent judgments or court approved settlements are recognised, although the latter have recently been construed as constituting a judgment in terms of Article 25 LC if they are part of a formal judgment and would deploy preclusive effects in their state of origin. Whether interlocutory decisions determining preliminary issues of substantive law would be recognised is unclear, although recent publications counsel in favour of such recognition. The Federal Supreme Court has never addressed the question whether procedural judgments are capable of recognition under the Convention.
Procedural aspects of recognition	Article 26(1) LC constitutes the principle of automatic recognition which has been observed in the Swiss courts. Cantonal courts have held that courts must consider the issue of non-recognition on their own motion, whether or not the parties have invoked it, although this has not been addressed by the Federal Supreme Court. The party opposing recognition has the burden of proof, as in Articles 27 and 28 LC. The question whether a judgment could be recognised irrespective of whether it is still binding in the Contracting State of origin has never been subject to a decision of the Federal Supreme Court. Where an ordinary appeal has been lodged in the state of origin, the Swiss court may stay the proceedings. The term 'ordinary appeal' is to be given an autonomous interpretation under the Convention. Where the court is deciding whether to stay, it must not consider grounds which the party lodging the appeal failed to put forward in the state of origin.
Exceptions to the rule (grounds for non-recognition)	<p>The Federal Supreme Court has denied recognition in two cases where foreign judgments did not contain a description of the facts or a legal reasoning. However, the denial was based not on Article 27(1) but rather on an inability to examine the rendering court's jurisdiction under Article 28 LC. The Court has also referenced ECJ case law with regard to compliance with the minimal guarantees for a fair trial under Article 6(1) ECHR. It has specifically held that recognition and enforcement could be denied in relation to the right to be heard, the right to offer evidence, and the guarantee of an effective defence in court proceedings. The Court views Article 27(1) as a catch-all provision for violations of 'procedural public policy' which is defined from a Swiss perspective.</p> <p>Swiss courts conduct their own examinations as to whether the defendant was adequately notified under Article 27(2). Cantonal case law has demonstrated that the recognising court is permitted to review the issue independently from the factual findings and legal conclusions of the rendering court. The Federal Supreme Court has held that it will not recognise <i>ex parte</i> provisional judgments. Furthermore, it is generally accepted that the adequacy of service must be analysed in accordance with the law of the state of origin or any relevant international treaties. Moreover,</p>

	<p>the defendant must be given time to sufficiently prepare his case or prevent a default judgment, although the exact time has never been subject to a decision of the Federal Supreme Court under Article 27(2).</p> <p>Non-recognition based on irreconcilability with domestic or third state judgments has rarely been addressed by Swiss courts. However, the Federal Supreme Court has stated that the purpose of Article 27(3) is to avoid contradictions emerging from a judgment from another Contracting State and a judgment rendered in the state where recognition of the other judgment is sought. Scholars have written that where judgments entail mutually exclusive legal consequences, non-recognition based on irreconcilability should be assumed.</p> <p>Article 29's prohibition of review as to substance has also rarely been considered by Swiss courts although a Cantonal court has held that the provision prohibits the recognizing court from taking procedural defects into account other than those set forth in Article 27 and 28. Courts have also never allowed an objection to recognition based on the invalidity of the foreign judgment, although it has been pointed out that the recognizing court may examine whether the foreign judgment does indeed exist.</p>
Effects of recognition	<p>Three theories have been put forth regarding which country's law determines the effects of recognition of a judgment under the Regime: (1) the state of the judgment's origin without modification [<i>Wirkungserstreckungstheorie</i>]; (2) the same effects as an equivalent judgment in the recognizing state [<i>Gleichstellungstheorie</i>]; and (3) the law of the state of origin; however, the effects may be subject to modification if they are completely foreign to the law of the recognizing state [<i>Theorie der kontrollierten Wirkungserstreckung</i>]. The Federal Supreme Court has stated a clear preference for the third option, although the majority of scholars prefer the first. It is also generally accepted that a foreign judgment recognized in Switzerland cannot have effects beyond that which would be conferred on it in its state of origin. It is unclear to what extent the law of the state of recognition may be assumed to call for a modification of the original effects.</p>
CLAIM PRECLUSION WITHIN THE BRUSSELS/LUGANO REGIME	
Existence and nature of claim preclusive effects	<p>Upon recognition, the foreign judgment will have the effect of <i>res judicata</i> (<i>materielle Rechtskraft</i>) in Swiss proceedings.</p>
Policies underlying claim preclusive effects	<p>In terms of underlying policy, scholars have pointed to the general aim of the Convention to facilitate the free movement of judgments and the acceptance of judgments from Contracting States as equal.</p>
Law applicable to claim preclusive effects	<p>The law applicable is that of the state of origin; however, it is unclear whether and to what extent the law of the recognizing state may be applied regarding the modification of such effects, since the specific question of recognition is controversially discussed and has never been addressed by the Federal Supreme Court.</p>
Conditions for claim preclusive effects	<p>A judgment must fulfil the criteria in Article 27 and 28 of the Lugano Convention; failure to fulfil the criteria does not preclude a later action in Switzerland based on the same claim. The law of the state of origin governs whether a foreign judgment is final for the purpose of <i>formelle Rechtskraft</i>.</p> <p>BGer 5P.246/2000 (29 August 2000)</p>
The identity of claims in the Brussels/Lugano Regime	<p>The Federal Supreme Court has never addressed this question; however, in keeping with the theory of <i>Wirkungserstreckungstheorie</i>, it would seem consistent to determine the issue in light of the law of the state of origin. However, Swiss courts have applied the ECJ's autonomous interpretation of identical claims in the context of <i>lis pendens</i> and have referred to it as <i>Kernpunkttheorie</i>. This characterization focuses on a pragmatic delimitation of the factual circumstances in the dispute and the claim's legal grounds.</p>
The identity of parties in the Brussels/Lugano Regime	<p>This matter has never been addressed by the Federal Supreme Courts and is not much discussed by the scholars. However, the Court has held that Article 27(3) requires that the principal parties be identical in a formal sense in the context of irreconcilability.</p>

Invoking claim preclusive effects under the Brussels/Lugano Regime	It has been assumed that the law of the recognizing state governs this question. Therefore, the recognizing court must take into account, on its own motion, the claim preclusive effects of a foreign judgment, whether or not they have been invoked by the parties. The party who opposes recognition has the burden of proof regarding the grounds of non-recognition under Articles 27 and 28 of the Lugano Convention.
Exceptions to claim preclusive effects under the Brussels/Lugano Regime	An exception to claim preclusive effects is assumed where a foreign judgment does not fulfil the prerequisites for recognition under Articles 27 and 28 LC. Other exceptions relate to the different types of judgments and their general capability of recognition under Article 25 LC. Finally, exceptions to claim preclusive effects may arise from the law of the judgments state of origin, and – according to the <i>Theorie der kontrollierten Wirkungserstreckung</i> from Swiss law.
Persons affected by claim preclusive effects	This question has not been specifically addressed by the courts, although the Federal Supreme Court has previously applied the law of the state of origin to determine which parties are affected by the claim preclusive effects of a recognized judgment. This practice would be consistent with <i>Wirkungserstreckungstheorie</i> .
ISSUE PRECLUSION WITHIN THE BRUSSELS/LUGANO REGIME	
Existence and nature of issue preclusive effects	This question has never been the subject of a Federal Supreme Court decision. Whether a recognised judgment has issue preclusive effect will depend upon which theory the court adopts; for instance, a consistent application of <i>Wirkungserstreckungstheorie</i> would counsel in favour of according preclusive effects if they would be bestowed in the country of origin.
Policies underlying issue preclusive effects	Since a distinction between the different effects of res judicata (<i>materielle Rechtskraft</i>) is – in general – not drawn under Swiss law, the policies underlying issue preclusive effects – as far as they would be recognised – may be deemed identical to those for claim preclusive effects. However, the question is not discussed and has never been addressed by the Federal Supreme Court.
Law applicable to issue preclusive effects	The law applicable to issue preclusive effects, as far as they would be recognised, may be deemed identical to that for claim preclusive effects. However, this question depends largely upon which theory is applied by the court with regard to recognition.
Conditions for issue preclusive effects	Since a distinction between the different effects of res judicata (<i>materielle Rechtskraft</i>) is – in general – not drawn under Swiss law, the conditions for issue preclusive effects – as far as they would be recognised – may be deemed identical to those for claim preclusive effects. However, the question is not discussed and has never been addressed by the Federal Supreme Court.
Invoking issue preclusive effects under the Brussels/Lugano Regime	Since a distinction between the different effects of res judicata (<i>materielle Rechtskraft</i>) is – in general – not drawn under Swiss law, the invocation of issue preclusive effects – as far as they would be recognised – may be deemed identical to that of claim preclusive effects. However, several questions specifically arising in this context are not discussed and have never been addressed by the Federal Supreme Court.
Exceptions to issue preclusive effects under the Brussels/Lugano Regime	Since a distinction between the different effects of res judicata (<i>materielle Rechtskraft</i>) is – in general – not drawn under Swiss law, the exceptions to issue preclusive effects – as far as they would be recognised – may be deemed identical to those to claim preclusive effects. However, the question is not discussed and has never been addressed by the Federal Supreme Court.
Persons affected by issue preclusive effects	Since a distinction between the different effects of res judicata (<i>materielle Rechtskraft</i>) is – in general – not drawn under Swiss law, the persons affected by issue preclusive effects – as far as they would be recognised – may be deemed identical to those affected by claim preclusive effects. However, the question is not discussed and has never been addressed by the Federal Supreme Court.

WIDER PRECLUSION	
Existence and nature of wider preclusive effects	This question has not specifically been considered by either the Court or scholars. However, it is fair to assume that wider preclusion (<i>Präklusionswirkung</i>) applies in this context as well as within the context of claim preclusion. Similarly, the nature is likely the same as that of the <i>Ausschlusswirkung</i> and the <i>Präjudizialitätswirkung</i> .
Policies underlying wider preclusive effects	Since the <i>Präklusionswirkung</i> is a general effect deriving from the principle of res judicata (<i>materielle Rechtskraft</i>) which adheres to claim preclusive effects as well as issue preclusive effects, the policies underlying wider preclusive effects may be deemed identical to those for the <i>Ausschlusswirkung</i> and the <i>Präjudizialitätswirkung</i> . However, the question is not discussed and has never been addressed by the Federal Supreme Court.
Law applicable to wider preclusive effects	Although the question has never been addressed by the Federal Supreme Court, nor has it been discussed, one may deem the law applicable to wider preclusive effects to be identical to that for the <i>Ausschlusswirkung</i> and the <i>Präjudizialitätswirkung</i> . Also, a foreign judgment will not be given any effects that go beyond that given in the country of origin; therefore, the law applicable to the wider preclusive effects of a recognized judgment would be that of the rendering state. However, as discussed previously, the role of Swiss law with regard to modification remains unclear.
Conditions for wider preclusive effects	Since the <i>Präklusionswirkung</i> is a general effect deriving from the principle of res judicata (<i>materielle Rechtskraft</i>) which adheres to claim preclusive effects as well as issue preclusive effects, the conditions for wider preclusive effects may be deemed identical to those for the <i>Ausschlusswirkung</i> and the <i>Präjudizialitätswirkung</i> . However, the question is not discussed and has never been addressed by the Federal Supreme Court.
Invoking wider preclusive effects	Since the <i>Präklusionswirkung</i> is a general effect deriving from the principle of res judicata (<i>materielle Rechtskraft</i>) which adheres to claim preclusive effects as well as issue preclusive effects, the invocation of wider preclusive effects may be deemed identical to that of the <i>Ausschlusswirkung</i> and the <i>Präjudizialitätswirkung</i> . However, the question is not discussed and has never been addressed by the Federal Supreme Court.
Exceptions to wider preclusive effects	Since the <i>Präklusionswirkung</i> is a general effect deriving from the principle of res judicata (<i>materielle Rechtskraft</i>) which adheres to claim preclusive effects as well as issue preclusive effects, the exceptions to wider preclusive effects may be deemed identical to those to the <i>Ausschlusswirkung</i> and the <i>Präjudizialitätswirkung</i> . However, the question is not discussed and has never been addressed by the Federal Supreme Court.
Persons affected by wider preclusive effects	Since the <i>Präklusionswirkung</i> is a general effect deriving from the principle of res judicata (<i>materielle Rechtskraft</i>) which adheres to claim preclusive effects as well as issue preclusive effects, the persons affected by wider preclusive effects may be deemed identical to those affected by the <i>Ausschlusswirkung</i> and the <i>Präjudizialitätswirkung</i> . However, the question is not discussed and has never been addressed by the Federal Supreme Court.
AUTHENTIC INSTRUMENTS/COURT APPROVED SETTLEMENTS	Authentic instruments will make their debut in Swiss law with the new Federal Code of Civil Procedure. However, the preclusive effects of such instruments is not discussed specifically within the code. The authors of the code, however, unanimously deny such effect and presume that authentic instruments are enforceable but may not be recognised. Court approved settlements must be capable of having preclusive effects in their country of origin in order to have such effect in Switzerland. However, where a settlement is incorporated into a formal judgment, presumably it may be recognised in Switzerland.
IV. PRECLUSIVE EFFECTS OF THIRD STATE JUDGMENTS	
	The preclusive effect of third state judgments is governed by the Federal Private International Law Act. Third state judgments will not be recognised in Switzerland if they are still subject to an ordinary appeal or have not yet acquired finality. The Act also provides for a general review of jurisdiction from a Swiss perspective. The grounds for non-recognition as set forth in the Act largely mirror those in the Lugano Convention, with only marginal differences. Any Swiss authority can consider the issue of recognition incidentally if a foreign judgment is relied upon with regard to preliminary issues in pending proceedings. An application for recognition must be accompanied by a certified copy of the judgment confirming its finality or that no appeal is possible; default judgments must also be accompanied by a certificate proving proper notice to the defendant. As discussed previously, with regard to the law applicable to recognition, the Federal Supreme Court has stated its preference for <i>Theorie der kontrollierten Wirkungserstreckung</i> which provides that

	<p>the law of the state of origin is applicable unless that law is completely foreign to Swiss law, in which case Swiss law may be considered for modifications. The practice with regard to third country judgments also extends to third country court approved settlements if the law of their state of origin deems them equivalent to a judgment.</p>
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United States	
I. JUDGMENTS	
The concept, form, structure and terminology of judgments	<p>A judgment is a final determination of the rights and obligations of the parties. Judgments can be either final or interlocutory. Several types of judgments are available. The most common is the money judgment – i.e. judgment for a fixed sum. While the exact form of the judgment depends on the case, most judgments contain: the name of the Court hearing the case, a listing of the parties, a short summary of the case, the amount of damages and interest awarded, the judgment itself and the date of judgment. Other types of judgment include – declaratory judgments, injunctions and orders on pre trial motions. Injunctions must clearly state the facts of the case and the obligations imposed upon the defendant.</p> <p>The extent to which a federal court must provide reasons for a decision is defined in the Federal Rules of Civil Procedure (FCRP). In a trial where there is no jury (bench trial) a judge must make specific findings of fact and separately state his conclusions of law. Similarly a court should state its findings and conclusions when it grants an interlocutory injunction.</p>
The final determination and findings on issues of fact and law	<p>The FRCP requires that in a bench trial the Court must separate and clearly identify findings as to fact and as to law. In jury trials, the jury can be asked to either render a general verdict or to answer specific factual questions from which the Judge will determine the legal position. At an appellate level, a high deference is shown to factual determinations made at first instance and indeed in New York the highest appellate court may, as a general rule, review only questions of law.</p>
The binding character of a judgment	<p>For a judgment to have preclusive effects it must be valid and final. To be valid a judgment must be one capable of withstanding an attack based on lack of personal jurisdiction, subject matter jurisdiction and notice. To be final, a judgment must be formally entered (by being signed and filed by the court clerk and must be “sufficiently firm”, that is there is “nothing for the court to do but execute the judgment”. The concept of finality, however, imposes different standards depending whether claim or issue preclusion is sought. In claim preclusion finality requires that the court has decided all regular proceedings on the claim, whereas finality for issue preclusion arises once an issue has been fully and finally litigated.</p> <p>Whether a judgment needs to be “on the merits” is increasingly unclear. Orthodoxy suggests that preclusive effect depends on a judgment being “on the merits”, however a number of commentators suggest that this requirement is of declining importance.</p> <p>Where a previously binding judgment is reversed, subsequent judgments based upon it will not automatically be null. However if the subsequent judgment is on appeal, a party may use the reversal of the first judgment as grounds for relief.</p> <p>In the event that an inconsistent judgment is rendered due to a failure to invoke the preclusive effect of an earlier judgment, preclusive effect is given to the judgment rendered last in time.</p>
Judgments that are capable of having preclusive effects	<p>Interlocutory judgments are not entitled to preclusive effects since such decisions are neither final nor “on the merits”. Final judgments generally obtain preclusive effect, subject to specific exceptions. Default judgments are not accorded issue preclusive effect, since the issues are not deemed to have been actually litigated, though New York has adopted a minority practice of according issue preclusive effects to such judgments. Consent or confessed judgments are similarly denied preclusive as the issues are not deemed to have been actually litigated.</p> <p>Summary judgments are however deemed to be on the merits and are therefore entitled to preclusive effect. Declaratory judgments are similarly deemed to have claim and issue preclusive effect.</p> <p>A distinction is drawn between personal and non-personal judgments. Non personal judgments consist of three distinct judgment types: pure <i>in rem</i> judgments, judgments on jurisdiction over status and quasi – <i>in rem</i> judgments. Pure <i>in rem</i> judgments have preclusive effects in that they both determine <i>erga omnes</i> the interests in a thing and have issue preclusive effects. However such judgments do not determine the rights and duties of the parties in relation to a specific</p>

	<p>transaction and therefore do not preclude further litigation through merger and bar. Judgments with regard to status have claim preclusive effects as to the existence of a status and the rights consequent thereon as well as issue preclusive effects. These judgments will have preclusive effect <i>erga omnes</i> with some limited exceptions such as where a person who has an interest in the status was unable to contest its existence as a party at trial. Quasi- <i>in rem</i> judgments comprise two types, first where the claimant seeks to establish a pre-existing interest in a thing, in which case the judgment has the same preclusive effect as <i>in rem</i> judgments, and second where the claimant seeks to attach the defendant's assets. In this latter case the judgment decides only the Claimant's interest in relation to the property attached and does not preclude further in personam actions by the Claimant.</p> <p>If a court mistakenly concludes it has jurisdiction, then that determination will nonetheless obtain preclusive effect save only where it was a manifest abuse of authority, or would substantially infringe the authority of another court or was rendered by a court incapable of adequately rendering a decision on the matter.</p> <p>Voluntary discontinuances will not bar a new action unless the order for discontinuance provides for such. Similarly motions for dismissal will not bar later actions unless the Court indicates that such is their effect and are a form of motion for dismissal capable of having preclusive effect.</p>
<p>II. PRECLUSIVE EFFECTS</p>	
<p>CLAIM PRECLUSION</p>	
<p>Existence and nature of claim preclusive effects</p>	<p>Claim preclusion is recognized in the US and is subdivided into two categories: merger and bar.</p> <p>Merger applies where the claimant has been successful in proceedings and operates to prevent a second action based on the same claim being brought. Merger extinguishes the entire claim, including all matters which could have been but weren't raised in the original proceedings. Merger is not an absolute rule and an exception is recognized in the umbrella term "claim splitting". Claim splitting can occur either by the parties agreement, or by the court expressly acknowledging the Claimant's right to maintain a second cause of action.</p> <p>Bar applies when the Defendant has been successful and bars the Claimant from another action on the same claim. As well as the claim splitting exceptions, which also apply to bar, several other specific exceptions to bar exist such as where a judgment rests on the prematurity of the action, the same claim is not barred once it has matured.</p>
<p>Policies underlying claim preclusive effects</p>	<p>The underlying policy considerations are finality, efficiency and consistency. Further claim preclusive effect avoids wasteful litigation, ensures fairness to the Defendant who is saved from repetitive litigation and prevents abuse of the legal system. Finally claim preclusive effect is seen as a means of preserving the separation of powers.</p>
<p>Conditions for claim preclusive effects</p>	<p>To engage claim preclusive effects a judgment must be valid, final and the same claim must be involved in the second action. This latter requirement therefore means that while parties may assert only part of their claim in one set of proceedings and then subsequently assert further rights in later proceedings, doing so risks claim preclusion. To determine whether a second claim is the "same claim", the Restatement takes a "transactional approach" – i.e. does the second claim arise from the same transaction or series of connected transactions as the first claim? To determine this Courts look to whether the facts in the second claim are proximate in time, space, origin and motivation to the first claim. New York has also adopted a transactional approach to defining "same claim".</p> <p>Claim preclusion extends to the parties to the original action and those with some relationship to those parties which justifies treating them similarly (e.g. parties joined in the original action). However the US Supreme Court has made clear that persons not a party to a prior action will not be covered by claim preclusion. Claims involving several claimants against a single defendant are considered as separate claims for preclusion purposes.</p>
<p>Invoking claim preclusive effects</p>	<p>The FCRP provides that claim preclusive effects must be raised as an affirmative defence that must be raised by the party seeking to rely upon it. Exceptionally and to promote efficiency the Court can raise claim preclusive effect of its own volition, however such is rare. New York has adopted the same rules. Preclusion can be raised early in proceedings; where the Defendant seeks to rely upon preclusion it can be submitted as a pre-trial issue, while a Claimant can raise it in his reply to the defendant's answer to prevent the defendant relying on a defence that is</p>

	<p>precluded by an earlier decision.</p> <p>The party relying on claim preclusion bears the burden of proving that the judgment has preclusive effect. Generally this will be done by submitting a formal record of the judgment, however in some cases of issue preclusion other forms of evidence may be necessary.</p> <p>The decision of whether to afford a prior judgment preclusive effect will usually be taken by the judge, though the question may go to the jury depending on the Court's definition of matters of fact/law</p>
<p>Exceptions to claim preclusive effects</p>	<p>A number of exceptions exist. First claim preclusion is not available where a judgment is not based on "the merits". Second where a jurisdictional or procedural limit applied in the original proceedings which prevented the Claimant from asserting all of his claim, the Claimant is not precluded from asserting the remainder of the claim in subsequent proceedings. Third preclusion will not apply where "claim splitting" is engaged, either by party agreement or by the Court giving the parties permission to split a claim (i.e. by indicating that the judgment is without prejudice). Fourth claim preclusion may be inapplicable for general policy reasons e.g. it would be unfair or contrary to constitutional provisions to preclude a second suit. Further claim preclusion will not apply either where the defendant has induced the claimant to file suit on less than the whole claim by misrepresentation or, finally, via a catch all exception, in "extraordinary situations".</p> <p>A defendant is ordinarily not required to bring a counterclaim against the Claimant unless a compulsory counterclaim rule applies. As such a defendant's failure to assert a counterclaim will not be affected by claim preclusion.</p>
<p>Claimant and Defendant</p>	<p>Via either the doctrines of merger (successful Claimant) or bar (successful Defendant) parties can be precluded from re-litigating the same claim.</p>
<p>Other participants</p>	<p>A person who is a named party to the action will also be bound by the preclusive effects of a judgment. There are several ways that individuals can become a named party to an action: joinder, which can be considered either necessary or permissive depending on the circumstances, interpleader, which is used where a single defendant faces multiple claims from conflicting claimants, impleader, which is used by Defendants to claim indemnification or contribution from third parties, and intervening parties, who join the action by their own initiative. Non-parties may also become parties as a result of substitution, i.e. the passing of a legal interest from a party to a non-party.</p>
<p>Represented persons</p>	<p>Representation by class action entails a range of preclusive effects. Represented class members will be bound by a judgment, though unnamed class members will only be bound once class certification has been granted, while those class members who have opted out will not be bound by the judgment. However class members will only be bound by a judgment if the representation was adequate and there was true identity of interests between the representor and the class. As such it is open to individual class members in subsequent proceedings to avoid the preclusive effect of an earlier judgment by raising defences on either of these two bases. Despite academic criticism of this rule vis a vis absent class members, the principle has been affirmed in <i>State v. Homeside Lending Inc.</i> and <i>Stephenson v. Dow Chemical Co.</i> Once a class member is deemed to be bound by a judgment, the normal rules described above apply save that where injunctive relief is sought in a class action, absent class members are not individually precluded from suing on their claims for monetary relief (i.e. a relaxation of the transactional definition to "same claim").</p>
<p>Persons connected to the Claimant, Defendant, and other participants</p>	<p>Generally only parties to an action are bound by a judgment's preclusive effects. However three exceptions exist to this general rule.</p> <p>First preclusion based on an actual representative relationship (e.g. class actions) binds both the representor and the representee. A common example of this is representation by a fiduciary. However a person who appears in different capacities will not be bound by an earlier judgment's preclusive effects; so if X acted in a representative capacity in earlier litigation he will not be bound when acting in an individual capacity in subsequent litigation. Further a represented person will <u>not</u> be bound where notice was required and was not given to the represented person or where the action did not concern the interest of the represented party or the representation was inadequate or finally where the representative was divested of his authority before judgment was rendered.</p> <p>Second preclusion based on a substantive relationship of privity applies in numerous situations to bind a party closely connected to an original party to a proceedings to the judgment from that proceedings. Thus successors in interests in property, successors to injured parties who</p>

	<p>subsequently die, persons vicariously liable for others, assignors and assignees, partners and unincorporated associations are but some of the situations in which a substantive relationship will bind parties connected to those in earlier proceedings.</p> <p>Finally a non-party may become bound as a result of conduct which induced reliance upon an earlier judgment. Thus a person who has a claim arising out of the same facts as the basis of the earlier action will be precluded from filing a separate action if he was aware of the prior action and enforcing his second claim would result in inconsistent judgments and he acted in a manner which lead the defendant to believe he would make no later claim and would abide by the result of the first action, failing to avail himself of joinder or intervention to resolve his claim.</p>
Strangers	Strangers cannot be bound by prior judgments to which they were not a party or privy, though they may be able to benefit from earlier judgments via issue preclusion.
ISSUE PRECLUSION	
Existence and nature of issue preclusive effects	Judgments in the US are capable of having preclusive effects and issue preclusion is formally divided into two categories: direct and collateral estoppel. While this formal distinction exists, in practice it is of little relevance as direct estoppel is rarely invoked. As such this section focuses solely on collateral estoppel, which operates to prevent re-litigation of issues (either of fact or law) decided in earlier proceedings.
Policies underlying issue preclusive effects	The policy consideration underpinning issue preclusion are broadly the same as those supporting claim preclusion e.g. preservation of consistency, finality etc... Issue preclusion is also thought to encourage parties to take their law suit seriously and advance their best arguments on a point, in the knowledge that once the issue is decided they will be precluded from re-litigating it.
Conditions for issue preclusive effects	<p>Four conditions must be satisfied to invoke issue preclusion: identity of the parties, identity of issues, the issues must have been actually litigated and determined and the issues must be essential to the judgment.</p> <p>Considering each in turn, identity of the parties used to be narrowly defined, covering only those persons who were parties to the original proceedings. Subsequently both the Restatement and New York case law has adopted a broader approach, save where issue preclusion is used offensively, and now permits issue preclusion to be invoked either against a person who was a party in the first proceedings or a person in "strict privity" with such a person. As well as encompassing descendent/representative, trustee/beneficiary type relationships discussed in the context of claim preclusion above, "strict privity" covers cases where a person has been in control of or substantially participated in the first action, even if not a formal party, and where there has been a merger of interests between parties in the two actions. Further the party in the second action seeking to use a first action party's victory on an issue against the former party/privy need not be a party to the first action. This can mean that the non-party is capable of using issue preclusion against a first action party who lost, while at the same time being immune from any use of issue estoppel against him; though procedural rules, such as joinder, have lessened the effect of this consequence.</p> <p>Identity of issues simply requires that the issue for which preclusion is being sought has been passed upon the first action. To determine this the Court uses a variety of factors to determine this issue, though the result is generally highly dependent on whether an issue is broadly or narrowly defined. The guiding factors in deciding which approach to take are the need to act fairly and efficiently. The Restatement suggests Courts consider the degree of evidential overlap, the similarity of legal argument, whether the same rule of law is being applied and the closeness of the claims to decide whether the same issues are involved. Where different legal standards are applied in the second action to the first, e.g. different standards of care are imposed in each case, then the Court will refuse issue preclusion. In some cases a Court may by inference determine that the issues are the same, for example where the first action's determination naturally encompasses the issue litigated in the second action.</p> <p>Issue preclusion only applies to those issues actually litigated and determined (unlike claim preclusion which encompasses claims which could have been brought). Thus to qualify, an issue must have been out forth in a party's pleadings and the decision must have been made with regard to it (though issues validly raised later in the proceedings will also receive preclusive effect). However this concept is broad enough to cover those issues which by definition must have been determined by the earlier litigation even if not expressly litigated e.g. a judgement</p>

	<p>according a separation between husband and wife necessarily implies they were validly married.</p> <p>Finally an issue must be essential to the judgment for it to obtain preclusive effect, that is (at least in New York) that the fact in issue was "material and relevant to the resolution of the legal issue involved in the first action." Some case law suggests that non-material findings may still obtain preclusive effect where the finding was made after "careful consideration" by the Court, but this practice is by no means widespread. In the event that a judgment is supported by several issues and it is impossible to determine which is essential to the judgment, the Restatement provides that none of the issues be given preclusive effect. The same applies to general verdicts returned by juries and explains the increasing use of more specific special verdicts.</p>
<p>Invoking issue preclusive effects</p>	<p>Issue preclusion can be raised by either party and be used either offensively or defensively. Disagreement exists over whether issue preclusion must be raised in a party's pleadings. Federal Courts and the US Supreme Court have all ruled that it must. However this view is subject to flaws, notably that the first judgment creating issue preclusion might only be given after proceedings in the second action have begun.</p> <p>To prove that issue preclusion should apply, the applicant may bring evidence of the prior pleadings and other "materials of record" from the first action. New York permits the use of the prior judgment and transcript from the first proceedings and the charge to the jury. Finally in deciding whether to allow the invocation of issue preclusion New York Courts consider a list of guideline factors set out by the Court of Appeals in <i>BR DeWitt Inc v. Hall</i> and <i>Schwartz v. Public Administrator</i> .</p>
<p>Exceptions to issue preclusive effects</p>	<p>The Restatement identifies several exceptions to the general rule on issue preclusion. First no issue preclusion will apply against a person who was unable to obtain appellate review of the earlier judgment upon which the issue preclusion is based. Second, if a party in the second action seeks to preclude the re-litigation of an issue of law, then issue preclusion will only apply if the second action is substantially related to the claim in the first action. Third, issue preclusion will be unavailable where the legal context has changed such that a new determination is required in order to "avoid inequitable administration of the laws".</p> <p>Fourth, issue preclusion may be refused when the first action was litigated in a Court of a limited jurisdiction or of special competence. This commonly occurs where an attempt is made to transpose an issue decided in a small claims court to subsequent litigation. Fifth where the burden of persuasion was placed on a different party in the first action, than in the second, issue preclusion may not operate. Thus where the burden to prove a fact was placed on A in the first action, and A failed to do so, B who is a party to both the first and second action, should not be precluded from trying to prove the same fact in the second action. Sixth, exceptionally Courts may create exception to issue preclusion on an ad hoc basis if there is a clear need to determine an issue because of the impact that determination will have on the public interest or the interest of specific third parties.</p> <p>Seventh, where it was unforeseeable in the first action that the issue would arise in the second action, issue preclusion will not apply if there is a clear and convincing need to re-litigate the issue; the rationale being that since the issue may not have been fully litigated in the first action, as its real importance was unforeseeable, it would be unfair to bind the parties to it in the second action. Finally, where issue preclusion is being sought against a party who did not have a full and fair opportunity to litigate the issue in the first action, then issue preclusion will be unavailable.</p>
<p>Claimant and Defendant</p>	<p>Either the Claimant or the Defendant may invoke issue preclusion against the other party – as long as the criteria for issue preclusion are satisfied. The use of issue preclusion by the Claimant in the second action is termed "offensive" use of issue estoppel, while the use by the Defendant is termed "defensive".</p>
<p>Other participants</p>	<p>Parties to an action are subject to res judicata effects of a judgment. Thus whenever a person becomes a party to litigation, by anyone of the means discussed above as regards claim preclusion, they will be bound by the issue preclusive effects of the decision. One exception to this general position is that no issue preclusive effects will result between parties whose relationship in the first action was non-adversarial e.g. co-defendants.</p>
<p>Represented persons</p>	<p>The same rules as discussed in relation to claim preclusion apply equally in this context. However it is worth noting that a person who has opted out of a class action, cannot subsequently avail</p>

	himself of the normal rule that a non-party may invoke issue preclusion against a former party.
Persons connected to the Claimant, Defendant, and other participants	Persons that are deemed privy to litigation are governed by the effects of issue preclusion. Thus a person represented by a party to litigation, is subject to issue preclusion resulting from that litigation. Similarly successors to property will be bound by decisions relating to that property. Where a family member has a claim derivative on the injuries of another family member, then determination of issues in the litigation of the injured family member will have preclusive effect against the family member with a derivative claim. However where a family member has a claim independent of the injured persons claim, no preclusive effects follow from determination of issues in that claim. The same rule applies as regards wrongful death actions; beneficiaries with an independent cause of action will not be bound by determinations made as regards the deceased. Issue preclusion does not apply between assignees and assignors or indemnitors and indemnittees except in limited and specified circumstances. Similarly issue preclusion will not apply to officers, directors or stockholders from litigation undertaken by a Corporation of which they are a part. As regards partnerships, a partner who files an action will bind all other partners who were either a party to an action or who controlled the litigation.
Strangers	Persons who were not party to litigation cannot be bound by an adjudication stemming from it, though they may be able to invoke a prior judgment in order to benefit from its preclusive effect. This position is termed the non-mutuality of estoppel. Some Court have placed limits on the application of offensive non-mutuality estoppel however; for example in mass tort cases, some Court only allow defensive use of issue preclusion. A general limit on the principle of non-mutual issue estoppel is that it is not applicable as against the state or federal government.
WIDER PRECLUSIVE EFFECTS	
Existence and nature of wider preclusive effects	The US does not recognize a separate doctrine attributing wider preclusive effects to judgments. The effect of claim preclusion, given the transactional approach to the definition of "claim", can be very broad encompassing different injuries, evidence, remedies and even a series of related events as well as those issues which could of as well as those which in fact did arise. However beyond this, no wider preclusive effects exist.
Policies underlying wider preclusive effects	N/A
Conditions for wider preclusive effects	N/A
Invoking wider preclusive effects	N/A
Exceptions to wider preclusive effects	N/A
Claimant and Defendant	N/A
Other participants	N/A
Represented persons	N/A
Persons connected to the Claimant, Defendant, and other participants	N/A

Strangers	N/A
III. PRECLUSIVE EFFECTS OF SISTER-STATE JUDGMENTS	
The existence and nature of preclusive effects of sister-state judgments	The Full Faith and Credit Clause of the US constitution provides for the recognition by all courts of judgments rendered in other US states. The effect of the Full Faith and Credit Clause is to require the recognizing Court to afford the judgment the same preclusive effects as it would have in the rendering state. Congress has enacted two further statutes that provides for full faith and credit in two specific situations: full faith and credit must be given to custody and visitation determinations, and out-of-state child support orders.
Policies underlying the preclusive effects of sister-state judgments	The main aim of the full faith and credit provisions are to help America operate as a unified nation, though obviously the provision helps to promote legal certainty, finality and judicial comity.
Conditions for preclusive effects of sister-state judgments	In order for full faith and credit to apply, two basic conditions must be met: first the judgment must be rendered by an American court (and hence administrative decisions or arbitration awards are not covered) and second the judgment must be valid and final. A judgment will be valid where the Court rendering it had valid jurisdiction over the claim and where the Defendant did not appear to contest the first court's jurisdiction, the second court may examine the first court's jurisdiction, giving due weight to the first court's determination as to its jurisdiction. New York's Civil Practice Law and Rules provide for the recognition of sister-state judgments, requiring that they first be authenticated in New York and then within 90 days filed with a county clerk in New York. The Rules make clear that a sister-state judgment will be treated as if it were a judgment rendered in New York.
Preclusive effects of sister-state judgments	The US Supreme Court has interpreted the Full Faith and Credit Clause to require that the recognizing court give the judgment from the originating court the same effect as it would have in the originating state. A controversial question however is whether a recognizing court can afford a judgment more effect than it would have in its rendering State, to which there is as yet no resolution.
<i>Claim preclusive effects</i>	A judgment recognized in another state must be given the same claim preclusive effects as the judgment would have in the originating state.
<i>Issue preclusive effects</i>	A judgment recognized in another state must be given the same issue preclusive effects as the judgment would have in the originating state.
<i>Wider preclusive effects</i>	The same discussion in Part II.C is relevant here.
Invoking preclusive effects of sister-state judgments	The discussions above in Part II.A and B relating to the invocation of the claim and issue preclusive effects of judgments is applicable in the context of full faith and credit.
Exceptions to recognition/preclusive effects of sister-state judgments	A party can attempt to prevent recognition of a sister state judgment by collaterally attacking the judgment for lack of validity or finality. If there is an attack made on these grounds, the recognizing court can make a determination of the originating court's jurisdiction so long as those issues had not been previously decided under conditions that would enable them to be recognized in the recognizing state. Generally any collateral attack will only be available where the defendant did not take part in the litigation in the originating state. Only in very narrow circumstances can a court otherwise refuse to recognize a judgment, for example where the original court sought to determine an issue relating to land located in the recognizing court's territorial jurisdiction or as regards the recognition of same-sex marriages.
IV. PRECLUSIVE EFFECTS OF FOREIGN COUNTRY (THIRD STATE) JUDGMENTS	

<p>Introduction</p>	<p>Courts have a discretion as to whether or not to recognise a foreign country judgment. The US is not a party to any international agreement governing recognition nor are there any federal statutes on the matter, and thus the rules on recognition have developed largely from Court practice and are now codified in both the Restatement (Third) of Foreign Relations Law and the Restatement (Second) of Conflict of Laws. Thus while the Full Faith and Credit provision of the US Constitution does not apply to foreign judgments, it does apply to US judgments which recognise a foreign judgment.</p> <p>In addition a large number of states (30 including New York) have adopted the Uniform Foreign Money Judgments Recognition Act which imposes a uniform regime of recognition for foreign money judgments. There are currently two versions of this act, the 1962 act and the 2005 act, the latter of which has only been recognized in three states, and thus the focus of the response will be on the 1962 act.</p>
<p>Procedure for recognition</p>	<p>While the 2005 Act requires that the issue of recognition must be expressly raised in court proceedings, either by seeking an action for recognition or by counterclaim, the 1962 Act advocated the use of a separate procedure contained in the Uniform Enforcement of Foreign Judgments Act.</p>
<p>Conditions for recognition</p>	<p>Several conditions exist for recognition. First the foreign judgment must be valid and final. Validity, in this context, encompasses considerations of whether the judgment was obtained by due process. The finality of a judgment is determined by reference to the law of the rendering jurisdiction. Second a judgement must be conclusive and enforceable in order for it to be capable of being recognised. At the time Hilton was determined, it was thought that reciprocity was a requirement for foreign judgments. Now that position is doubtful and is indeed followed in only very limited situations e.g. a foreign judgment is in favour of a national of that county against a foreign Defendant.</p>
<p>Grounds for non-recognition</p>	<p>The 1962 Act provides three mandatory and six discretionary grounds of non recognition. A Court will not recognize a judgment where the judicial system in the rendering country is not impartial/ contrary to US notions of due process or where the rendering court did not have personal/ subject matter jurisdiction over the defendant/proceedings. A Court may not recognise a foreign country judgment if the Defendant did not receive due notice of the proceedings or the judgment was obtained by fraud or the judgment conflicts with another final judgment or the cause of action underlying the judgment is repugnant to US public policy or the foreign court obtained jurisdiction contrary to a valid jurisdiction clause operative between the litigants or finally where jurisdiction is based only on personal service, the foreign court was a seriously inconvenient forum for the action.</p>
<p>Recognition in specific contexts</p>	<p>The 1962/2005 Act exclude tax, penal and judgments relating to domestic relationships from their scope; these being instead dealt with by the R3d Foreign Relations Law.</p> <p>Section 483 provides that Courts may recognise tax or penal judgments, so long as they comply with the conditions for recognition of foreign judgments.</p> <p>Section 484 governs foreign divorce decrees and imposes one mandatory and two discretionary grounds for recognition. Foreign child custody orders are also given special treatment at section 485, which mandates recognition of such orders subject to specific conditions imposed in the section.</p>
<p>Applicable law and scope of the effect of recognised judgments</p>	<p>A recognised foreign country judgment is given the same effect as it has in the foreign court, neither more nor less. Some debate exists over whether US Courts should apply non-mutual issue preclusion where a foreign Court would not, with some decisions indicating that no rule precludes a US Court from giving foreign judgments this wider effect. American courts may not apply foreign preclusion law with respect to jurisdictional issues.</p>