COLLATERAL ATTACK RULE V. RES JUDICATA
AND COLLATERAL ESTOPPEL

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Abbott v. Texas Dept. of Mental Health and Mental Retardation, 212 S.W.3d 648 (Tex.App.-Austin, 2006)  
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I. RES JUDICATA AND COLLATERAL ESTOPPEL: BACKGROUND AND LEGAL ELEMENTS

RES JUDICATA

Both res judicata and collateral estoppel are common law claim preclusion principles derived from the overriding concept of judicial economy, consistency, and finality. The doctrines can apply to both the factual and legal questions that must be resolved in a legal action. These concepts are often argued together, albeit improperly, as if they were the same thing or alternative legal arguments. Because they are affirmative defenses, they must be pled or they will be waived.

Res judicata is claim preclusion. It prevents the re-litigation of a claim in a second cause of action that was (or with the use of diligence, should have been) litigated in a prior action. According to the Restatement of Judgments, a party who once has had a chance to litigate a claim before an appropriate tribunal usually ought not to have another chance to do so.

THE ELEMENTS OF RES JUDICATA

A claim of res judicata under Texas law consists of three elements:

1. A final judgment on the merits by a court of competent jurisdiction;
2. Identity of parties or those in privity with them; and
3. A second suit based on claims actually litigated in the first suit or claims which should have been litigated in the first suit.

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1 Astoria Fed. Sav. & Loan Ass’n v. Solimino, 501 U.S. 104, 111 S.Ct. 2166, 115 L.Ed.2d 96, 59 USLW 4616, 55 Fair Empl. Prac. Cas. (BNA) 1503, 56 Empl. Prac. Dec. P. 40, 809 (U.S.N.Y. Jun. 10, 1991) (No. 89-1895) (”Such repose is justified on the sound and obvious principle of judicial policy that a losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on an issue identical in substance to the one he subsequently seeks to raise. To hold otherwise would, as a general matter, impose unjustifiably upon those who have already shouldered their burdens, and drain the resources of an adjudicatory system with disputes resisting resolution.”

2 Although, as a matter of course, res judicata and collateral estoppel are invoked more often to prevent the re-litigation of fact issues, rather than the review of legal conclusions. Courts have been quick to retain the ability to review legal determinations. See Guajardo v. State, 109 S.W.3d 456, 460 n.10 (Tex. Crim. App. 2003) (discussing collateral estoppel and stating that “reviewing courts give great deference to factual findings, but they review legal conclusions and applications de novo.”


4 Tex. R. Civ. P. 94

5 Barr v. Resolution Trust Corp., ex rel. Sunbelt Fed. Sav., 837 S.W.2d at 631.

In 1992, the Texas Supreme Court discussed the different legal standards for determining whether res judicata should apply because a party had “had a chance to litigate a claim.”

The court adopted the transactional approach to res judicata: It provides that a final judgment on an action extinguishes the right to bring suit on the transaction, or series of connected transactions, out of which the action arose. “A ‘transaction’ under the Restatement is not equivalent to a sequence of events, however; the determination is to be made pragmatically, ‘giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a trial unit conforms to the parties’ expectations or business understanding or usage.’”

**COLLATERAL ESTOPPEL**

Collateral estoppel is issue preclusion. It prevents the re-litigation of an identical issue, even in connection with a different claim or cause of action. Unlike res judicata, which can apply to any claim that the parties had an opportunity to litigate, collateral estoppel applies only when the issue was actually litigated and essential to the judgment in the previous action. Under the Restatement, a party who has actually litigated an issue should not have another chance to do so.

**THE ELEMENTS OF COLLATERAL ESTOPPEL**

Courts have stated the elements of collateral estoppel differently in different situations. Generally, collateral estoppel bars a claim only if:

“(1) the facts sought to be litigated in the second action were fully and fairly litigated in the first action;

(2) those facts were essential to the judgment in the first action; and

(3) the parties were cast as adversaries in the first action.”

However, collateral estoppel will bind a party and those in privity with him even if the parties were not actually named as adverse parties in the first action. So, “being cast as adversaries” does not require mutuality to invoke collateral estoppel, it only requires that the party against whom the plea of collateral estoppel is being asserted be a party or in privity with a party in the prior litigation. Thus, collateral estoppel is often invoked by a third party in a subsequent action to bind a losing party on an issue of fact that was resolved in a previous action.

When applying collateral estoppel in a criminal context, the Court of Criminal Appeals stated the elements thusly:

(1) a “full hearing” at which the parties had an opportunity to thoroughly and fairly litigate the relevant fact issue;

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7 Barr v. Resolution Trust Corp., ex rel. Sunbelt Fed. Sav., 837 S.W.2d at 629 n.3.
8 Id. at 630-31 (citing to Restatement of Judgments § 24(1)).
9 Id.
10 John G. & Marie Stella Kenedy Mem'l Found. v. Dewhurst, 90 S.W.3d 268, 288 (Tex. 2002); Sysco Food Servs., Inc. v. Trapnell, 890 S.W.2d 796, 801 (Tex. 1994).
(2) the fact issue must be the same in both proceedings; and
(3) the fact finder must have acted in a judicial capacity.\(^\text{13}\)

**Offensive and defensive use of the principles**

Although both res judicata and collateral estoppel can be used to bind either the plaintiff or defendant, courts have categorized their usage as either “offensive” or “defensive.” The use of the offensive/defensive terms is most commonly used in connection with collateral estoppel.

Offensive collateral estoppel is used by a plaintiff “seeking to estop a defendant from relitigating an issue which the defendant previously litigated and lost in a suit involving another party.”\(^\text{14}\) When deciding whether offensive collateral estoppel should apply, the court should consider whether there are conflicting adjudications and whether the defendant in the later case had a motivation to defend itself in the first action.\(^\text{15}\) These factors are called the *Parklane* factors\(^\text{16}\); they are not used when a party seeks to use defensive collateral estoppel.

The following cases are examples of the offensive use of collateral estoppel:

*Heard v. Moore*, 101 S.W.3d 726, 729 (Tex. App.—Texarkana 2003, pet. denied) (plaintiff's suit against defendants not barred by res judicata even though defendants as third-party plaintiffs obtained default judgment against third-party defendant in same suit for contribution and indemnity because plaintiff “was procedurally neutral” as to the claim against the third-party defendant and had no obligation “to inject herself” into that dispute).

*In re J.G.W.*, 54 S.W.3d 826, 833 (Tex. App.—Texarkana 2001, no pet.) (father's claims against ex-wife and her new husband for intentional infliction of emotional distress, interference with child custody, and civil conspiracy which could have been litigated in prior suit to modify custody and support provisions of divorce decree not barred by res judicata because these claims “would only be ancillary” to the modification proceeding).

*Cain v. Cain*, 746 S.W.2d 861, 863 (Tex. App.—El Paso 1988, writ denied) (former wife's turnover action for husband's retirement payments not barred by res judicata even though she did not seek turnover relief in prior suit to enforce divorce decree).


\(^{15}\) Only the offensive use of collateral estoppel brings these factors into consideration. They have been referred to by the courts as the *Parklane* factors. See *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 99 S.Ct. 645, 58 L.Ed.2d 552 (1979).

\(^{16}\) The first factor is whether application of the doctrine will tend to increase litigation by allowing a plaintiff to “wait and see” before filing suit instead of joining in the prior litigation. Second, the offensive use of collateral estoppel may be unfair under the circumstances of a particular case. Under this factor, the court considers the defendant's incentive in the first action to vigorously defend the suit, the foreseeability of future suits, and the availability of procedural safeguards in the second suit that were not available in the first suit.
Defensive collateral estoppel is “where estoppel is claimed because a plaintiff previously litigated and lost an issue against another defendant.”17 “Defensive use of collateral estoppel does not trigger application of the Parklane factors.”18

II. THE APPLICATION OF THESE PRECLUSIVE DOCTRINES IN AN ADMINISTRATIVE CONTEXT

It was not until the 1966 case of United States v. Utah Construction & Mining Co. that the concepts were first applied in an administrative context.19 The United States Supreme Court held, “When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose.”20 That statement is equally applicable to Texas agencies21 for the concepts of both res judicata and collateral estoppel.22 This seems straightforward enough, but as we will see, the practical application of these concepts is rarely so unobjectionable.

III. INTERESTING PROBLEMS APPLYING THESE DOCTRINES IN AN ADMINISTRATIVE CONTEXT

In an administrative context, the application of res judicata and collateral estoppel creates a whole new set of problems that go beyond the standard issues that are familiar to the civil and criminal judicial system. In the traditional judicial systems, courts have tended to review:

- Whether the previous arbiter had the proper jurisdiction to render its decision,
- Whether the claims/issues are similar or identical,
- Whether the identity of the parties is the same,
- Whether the parties to be bound by the previous decision are in privity,23
- Whether the order is truly a final decision on the merits,
- Whether such a decision is preempted, exempted or subject to collateral attack,24

17 Fletcher v. Nat'l Bank of Commerce, 825 S.W.2d at 177.
23 Mutuality is not required for the invocation of collateral estoppel; rather, it is only necessary that the party against whom the plea of collateral estoppel is being asserted be a party or in privity with a party in the prior litigation. Sysco Food Servs., Inc. v. Trapnell, 890 S.W.2d 796, 802 (Tex. 1994); Eagle Props., Ltd. v. Scharbauer, 807 S.W.2d 714, 721 (Tex. 1991).
24 Sometimes statutes or judicial decision will specifically prevent the application of these doctrines in a later proceeding. See generally TEX. TRANSP. CODE ANN. § § 724.048(a), 524.012(e) (Vernon Pamph.1998)
Whether the subsequent case is civil, criminal or administrative, the application of res judicata and collateral estoppel which may result from a final administrative order creates a whole new layer of inquiry that highlights the differences between the judicial process and the administrative process, such as:

- Differing procedural protections, including admissibility and evidentiary standards,
- Narrow and/or specialized jurisdictional arenas,25
- Fluid facts,
- Pro se parties,26
- Agency policies and the nature of shifting/changing policies,
- Statutory authority of an agency to make certain determinations,27
- Special agency qualifications to determine fact issues.28
- Whether the factual findings at issue are mediate (evidentiary) vs. ultimate facts.29

Both res judicata and collateral estoppel function best when applied to adjudication of past facts, where the second proceeding involves the same claim or transaction as the first.30

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25 An agency must have jurisdiction over the disputed issues for courts to give agency findings preclusive effect. See Puga v. Donna Fruit Co., Inc., 634 S.W.2d 677, 680 (Tex. 1982). Even if the agency is powerless to grant all the relief requested, if it has the authority to make incidental findings essential to the granting of the relief, the agency has primary jurisdiction to hear the dispute. Tex. Educ. Agency v. Cypress-Fairbanks I.S.D., 830 S.W.2d 88, 90-91 (Tex. 1992); Lake Country Estates, Inc. v. Toman, 624 S.W.2d 677, 681 (Tex. App.—Fort Worth 1981, writ ref'd n.r.e.).

26 Courts have generally looked with disfavor on the application of collateral estoppel when a party was not represented by counsel, and they have tended to approve its application when all parties received the benefit of legal counsel at an administrative hearing. See generally Ramirez v. Tex. State Bd. of Med. Examiners, 99 S.W.3d 860 (Tex. App.—Austin 2003, pet. denied) (where doctor was represented by counsel at a license revocation hearing, he was barred from collaterally attacking the facts of his license revocation); Muckelroy v. Richardson Indep. Sch. Dist., 884 S.W.2d 825 (Tex. App.—Dallas 1994, writ denied) (teacher represented by counsel before the education commissioner was barred from relitigating the issue that the commissioner decided); cf. Ex parte Peralta, 87 S.W.3d 642, 647 (Tex. App.—San Antonio 2002, no pet.) (declining to apply collateral estoppel where the defendant and the state were not represented by attorneys at a parole revocation hearing).

27 In some instances, statutes give certain agencies primary jurisdiction over an issue. A decision by an agency primarily qualified to determine a question is binding on another agency; another agency’s decision is not binding on an agency primarily qualified to determine a question. Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 401, 60 S.Ct. 907 (1940).

28 When agencies have primary or exclusive jurisdiction, courts give deference. In re Southwestern Bell Telephone Co., L.P., 226 S.W.3d 400 (Tex. 2007) (stating that trial courts should defer to appropriate administrative agencies when (1) the agency is staffed with experts trained in handling complex problems within the agency's purview, and (2) great benefit is derived from the agency's uniform interpretation of laws within its purview and the agency's rules and regulations when courts and juries might reach differing results under similar fact situations.); see also Ronald L. Beal, 2 Texas Administrative Practice and Procedure § 12.2, at 12-50 to 12-51 (2006) (suggesting that primary-jurisdiction principles govern whether challenge to allegedly ultra vires agency actions can proceed or must yield to agency proceeding).

29 Generally, the factual findings for which collateral estoppel is sought must have been a legal necessity for the judgment, and must have been actually litigated. For a good discussion on the distinction between mediate and ultimate facts, see Sec. Exch. Comm’n v. Monarch Funding Corp., 192 F.3d 295 (2d Cir. 1999); Yates v. U.S., 354 U.S. 298, 77 S.Ct. 1064 (1957).
So, when the original proceeding tends to closely mirror the traditional criteria for applying res judicata or collateral estoppel, courts have chosen to apply the preclusive doctrines. Conversely, when the original proceeding lacked strong evidentiary standards, or at least one of the parties was not represented by legal counsel, or the factual findings sought to be collaterally attacked were evidentiary rather than ultimate facts, the courts have generally declined to apply the principles.  

IV. ACTUAL APPLICATION OF RES JUDICATA AND COLLATERAL ESTOPPEL ACROSS DIFFERENT FORUMS

As administrative lawyers, we must be cognizant of how our administrative strategies and administrative orders may effect our client outside of the administrative arena. How will the outcome of a contested case hearing influence our client’s future legal options in a related civil or criminal case? What if, after a final agency order is in place, that agency decides that the order presents facts that prove a prima facie case of a violation for a different state agency?

The reverse is also true. For anyone that has practiced administrative law in the area of occupational licensing, it is common to have licensees seek legal counsel in an administrative action based on the fact that they already pled to a criminal charge. Often, your client will tell you that the criminal attorney never asked about whether the client had a license, and never researched what the effect of probation or deferred adjudication might have on the licensee.

Because of the application of res judicata and collateral estoppel is often based on the fact-specific criteria outlined in SECTION III, supra, the rules regarding their application can appear uneven. Practitioners are left to review the specific facts of cases in an attempt to fashion a rough template for when res judicata and collateral estoppel are appropriate.  

30 Kenneth C. Davis, Administrative Law Text (1972).
31 For a discussion of the necessity of legal counsel, see generally Ramirez v. Tex. State Bd. of Med. Examiners, 99 S.W.3d 860 (Tex. App.—Austin 2003, pet. denied) (where doctor was represented by counsel at a license revocation hearing, he was barred from collaterally attacking the facts of his license revocation); Muckelroy v. Richardson Indep. Sch. Dist., 884 S.W.2d 825 (Tex. App.—Dallas 1994, writ denied) (teacher represented by counsel before the education commissioner was barred from relitigating the issue that the commissioner decided); Ex parte Peralta, 87 S.W.3d at 647 (citing the fact that the defendant and the state were not represented by attorneys at a parole revocation hearing as a basis for not applying collateral estoppel). For a discussion of ultimate vs. mediate facts in a criminal context, see Jaime v. State, 81 S.W.3d 920 (Tex. App.—El Paso, 2002) (stating that “the doctrine must not be applied hypertechnically, but requires that the reviewing court examine the record to determine what issues have been foreclosed between the parties.” (citing Ashe v. Swenson, 397 U.S. 436, 443-44, 90 S.Ct. 1189, 1194-95, 25 L.Ed.2d 469 (1970)); Ex parte Tarver, 725 S.W.2d 195, 198 (Tex. Crim. App. 1986)); see also Smith v. State, 74 S.W.3d 868, 875 (Tex. Crim. App. 2002) (because issue of ultimate fact was not determined at a 1992 punishment hearing, doctrine of collateral estoppel was inapplicable to a 2002 rehearing on punishment).  
32 The absence of bright lines to apply these doctrines is exemplified by the discussion in Astoria Fed. Sav. & Loan Ass’n v. Solimino, 501 U.S. 104, 111 S.Ct. 2166 (1991). The U.S. Supreme Court found that the facts of that case did not support applying the preclusive doctrines. “Such values are not represented by the lenient presumption in favor of administrative estoppel, the suitability of which varies according to context; nor does a finding against estoppel in this case give rise to an implied legislative repeal. Thus, the test for the
To the extent that there are very few hard and fast rules that lawyers can depend on when it comes to the application of these doctrines, the cases below may give administrative attorneys a starting point for fashioning an argument that the principles should, or should not be, appropriate.

**General Principals:**

Any federal or state agency can bind a federal or state court by res judicata/collateral estoppel once the agency has heard the matter.

*San Remo Hotel, L.P. v. City and County of San Francisco, Cal.*, 545 U.S. 323, 125 S.Ct. 2491, 162 L.Ed.2d 315 (2005). The owners of the San Remo Hotel brought a § 1983 action against the city, challenging the constitutionality of a hotel conversion ordinance and alleging, *inter alia*, that the city’s ordinance effected facial and as-applied takings in violation of Fifth Amendment. The Supreme Court held that “28 U.S.C. § 1738 provides that ‘judicial proceedings ... shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State ....’” This statute has long been understood to encompass the doctrines of res judicata, or ‘claim preclusion’ and collateral estoppel, or ‘issue preclusion.’

*Univ. of Tenn. v. Elliott*, 478 U.S. 788, 798, 106 S.Ct. 3220, 3225-26, 92 L.Ed.2d 635 (1986) (stating that the principles of res judicata and collateral estoppel hold true when a court has resolved an issue, and should do so equally when the issue has been decided by an administrative agency acting in a judicial capacity, be it state or federal.)

**Failure of an administrative decision to be absolutely final prevents the subsequent application of res judicata and collateral estoppel.**

*Barclay v. Bexar County Sheriff’s Dept.*, No. 04-02-00780-CV, 2003 WL 21653872 (Tex. App.—San Antonio Jul. 16, 2003, no pet.). Where a county employee sought judicial review of a decision of the county’s civil service commission denying her claim for full salary during her period of incapacitation, the commission did not affirmatively and unambiguously issue a final decision on whether her injury was compensable. The Court held the commission’s decision was not a final decision for the purposes of res judicata, collateral estoppel or exhaustion of administrative remedies.

The Texas Supreme Court has defined a final agency order as one (1) that is definitive; (2) promulgated in a formal manner; (3) with which the agency expects compliance; and (4) that imposes an obligation, denies a right, or fixes some legal relationship as a consummation of the administrative process.\(^{33}\)

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presumption’s application is whether administrative preclusion would be inconsistent with Congress’ intent in enacting the particular statute. *University of Tennessee v. Elliott*, 478 U.S. 788, 796, 106 S.Ct. 3220, 3225, 92 L.Ed.2d 635.”

V. USE OF AN ADMINISTRATIVE FINDING TO PRECLUDE PROSECUTION ON A CRIMINAL CHARGE

Because collateral estoppel is one of the protections provided by the Fifth Amendment guarantee against double jeopardy, a defendant may assert the doctrine to bar the relitigation of facts in a criminal prosecution regardless of whether the prior fact-finding proceeding was criminal, civil or administrative.\(^34\)

If the administrative finding occurred as part of a parole revocation or probation revocation hearing, collateral estoppel will probably not prevent a later criminal prosecution. It is not uncommon for a criminal defendant to be accused of committing a crime while on probation or parole for an earlier offense. In such a case, the defendant will be required to undergo a revocation hearing before the Board of Pardons and Paroles to determine if they have violated the conditions of their probation or parole. Recent rulings have steered away from allowing the decision in the revocation hearing to control fact issues in a later criminal prosecution.

The analysis for this position is best explained through federal case law. Under federal law, a parole revocation hearing is not a stage of criminal prosecution.\(^35\) Therefore, double jeopardy does not apply to parole and probation revocation proceedings because such proceedings are not designed to punish a criminal for the violation of a criminal law, but to determine whether a parolee or probationer has violated the conditions of his parole and probation.\(^36\) With these principles in mind, the Fifth Circuit specifically held that collateral estoppel did not preclude the State of Texas from prosecuting a defendant for involuntary manslaughter where the evidence to support the defendant's bond revocation was found to be insufficient.\(^37\) The Fifth Circuit reasoned that bond revocation proceedings are not designed to obtain a conviction for an offense.\(^38\)

In general, several early criminal cases held that the State could be prevented from subsequently relitigating fact issues in a criminal prosecution if those same fact questions were properly and finally decided in an earlier administrative proceeding.\(^39\) Lately, Texas courts have held that collateral estoppel does not bar a subsequent criminal prosecution for an offense that was the basis of a parole revocation.\(^40\) In justifying the shift away from the

\(^{37}\) See Showery v. Samaniego, 814 F.2d 200, 203 (5th Cir.1987).
\(^{38}\) See id.
\(^{39}\) State v. Aguilar, 947 S.W.2d at 259-60; Ex parte Tarver, 725 S.W.2d at 199.
\(^{40}\) See Reynolds v. State, 4 S.W.3d 13, 17-18 (Tex. Crim. App. 1999); Ex parte Peralta, 87 S.W.3d 642, 645-46 (Tex. App.—San Antonio 2002, no pet.); Salinas v. State, 1 S.W.3d 700, 701-02 (Tex. App.—Amarillo 1999, pet. ref'd) (noting motion to revoke probation and parole are administrative proceedings); Ex parte Daniel, 781 S.W.2d 412, 414-15 (Tex. App.—Houston [1st Dist.] 1989, pet. ref'd) (stating the fact issue of whether an appellant committed the offense should be addressed in a criminal proceeding); Ex parte Bowen,
strict application of collateral estoppel to criminal adjudications, the Texas Court of Criminal Appeals has stated that “traditional collateral estoppel principles applicable to civil cases are somewhat relaxed and are not entirely applicable to criminal cases.” The term “somewhat relaxed” can be read as the court’s requiring both a strict compliance with the elements of collateral estoppel and a closer relationship between the earlier administrative fact adjudication and the later hearing in which administrative adjudication should be invoked.

Even as it has recently rejected collateral estoppel claims by criminal defendants to prevent the dismissal of criminal prosecutions, the Court of Criminal Appeals has often done so on evidentiary grounds that strictly applied the elements of privity of parties and the concept of “full hearing.” So, while consistently finding bases for not allowing its application, courts have repeatedly stated collateral estoppel may apply to criminal cases when the principles for invoking the doctrine are met. For example, the courts have been quick to question whether the earlier administrative adjudication was such that a defendant would have been bound by the decision if it would have been adverse: “Collateral estoppel doctrine makes no distinction between which party claims its benefit; for example, neither this doctrine nor any other constitutional provision arguably would prohibit the prosecution from relying on collateral estoppel principles in a successive criminal prosecution to establish an element of the offense that a jury found adversely to a defendant in a prior criminal prosecution.”

In another example, the Texas Court of Criminal Appeals has held that, to determine whether collateral estoppel bars a subsequent prosecution (or permits prosecution but bars relitigation of certain specific facts), courts should apply a two-step analysis to determine: 1) exactly what facts were “necessarily” decided; and 2) whether those “necessarily decided” facts constitute essential elements of the offense in the second trial.

746 S.W.2d 10, 12-13 (Tex. App.—Eastland 1988, pet ref'd) (stating same); Collins v. State, 742 S.W.2d 511, 512 (Tex. App.—Waco 1987, pet. ref'd).

41 Reynolds v. State, 4 S.W.3d at 18.

42 See Reynolds v. State, 4 S.W.3d at 17 (discussing its holding that the Texas Department of Public Safety and the district attorney are not the same party for collateral estoppel purposes); Ex parte Peralta, 87 S.W.3d at 647 (stating that neither the defendant nor the state were represented by attorneys at the parole revocation hearing); State v. Henry, 25 S.W.3d 260, 262 (Tex. App.—San Antonio 2000, no pet.) (holding that a dismissal of a criminal charge is not a final adjudication for the purposes of collateral estoppel).

43 See e.g. Guajardo v. State, 109 S.W.3d 456, 466 (Tex. Crim. App. 2003) (Hervey, J., concurring) (stating that the doctrine literally applies for the benefit of both parties in a lawsuit); Reynolds v. State, 4 S.W.3d at 17-18 (stating that collateral estoppel doctrine makes no distinction between which party claims its benefit; for example, neither this doctrine nor any other constitutional provision arguably would prohibit the prosecution from relying on collateral estoppel principles in a successive criminal prosecution to establish an element of the offense that a jury found adversely to a defendant in a prior criminal prosecution)

44 Guajardo v. State, 109 S.W.3d at 466 n.5 (Hervey, J., concurring).

Res judicata and collateral estoppel do not apply to allow findings from an administrative license revocation hearing to be used in a later criminal prosecution...

The doctrine of collateral estoppel emanating from the state and federal constitutional double jeopardy protections does not apply to bar the relitigation of findings made at an administrative license revocation hearing.46

The Texas Transportation Code expressly prohibits the application of collateral estoppel to (1) a finding of the DPS or an administrative law judge at a hearing on the suspension or denial of a driver’s license where the driver refuses to provide a breath or blood specimen; and (2) a determination by the DPS on a driver’s license suspension if the driver does not request a hearing on the suspension and the driver submits a breath or blood specimen.47

… but collateral estoppel may not preclude findings from an administrative license revocation case from being used in a subsequent civil action. Turnage v. JPI Multifamily, Inc., 64 S.W.3d 614 (Tex. App.—Houston [1st Dist.] 2001, no pet.). When Turnage was involved in an altercation with his apartment complex’s security guard, who happened to be an off-duty police officer, Turnage was arrested for DWI and attempting to disarm a peace officer. At the license suspension hearing resulting from the DWI charge, the ALJ found against Turnage. Later, the DWI charge was dismissed and Turnage was acquitted on the charge of attempted disarming of a peace officer. Turnage subsequently sued the apartment management company alleging various torts. The Court of Appeals held that collateral estoppel barred relitigation of whether the security officer had acted with reasonable suspicion and probable cause.

VI. USE OF AN ADMINISTRATIVE FINDING TO PRECLUDE A LATER CIVIL LAWSUIT

Administrative lawyers should be thoughtful when considering the doctrine of exhaustion of administrative remedies in the context of their client’s endgame strategy. As these cases show, sometimes the necessity of an administrative hearing can prevent a client from prevailing in a later filed civil suit. This appears to be particularly true when the administrative hearing elicits ultimate facts that are detrimental to the plaintiff’s later civil suit.

Was the previous administrative decision a final judgment on the merits? Salinas v. Meaux Surface Prot., Inc., No. 01-11-00096-CV, 2012 WL 1564678 (Tex. App.—Houston [1st Dist.] May 3, 2012). Returning from an offshore rig assignment, Salinas was injured when his supervisor, who had been drinking, drove the truck in which Salinas was riding into a wall. Salinas filed a claim under the Longshore Harbor Worker’s Compensation Act (LHWCA); Meaux answered arguing that Salinas was not injured while in the course and scope of his employment. The U.S. Department of Labor issued a finding that the LHWCA did not apply to Salinas’ claim. Salinas then filed a civil lawsuit

47 See TEX. TRANSP. CODE ANN. § § 724.048(a), 524.012(e) (Vernon Pamph.1998)
against Meaux alleging negligence; Meaux responded with a motion for summary judgment, claiming that workers’ compensation was Salinas’ exclusive remedy. Based on the U.S. Department of Labor’s finding, Salinas invoked res judicata and equitable estoppel, asserting that Meaux was barred from asserting that workers’ comp was the exclusive remedy when Meaux had previously taken the contrary position that Salinas had not been in the course and scope of his employment at the time of the accident. On appeal, the court found that the U.S. Department of Labor’s finding was not a prior final judgment on the merits, because Salinas had not requested a referral to the Administrative Law Judge to challenge the Department’s finding that the LHWCA did not apply. The court affirmed summary judgment for Meaux.

What agency decisions constitute a prior final judgment on the merits?

Texas Workforce Commission determinations are usually considered final judgments...

_Igal v. Brightstar Info. Tech. Group, Inc.,_ 250 S.W.3d 78 (Tex. 2008). Brightstar terminated employee Igal; Igal filed a wage claim 18 months later, claiming that the termination was without cause, entitling him to post-termination compensation. The Workforce Commission concluded that it lacked jurisdiction because Igal filed his claim too late; Igal did not appeal that decision. Instead, Igal sued Brightstar in district court for breach of contract and declaratory judgment. On appeal, the Supreme Court recognized that res judicata does not apply when the initial tribunal lacks subject matter jurisdiction over the claim. However, the Supreme Court held that the limitations period, while not jurisdictional, was a bar to Igal’s claim. When the Workforce Commission sits in a judicial capacity, res judicata will generally apply to final Commission orders.

... but there are exceptions in a Worker’s Compensation context...

_Barnes v. United Parcel Serv., Inc.,_ ___ S.W.3d ___, No. 01-09-00648-CV, 2012 WL 112252 (Tex. App.—Houston [1st Dist] Jan. 12, 2012). Cooper had a history of heart conditions, and died from heart complications while on the job for UPS. Cooper’s fiancée filed a worker’s compensation claim; the injury was determined to be not compensable for the purposes of worker’s comp. Cooper then filed suit against UPS for gross negligence. UPS asserted res judicata and collateral estoppel. Normally, res judicata applies to final decisions by the Department of Workers’ Compensation. On appeal, the court held the fiancée’s gross negligence claim was not precluded because it was a claim for exemplary damages that could not have been raised at the Department of Worker’s Compensation. In addition, the court found that the causation burden was different in the fiancée’s suit alleging gross negligence, so issue preclusion did not apply as well.

_Commissioner of Education decisions are prior final judgments._

_Nairn v. Killeen Indep. Sch. Dist.,_ ___ S.W.3d ___, No. 08-10-00303-CV, 2012 WL 561015 (Tex. App.—El Paso Feb. 22, 2012). When Nairn received a demotion, she filed a grievance challenging her reassignment. School trustees determined that Nairn had failed to prove discrimination, harassment, or retaliation claims. Later, the Board chose to not renew her contract with the District. Narin sought review of the nonrenewal through the Commissioner of Education, who denied her claims, found performance-based reasons for
the nonrenewal of her contract, and dismissed her appeal. Nairn did not appeal that decision, but instead filed a whistleblower and discrimination suit against Killeen ISD. Killeen asserted res judicata; Nairn responded that her claims were not fully and fairly adjudicated by the Commissioner of Education and some of her claims were based on facts that occurred after the Commissioner’s decision. On appeal, the Court found that the trial court lacked jurisdiction to consider Nairn’s whistleblower/discrimination suit because the Commissioner’s fact-findings on the nonrenewal of Nairn’s contract bound the district court. As to her other claims, the court found that Nairn had failed to exhaust her administrative remedies by failing to appeal her complaints to the Commissioner.

*Muckelroy v. Richardson Indep. Sch. Dist.*, 884 S.W.2d 825 (Tex. App.—Dallas 1994, writ denied). Muckelroy resigned after being told that the superintendent was going to recommend nonrenewal of her teaching contract. She later sought to revoke her letter of resignation, but the school’s superintendent denied the request to revoke. Muckelroy appealed to the commissioner of education; the commissioner found that her resignation was properly accepted and could not be withdrawn after acceptance. While the action was pending before the commissioner, Muckelroy filed a civil lawsuit against the school alleging, *inter alia*, breach of contract. The Court of Appeals held that the commissioner’s findings on the validity of the resignation bound the trial court. The commissioner’s factual determination that Muckelroy had voluntarily resigned precluded her breach of contract claim.

*Isaacs v. Schleier*, 356 S.W.3d 548 (Tex. App.—Texarkana 2011). The Isaacs bought a racetrack in 1998; when they wanted to sell it to the Bishops in in 2002, they used the same attorney that had drafted the sales documents in 1998. Schleier, the attorney, charged both parties a fee and prepared the documents. The Deed of Trust listed Schleier as the trustee, and the versions of the documents signed by the Isaacs did not match the version of documents signed by the Bishops. When the Isaacs began foreclosure proceedings against the Bishops, the Bishops sued Schleier and the Isaacs; the Bishops prevail in a jury trial. The Isaacs then sue attorney Schleier for breach of contract, negligence and breach of fiduciary duty. On appeal, the Court holds that the Isaacs’ claims are barred by the statute of limitations, and res judicata applied.

**Election of remedies will bar subsequent relitigation in Payday Law cases.**  
*Pipes v. Hemingway*, 358 S.W.3d 438 (Tex. App.—Dallas 2012). In 2008, Pipes sought over $30K from Hemingway’s law firm for unpaid wages; the Workforce Commission awarded Pipes $6,920.17 on that wage claim. Pipes did not timely appeal that decision. In 2009, Pipes filed a civil suit alleging that Hemingway’s law firm had failed to pay Pipes the full contractual wages for Pipes’ work as an independent contractor from June through October 2007. On appeal, the court recited that the Payday Law is not an employee’s sole and exclusive remedy for unpaid past wages, but once an employee has elected to invoke the Workforce Commission’s jurisdiction, res judicata will apply to those wage claims. However, any claims for past wages that occurred outside of the time frame considered in the original Workforce Commission wage claim is not barred.
Nuisance determinations are a special breed.
City of Dallas v. Stewart, 361 S.W.3d 562 (Tex. 2012). Stewart abandoned her house in 1991. In 2001, the Dallas Urban Rehabilitation Standards Board, a 30 member administrative body that enforces municipal zoning ordinances, determined the house was an urban nuisance and ordered it demolished. Stewart’s request for rehearing was denied, and she appealed the Board’s decision to District Court. Meanwhile, her house was demolished, so Stewart amended her appeal to include an unconstitutional taking claim. The City moved for directed verdict, asserting that the nuisance determination was res judicata to preclude Stewart’s takings claim. Trial court denied the City’s motion, and the jury awarded Stewart $75,707.67 for the destruction of her house. In a 5-4 decision, the Texas Supreme Court held that as long as the property owner has properly exhausted her administrative remedies and carried the appeal of a nuisance finding to the district court, that nuisance finding is not given preclusive effect in a subsequent/concomitant constitutional takings action.

See also Patel v. City of Everman, 361 S.W.3d 600 (Tex. 2012). On a case decided on the same day as Stewart, above, the Supreme Court applied res judicata to dismiss a takings claim based on an underlying nuisance decision. Patel appealed the administrative decision that his property was a nuisance, but later nonsuited the case and asserted a takings claim in district court. On appeal, the Supreme Court found that Patel’s failure to pursue an appeal of the administrative nuisance finding barred his taking claim.

Arbitration is considered a final judgment on the merits, and collateral estoppel applies.
Zea v. Valley Feed & Supply, Inc., 354 S.W.3d 873 (Tex. App.—El Paso 2011). Following a breakdown in business partnership, Travis filed to arbitrate the dispute pursuant to an arbitration clause in a security agreement. Zea responded by alleging fraud, estoppel, waiver, illegality, etc. The arbitrator found that Travis was entitled to specific performance of the purchase option, and Zea did not prove its defenses. Meanwhile, Zea filed suit against Travis and other limited partners, alleging the same actions complained of in the arbitration. The trial court severed the suit against Travis from the rest of the claims and confirmed the arbitration award. The other limited partner defendants (Valley Feed) moved for summary judgment alleging collateral estoppel. On appeal, the court found that Zea’s claims against Valley Feed mirrored its defenses in the arbitration, and those issues had been litigated fully and fairly against Zea through the arbitration. Thus, Zea’s civil claims against Valley Feed were barred by collateral estoppel due to the arbitration award to Travis.

SWEPI, L.P. v. Camden Res., Inc., 139 S.W.3d 332 (Tex. App.—San Antonio 2004, pet. denied). Camden drilled a producing gas well near the lease line of adjacent property leased by SWEPI. SWEPI sued, alleging sub-surface trespass and conversion and asserting that the Camden well was not drilled vertically. SWEPI also filed a parallel complaint with the Texas Railroad Commission (RRC), requesting a survey to determine the well’s bottom hole location. The RRC denied SWEPI’s request for a survey, finding that SWEPI had failed to show “probable cause to suspect” that the Camden’s well was not bottomed within Camden’s lease boundaries. Based on the RRC’s ruling, Camden
asserted that SWEPI’s claims were barred by collateral estoppel and res judicata; the trial
court granted Camden’s motion for summary judgment on those grounds. On appeal, the
court reversed the trial court, holding that: 1) the RRC did not have the authority to
resolve the ultimate issue of whether Camden had committed sub-surface trespass and
conversion, and 2) the RRC did not decide the ultimate disputed question, namely, whether
Camden’s well crossed into SWEPI’s lease line, because the RRC only found that SWEPI
has failed to show “probable cause to suspect” the well was not bottomed out within the
Camden’s lease.

pet. denied). Ramirez’s medical license was revoked in 1987. In 2000, he applied to the
Board for reinstatement and filed a parallel civil lawsuit seeking a declaratory judgment
that the Board’s rules did not prevent him from presenting evidence that tended to
undermine the findings of the original board order at his hearing on reinstatement. He also
sought an injunction to stop the Board from preventing his collateral attack on the 1987
revocation order. The Court of Appeals held that the trial court properly applied collateral
estoppel to bar Ramirez from relitigating the facts of his 1987 license revocation in the
2000 administrative reinstatement proceeding.

Neurologist Johnston was accused of misconduct with patients. Johnston was criminally
charged with attempted sexual assault, and after a mistrial, eventually pled guilty to a Class
C simple assault and paid a fine. The Texas Medical Board also held an administrative
hearing on the issue, but the ALJ branded the charges against Johnston as “pure
fabrications” and “fiction.” Johnston claimed that conflicting prior adjudications (one
criminal guilty plea versus an administrative finding that there was no basis for the charge)
on the ultimate issue of his misconduct prevented the application of collateral estoppel. On
appeal, the court glossed over the administrative adjudication and found that his guilty plea
with regard to the criminal charges operated to collaterally estop Johnston from suing the
hospital and various physicians who Johnston claimed had made the scurrilous accusations
against him.

VII. USE OF A CRIMINAL FINDING TO PRECLUDE A CIVIL LAWSUIT OR ADMINISTRATIVE
PROCEEDING

Offensive collateral estoppel rule: It is improper to introduce evidence in an effort to retry
or mitigate a criminal guilty verdict. A criminal defendant cannot litigate the issue of guilt
again in a civil action.

risk” sex offender, Garrett was estopped from challenging the administrative classification
because the existence of a victim, which required Garrett to score higher on the sex
offender classification screening tool, was an element of the indecent exposure offense.
When a neurologist sued claiming that various physicians falsely accused him of sexual misconduct, the Court of Appeals held that he was precluded from bringing those claims because as part of a plea bargain he pled guilty to Class C simple assault by contact. The court found that the neurologist’s act of assault was litigated in his criminal proceeding, and that was the same issue he wished to relitigate in his civil claims.

In a suit for malicious prosecution, a convicted robber was barred by collateral estoppel from bringing suit against the alleged witnesses.

There are few published opinions whereby collateral estoppel was invoked by or against a governmental body in a later proceeding because the ultimate fact had been adjudicated previously in a civil court or a separate administrative hearing.

In April 2003, Dr. Brown’s license was temporarily suspended; Dr. Brown and the Board immediately began negotiating an agreement on the disputed issues. The parties entered into an agreed settlement order on those issues in June 2003. In October 2003, the Board filed a second complaint with SOAH. On appeal, Dr. Brown asserted that the Board’s second complaint concerned allegations that occurred in 2002, and that those claims were adjudicated, or with the exercise of due diligence, should have been litigated in the 2003 settlement proceeding. The court held that that final agreed settlement order was not a final adjudication of all disciplinary matters that occurred in 2002, because the proceeding that resulted in the final order was in the nature of a mediation, not a final adjudication. The court found that the final merits of the Board’s claims were not reached, and therefore res judicata did not apply.

I Gotcha, Inc. v. Holzer, No. 2-09-236-CV, 2010 WL 2636154 (Tex. App.—Fort Worth Jul. 1, 2010). Holzer filed an EEOC complaint against I Gotcha; I Gotcha subsequently fired Holzer. Holzer applied for and received unemployment compensation benefits. I Gotcha appealed that decision, claiming Holzer was fired for work-related misconduct. While the unemployment compensation benefits appeal was pending, Holzer asserted her discrimination claims in federal court. The federal court signed a take-nothing judgment on Holzer’s discrimination claims. I Gotcha subsequently appealed Holzer’s unemployment compensation benefits claims, asserting that res judicata precluded those claim because the federal court had denied Holzer all relief on her wrongful termination claims. On appeal, the court recited a number of deficiencies with I Gotcha’s argument: 1) the federal case had not even been filed at the time that the Workforce Commission determined Holzer’s right to unemployment benefits, so the federal case could not be res judicata to the Commission’s initial determination of Holzer’s claim for unemployment benefits, 2) I Gotcha did not show that the Workforce Commission was a party to the
federal lawsuit, and 3) I Gotcha failed to plead any basis upon which the federal court
would have had jurisdiction over Holzer’s unemployment claim.

civil suit alleging negligence against the doctor, the Medical Board filed a formal
disciplinary action against him. Dr. Aguero asserted collateral estoppel, arguing that the
Board could not relitigate the issues of negligence and standard of care that had been
previously litigated in the civil proceedings. The ALJ denied the motion, and issued a PFD
finding that Dr. Aguero had violated Board rules and the standard of care. On appeal, the
Court held that the Board and Dr. Aguero had not been cast as adversaries in the civil case,
so collateral estoppel did not apply.

Goldstein v. Comm’n for Lawyer Discipline, 109 S.W.3d 810 (Tex. App.—Dallas 2003,
pet. denied). Goldstein represented a client in a divorce proceeding. In that proceeding,
Goldstein represented that his fee was $300,000. Later the client sued Goldstein claiming
that she had paid him $4.8 million as a contingency fee. Goldstein claimed that the $4.8
million was a gift. After a one month jury trial, the jury found that the $4.8 million dollars
was not a gift. The Commission subsequently brought a disciplinary proceeding seeking
disbarment against Goldstein based in part on his receiving $4.8 million from Ginsburg.
The Commission filed a motion for partial summary judgment asserting Goldstein was
collaterally estopped from relitigating whether the $4.8 million payment (1) was a fair gift
or bonus, (2) was a contingency fee, (3) was not in writing, and (4) was unconscionable. 48
The trial court granted the Commission's motion for partial summary judgment. The Court
of Appeals found that the trial court did not abuse its discretion by giving collateral
estoppel effect to findings in the prior malpractice civil suit, and affirmed. The Court did
distinguish the Goldstein facts from the facts in Neely, which appears to be a similar case. 49

Neely v. Comm’n for Lawyer Discipline, 976 S.W.2d 824 (Tex. App.—Houston [1st Dist.]
1998, no pet.). Neely represented the wife in a divorce proceeding. A month after the
court signed an agreed order of divorce, Neely filed a motion for new trial, an amended
petition, and a motion for sanctions and order for contempt. The husband moved to strike
and moved for sanctions. The court sanctioned Neely under TRCP 13 for filing groundless
pleadings. The Commission then brought an administrative action for a violation of the
Disciplinary Rules. Neely asked for a jury trial on the issue, and the Court granted the
Commission’s motion for summary judgment. On appeal, the Court found that collateral
estoppel did not apply because the facts of the Neely case stemming from the original
divorce proceeding were the result of a disciplinary proceeding arising from professional
misconduct. The Court noted that the Commission did not bring the case as a result of

48 This is an example of offensive use of collateral estoppel, because the plaintiff (Commission) was using
the doctrine to estop a defendant (Goldstein) from relitigating an issue that the defendant (Goldstein) litigated
and lost in prior litigation with another party.
49 The Goldstein court was divided, and Justice James dissented, preferring a decision that would have
mirrored Neely.
compulsory discipline resulting from the conviction of an intentional crime. The Court reversed and remanded.

Al-Jazrawi v. Tex. Bd. of Land Surveying, 719 S.W.2d 670, 671 (Tex. App.—Austin 1986, writ ref’d n.r.e.). Al-Jazrawi asked the Board to reconsider a prior denial of his application, which he had not appealed. The Third Court of Appeals ruled that a final administrative order bars subsequent agency adjudication of the same subject matter by the same party, unless allowed by statute or by changed circumstances. Al-Jazrawi’s failure to perfect an appeal of the agency’s order constituted an acquiescence to the agency’s action. The Third Court further found that, even had there been changed circumstances, the agency did not err in refusing to readjudicate the application.

SOAH has not hesitated to discuss collateral estoppel in administrative cases when the facts were allegedly litigated in a prior administrative or civil lawsuit:

Tex. Alcoholic Beverage Comm’n v. Hadi Ali Yassine, Docket No. 458-02-3719, 2004 WL 4465939 (Tex. State Office of Admin. Hearings Jan. 26, 2004). In an application for a mixed beverage permit SOAH applied collateral estoppel to cancel a mixed beverage permit and mixed beverage late hours permit, based on a final order of the TABC in the related case Nouveau Entm’t, Inc. Permit Application Filed with the Tex. Alcoholic Beverage Comm’n, Docket No. 458-02-3391. SOAH found that the original proposal for decision in Nouveau, which was adopted by the TABC and affirmed by the Travis County District Court, contained facts which corresponded exactly to the allegations in Hadi Ali Yassine.

In the Matter of the Application of Jerry Huston, Docket No. 312-95-0936 (SSB 95-026), 1996 WL 529198 (Tex. State Sec. Bd. Sept. 13, 1996). When Huston applied for registration as an investment agent, the Securities Commissioner opposed the issuance of registration because, inter alia, Huston had been found to have committed securities sales violations is based on the findings in the final judgment entered against him in the civil quo warranto proceeding. SOAH found that collateral estoppel did not apply because the Commission staff did not prove the Parklane factors, and that the application of collateral estoppel would be unfair under the circumstances of the quo warranto proceeding.

There are also a number of federal cases that do apply the concept in the same manner.

U.S. v. Stauffer Chem. Co., 464 U.S. 165, 104 S.Ct. 575 (1984). In Stauffer, the Environmental Protection Agency attempted to use private inspectors to investigate a Stauffer chemical plant in Wyoming under a provision of the Clean Air Act. The Tenth Circuit ruled in Stauffer's favor, holding that under § 114(a) of the Act, they were not "authorized representatives" capable of inspecting. When the EPA attempted to do the same thing in another Stauffer plant, this time in Mt. Pleasant, Tennessee, the company refused to allow the private inspectors in, and the government began a civil contempt proceeding in federal district court. The district court sided with the government as to the

50 This is another example of the offensive use of collateral estoppel.
meaning of "authorized representatives." Eventually, without reaching the merits of the case, the Supreme Court ruled that "the doctrine of mutual defensive collateral estoppel is applicable against the government to preclude relitigation of the same issue already litigated against the same party in another case involving virtually identical facts." *Id.* at 169, 104 S.Ct. at 578. (*But compare* *U.S. v. Mendoza*, 464 U.S. 154, 162, 104 S.Ct. 568, 573, 78 L.Ed.2d 379 (1984) (holding that nonmutual offensive collateral estoppel may not be asserted against the government.)) In short, the adjudication in the Tenth Circuit controlled the outcome of the suit in the Sixth Circuit as a matter of estoppel despite the fact that they were merely sister circuit courts of appeal.

**Remember that res judicata applies to claims that could have been brought in an earlier proceeding.**

*Bencor, Inc. v. Variable Annuity Life Ins. Co.*, No. 01-09-00094-CV, 2011 WL 1330818 (Tex. App.—Houston [1st Dist.] Apr. 7, 2011). Bencor initiated arbitration proceedings to resolve a contract dispute with VALIC. The arbitration panel issued an order and an award for Bencor which stated that it fully resolved all claims, counterclaims and disputes of fact advanced by the parties, and that all claims not expressly granted were denied. When VALIC refused to pay certain post-termination commissions, Bencor sued for breach of contract. VALIC asserted that res judicata barred Bencor’s claims because they had been litigated before the arbitration panel. Bencor responded that the claims it asserted in the lawsuit were not litigated, and had been unripe at the arbitration. On appeal, the Court found that Bencor’s claims were ripe at the time of the arbitration, and that Bencor could have requested a declaration on the right to receive post-termination commissions. Because the civil suit sought damages under the same section of the contract that had been considered in the arbitration proceeding, Bencor’s claims were related in time, space, origin, and motivation to its civil claim. Res judicata precluded Bencor’s claims.

*A.H.D. Houston, Inc. v. City of Houston*, 316 S.W.3d 212 (Tex. App.—Houston [14th Dist.] 2010). Over course of a decade, the owners of several Sexually Oriented Businesses in Houston challenged a City Ordinance regulating where the businesses could be located and a hearing process for deciding when the businesses had to move. Meanwhile, in federal court the business owners challenged the constitutionality of the ordinance under many theories. After the constitutionality of the ordinance was upheld in federal court, the businesses sought to challenge the hearing process in state district court, alleging that the state court claims were as-applied challenges, unlike the earlier facial challenges asserted in federal court. On appeal, the Court disagreed, holding that res judicata barred the businesses state court claims because all of the businesses’ challenges were rooted in the structure of the ordinance.

*Halloco Tex., Inc. v. McMullen County*, 221 S.W.3d 50, 50 Tex. Sup. Ct. J. 314 (2006). In a 5-3 decision, the Texas Supreme Court found that res judicata barred Hallco from bringing a Fifth Amendment as-applied taking claim in a second suit, because Hallco had brought a facial takings claim in a previous suit. Hallco argued that it could not have brought the as-applied claim in the first suit because the as-applied claim was not yet ripe at the time it filed its facial takings claim. The Supreme Court found that the original facial takings claim sought compensation for the same injury asserted in the as-applied taking claim, and
the elements of both an as-applied and facial challenge were fixed and known in the prior litigation.