# Appendix 4B

# **Figure: Applying Collateral Estoppel**

#### Elements of Both Traditional and Nonmutual Collateral Estoppel (C/E)

The issue in question is identical to an issue actually litigated and necessary to the prior judgment:

- The issue is the same one that was involved in the prior action.
- The issue was raised and actually litigated in the prior action.
- The issue was material and relevant to the disposition of the prior action.
- The determination of the issue in the prior action was necessary and essential to that judgment.
- The burden of proof for the issue is the same in both actions.

There is a final judgment on the merits in the prior action.

### **Traditional Collateral Estoppel**

#### OFFENSIVE

#### DEFENSIVE

Plaintiff asserts C/E to prove an element of the cause of action, preventing defendant from relitigating the issue that was decided in the prior action. Defendant raises C/E as a defense to stop plaintiff from relitigating an issue that was decided in a prior action.

The parties in the pending action are the same as, or in privity with, the parties to the prior action.

## Nonmutual Collateral Estoppel

#### OFFENSIVE

Plaintiff seeks to stop a defendant from relitigating an issue that the defendant has previously litigated unsuccessfully in another action against a different party.

#### Limitations:

The court is given broad discretion in deciding if it will allow plaintiff's use of nonmutual offensive collateral estoppel by considering if the application is fair to the person against whom it is being raised. DEFENSIVE

Defendant seeks to stop the plaintiff from relitigating an issue the plaintiff previously litigated unsuccessfully in another action against a different party. Plaintiff in current action may have been the plaintiff or defendant in previous action.

The party against whom the application of collateral estoppel is being sought had a full and fair opportunity to litigate paternity in the prior action.