Civil Procedure Notes

10/28/13

Midterm up through venue

1. Relation Back
	1. Blair v. Durham (6th Cir. 1943)
		1. Possibility of arguing relation back on basis of state law that provides statute of limitations if state law actually does provide that (does so in Durham – but relevant provision - 15(c)(1)(A) - did not exist at that time)
			1. Doesn’t necessarily mean state law that provides cause of action, could be forum state law (talk about more later)
		2. First cause of action – negligence of employee dropping plank on P’s head; second cause of action – negligence of construction of scaffolding (after realizing employee was independent contractor and past statute of limitations against rightful defendant)
		3. Trial court allowed amendment, appellate court affirmed
		4. Court explanations
			1. Same cause of action: MSG – not convincing; could be different causes of action but still relates back
			2. Same injury: MSG – not convincing; injury could be the same but wrongful conduct is so different that it shouldn’t relate back (witnesses could be very different, relation back not appropriate)
	2. Conduct, transaction, or occurrence test
		1. Test seeks to preserve purposes of statute of limitations
			1. Stale evidence, repose of defendant, waiving rights with respect to events, etc.
	3. When relation back was not allowed:
		1. Katrina case on flood damages; amendment wanted to add looting to the claim; court concluded that relation back was inappropriate
		2. Courts usually very generous to allow relation back
2. Counterclaims
	1. Complex Litigation: Causes of action being added by person other than the plaintiff – also new parties added
	2. Defendant joins action against the plaintiff – in context of same lawsuit
	3. Compulsory counterclaim – FRCP 13(a)
		1. Standard of arising out of transaction or occurrence that is the subject matter of the opposing party’s claim
			1. Reasoning – efficiency
			2. Do not assume that this test is exactly the same as relation back test, even though they both speak of transactions and occurences
		2. Exceptions
			1. when the action was commenced, the claim was the subject of another pending action
				1. Drafted particularly to protect state’s jurisdiction in states that do not have compulsory counterclaim rule
				2. P sues D is state court for battery; while proceeding, D sues P in federal court for same occurrence; is P required to bring battery in federal court as compulsory counterclaim to D’s federal suit against P?

Compulsory counterclaim rule does not apply since it was subject of another pending action. (FRCP 13(a)(2)(A))

Is this exception unnecessary because D should have brought his federal court action as counterclaim to P’s original action in state court?

No – state court might not have compulsory counterclaim rule

exception is unnecessary if state has compulsory counterclaim rule

* + - 1. If defendant, to bring counterclaim, has to join someone (necessary party) that cannot be joined in this lawsuit (lack of personal jurisdiction)
			2. Opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim and pleader does not assert any counterclaim under rule
				1. Quasi in rem – source of personal jurisdiction over D is property; would be unfair to make D bring cause of action against P

Court would be asserting more power over D in counterclaim than just the value of property

Would shift quasi in rem to in personam

* + - * 1. What if adding counterclaim didn’t exceed the amount? Exception may be too broad if counterclaim would still be in scope of court’s power
				2. If defendant chooses to bring any counterclaim, he waives right to limit court’s power (if D brings one, they should be required to bring all compulsory counterclaims)
			1. If P sues D in state court that has compulsory counterclaim rule, no duty to bring a counterclaim that MUST be brought in federal court
				1. P sues D in CA state court for breach of contract to pay for securities; D fails to join an action against P for violation of federal securities law (exclusive federal subject matter jurisdiction) in connection with sale; CA has compulsory counterclaim rule; D brings action in federal court in CA against P under federal securities law; P claims action is barred under the compulsory counterclaim rule – not barred because state does not have SMJ for federal action

This is a matter of state compulsory counterclaim law – they say you don’t have to bring action b/c you can’t bring it

Federal court has obligation to respect CA law on the matter under full faith and credit statute – if CA did say the federal action was barred, federal court would have statutory obligation to respect decision

but since it is a statutory obligation, a federal court, interpreting the statute, might consider CA law too intrusive on defendant’s right to bring federal action and so allow D to bring it anyway

* + 1. Courts must look to first court’s law on compulsory counterclaim rule (full faith and credit)
			1. Ex: If NY doesn’t have compulsory counterclaim rule, subsequent suit in federal court regarding same transaction could proceed – look to state law (if federal court first, second state action would be barred since FRCP has compulsory counter claim rule)
	1. Officer P sues arrestee D in CA state court for battery in connection with arrest; CA has compulsory counterclaim rule; must D join federal civil rights action against P? Yes because federal issue can be brought in state court and related to same transaction or occurrence
		1. If D brings counterclaim can P remove? No only Ds can remove (Shamrock)
		2. Can D remove? No because original action must be of federal question (Motley) – must look only at Ps complaint
		3. MSG does not like this since P can proactively bring up suit in state court because knows that state court will be more favorable when he expects that D would bring a federal suit against him (natural defendants acting as plaintiffs to get into the state court system)
	2. P sues D in federal court on negligence; D makes pre-answer motion to dismiss for failure to state claim; D’s motion granted; D sues P in federal court on negligence in connection with same action; P asserts defense that D is precluded because it was a compulsory counterclaim in earlier suit
		1. Defense fails
		2. Pre-answer motion was granted in first suit, so no pleading at all; only a *pleading* must state the counterclaim
		3. Compulsory counterclaim rule only attaches if D submits an answer
		4. What if you answer w/ defense of failure to state a claim
			1. Must include compulsory counterclaims –
			2. If court dismisses P’s complaint for failure to state a claim you MUST ask for court to dismiss the counterclaims without prejudice so you can bring up the counterclaim suit again elsewhere
	3. Williams v. Robinson (D.D.C 1940)
		1. Facts
			1. Second lawsuit (district of DC) – Williams suing Mr. Robinson for slander saying that he was an adulterer
				1. Robinson moves to dismiss: compulsory counterclaim in an earlier lawsuit – so now barred
				2. Was he right to bring defense of preclusion as a pre-answer motion?
				3. No – it is an affirmative defense – should be brought in answer
				4. MSG: there should be a pre-answer motion to dismiss on grounds of the affirmative defense of compulsory counterclaim, because no need to answer if you are right

Not permitted, but court didn’t notice in this case

* + - 1. First lawsuit (district of DC) – Mrs. Robinson suing Mr. Robinson for maintenance
				1. Mr. Robinson counterclaims against wife for divorce on grounds for adultery; joins Williams
				2. Was divorce a compulsory counterclaim? No – would be crazy if divorce claim had to be brought or be lost (permissive counterclaim)
				3. SMJ? – residents of DC, used to go to district of DC under as arising under jurisdiction (now different and would be dismissed– 2 court systems: federal court and “fake” state court system for DC, the action would be brought in the “state” court). Family law matters now dismissed by fed. dist. cts. even if there is SMJ

Aside: Source of DC common law? - look to MD precedent

* + 1. Issue – does the compulsory counterclaim rule apply to a counterclaim?
			1. Yes – when being sued in any capacity, you are held to include any compulsory counterclaims in your answer
		2. Issue – is slander action compulsory to divorce counterclaim?
			1. No – motion to dismiss denied
		3. Court’s reasoning
			1. Transaction or occurrence of slander action not same as transaction or occurrence of divorce action
				1. Different things done that give rise to causes of action

Done in first action – having sex

Done in second action – talking about sex

* + - 1. Note: By bringing compulsory counterclaims, don’t have to worry about admitting to the original claim
			2. Would be efficient to bring actions together – same witnesses since to prove slander must prove that adultery did not happen (truth is defense to slander)
				1. In both divorce action and slander action the question of adultery would be an essential issue
				2. Not forced to litigate together, however
				3. Because if an action is a compulsory counterclaim it is barred if not brought up – must have clear rules on when compulsory counterclaim or not; better to use more formulistic notion even if some inefficiencies result
1. Permissive counterclaims
	1. Pleading may state as a counterclaim against an opposing party any claim that is not compulsory – FRCP 13(b)