Tuesday October 29, 2013

Preliminary Clarification:

Separate Trials 42(b)

Even if you have permissible/compulsory joinder, that doesn’t mean those causes of action are going to be tried before the same jury.

Consolidation 42(a)

Separate lawsuits but before the same federal court with an overlap of issues can be tried together.

If they are in different federal courts, sometimes transfer and consolidation will occur

Can’t consolidate state and federal cases together or cases from different states.

Permissive Counterclaims:

1. Permissive counterclaim: a pleading may state as a counterclaim against an opposing party any claim that is not compulsory
	1. Not limited to the defendant, anyone who is being sued may bring against that person any claim you have against him
	2. Why allow this when not the big efficiency rule as with compulsory counterclaim? Still overlap of parties and enables a minimal amount of efficiency – they are already litigating

**Hypo 1**:

P, X and D get into a brawl. P sues D for battery.

1. May D counterclaim against P for breach of an unrelated contract? Yes
2. Must he? No
3. May D bring a counterclaim against P for D’s damages in the brawl? Yes
4. Must he? Yes
5. Must D join X to his counterclaim against P? No
	1. Rule 13(h) – a lot of efficiency in joining X, but he doesn’t have to join X.
	2. Autonomy argument: Although there’s a great overlap of witnesses, P is the master of his claim.
	3. A third party might diminish the defendant’s argument. For example, it might deflect culpability from D (same issue would be for co-plaintiffs).

**Hypo 2**:

P (NY) sues D (Cal) for $45,000 in NY state court. D brings a permissive counterclaim for breach of an unrelated contract for $45,000.

1. May P remove?
	1. No, only defendants can remove.
2. May D remove?
	1. No. Aggregation is not allowed due to the Well-Pleaded Complaint Rule (*Mottley*). Must look to the original complaint for amount in controversy.
3. What if D had counterclaimed for $80,000?
	1. Still doesn’t matter.
4. What if D’s counterclaim was compulsory?
	1. Still doesn’t matter. Even though, there is less of a worry that D is trying to manufacture SMJ.

**Hypo 3**:

X (NV) knows that he is likely to be sued for $1,000,000 for negligence by Y (CA) concerning an accident in NV. He feels that a NV state court (which has the compulsory counterclaim rule) would be more favorable to him than a federal court. X therefore sues Y in Nev. State court for $3000 for his damages from the accident.

Y cannot remove because X has made it impossible

Negative side of the well pleaded complaint rule

**Hypo 4**:

P (NY) sues D (CA) in federal court in CA concerning a battery that the two got into in NY. D counterclaims concerning the damages that D sustained from P in the brawl (compulsory counterclaim). P brings a motion to dismiss the counterclaim due to lack of PJ. What result?

1. This satisfies international shoe, therefore it is Constitutional. Plaintiff has waived PJ by suing there -- he is receiving benefits of state’s courts in the other action and therefore submits himself to PJ.

**Hypo 5:**

P (FL) sues D (CA) in federal court in NY concerning a battery that the two got into in NY.

D counterclaims concerning breach of an unrelated contract that took solely within FL

P brings a motion to dismiss the counterclaim for lack of personal jurisdiction and improper venue.

1. What result?
	1. Majority View: The plaintiff cannot object on PJ/venue grounds
	2. Minority View: plaintiff may object on PJ/venue ground because it would not have PJ V if it was an independent action (see hypo 6).

**Hypo 6:**

P (FL) sues D (CA) in federal court in NY concerning a battery that the two got into in NY.

P joins an action against D concerning breach of an unrelated contract that took solely within FL

D brings a motion to dismiss the second action for lack of PJ and improper venue.

1. What result?
	1. Every cause of action must have personal jurisdiction/venue

**Hypo 7:**

P sues D for battery in federal court. D answers, asserting the defense of lack of PJ and joins a counterclaim for his own damages in the brawl. P argues that D has waived defense of PJ by counterclaiming. What result?

1. Because he filed an answer he had to include compulsory counterclaims. He should have filed a pre-answer motion to avoid this problem.
2. Putting a compulsory counterclaim into answer doesn’t waive PJ or venue
3. Rule 12(b): “no defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion” – not applicable because it has to do with defenses like failure to state a claim – here we are talking about counterclaims. However, it is analogous and is how the court generally rules on these sorts of matters.
4. What about permissive counterclaims? You’re not compelled to bring it, you chose to bring it and you’re objecting that the court doesn’t have jurisdiction over you? Some courts hold that PJ is waived. MSG: Doesn’t make sense. All this means is that the D is going to have to first answer without the permissive counterclaim, wait for the court to rule on the jurisdiction defense and if it decides against it, amend the answer to include the permissive counterclaims. Why make him go through this?

**Hypo 8:**

P sues D for battery in state court within the statute of limitations. D answers, bringing a compulsory counterclaim for his damages from the same brawl. By the time of the answer, the counterclaim is outside of the statute of limitations. Is it barred?

1. Not covered by the relation back provision 15(c), which is about amendments, not counterclaims. But similar reasoning applies. Analogous to relation back because same transaction/occurrence

**Hypo 9:**

P sues D for battery in state court within the statute of limitations. D answers, bringing a compulsory counterclaim for defamation concerning statements P made during the brawl.

Counterclaim was outside the statute of limitations for defamation (which is shorter than the statute of limitations for battery) even at the time that P served his complaint upon D. P claims that D’s defamation action is barred by the applicable statute of limitations. Is it?

1. In terms of notice, contacting witnesses, etc. P’s been thinking about the lawsuit for a long time (no right to repose) P is not the average plaintiff that would have been surprised by this counterclaim.
2. Even though the counterclaim would have been barred, *some* courts have concluded that P has waived all statute of limitation defenses that he otherwise had for the counterclaims of the same transaction or occurrence.
3. Would have to be the same transaction or occurrence (i.e. would only work for compulsory counterclaims, not permissive)

**Other joinder rules. Joinder of causes of action.**

Two questions (does not work for 3rd party complaints, necessary parties, or interventions)

1. Are the people involved in the cause of action already adversaries?
2. Does the cause of action concern the same transaction/occurrence as an action already being litigated?

SEE POWERPOINT EXAMPLES:

**Example:** 1. NO; 2. NO. Then joinder is impermissible. There’s no efficiency in joining.

**Example:** 1. YES; 2. NO. Permitted, not required Example 13(b): permissive counterclaim rule.

**Example:** 1. NO; 2. YES. Permitted, not required.

**Example:** 1. YES; 2. YES. Required. 13(a) - compulsory counterclaim, and claim preclusion

Rule 13: Crossclaims Against a Co-party

Two P’s sue a D. If one P1 has an action against P2, he may bring the cause of action that involves the same transaction/occurrence, but he is not required to (the same goes for D’s)

**Hypo 10:**

P sues D and D’s employer E for a battery committed by D in the course of D’s employment. May E cross-claim against D for indemnification?

1. What’s indemnification? When you have respondeat superior (suing for the torts of the employee), P gets recovery from employer and employer is responsible for getting compensation from employee. The employee might be judgment proof, if that’s the case, where do we want the burden to lie? – on the employer not on P. (Also true for a contribution action).
2. Is the indemnification action really the same event/transaction/occurrence as P’s action against E and D? Indemnification action may not have a great overlap, however it is efficient for them to be brought in the context of the same lawsuit.
	1. *“The crossclaim may include a claim that the coparty is or may be liable to the crossclaimant for all or part of a claim asserted in the action”* R13(g).
3. *Blair v. Durham*: mistake that P only sued the employer and then it turned out that workers were employees of an independent contractor. She should have sued employee and employer.

**Hypo 11:**

If E chooses not to cross-claim for indemnification, may E nevertheless cross-claim against D for D’s pilfering office supplies?

1. Impermissible. Not efficient. No witness/evidence overlap. Different e/t/o.
2. Introducing new adversarial relationships

**Hypo 12:**

If E chooses to cross-claim against D for indemnification, may D join an action against E for E’s failure to pay back wages?

1. Permissive counterclaim. Allowed by 13(b). Not obligatory.
2. Although there’s not overlap, the parties already hate each other and have their lawyers so it’s ok.
3. If E has joins indemnification action against D, he would be able to join the office supply action against D under FRCP 18(a).

**Hypo 13:**

P1(NY) and P2(CA) sue D(Mass.) in D. Mass. For an accident that occurred in NY. P1 joins crossclaim against P2 for his damages from P2 in the accident. PJ and V for P1’s crossclaim?

1. Already being litigated, so the venue statute and PJ does not need to be satisfied for the cross-claim.

**Rule 18. Joinder of Claims.**

(a) In General. A party asserting a claim, counterclaim, crossclaim, or third party claim may join, as independent or alternative claims, as many claims as it has against an opposing party. When you’re bringing an action against someone in any capacity you many join any other action (permissible)

**Hypo 14:**

P sues D1 and D2 for damages in a battery. May D1 cross-claim against D2 for breach of an unrelated contract? No

 Assume that D1 cross-claims against D2 for his damages in the battery. May D1 now join an action against D2 for breach of an unrelated contract? Yes

**Hypo 15:**

P (NY) sues D (CT) in fc in D.Wyo for a battery that occurred in Wyo. D answers. P amends to join an action against D for another battery that occurred in TX. PJ and venue for TX battery action?

1. Every cause of action must have its own PJ, venue and SMJ.