**Happy Halloween** October 31, 2013

Three themes: (A review from the beginning of class)

1. Statutory Interpretation: Venue, Diversity, etc. Difficulties figuring out if a certain situation falls under the statute. Look for the relevant word or phrase. MSG says: look for the purpose behind the statute, and then try to match the situation to the purpose.
2. Structure of American Legal System:
	1. Horizontal federalism: How does the sovereignty of one state affect the sovereignty of another state e.g. PJ
	2. Vertical federalism: Power of federal courts versus the power of state courts
	3. Separation of powers – Congress vs. federal courts (haven’t gotten to much yet).
3. How to come up with rules for resolving disputes. (This is what we are in the thick of right now). Balance:
	1. Upholding the substantive rule of law - ie: making sure those who don’t have a right to relief don’t get relief, those who do have a right to relief get relief—find out the facts and accurately apply the law to those facts
	2. Other interests (eg: Party autonomy and privacy)
		1. Do not want to take away the P’s right to a day in court
	3. Efficiency - eg: You can ensure absolute notice to everyone—but that is sometimes way too inefficient.
* The Plaintiff is the master of his claim. The joinder rules don't take into account just the first and third above considerations, they also take into account the second, ie: party autonomy. Allow the plaintiff to decide the defendants to sue
* argument for joinder of parties when there is an overlap of evidence – e.g. all parties to an event
	+ But joinder rules do not demand plaintiff join all defendants concerning an event even if there is PJ and SMJ, out of respect for plaintiff autonomy
* Why plaintiff autonomy? Step back and ask, "why do we even allow a plaintiff to sue at all?"
	+ There is a problem with giving plaintiff this power: Plaintiffs always think that they are in the right, will always want to sue, which can result in frivolous suits.
	+ Hypo: We could instead allow the government to bring all of the suits, and allow the plaintiff to recover only when the government brings the civil suit on the plaintiff's behalf. Similar to in criminal law. Wouldn't the government make more rational choices than an emotionally involved individual?
		- Class discussion:
			* *Economic Argument Against:* This would require the government to bear the costs of the civil suit, we would rather have the plaintiff bear the cost because they have the interest and are the one who stands to benefit.
			* *Plaintiff's Interest/Ownership:* If plaintiffs have been wronged, they own rights to relief. It is theirs, and the power to assert it should be theirs. They can settle or litigate as they see fit, for the amount that they see fit. The plaintiff owns the suit and choose which defendants to sue. This is all about the plaintiff's autonomy. Plaintiff is the master of his claim.
		- MSG: There is a moral and an economic view of tort law. In Kades’s class, we are getting more of the economic view.
		- It can be costly to allow duplicative litigation, however since the plaintiff is in control of the lawsuit, duplicative litigation is allowed.
			* it takes a lot to require the joinder of parties (under R 19). Simply saying that it would be more efficient would be insufficient. The plaintiff is the one in control and chooses whom to sue.
	+ Making sense of the joinder rules (except for 14(a) and 19). Two Questions:
		- Are people already adversaries?
		- Does the COA concern the same t/o as an action already being litigated?
	+ If both NO: Joinder forbidden.
	+ If one YES and one NO: Joinder permitted but not required.
		- 13(b), 18(a) (adversaries yes, coa no)
		- 20(a), 13(g) (adversaries no, coa yes)
		- 18(a) applies whenever a cause of action is brought in whatever form; counterclaim, cross claim, third party claim, or even regular claim
	+ If both YES: Required joinder
		- 13(a) Claim preclusion - compulsory counterclaim rule
* Rule 20: Permissive Joinder of Parties

“jointly, severally, or in the alternative”

* + - in the alternative:
			* D is liable either to plaintiff A or plaintiff B (not both)
			* Either defendant A or defendant B (not both) is liable to P
		- Jointly: P can sue defendant A or defendant B for entirety of damages
		- Severally: Each defendant is liable for own damages caused
		- Jointly & Severally: Sue one for the totality, but then that one would have a separate claim against the other defendant for contribution
* P sues D and D's insurance company in federal court in California in connection with an accident in California. Under California law "direct actions" (in which insurance companies are sued directly for the torts of the insured) are not allowed. P claims that joinder is allowed under R. 20(a). Result?
	+ Argument for allowing joinder? R 20 allows defendants to be joined if the actions against them arise out of “the same transaction, occurrence, or series of transactions or occurrences” – Federal procedure controls, even if state procedure is different
	+ Argument against. This is not procedure. This is substance. This is the COA that we are talking about here. FRCP can't create a COA that is not there. Look to state law. California law needs to be used, can't use FRCP in this instance. The federal court needs to respect the state law.
		- Assume the police are protected by immunity. Under state law you cannot join the police officer, so even if FRCP would allow it, you cannot. Cannot create a COA under FRCP.
		- We are talking about the substance of a COA. We don't want a rule about procedure to create a COA. There is an important distinction between procedure and substance.
		- Whether direct actions are a matter of substantive law or procedural law is a source of ambiguity. MSG suggests that he thinks it might be more of a procedural issue.
* Some states allow direct actions and some states don't. The worry standing behind prohibiting direct actions is that if you have the insurance company as a defendant, a jury will see the deep pockets of the insurance company and will return a bigger verdict. In some states, you cannot even mention to the jury that the defendant has insurance. Jury might say "Well we weren't going to find him liable, but since the defendant has insurance, sure, the big insurance company won't miss a few more thousand (or million) dollars." The jury should be left in ignorance as to whether the defendant has insurance.

Rule 13(h) Counterclaim and crossclaim: When you have crossclaims and counterclaims you may or must join a party as Rule 20 and Rule 19 direct.

* P sues D1 and D2 for a 4-car pileup in Vt.
	+ May D1 join X, who was the driver of the 4th car? Not if D1 is simply asking for damages that X caused D1. Not allowed under R 14
	+ May D2 crossclaim against D2 for damages D2’s car did to D1’s car? Yes
	+ May D1 join X to that cross-claim? Yes, same t/o and at least one question of law and fact in common – 13(h)
	Must D1 join X to that cross-claim? No
* P sues D for battery concerning P’s damages from a barroom brawl? May D counterclaim against P for his damages from a different brawl between P, D, and X? Yes permissive counterclaim - 13(b)
	+ May D join X to this counterclaim?
		- Yes, same t/o and at least one question of law and fact in common – 13(h)

Impleaders - also known as third party complaints *Rule 14*

* When can someone who is being sued drag in a new party?
	+ Allowed, BUT, D may bring in a new party only if claim is new party is liable to D for all or part of D’s liability to P – e.g. indemnification under insurance contact
	+ If an action is being brought against you, you, as a third party plaintiff, may join a third party defendant, only to compensate you for all or part of the amount you had to pay the original plaintiff. You cannot bring a third party defendant in in order to get compensation for damages the third party defendant caused you.
		- Whenever anyone new is dragged into a suit, they may always bring up PJ as a defense
		- Third party defendant must assert any compulsory counterclaim
		- Third party defendant may assert any counterclaim against the third party plaintiff
	+ A third party defendant can be allowed to assert defenses on behalf of the defendant/third party plaintiff. Think about an insurance company that is brought in as a third-part defendant by the insured. Insured might not care about whether he wins or loses because he knows the insurance company will compensate him if he loses. Therefore, we allow third party defendant to assert defenses on behalf of D.
* Hypo: P, Z, and X are in a barroom brawl. P sues Y, Z’s employer on the ground that Z’s battery was committed in the course of employment.
	1. May Y implead its insurer I? yes Y may implead I, its insurer(Not common, normally insurance company is right alongside defendant controlling the litigation. However, if insurance company is denying that they have any responsibility under insurance contract then you might have to implead them.)
	2. May Y implead Z? Yes, indemnification action
		1. Employer after paying P, may go after employee
	3. If P sues Z, may Z implead X? ONLY if asking for contribution from X (claim is that X is liable to Z for all or part of Z’s liability to P) - only way impleader allowed here
		1. Z cannot simply join X to get the damages that X caused Z in the brawl
* Why do we want an impleader to be allowed?
	+ - Reason not to allow – often will be different types of evidence, causes of action etc…
			* E.g. P’s action against the defendant – tort; D’s action against
		- Reason to allow…
			* Hypo: P sues D for negligence in federal court. D fails to implead his insurance company I. D loses. D then brings an action against I for indemnification under the insurance contract. What defenses can I bring up?
			* I will say "I was not a party to that lawsuit. I am not bound by that suit." No one can be bound to a lawsuit to which they were not a party (or in privity with a party - will discuss later) - unless received sufficient notification (Mullane) and defaulted
			* Since I is not bound by P’s suit against D, that will have to be relitigated. D will take the shoes of P and I will take the shoes of D and they will basically retry the case that I was originally not a party to. I not bound because was not a part of original suit and gets this chance to relitigate this.
* Hypo: P (NJ) sues D (NY) in S.D.N.Y. Suit is under MD battery law concerning a brawl between P and D in MD.
	+ May D join an indemnification action against X, his insurance company?
		- Yes, third party complaint
	+ Is there SMJ for P's suit against D if X's state of incorporation is NJ?
		- NJ🡪NY🡪NJ does this destroy diversity? NO otherwise it would be too easy to destroy diversity
		- P v D has diversity SMJ
* Three sources of SMJ (that we know of)
	+ Federal Question
	+ Diversity
	+ Supplemental
	+ Is there SMJ for D's impleader against X if X's state of incorporation is NY?
		- NJ🡪NY🡪NY classic example of supplemental jurisdiction so no problem
		- What about venue? Do not worry about it for impleaders
		- Impleaders always satisfy the venue
		- Need to show PJ over X! Can be a problem