**Civil Procedure Class Notes November 04 2013**

Michael Steven Green is going to write the Oxford Introduction to Law book for Civil Procedure. Glannon made a critical, jaw-dropping error.

**Review: Joinder and Impleaders.**

Two questions that spell out the philosophy behind most of the joinder rules:

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

If one of the two is answered “yes,” joinder is permissive, not required.

If both are answered “yes,” joinder is compulsory.

If both are answered “no,” joinder is forbidden.

Impleaders (third-party complaints), do not satisfy the “two question test” - Rule 14(a) is much narrower. The defendant can only “drag-in” a third party that might be liable to the defendant for all or part of the relief the defendant had to provide to the plaintiff if the defendant loses (indemnification or contribution actions). Once you have the indemnification or contribution, then you can add other cause of action under Rule 18(a).

*Examples:*

1. Defendant is found liable in a battery action in which he impleads his insurance company. The insurance company later brings a suit against the defendant for failure to pay insurance premiums past due at the time of the lawsuit. The second suit is barred—an indemnification action is about the insurance contract, and should have been brought as a compulsory counterclaim in the original suit, which also had to do with the insurance contract.

The third-party defendant may also assert against the *plaintiff* a claim arising out of the transaction or occurrence that is the subject matter of the plaintiff’s claim against the third-party plaintiff. The plaintiff can also assert claims against the third-party defendant that arise from the same transaction or occurrence. These are allowed under the joinder rules and follow the two-question rule.

*Examples:*

1. X, an employee of D, gets in a car accident with P. P sues D in D.N.J. D impleads X for indemnification.

May X bring an action against P for X’s damages? YES.

Must he? NO.

If X does not bring action against P for the damages, may he add a breach of contract action for failure to mow his lawn? NO. BUT…if he does bring the action for damages, he may join the contract action.

**Intersection of Joinder with Personal Jurisdiction and Venue**

*Causes of action joined under 18(a) by plaintiffs against defendants:*

1. Each must satisfy personal jurisdiction
2. Each must satisfy venue statute

*Joinder of defendants under Rule 20:*

1. There must be personal jurisdiction over each defendant
2. The venue statute must be satisfied for all defendants

*Compulsory counterclaims by defendants against plaintiffs:*

1. Personal jurisdiction is considered waived by the plaintiff by suing in the forum
2. Venue statute need not be satisfied

*Permissive counterclaims by defendants against plaintiffs:*

1. Majority view is that personal jurisdiction is considered waived
2. Majority view is that venue statute need not be satisfied

*Cross-claims between co-defendants and co-plaintiffs:*

1. No personal jurisdiction argument is needed
2. No venue argument is needed

*Third-party complaints brought by defendants:*

1. There must be personal jurisdiction over the third party defendant
2. The venue statute need not be satisfied

**Necessary Parties**

*Rule 19(a) Required Joinder of Parties if Feasible:*

1. Required Party. A person who is subject to service of process (“personal jurisdiction”) and whose joinder will not deprive the court of subject matter jurisdiction must be joined if:
   1. In that person’s absence, the court cannot accord relief among the parties
   2. That person claims an interest related to the subject of the matter and is so situated that disposing of the action in the person’s absence may
      1. Impair the person’s ability to protect the interest
      2. Leave an existing party subject to a substantial risk of incurring double, multiple, or inconsistent obligations because of the interest

*Examples:*

1. P, D, and X are in an accident in which D runs into P’s car and X’s car. P sues D for negligence.

Is X a necessary party on the ground that a determination of D’s negligence in X’s absence will impair X’s ability to protect his interest? No, X is not a necessary party because X’s interests are not adversely affected, he is not bound by the judgment unless he is made a party.

Think about it this way—if X is not brought into the lawsuit, can he later sue D? Absolutely, if he is never made a party to the original suit, he cannot be precluded. In other words, X and P are not in **privity**. Even if X and P were in the same car and they were husband and wife, X is still not bound by the earlier action—they are not in **privity**.

1. P, D, and X are in an accident in which all three cars run into one another. P sues D for negligence. D is found not liable on the ground that P was contributorily negligent. P then sues X for negligence.

Can X preclude P from re-litigating the issue of P’s contributory negligence? Yes, someone who is not a party can take advantage of the fact that someone was party to an earlier lawsuit. (We will discuss later.)

1. P, D, and X are in an accident in which D runs into P’s car and X’s car. P sues D for negligence.

Is X a necessary party on the ground that, in X’s absence, D may be submitted to inconsistent obligations? No, this is not the inconsistency that we’re talking about. What the FRCP 19 envisions is not inconsistent determinations of issues, but inconsistent obligations—where in one instance D is told to do something and in another case is told to not do the very same thing.

In our example, D may be found not negligent in one suit and not owe any money to P, and then later D may be found negligent in a second suit and owe money to X. D can pay both P and X or only X and not P—this isn’t an inconsistent obligation, an inconsistent obligation is where P is told to pay X and later told not to pay X. If you wanted to avoid inconsistent determinations or issues, you could create New Jersey’s rule (now abandoned) where all foreseeable parties to the same event are made necessary parties, but that is not the federal rule.

1. A, B, and C are in a brawl. A sues B for battery (but C really did it).

Is C a necessary party because he is essential for B’s defense? No, all B has to do is bring C in as a witness and argue as a defense that C did it.

1. You are suing a corporation to have certain dividends declared in your name, but the majority of the Board of Directors has to sign-off for that to happen.

Are the Board Members necessary parties? Yes, otherwise the plaintiff could not get the relief that they request.

1. P sues the D Corporation under product liability concerning a product that failed and is asking for $20k of damages.

X and Y also bought D Corporation products that failed and each suffered $10k of damages.

Is there any way that X and Y could be necessary parties? Yes, if the D Corporation only has $20k of assets. This is basically a bankruptcy case—all the creditors to the defendant in a bankruptcy case are essentially necessary parties.

1. Water flows form D’s property down to P’s property, flooding it. P sues D to erect a dam to protect P’s property. If the dam is erected, X’s property upstream from D’s will be flooded. Is X a necessary party? Yes, because X could later sue to have the dam removed if the court finds for P in the first suit. This is a case where D could be subject to inconsistent obligations—to build the dam and to not build the dam. X cannot be obligated by the finding in the first suit if he is not made a party, so he has to be made a party in the first suit.
2. The sublessee sues the lessee to alter property. Lessor, who must consent to change, is a necessary party. Why? In order for the plaintiff (sublessee) to get the relief that the he requests, the lessor must allow the lessee to alter the property. This could also be a case of inconsistent injunctions—if the lessee is told to alter the property, the lessor could then sue the lessee and would not be obligated by that judgment.
3. Glueck sues Company to have Company reissue shares currently held by Hass in both Glueck and Haas’s name. Why is Haas a necessary party? We are protecting the company, if the court orders the company to award Glueck half the value of the shares, and then Haas sues to have it restored, you could end-up with the company paying out more than once on the same claim.
4. P claims a vase in D’s possession. X also claims the vase. X is a necessary party. Why? If the court awards P the vase, X could sue D and D would have to pay X money because they no longer have the vase. There needs to be a definitive determination of ownership. This is like an *in rem* action—we have to bring together all the claimants on property in order to resolve the disputes, to keep D from having multiple obligations (that is, paying out more than once on the same claim).
5. Purchaser of debenture sues the issuer to assert alleged right to convert the debenture into stock. Are the other owners of the debentures necessary parties? Yes, this has to be brought as a mini-class-action, because the bonds are basically a single class of property that should be treated the same way. The issuer has to treat all of the bonds the same way because they are of the same class, the purchasers also have to know about the convertibility of the bonds when they buy them because it’s a characteristic of the product.

*Rule 19(b). When joinder is not feasible.*

1. If a person who is required to be joined cannot be joined, the court must determine whether the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:
   1. The extent to which the judgment rendered in the person’s absence might prejudice that person or existing parties
   2. The extent to which any prejudice could be lessened or avoided by:
      1. Protective provisions in the judgment
      2. Shaping the relief—e.g. changing from injunctive relief (“build the dam”) to monetary damages (“pay for all losses caused by the flooding”)
      3. Other measures
   3. Whether a judgment rendered in the person’s absence would be adequate—e.g., in the bankruptcy example, would a necessary party get the relief they are entitled to?
   4. Whether the plaintiff would have an adequate remedy if the action were dismissed for non-joinder—e.g, can the action proceed in state court if subject matter jurisdiction over the necessary party is a problem?

When faced with the inability to join a necessary party (say, because of lack of personal jurisdiction), courts face the decision of either continuing the litigation without the party, reshaping the relief, or dismissing the action.

*Rule 24. Intervention.*

1. Intervention of Right. On timely motion, the court must permit anyone to intervene who:
2. Is given an unconditional right to intervene by a federal statute
3. Claims an interest relating to the property or transaction and disposing of the action may impede the intervening party from protecting its interest, unless existing parties adequately represent the interest