**Civil Procedure Notes 11-5-13**

**R. 19 – Necessary Parties**

-Overriding plaintiff’s autonomy to control his/her lawsuit out of respect for

1. someone already a party, who might be subject to multiple or inconsistent obligations

2. or person that is not a party, who will as a practical matter not be able to vindicate their interest

-Has to always be personal jurisdiction over someone is dragged into a lawsuit

     -sometimes that means have to show personal jurisdiction over a plaintiff

     - necessary party can be a defendants or a plaintiff

 -If no PJ, then there has to be a discussion about throwing out the lawsuit or continuing without the necessary party

P Claims a vase in D's possession and sues D

X also claims the vase

X is a necessary plaintiff - suing D for the vase w/ P

-Have to show PJ over this involuntary plaintiff

-Necessary b/c D does not want to have to pay out twice on same claim

SCOTUS court holding on PJ over individuals compelled to be plaintiffs in class action

(not responsible for this though)

Q. from Kevin – why doesn’t federal court take advantage of its constitutional power to get PJ over a necessary party beyond a state’s borders? The only reason the federal court is limited is because of a FRCP - 4(k)(1)(A)

Green: There is in fact a FRCP that does take advantage of this -100 mile bulge: PJ over a necessary party in fed ct even if a state court could not get PJ as long as the necessary party is within 100 miles of the fed ct (you are not responsible for 100 mile bulge though)

Green – another example is statutory interpleader – You think lots of people are going to make claim on a thing you have, so you compel them all to be parties to same suit, so you don’t have to pay out multiple times on same claim

1. Statute allows them all to be brought in as involuntary plaintiffs in one lawsuit, wherever they are in the US – not limited by 4(k)(1)(A)

2. BUT since these are state law claims, must be SMJ – so must be minimal diversity - Congress has used power to bring minimal diversity cases into federal district court

(once again, you are not responsible for statutory interpleader though)

Courts have generally held venue has to be satisfied concerning necessary parties brought in under R 19 (especially when brought in as defendants)

3 ways there might be problem concerning jurisdiction/venue with respect to a necessary party

Personal Jurisdiction

Might destroy Diversity

Venue

What if there is a necessary party but can’t be joined?

Again, the court has to decide whether to proceed without the party or dismiss whole case - This question used to be called determining whether the party was indispensable.

**R.24 Intervention**

(a) Intervention of Right

Similar to R.19 w/ exception that if someone is already representing your interest then cannot intervene of right

African-Americans who have been refused employment by a fire department are suing the city for racial discrimination in hiring.
They are asking for preferential treatment in hiring by the fire department as a remedy for past discrimination.
May the white firefighters (or white applicants to the fire department) who would be affected by this relief intervene of right?

Yes, because…

1. Fire department can be submitted to different injunctions if the white firefighters file a separate lawsuit.

2. No existing party represents their interest, Fire department only concerned about themselves. May be interested in settling etc.

If you intervene you become a party –

Thus if you allow white fire fighters to intervene

 - they can impact settlement; example black fire fighters and department want to settle, white firefighters could thwart settlement– very difficult to find settlement all 3 agree to

 -Often interveners have conditions on their intervention, such as no right to control settlement

 -otherwise the whole thing (usually) has to go to trial

What if they don’t intervene – then they bring their own suit?

In other words, we are assuming that in the first suit the fire dept. did not bring white applicants in as a necessary party in a R. 12(b)(7) motion/or in answer

 -And white applicants didn’t intervene under R. 24

Result is a tragedy:

(1) Allow 2nd lawsuit to proceed? Then defendant could be subject to inconsistent injunctions

(2) Allow second injunction to trump first? The original plaintiffs are treated unfairly – they already won their lawsuit

(3) Don’t allow second suit to proceed? Then white fire fighters cannot vindicate their interests

Partial solution – impose this rule

Anyone who had actual notice of lawsuit and failed to intervene is precluded – forces them to intervene

\*This is what congress did with respect to civil rights actions

-Some states are doing this now on a broader range of legal issues

-Still have a problem when one cannot know the effects of a judgment

-especially a problem with public law litigation

Might extend the doctrine beyond those who got actual notice. Give notice of lawsuit under Mullane standard

-Then if they fail to intervene they will be bound

- Inform people that their interests are being adjudicated so that they can intervene – make sure there’s Mullane notice to them, and if they fail to intervene, then they will be bound

- this does occur already in quiet title actions

Cannot be bound by a suite you are not a party to unless:

-In ‘privity’ (will discuss later)

- under this cutting edge doctrine – you were a necessary party/intervenor of right and given notice of the suit and did not intervene

What if you intervene

- Cannot challenge PJ

 - a discouragement to intervening...why not wait to be brought in as a necessary party, where you *can* challenge on PJ grounds?

P wants to build a dump in wetlands, army corps of engineers refused to issue a permit, P sues army corps of engineers. May people who live by the wetlands intervene on the side of the government?

 -their property could be adversely affected by dump being build

 -ACE could be subject to contradictory injunctions

 -Govt. has interest of everybody (including people that want the dump), not specifically the people that live near the wetlands, so would-be intervenor’s interests won’t be represented by ACE

- BUT problem with allowing intervention – private people can highjack the government’s suit

- so strong limitations are often put on intervenors on the side of the gov’t

E.G....

-assume ACE litigates and loses, and decides they don’t want to appeal

 -then the third party group might be allowed to intervene for the purposes of appeal, particularly if the gov’t is no longer rep. rights by not appealing

-What type of impact on your interest is necessary to allow you intervene in a law suit – example: instead of people near the wetland and it is environmental interest group

This is tied to the problem of *standing* – discussed in Fed Courts

* Need concrete legally protected interest

(b) Permissive Intervention

-Much broader, also much rarer that courts allow it

-Has a claim or defense that shares with the main action a common question of law or fact

Supplemental Jurisdiction

-Efficiencies to have certain actions brought together

P (NY) sues D (NY) under Federal securities law in federal court

P joins under R.18 (a) a state law fraud claim against D

D impleads insurer I (NY) under state law contract claim

D also brings compulsory counterclaim for breach of contract (P did pay all the money he owes)

-Want all these actions to be brought together but all the actions besides Fed question action don’t have own source of subject matter jurisdiction

Solution....

US Constitution Art. III – what goes to federal court are cases and controversies

 -All of these actions are part of one case or controversy, so as constitutional matter they can all go to Fed. Ct.

Historically 2 ways actions can be part of same case or controversy - Pendent/Ancillary

Pendent Jurisdiction: Applies to a plaintiff who brings action that has own SMJ & joins and another action with common core of operative fact

Ancillary

1. Shares a common core of operative fact with the plaintiff’s claim but brought by someone else (e.g. compulsory counterclaim)
2. Joined cause of action, although no really arising out of a common core of operative fact as the action that has own source of SMJ, asserts legal rights that were activated by the cause of action that has an independent source of federal SMJ
	1. Impleader
	2. Supplementary proceedings to effectuate P’s judgment (eg attach D’s assets)

Pendent and ancillary together define scope of constitutional case or controversy

-compulsory counterclaims, impleaders, cross-claims – part of same constitutional case or controversy

-permissive counter claims – not part of the same constitutional case or controversy

PROBLEM – what happens if we let any cause of action that is part of the same constitutional case or controversy in?

P (NY) sues D1 (NJ) for brawl
P joins D2 (NY) under R 20(a)

 -It’s frustrating statutory requirement 28 U.S.C. §1332 – you need complete diversity

Two-part inquiry

 -Is it constitutional?

 -What is the demand of that statute that gave the Fed. Courts jurisdiction over the case in the first place. Will it be frustrated by allowing pendent/ancillary jurisdiction?

Used to answer second question by looking to particular statute giving fed courts SMJ (e.g. federal question, diversity) now answered by 28 U.S.C. § 1367:

Still two questions

1. Is this action part of the same constitutional case or controversy as action with own SMJ
2. Does it satisfy statutory requirement in § 1367

First step is the constitutional one (stated in 1367(a)):

1. Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

have an action that can make it into Federal court on its own

-then can have jurisdiction over all other claims from same case/controversy, unless exception in 1367(b) excludes it

Second step in 1367(b)

1. In any civil action of which the district courts have original jurisdiction founded **solely on section 1332 of this title**, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by **plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure**, or over **claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules**, when exercising supplemental jurisdiction over such claims would be **inconsistent with the jurisdictional requirements of section 1332**.

NOTICE that exceptions in 1367(b) only apply if original action is under 1332 (diversity statute)

* If original action is federal question, then only concern is constitutional one

What if the defendant is granted summary judgment on federal security laws action? What happens to state law actions in on supplemental jurisdiction? Must they be dismissed? No - they get to stay in federal court, because the same case or controversy arising under federal law is there.

BUT the federal court can dismiss the state law claim over which it has supplemental jurisdiction for these reasons, spelled out in 1367(c) (Come from Gibbs case)

1. the claim raises a novel or complex issue of state law
2. the claim substantially predominates over the claim or claims over which the district court has original jurisdiction.
3. The district court has dismissed all claims over which it has original jurisdiction, or
4. In exceptional circumstances, there are other compelling reasons for declining jurisdiction.

What if D is granted summary judgment on Federal Securities actions?

-Rest can stay in court b/c the court has already said that it has SMJ over the case/controversy

-practical matter – if had been in court for a long time then suddenly federal action is thrown out – shouldn’t be *forced* to dismiss actions that have supplemental jurisdiction

P(NY) wishes to sue D(NY) in federal court for damages in connection with a brawl in NY.
He sues D in the S.D.N.Y., claiming that D’s hitting him was a violation of the Securities Exchange Act (which prohibits fraud in connection with the purchase or sale of a security)
He joins a state law battery action to the SEA action.
Has P succeeded in creating SMJ for what is essentially a state law action?

NO – here the court would dismiss the securities law action for lack of SMJ, not failure to state a claim. Since there would be no action in federal court with original jurisdiction, there would be no action to which the state law battery action could be supplemental.

In less abusive situations, would dismiss the federal action for failure to state a claim and then would have supplemental jurisdiction over the state law actions, although could dismiss them under 1367(c)

A(NY) sues B(NY) under Fed. Securities laws.

A joins state common law fraud claim against C(NY), an auditor for B who was also responsible for the fraud

 -since federal question issue – then it is only a question of whether it is the same constitutional case or controversy

 -1367 allows pendent party jurisdiction