Lect 27

**IMPLEADERS**

**14(a)**

Rule 14. Third-Party Practice  
  
(a) When a Defending Party May Bring in a Third Party.  
    (1) Timing of the Summons and Complaint.  A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court’s leave if it files the third-party complaint more than 14 days after serving its original answer.  
    (2) Third-Party Defendant’s Claims and Defenses.  The person served with the summons and third-party complaint — the “third-party defendant”:  
        (A) must assert any defense against the third party plaintiff’s claim under Rule 12;  
        (B) must assert any counterclaim against the third-party plaintiff under Rule 13(a), and may assert any counterclaim against the third-party plaintiff under Rule 13(b) or any crossclaim against another third-party defendant under Rule 13(g);  
        (C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff’s claim; and…

*(2) Third-Party Defendant’s Claims and Defenses.  The person served with the summons and third-party complaint — the “third-party defendant”:  
        (A) must assert any defense against the third party plaintiff’s claim under Rule 12;  
        (B) must assert any counterclaim against the third-party plaintiff under Rule 13(a), and may assert any counterclaim against the   
        third-party plaintiff under Rule 13(b) or any crossclaim against another third-party defendant under Rule 13(g);  
        (C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff’s claim; and  
        (D) may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the  
        plaintiff’s claim against the third-party plaintiff.*

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  
Is there SMJ for P's suit against D if X's state of incorporation is NJ? Yes – one simply looks at the Ps and Ds to determine whether the Ps’ actions against the Ds have SMJ – one ignores third party defendants  
  
Is there SMJ for D's impleader against X if X's state of incorporation is NY? It does not have SMJ on its own (since it is not federal question or diversity) – but, as we shall see later, it has supplemental jurisdiction

- Assume X is joined. *-* D is found liable and it is determined that X must indemnify D under the insurance contract.  
- Subsequently X sues D in New York state court for premiums that were past due at the time of D's impleader against X.   
- May the suit proceed? No – it was a compulsory counterclaim to the third party complaint

**“Triangular” third party complaints**

14(a)

  (2) Third-Party Defendant’s Claims and Defenses.  The person served with the summons and third-party complaint — the “third-party defendant”:  
              (D) may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff’s claim against the third-party plaintiff.  
    (3) Plaintiff’s Claims Against a Third-Party Defendant.  The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff’s claim against the third-party plaintiff. The third-party defendant must then assert any defense under Rule 12 and any counterclaim under Rule 13(a), and may assert any counterclaim under Rule 13(b) or any crossclaim under Rule 13(g).  
. . .

These fits the two-question format

1) are people already adversaries? NO  
2) does the cause of action concern the same t/o as an action already being litigated? YES  
  
permitted, not required

* X, employee of D, gets in car accident with P
* P sues D in D.N.J. under theory of respondeat superior
* D impleads X for indemnification

1. May X bring an action against P for X’s damages in the car accident?
   1. Yes arises out of same T/O
2. Must he?
   1. NO
3. If X does not bring an action against P concerning the car accident, may X bring an action against P for P’s breach of a contract to mow X’s lawn? NO

Now the intersection between joinder rules and PJ/venue (will do SMJ in connection with supplemental jurisdiction)

1. Joinder of claims in complaints against the same defendant under R. 18(a).

There must be PJ with respect to each cause of action joined under R. 18(a).

Why? It might not violate due process if a plaintiff had to satisfy PJ for only one cause of action and could join unrelated causes of action against the same defendant without satisfying PJ (assuming that the defendant appeared). But if this were allowed it would invite manipulation by plaintiffs. A plaintiff would concoct an insignificant claim where there was PJ over the defendant in a forum the plaintiff wanted and then would join the unrelated genuine claims he had against the defendant without having to satisfy PJ.

There must be V with respect to each cause of action joined under R. 18(a).

Why? Same worries about manipulation by plaintiffs described above.

2. Joinder of defendants in complaints under Rs. 19 or 20(a).

There must be PJ over each defendant joined.

Why? Anything else would violate the due process clause. The court is asserting power over each defendant and why the court has such power must be justified with respect to each defendant.

All of the defendants joined are counted when one determines whether there is V.

Why? This follows from the language of the venue statute 28 U.S.C. § 1391.

3. Compulsory counterclaims under R. 13(a) against already existing parties.

The counterclaim defendant cannot challenge the compulsory counterclaim on PJ grounds.

Why? It probably would not violate due process to consider the counterclaim defendant subject to PJ. See Adam v. Saenger (F&K 529-30). Furthermore, the counterclaim defendant chose to sue in that forum on that transaction or occurrence (T/O), so how can he complain about being sued in that same forum concerning the very same T/O?

The counterclaim defendant cannot challenge the compulsory counterclaim on V grounds.

Why? It makes sense on V grounds to litigate all causes of action concerning the same T/O in the same forum. After all, the witnesses will overlap. So if the original claim had V, it makes sense to say that the compulsory counterclaim has V.

4. Permissive counterclaims under R. 13(b) against already existing parties.

The majority view is that the counterclaim defendant cannot challenge the permissive counterclaim on PJ grounds.

Why? It does not appear that it would not violate due process to consider the counterclaim defendant subject to PJ. The reasoning of Adam v. Saenger would appear to apply to permissive counterclaims, although whether Adam would be upheld by the current SCt is an issue. Furthermore, the counterclaim defendant chose to sue in that forum, so it is plausible that he should not be allowed to object to that forum as the site for an unrelated suit. This argument is not as strong as the compulsory counterclaim example above, however.

The majority view is that the counterclaim defendant cannot challenge the permissive counterclaim on V grounds.

Why? The argument is that the forum cannot be that inconvenient for the counterclaim defendant or he would not have chosen it as the place for his own suit. Furthermore, there are efficiencies gained from litigating all the differences between the two parties in the same forum, even if they are unrelated. Once again, this is not as strong an argument as it is in a compulsory counterclaim context.

5. Cross-claims against already existing parties.

The cross-claim defendant cannot challenge the cross-claim on PJ grounds.

Why?  It does not appear that it would not violate due process to consider the counterclaim defendant subject to PJ. Furthermore, with respect to cross-claims between co-defendants, if there was PJ over the defendants for the plaintiff's claim against them, there should be PJ for the cross-claim anyway. As for cross-claims between co-plaintiffs, the plaintiffs chose the forum for litigating that T/O, so they can't object to litigating a cross-claim concerning the same T/O there.

The cross-claim defendant cannot challenge the cross-claim on V grounds.

Why? It makes sense on V grounds to litigate all causes of action concerning the same T/O in the same forum. So if the original claim had V, it makes sense to say that the cross-claim has V. Furthermore, with respect to cross-claims between co-defendants, if there was V for the plaintiff's claim against them, there should be V for the cross-claim anyway.

6. Impleaders.

An impleaded party can challenge the impleader on PJ grounds.

Why? Anyone dragged before a forum has a right to challenge that court's asserting power over her.

An impleaded party cannot challenge the impleader on V grounds.

Why? It makes sense on V grounds to litigate all causes of action concerning the same T/O in the same forum. So if the original claim had V, it makes sense to say that the impleader has V. (Note however that an impleader is not exactly about the same T/O as the original claim. It might be about the terms of an insurance contract, for example. Still the two actions are closely related, since the outcome of the impleader depends essentially on the outcome of the original suit.)

Necessary parties

**Rule 19. Required Joinder of Parties**(a) Persons Required to Be Joined if Feasible.  
    (1) Required Party.  A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction  
    must be joined as a party if:  
        (A) in that person’s absence, the court cannot accord complete relief among existing parties; or  
        (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person’s absence may:  
            (i) as a practical matter impair or impede the person’s ability to protect the interest; or  
            (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Some examples where someone might seem to be a necessary party but is not:

P, D, and X are in an accident in which D runs into P’s 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?

For example....

P, D, and X are in an accident in which D runs into P’s and X’s car   
P sues D for negligence  
D is determined to be not negligent  
X then sues D for negligence  
can D preclude X from relitigating the issue of D’s negligence?

NO – (with some exceptions to be later identified) you cannot be bound by judgment or a determination of an issue in which you were not a party

* so one cannot argue that X is a necessary party simply because there is an overlap of issues between X’s case and P’s – X will not be harmed by however the suit between P and D turns oiut

COMPARE a situation where someone can be precluded because they were a party in the earlier litigation

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 the P was contributorily negligent  
P then sues X for negligence  
Can X preclude P from relitigating the issue of P’s contributory negligence?

YES – was a party

P, D, and X are in an accident in which D runs into P’s 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?

for example...

P, D, and X are in an accident in which D runs into P’s and X’s car   
P sues D for negligence  
D is determined to be not negligent  
X then sues D for negligence  
D is determined to be negligent.   
D pays X’s damages.

There is an inconsistency here but this is NOT the sort of inconsistent obligations that make someone a necessary party

* giving X money and not giving P money is not inconsistent

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 – can simply introduce defense that C did it and make C take stand

So what ARE examples of necessary parties?

19(a)(1)(A)

**- in absence of party complete relief cannot be provided to existing parties**

- you are suing a corporation to have certain dividends declared in your name, but the majority of a board of directors has to sign on for that to happen  
- are the members of the board necessary parties?

YES

What about 19(a)(1)(B)(i)-(ii)

- **absent party claims interest relating to subject of the action and disposition of action may**

**- as practical matter impair his ability to protect that interest**

**- leave parties who are already parties subject to double, multiple or inconsistent obligations**

Example

P sues the D Corp. for product liability concerning a product that failed and is asking for $20k of damages  
X and Y also bought D Corp. products that failed and each suffered $10k in damages  
Any chance X and Y necessary parties?

If the D Corp. only has $20K

- X and Y are not bound by the judgment in P v. D, in the sense that they can sue D on their own later, but if all the money is gone as a practical matter they will not be able to vindicate their interests

- other examples: multiple claims against limited fund (such as a trust fund or insurance proceeds)

- would also be a reason to intervene of right

water flows from D’s property down to P’s, flooding it

P sues D to erect a dam to protect P’s property downstream

if the dam is erected X’s property, upstream from D’s will be flooded

Is X a necessary party?

* Yes – two reasons
  + D could be subject to inconsistent obligations
    - P wins and D is subject to an injunction to build the dam, then X, who is not bound, sues and D and D is subject to an injunction to take dam down
  + or, if the first injunction will not be revisited by the court in the suit of X v. D, then one can say that X’s ability to vindicate his interest has been compromised by the suit in P v. D

Sublessee sues lessee/sublessor to alter property.  
Lessor/owner, who must consent to change, is a necessary party.   
Why?

* could say that joining him is necessary to provide Sublessee with relief
* could say that without joining him lessee/sublessor could be subject to inconsistent obligations
  + Sublessee gets injunction to make changes
  + Lessor/owner, who is not bound, sues lessee/sublessor and get injunction not take make changes
* or could say that if the judgment in Sublessee’s favor would be respected by the second court in the Lessor/Owner’s suit against the lessee/sublessee, then the Lessor/Owner’s interests would be adversely affected

Glueck sues Company to have Company reissue shares currently held by Haas in Glueck and Haas’s name.  
Haas (who thinks shares are all his) is a necessary party.  
Why?

Company could be subject to dual obligations

Say Glueck wins first suit and Company reissues the shares - half in Glueck’s and half in Haas’s name

Haas would not be bound and so could sue and get a judgment against the company to issue all the shares in his name

P claims a vase in D’s possession.   
X also claims the vase.  
X is a necessary party.  
Why?

P could win a suit against D, get the vase, and the X, who is not bound could sue D and get a judgment entitling him to the vase too

* when you think that there are a number of competing claimants on something you possess, you can bring what is called an interpleader to get them all together for a consistent determination that is binding on all of them
* A purchasers of a debenture sues the issuer to assert alleged right to convert the debenture into stock.
* are the other owners of the debentures necessary parties?
* Yes – the idea is that, as a practical matter, the class of debentures need to be treated the same because they will be passing hands over and over again on the market– one cannot have certain debentures treated one way and others another way on the basis of how litigation concerning them turned out.
* thus to avoid inconsistent obligations the issuer can make a motion to join all other owners of the debentures as necessary parties
  + if there are lots of them, this may justify the creation of a class action

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. Are white applicants to the fire department necessary parties?

* yes, the department could be subject to inconsistent injunctions as a result of two separate suits

Glueck (NY) sues Company (Cal.) in federal court in California to have Company reissue shares currently held by Haas (NY) in Glueck and Haas’s name.  
  
Is there a problem...?

* If Haas is brought in as a defendant, he will destroy diversity
* there also may be no PJ over Hass in CA

If so, one must decide if the necessary party is indispensable

if indispensable, then the whole suit needs to be dismissed because joinder is not possible:

19(b) When Joinder Is Not Feasible.  If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, 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 a judgment rendered in the person’s absence might prejudice that person or the existing parties; **[this just takes into account the original considerations that made the person a necessary party – the question is how strong those considerations are]**    (2) the extent to which any prejudice could be lessened or avoided by:  
        (A) protective provisions in the judgment;  
        (B) shaping the relief; or [**for example, in our dam example, changing a request for injunctive relief to a request for damages]**  
        (C) other measures;  
    (3) whether a judgment rendered in the person’s absence would be adequate; **[again, this just takes into account the original considerations that made the person a necessary party – the question is how strong those considerations are]** and  
    (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder. **[for example, if the problem is lack of diversity when the necessary party is joined, there will be a place where an adequate remedy is possible – namely state court]**