Lect 29

28 U.S.C. § 1367. - Supplemental jurisdiction

(a) 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.

(b) 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.

P (Cal) sues D (Cal) under federal securities law and joins a state law action for a battery occurring a few weeks before the fraud.

OK under joinder Rules?

Yes under 18(a)

- suppl jur?

 - NO not part of same const’l case or controversy

P (Cal) sues D (NY) for $50K and under federal securities law joins a state law action for a battery for $30K occurring a few weeks before the fraud.

* no suppl. jur. for battery action – not same constitutional case or controversy
* BUT it has its own source of SMJ as a diversity case – can get above jurisdictional minimum through aggregation with the federal action

P (Cal) sues D (Cal) under federal securities laws. D joins an action against P for battery, asking for $100k.

- allowed under joinder rules?

 - YES permissive CC under 13(b)

 - Is there suppl jurisd?

 - NO - not part of same const’al case or controversy

P (Cal) sues D (Ore) for state law breach of contract, asking for $100K. D joins an action against P for battery, asking for $25k.

no suppl jur – not part of same const’l case or controversy

and does not have its own source of SMJ – cannot aggregate with P’s action to get a counterclaim above the jurisdictional minimum (we discussed this before)

 P (NY) sues D (NJ) for battery asking for $100K. D impleads X (NY) a joint tortfeasor for contribution.

 - suppl jur?

 - Yes – same cont’l case or controversy as P v. D. Because P v. D is solely a diversity case, we must worry about the exceptions to suppl. jur. in 1367(b) but they do not apply - this is not a claim by a plaintiff and all the exceptions concern claims by plaintiffs

 - X brings 14(a) claim against P from damages from same accident

 - X claim against P has suppl jurisd – same const’l case or controversy and not in exceptions of 1367b

P brings compulsory CC against X

 - arguably no suppl. jur.: it is part of the same const’l case or controversy but it looks like the exceptions in 1367(b) apply

 - it is a claim by a plaintiff against someone made a party under R. 14 and the requirements of 1332 are not satisfied

 - could say claim by a counterclaim plaintiff or a claim by a third party defendant, since P fits those descriptions too

- federal courts are split here, but if there is no suppl. jur. then 1367 has failed – there is no suppl. jur for an action where we have no worry about P using suppl. jur to circumvent the requirements of diversity

 P (NY) sues D1 (NJ) for state law battery asking $100k and D2 (of NJ) asking $25K.

 - allowed under rules?

 - YES 20

 - suppl jur? NO

 - exception in 1367b applies - claim by a P against a D made a party under R20

Ortega (a citizen of Puerto Rico) sues Star-Kist (a citizen of Delaware and PA) under Puerto Rican law for damages to her finger from opening a tuna can. Her damages are above the amount in controversy. Her parents (also citizens of Puerto Rico) join under R 20 asking for emotional distress and medical expenses. Their damages are below the amount in controversy.

Is there suppl. jur. for the parents’ claim?

Justice Kennedy’s majority opinion in Allapattah - YES

 - this does not fall under any of the exceptions in 1367(b)

 - (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.

- it is not a claim by a P against someone made a party under 14, 19, 20 or 24 (why, because D is in the suit without any joinder rule)

- it is not a claim 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

- it is a claim by a plaintiff joined **under R 20**

* theory of statutory interpretation
	+ statute is clear – not ambiguous – so must follow its plain language
	+ Congress must change it if it doesn’t like it
	+ But the legislative history strongly suggests that 1367 was meant only to abrogate Finley and Aldinger – here it does much more
	+ what is problem with relying on legislative history?
		- individuals can add bits in self-serving way

P1 (NY) sues D (NJ) under state law battery for $100k. D makes a motion to join P2 (NY), who has a claim against D for $25K, as a *necessary* party

* Here there is no suppl. jur., because P2 v. D is a claim by a person proposed to be joined as a plaintiff under Rule 19
* so, if the party does not have to be joined (is joined under R 20) there is supplemental jur, but if they need to be joined (under R 19) there isn’t? Green: that’s crazy

 P1(NY) sues D (NJ) for $100k and joins with P2 (NJ) who sues D for $100K.

 does that have suppl. jur. too?

* NO
	+ How does Kennedy solve this problem?
	+ Claims that P1 v. D is not a “civil action of which the district courts have original jurisdiction”
		- P1 v. D is contaminated by the lack of diversity in P2 v. D
		- Don’t even get to exceptions in 1367(b)
	+ Problem – why isn’t the case where the P2 v. D is between diverse parties but below the jurisdictional minimum not also one where P1 v. D is contaminated?
	+ Green – Kennedy’s opinion seems incoherent – does not take the plain meaning approach to statutory interpretation seriously

What about: P1(NY) sues D1 (NJ) for $100k. P1 joins with P2 (NY) who sues D2(NJ) for $25k.

here Allapattah does not give P2 v. D2 suppl. jur. because it is a claim by a plaintiff against someone made a party under R. 20

recap of supplemental jurisdiction for diversity cases with co-plaintiffs and co-defendants…

P1(NY) and P2(NJ) sued D(NJ)

* P2 v. D does NOT have suppl. jur.

P1(NY) and P2(NY) sued D(NJ) – P1 sues for 100K and P2 for 25K

* P2 v. D HAS suppl. jur. under Allapattah

P(NY) sues D1(NJ) and D2(NY)

* P v. D2 does NOT have suppl. jur.

P(NY) sues D1(NY) for 100K and sued D2(NY) for 25K

* P v. D2 does NOT have suppl. jur.

**DO: 1441(c)**

P(cal) sues D(cal) in state court in cal under 42 U.S.C. 1983 for violations of his civil rights

Joined to the action is an unrelated state law breach of contract action against D.

May D successfully remove?

**remember normally Ds can’t break P’s lawsuit up to make part removable – that’s why you can have joinder to defeat diversity**

**BUT this is an exception**

**28 U.S.C. § 1441. - Actions removable generally**

(c) Joinder of Federal law claims and State law claims.--(1) If a civil action includes--

(A) a claim arising under the Constitution, laws, or treaties of the United States (within the meaning of section 1331 of this title), and

(B) a claim not within the original or supplemental jurisdiction of the district court or a claim that has been made nonremovable by statute, the entire action may be removed if the action would be removable without the inclusion of the claim described in subparagraph (B).

(2) Upon removal of an action described in paragraph (1), the district court shall sever from the action all claims described in paragraph (1)(B) and shall remand the severed claims to the State court from which the action was removed. Only defendants against whom a claim described in paragraph (1)(A) has been asserted are required to join in or consent to the removal under paragraph (1).

D can remove and the federal court will keep the federal action and remand the unrelated state law action

this is good – otherwise Ps could make federal actions unremovable very easily

NOW

**Issue preclusion**

If in an earlier case an issue was
- actually litigated and decided
- litigated fairly and fully
- and essential to the decision
then the earlier determination of the issue precludes relitigation of the same issue by someone who was a party or in privity with a party in the earlier litigation

* issue preclusion is about issues that were actually litigated – not about issues that should have been litigated
* compare this with claim preclusion, which precludes actions that should have been litigated in the earlier suit

Little v Blue Goose Motor Coach

SCt Ill 1931

- Dr Little collided with a Blue Goose bus

- Blue Goose sued Little in justice of the peace ct under negligence for damages to the bus and got $139

- while that suit was going, Little brought personal injury action in city ct of E. St. Louis

 - would that be allowed if 1st suit had been in fed ct? NO

 - but the justice of the peace ct did not have the compulsory counterclaim rule

NOTE about the compulsory CC rule– if there are two actions going on at the same time: P v. D and D v. P, in which D. v. P is a compulsory CC to P v. D, P does not have to wait for P v. D to come to a judgment to invoke the compulsory counterclaim rule –P can ask that D v. P be dismissed without prejudice so that it can be brought with P v. D

in that sense the compulsory counterclaim rule is the defendant’s equivalent of both claim preclusion and the doctrine of claim splitting/prior action pending

- Little died and executrix of estate (wife) became P

- she alleged negligence & willful & wanton negligence (recklessness)

- Blue Goose claimed estoppel by verdict, that is, issue preclusion (trial ct denied)

- judgment for Mrs. Little at trial

- appealed

- reversed (issue preclusion applies)

- appealed

- affirmed by Ill SCt (issue preclusion applies)

The person bound is Mrs. Little, but she was not a party in the earlier suit – why is that OK?

she was in privity with Mr. Little

we will discuss this later

a decedent and the executor of his estate are in privity