Lect 27

**Rule 13. Counterclaim and Crossclaim**  
  
(g) Crossclaim Against a Coparty.  A pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.

Example:

P sues D1 and D2 for battery  
D1 joins an action against D2 for his damages in the brawl

1. Why are crossclaims permitted? Overlap of evidence
2. why merely permissive? Why not obligatory?

* don’t want to introduce fights among co-defendants or co-plaintiffs unless you have to

P sues D and D’s employer E for a battery committed by D in the course of D’s employment. May E cross-claim against D for indemnification?

yes – concerns same T/O as P’s suit against D

Must he?

No (will not be precluded if he brings it in diff suit)

If E chooses not to cross-claim for indemnification, may E nevertheless cross-claim against D for D’s pilfering office supplies?

No – not same T/O as original action against him

If E chooses to cross-claim against D for indemnification, may D join an action against E for E’s failure to pay back wages?

Yes – permissive CC

Rule 18. Joinder of Claims  
  
(a) In General.  A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

1) are people already adversaries? YES  
2) does the cause of action concern the same t/o of an action already being litigated? NO   
  
permitted, not required  
   
Example 18(a) :  
P sues D for battery  
P joins an action against D for breach of an unrelated contract

P sues D1 and D2 for damages in a battery. May D1 cross-claim against D2 for breach of an unrelated contract? NO  
  
 Assume that D1 cross-claims against D2 for his damages in the battery. May D1 now join an action against D2 for breach of an unrelated contract? YES under 18(a)

Notice that there must be PJ, SMJ and venue for each cause of action joined under 18(a)

P (NY) sues D (Conn.) in federal court in D. Wyo. for a battery that occurred in Wyo.   
D answers.  
P amends to join an action against D for another battery that occurred in Texas.  
  
PJ and V for the Texas battery? NO

JOINING PARTIES

*Rule 20. Permissive Joinder of Parties*

*(a) Persons Who May Join or Be Joined.*

*(1) Plaintiffs. Persons may join in one action as plaintiffs if:*

*(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and*

*(B) any question of law or fact common to all plaintiffs will arise in the action.*

*(2) Defendants. Persons . . . may be joined in one action as defendants if:*

*(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and*

*(B) any question of law or fact common to all defendants will arise in the action.*

1) are people already adversaries? NO  
2) does the cause of action concern the same t/o of an action already being litigated? YES  
  
permitted, not required  
   
Example 20(a):  
P sues D1 for battery  
P joins a battery action against D2 concerning the same brawl

- jointly, severally, or in the alternative…

joint liab. is where one defendant may be sued for the entire damages that the defendants caused

several is where each D may be used for the damages he caused

alternative is where the P is saying one defendant or the other did it (but not both)

* A, B and C, each driving separate cars, get into a car accident
* May both B and C sue A?
  + Yes
* Must they?
  + No
* May A sue both B and C?
  + Yes
* Must he?
  + No

permissive joinder of counterclaim or cross-claim plaintiffs or defendants

13(h)

may bring in as under 19 and 20

Rule 13. Counterclaim and Crossclaim

. . .

(h) Joining Additional Parties. Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.

* P sues D1 and D2 for a 4-car pileup in Vermont
* May D1 cross-claim against D2 for damages D2’s car did to D1’s car?
  + Yes
* May D1 join X to that cross-claim?
  + Yes
* 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
* May D join X to this counterclaim?
  + Yes

**IMPLEADERS**

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…

**This does NOT satisfy the two-question rule**

Assume P D and X are in a brawl

P sues D for his damages

Can D bring a third party complaint against X concerning the damages that X caused D

**NO – not allowed under 14(a) even though it is the same T/O as P’s action against D**

* 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
* May Y implead Z?
  + YES - employee’s duty to indemnify employer, if employer is liable under respondiat superior
* May Y implead its insurer I?
  + Yes indemnification under insurance contract
* If P sues Z, may Z implead X?
  + ONLY IF arguing contribution between joint tortfeasors

Why allow impleaders

* some overlap of evidence
* good to have the third party defendant bound

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 can force D to relitigate D’s liability to P – I cannot be bound by that liability since I was not a party
* This is why it is good to implead
* NOTE: in most insurance contracts you don’t have to implead the insurance company – under the insurance contract you will be obligated to inform the company of the suit against you and allow it to undertake your defense
* BUT if the insurance company claims that the suit against you is not covered by the policy, it is good to implead them so that they can be bound by any determination that you are liable
  + Note that the third party defendant can bring up the defendant’s defenses to the 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