Lect 28

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]**

Intervention – when a non-party enters the lawsuit without a member of the lawsuit bringing him in

start with intervention of right

standard is similar to that of a necessary party

***Rule 24. Intervention*** *(a) Intervention of Right.  On timely motion, the court must permit anyone to intervene who:  
    (1) is given an unconditional right to intervene by a federal statute; or  
    (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.*

1) 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? Would there be any conditions on their intervention?

- they can intervene of right for the same reason that they are a necessary party

- only real difference is that they have to show that the fire department will not adequately represent their interests, but that is probably true

- BUT probably would not have all the rights of a party

- like a party they can introduce evidence, have lawyer present arguments etc., but only concerning the constitutionality of the remedy requested

- and unlike a party probably cannot thwart settlement

Problem – what if they do not intervene?

* could they subsequently bring suit in a separate action?
* if they can’t it will violate their due process rights (their rights are adjudicated w/o participation)
  + if they can, possible unfairness to fire department (may be whipsawed) or to African-Americans
* may make sense to have rule that says that if they knew (or maybe if they should have known or got Mullane notice) and failed to intervene then they will be precluded
* something like this has been created by federal statute for civil rights actions
  + 42 U.S.C. § 2000e-2(n) (don’t need to know the details)
* but some states are moving toward a common law doctrine that is similar: if a third party is a necessary party-intervenor of right, has notice of the action, and fails to intervene, then will be bound by the proceedings
* IMPORTANT: this is a cutting-edge doctrine and if it is recognized applies ONLY if the third party is a necessary party-intervenor of right
  + this is an exception to the rule that you cannot be bound by proceedings in which you did not participate
* P wants to build a dump in some wetlands
* The Army Corp of Engineers refuses to issue a permit
* P sues the Army Corp of Engineers
* May people who live by the wetlands intervene on the side of the government?

- have proper interest (not having dump smells on property)

- gov’t arguably does not represents those interests

- once again, may be limited in role as parties – there is a worry about private citizens hijacking the governmental suit

- often the intervenors’ role is very limited – only to pursue appeal if the government loses and chooses not to appeal

24(b) permissive intervention

**(b) Permissive Intervention.  
    (1) In General. On timely motion, the court may permit anyone to intervene who:  
        (A) is given a conditional right to intervene by a federal statute; or  
        (B) has a claim or defense that shares with the main action a common question of law or fact.  
. . .**

- one question of law or fact in common

- but must weigh efficiency of intervention against prejudice to current parties

- delay, confusion, and discord

- generally permissive internvention is rare

Supplemental Jurisdiction

- efficiency to bringing certain related causes of action together in federal court

- allowed and sometimes required under joinder rules

- but that doesn’t create SMJ on its own

P NY sues D NY under federal securities law

P joins under R 18(a) a related state law fraud claim (required by claim preclusion)

D impleads insurer (NY) for state law insurance contract claim

D also brings compulsory CC for breach of contract (P didn’t pay all the money he owes)

* there are good reasons to allow all these actions to be brought in federal court with the federal securities law claim, even though they don’t have their own source of SMJ

How to justify this?

It is constitutional because they are part of the same constitutional case or controversy as the federal action

U.S. Const. Article III. Section. 2.   
  
The judicial Power shall extend to all **Cases**, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; . . . --to all **Cases** of admiralty and maritime Jurisdiction;--to **Controversies** to which the United States shall be a Party;--to **Controversies** between two or more States;--between a State and Citizens of another State;--between Citizens of different States,--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.