Lect 29

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.

historically such a form of SMJ was divided into pendent and ancillary (nothing really rides on the distinction anymore)

- pendent

- generally applies to someone bringing an action that has federal SMJ who add causes of action to it that arises from a common nucleus of operative fact as the federal SMJ action

- pendent *party* jurisdiction is pendent jurisdiction that adds new parties

ancillary

- includes two case

1) actions brought by someone other than the plaintiff that lack their own source of federal SMJ but have a common core (or nucleus) of operative fact with the action that does  
(compulsory counterclaims, crossclaims)  
 - 2) joined cause of action, although not really arising out of the common nucleus of operative fact, asserts legal rights that were activated by the cause of action that has an independent source of federal SMJ actions  
- impleader  
- supplementary proceedings to effectuate P’s judgment

- e.g. P sues D under federal law, gets a judgment. The proceedings are continued to effectuate the judgment by attaching the D’s property. The action to effectuate the judgment is under state law and if the parties are not diverse there will be no SMJ for it on its own. It is simply a state law action to collect a debt. BUT it has ancillary jurisdiction.

Problem

P (NY) sues D1 (NJ) for brawl

- P joins D2 (NY) under R 20(a)

- same const’l case or controversy

BUT allowing pendent jurisdiction would eviscerate 1332’s requirement of complete diversity

P could use pendent jurisdiction to circumvent the complete diversity requirement – we don’t want that

- SO: just because pendent/ancillary jurisdiction may be constitutionally allowed does not mean it is *statutorily* allowed

- in the past courts had to look to the particular statute providing jurisdiction for the core claim to see whether allowing pendent/ancillary jurisdiction was compatible with the purpose of that statute

NOW the statutory question is answered by 28 USC 1367 (supplemental jurisdiction statute) which was passed in response to the Finley case

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.

Examples

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) for state law contract claim  
D also brings compulsory counterclaim for breach of contract (P didn’t pay all the money he owes under the securities contract)

ALL have supplemental jurisdiction

they satisfy 1367(a) because they are all part of the same constitutional case or controversy as the federal action

* and none of the exceptions in 1367(b) apply because the court has original jurisdiction under 1331, not 1332

What if the D is granted a directed verdict on the federal securities action? What if the D gets the federal securities action dismissed for failure to state a claim?

Must the court dismiss the actions with supplemental jurisdiction?

NO – the constitutional case or controversy remains

PROBLEM:

- P(NY) and D(NY) wish to litigate their state law battery action in federal court before their friend, federal judge X, who is willing.  
- How to overcome the problem of SMJ?  
- P sues D in federal court claiming that D’s hitting him was a violation of federal securities law  
- P joins to the federal action a state law battery action  
- When the federal securities law action is dismissed for failure to state a claim, there is still SMJ for the battery action  
- should this work...?

- NO – in this case, where the federal action is being used to simply gin up federal SMJ for an essentially state law case, the court must dismiss the federal securities action *for lack of SMJ*, not failure to state a claim

– when it is dismissed for lack of SMJ, then the court must dismiss the state law actions

- the fact that a court has supplemental jurisdiction for an action does not mean, however, that it must take the action:

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if -  
(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.

So if the federal securities action is dismissed early on, the federal court has a good reason to dismiss the supplemental actions (although it is not obligated to do so)

NOTE: If the supplemental action is dismissed under 1367(c) it can be refiled in state court without worrying about the state statute of limitations:

1367(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

Is 1367(d) constitutional? This is federal regulation of state court procedure (highly unusual). Why is that allowed? The SCt upheld it on the ground that the purpose was protecting federal jurisdiction. Without it, plaintiffs would be unwilling to sue in federal court for worry that the state actions dismissed under 1367(c) would be barred forever.

NOTE: 1367(d) does not apply if the state action is dismissed for lack of SMJ – it applies only to actions that have supplemental jurisdiction but are nevertheless dismissed discretionarily

A (NY) sues B(NY) under federal securities laws   
  
A joins state common law fraud claim against C (NY), an auditor for B who was also responsible for the fraud - is this allowed under Fed Rules?

- Yes under R 20(a)

- is there constitutional power to take the action against C?

- yes –same constitutional case or controversy

- But before 1367, the SCt had held that pendent party jurisdiction was not statutorily allowed

- they said this in Finley v. United States (US 1989) and Aldinger v. Howard (US 1976) which involved the jurisdictional statutes giving federal courts SMJ for actions against the US and civil rights actions, but it would appear that they would have said the same thing about actions in federal court under 1331 too

Congress didn’t like this so it passed 1367

Basically was intended to abrogate Finley and Aldinger, but keep the rest of the law on pendent and ancillary jurisdiction the same

* But the statute was misdrafted

examples of 1367 in action

let’s start with examples where it works:

A (Cal.) sues E (Nev.) (B’s employer) under state law for a battery committed by B (Cal.)   
- E impleads B   
- B then brings a suit against A on the harm done to B in their fight

does the action by B against A have supplemental jur?

Yes

* first step, it is part of the same constitutional cause or controversy as A v. E
* second step, because A v. E has original jurisdiction only under 1332, we must worry about whether the exceptions in 1367(b) apply
* but they don’t: all the exceptions involve actions by plaintiffs and B v. A isn’t an action by a plaintiff

- Pre-1367 ancillary jurisdiction was allowed in such a scenario under Revere Copper & Brass v. Aetna

- after all, B is not using ancillary jurisdiction to circumvent the requirements of complete diversity – he didn’t even want to have a suit in federal court in the first place

- and the same thing is true under 1367

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Imagine instead that it was A that joined an action against B

That is like Owen Equip & Erection Co v. Kroger, where pre-1367 the SCt held that pendent jurisdiction should not be allowed

* A(Cal) might sue an employer(Nev.) under diversity, knowing E would implead B(Cal.) and then join an action against B,
  + that would be a way to use pendent jurisdiction to get a state law action between two Californians into federal court
* and supplemental jurisdiction is not allowed under 1367 too
* first step, A v. B is part of the same constitutional cause or controversy as A v. E
* second step, because A v. E has original jurisdiction only under 1332, we must worry about whether the exceptions in 1367(b) apply
* and they do: this is a claim by a plaintiff against someone made a party under R 14 when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332 (the parties are not diverse)

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 (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