Lect 30

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

**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

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 - how will issue of Little’s negl decide the wife’s suit for negl on the part of the bus co?

 - he is contributorily negl

 - but she also alleges recklessness, to which contrib negl is not a defense

 - doesn’t that mean the issue of whether the bus co was reckless is still open?

 - no, was decided in earlier case as well because under Ill law the burden is on P to show he was not contrib negl

- since that was shown, Co could not have been reckless

Why is issue precl good?

- finality, efficiency, consistency

Why is it bad?

- 1st decision may not be right – issue preclusion expands the effect of the error

- burdened party may have had no idea that so much was riding on the litigation of the issue

1) Notice: must be the *same issue* – but some wiggle room

* P sues D for breach of a contract to buy 10 shares of the C Corp. every month for 2 years
* D introduces the defense of fraud, on the ground that at the time they entered into the contract P lied to D about the C Corp.’s oil assets
* D loses on that issue; judgment for P
* Subsequently D breaches the contract again
* P sues D and D introduces two defenses:
	+ statute of frauds (the contract was not in writing)
	+ fraud (at the time that they entered into the contract, P lied to D about the C Corp.’s coal assets)
* Is D issue precluded?
	+ not concerning statute of frauds – issue preclusion is about what was actually litigated, not what should have been
	+ would be precluded about fraud, even though coal assets were not litigated

Jacobson v. Miller SCt Mich 1879

P sued for installments on rent

- no denial of execution (D claimed other person was using the property)

 - in subsequent action for new installments, the execution of the leases was challenged

 - held that admission does not have issue preclusive effect

 - not actually litigated

 - plenty of reasons to admit even if you think it is not true

Problem: in some circumstances, might that not undermine the reliance that the P had on his earlier judgment?

* what if it had been determined that there was no execution in the first suit?
	+ the P would have gotten another tenant

Actually litigated and decided requirement

* P sues D for negligence
* D introduces the affirmative defense of contributory negligence in his answer
* At trial, no evidence for or against contributory negligence is offered by either side and the jury finds for P
* Would D be issue precluded from relitigating P’s negligence?
* Yes

default judgments?

 - could take there to be issue preclusion on every issue necessary for judgment

 - courts used to do that

 - now courts generally allow no issue preclusion

summary judgment? directed verdict?

 - yes issue preclusion

consent judgments?

- a consent judgment is a judgment issued by a court at the consent of the parties pursuant to a settlement agreement

 - shouldn’t have issue preclusive effect (unless that is part of the settlement agreement) but some courts allow it

 - so must be careful

- best to say in settlement agreement no issue precl effect

Another requirement for issue preclusion

Was it essential to the judgment?

- important because may not have been vigorously litigated or taken seriously by the finder of fact if not essential

- and appellate review may not be available if not essential

Cambria v Jeffery

SCt Mass 1940

Two autos, one owned by (Cambria) and driven by his servant and the other owned and driven by (Jeffrey) collided

in first suit Jeffrey sued Cambria for bodily injuries and auto damage

- ct found that both Jeffrey and the servant were negligent and denied recovery to Jeffrey because he was contributorily negligent

Subseq’ly Cambria sued Jeffrey for damage to auto

- jury found for Cambria

- judge entered verdict for Jeffrey on ground that negligence of both Jeffrey and Cambria’s servant had been determined

appealed

- reversed

- finding that servant was negligent was not necessary to judgment for Cambria, since all that was needed for that was that Jeffrey was contributorily negligent

Subseq’ly Mass SCt backtracked in the Home Owners Fed savings Case, saying that if an issue was treated as essential by the court even if not strictly essential it can have issue preclusive effect

* some courts take this approach