**Class notes Monday, October 23, 2017**

* **Hypo #1:**
	+ **-** Officer P sues arrestee D in California state court for battery in connections with P's arrest of D

	- California has a compulsory counterclaim rule

	- must D join in his answer his federal civil rights action against P concerning P's actions in the arrest? **Yes (assuming CA has Comp CC rule)**

	 - if D brings the counterclaim, may P remove?
		- **No - Only defendants can remove**

		 - if D brings the counterclaim, may D remove?
			* **No b/c *Mottley* rule**
	+ **what about comp CC for aggregation**
		- **Ex:**
			* **P (CA)🡪 D(NV) in state ct and AIC $50k**
				+ **Not removable action**
				+ **Imagine D has compulsory counterclaim for $50k too, that may not be used to get above AIC**
				+ **You can’t aggregate P’s action and compulsory counterclaim to get above jurisdictional min, even though P can aggregate claims to get there**
* **Hypo #2:**
	+ P sues D in federal court concerning negligence
	•    D makes pre-answer motion to dismiss for failure to state a claim
	•    D’s motion is granted
	•    subsequently D sues P in federal court concerning negligence in connection with the same accident
	•    P asserts defense that D is precluded from bringing action because it was a compulsory counterclaim in the earlier suit
	•    barred?
	+ **At what point do you have obligation to bring counterclaim?**
	+ **any time someone is suing you, you must bring all causes of actions concerning the same transaction/occurrence at a certain point – but when does that obligation attach?**
		- **The pleading response stage**
		- **12(b) motion doesn’t create compulsory counterclaim obligation**
* **Hypo #3:**
	+ - P (NY) sues D (Cal) in federal court in Cal concerning a battery that the two got into in NY

	- D counterclaims concerning breach of an unrelated contract that took place solely within NY

	- P brings a motion to dismiss the counterclaim for lack of PJ

	- what result?
	+ **This is about PJ for counter claim**
		- **Can P say no PJ for counterclaim**
	+ **Majority rule: there *is* PJ for permissive counterclaim**
		- * **Green: this is problematic approach**
* **Hypo #4**
	+ - assume that P sues D for battery in federal court

	- D answers, asserting the defense of lack of PJ and joins a counterclaim for his own damages in the brawl

	- P argues that D has waived defense of PJ by counterclaiming - result?
	+ **When D brings counterclaim, in conjunction with other waivable defenses (like PJ), does that waive the defenses?**
		- **Fed R Civ P 12 makes it clear that defenses on the merits in the answer or preanswer motion don’t waive PJ – but there is nothing there about CCs**
			* **“**No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.”
		- **but courts have held if your answer is compulsory counterclaim, it does not waive PJ**
		- **But still open question on permissive counterclaims**
	+ **Any time you bring new party in (whether joinder or necessary party, etc), they must always be served in accordance with Rule 4 anything else is Rule 5**
* Impleaders
	+ **Big thing to remember: they don’t do what you think they should**
		- **which is to allow you to bring any action against new party concerning same transaction/occurrence for which you’re being sued**
	+ What you have to say instead
		- Third party defendant is liable to you for all or some of what you are liable to the person suing you for
		- Aka “derivative liability”
			* e.g. if I am liable, I and the third party D are joint tortfeasors , therefore, 3rd P D is liable to me for all or part of what I am liable to P
			* Ex: employer brings indemnification against employee when employer is sued under respondeat superior
	+ This is what Rule 14 is all about
* 14(a)(2)
	+ (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 cross claim 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…

3rd party D can assert the defenses of the defendant who impleaded him

14(a)(2)
              (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.

* + AKA triangular causes of action
	+ Green: maybe call them third party complaint—no definitive name for them
* Intersection between joinder rules and PJ and venue
	+ When p suing D on multiple COA against the same D joined under 18(a), needs to have personal jurisdiction for all COAs
		- SCt. Has never decided on earlier cases, but we do know that fed courts demand it
		- PJ for every COA
		- PJ for one COA, doesn’t mean PJ for all COA
	+ Same thing is true about venue
		- Each COA must satisfy venue statute
		- If you rely on residential venue, no problem
		- Transactional🡪 have to make sure all applicable
	+ Joinder of Ds under R20
		- PJ over each D
		- Venue statue has to be satisfied for all Ds
			* residential venue obviously takes into account all Ds
			* if transactional venue, then must make sure it applies for each D
	+ Compulsory counterclaims
		- Venue statute doesn’t NEED to be accounted for
		- and there is no need to show PJ
* Permissive counterclaims by defendants against plaintiffs
	+ majority view is PJ is considered satisfied (or waived)
	 majority view is venue statute need not be satisfied
* third party complaints brought by defendants
	+ there must be PJ over the third party defendant
	+ venue statute need not be satisfied
* the fact that you were not a party almost always means you cannot be bound by what happened
	+ so you don’t have to worry that someone needs to be brought in, b/c if they aren’t, some legal determination will bind them
		- necessary parties arise from different problems
			* Inconsistent obligations (re: build dam or don’t) or multiple obligations (paying out multiple times for same claims)
* Rule 19 Required Joinder of Parties
	+ 19(a)(1)(B)(i) and (B)(ii) have same goals basically
	+ D won’t be subjected to inconsistent obligation
	+ Third party as practical matter as not being able to vindicate their interests
	+ Bankruptcy is kind of like necessary party b/c every party with a claim must be included for appropriate adjudication
		- We don’t want one person to get totality of what’s due to them, and then other people joining later, only get fraction or none of their relief
* **Hypo #5 –example of necessary party**
	+ P claims a vase in D’s possession

	X also claims the vase

	X is a necessary party

	why?
	+ **Because it can also be X’s property**
	+ **It would satisfy properties of R19**
		- **X has interest in action b/c he says it’s his vase**
		- **If P wins and gets vase, and X tries to sue D, P has it**
		- **But maybe he sues for the value of the vase**
		- **But then D would be subject for multiple obligations to pay**
		- **X and any other claim is necessary party**
		- **We also see why in rem action is important b/c it would bring in all these claimants together**
		- **Green: when not in rem action but instead try to bring in multiple claimants, you yourself are not claiming to be owner, the name for this interpleader**
* **Hypo #6—necessary party**
	+ a purchaser 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 b/c they have common interest in whether they have ability to convert it**
	+ **Shouldn’t have multiple law suits b/c there is a problem with having these bonds moving around where certain bonds can be converted to equity and others can’t**
	+ Bonds being bought and sold, would mean that there is no longer market in that debt b/c it would have completely different characteristics
		- This is a category of debt, but we want it to be treated the same in market place, therefore, everyone needs to be bound to make sure it’s all equal
	+ Green: practically necessary to have uniform approach
	+ **If you have all these people as necessary parties and there are more than can have their on lawyers participating in a law suit, you turn it into a class-action suit**
		- And that’s how class actions started
			* Necessary parties but too many to give everyone their own lawyer
			* So you had to determine the fate of all through the action of one representative plaintiff
		- Class actions have gone well beyond this
			* Ex: mass tort –big explosion and a lot of people hurt
				+ here the claimants are not necessary parties
				+ it is only the level of efficiency to have all suits brought in that justifies it as a class action
		- Original class action was where all these people were necessary parties but there were too many so class action makes sense
* **Hypo #7**
	+ 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...?
	+ **We know why Haas is necessary party**
	+ **Assume there is PJ here**
	+ **The problem with joining him is that Haas is diversity destroying party**
	+ **Assume this is under state law, but now we have necessary party that is New Yorker**
	+ **Ct may not known which side Haas is on (P or D)**
		- **You want to bring Haas in b/c he is claiming he has ownership**
		- **Haas is D b/c he claims to be the owner of it all, contrary to what Glueck says**
			* **His relationship to Glueck that would make it P/D relationship, is that it’s adversarial**
			* **P is claiming property that Haas claims is his**
			* **And company will probably side with Haas too (they gave property to Haas b/c it’s his)**
	+ **So assuming that someone is necessary party but they can’t be joined because it would destroy diversity or there is no PJ independent of consent and consent won’t be given**
	+ **Ct hast do decide if they can move forward without necessary party or if they need to throw out case entirely**
		- **is the necessary party “indispensable”?**
	+ **19(b)**
	+ **(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 how necessary a party they 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
	        (C) other measures;** [classic example, change injunctive relief into damages]

 **(3) whether a judgment rendered in the person’s absence would be adequate;** [this just takes into account how necessary a party they are]

* + **and
	    (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.** [is there a place where all the parties can be put together, eg state court]
* Torrington v. Yost
	+ Trade secrets case in federal court
	+ D worked for P, while working for P, signed confidentiality agreement
	+ Left P to work at similar kind of job
	+ D moved to dismiss under R19 for failure to join new employer INA
		- INA is a necessary party b/c they have an interest in the litigation and if they are not joined, they won’t be able to vindicate their interests and party will be subject to inconsistent obligations
		- Inconsistent determination on whether D can work for INA or not
	+ Usually it is injunctive relief that causes necessary party problem
	+ P wants to prevent D from working for 18 months
	+ Duplicative law suits
		- Torrington brought their claim and won
		- Then INA brought claim against Yost and won
		- Inconsistency here is under first judgment Yost is obligated to not work for INA and under second is obligated to keep his contract with INA and work for them
	+ BUT INA and Torrington are from the same state and INA must be brought in a a D with Yost
	+ Is INA indispensable?
		- main question is
			* whether there is an alternative forum where they can all be put together (yes – state court)
			* whether relief could be changed to solve problem – eg Yost made to work somewhere else at INA
				+ won’t help – INA could sue him for not working in the place they originally wanted him to – putting Yost under inconsistent obligations
* 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.
		- Green: (2) **could also be put in terms of someone who is already a party subject to inconsistent obligation**
* **Hypo #8**
	+ 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? **Are they necessary parties?**
		- **could be so described under 19(a)(1)(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.
		- eg Af-Am’s win and then white firefighters sue fire dept. and also win – fire dept is subject to inconsistent obligs
		- or could say that if second suit is dismissed because of judgment in 1st the white firefighters can’t vindicate their interest
	+ the idea of intervention of rights under 24(a) is similar – necessary party joins of own accord
		- BUT there is a tendency to say that the interest needed to be an intervenor of right is broader than the interest needed to be a necessary party – for an intervenor it might not be an interest that the intervenor could have sued on if he is not joined
	+ **If no one else mentions white applicants, then they can join the party on their own**
		- **Someone who is not party and joins the law suit, they have to have good reason**
			* **Reason: they are necessary party or something very close to necessary party**
			* **Only thing is that you won’t be able to intervene if “existing parties adequately represent that interest”**
			* **There’s the idea that someone has an interest in the law suit but it’s sufficiently important that they can intervene**
			* **If lawsuit proceeds without you, you might not be able to vindicate your interests**
	+ **Can court bring in necessary party *sua sponte*?**
		- **Yes, this is a way of providing adequate relief and they have an interest in doing so**
	+ What if white firefighters don’t intervene?
		- **1. They didn’t find out to intervene**
		- **2. They knew about it and decided not to intervene and no one else knew that they were necessary party**
		- It’s a tragedy b/c someone is going to be screwed over
	+ Green: for this particular example, there’s a statute that applies 🡪 42 U.S.C. § 2000e-2(n)
		- If you had actual notice of law suit (the white applicants), and you didn’t intervene, you’re going to be bound to the lawsuit
		- tied to civil rights actions
		- So you must join law suit if you find out about or else you’ll be bound
		- This is an EXCEPTION to the general rule that you cannot be bound by a judgment unless you were an actual party
		- SOME jurisdictions have introduced this general idea in their common law of issue preclusion
			* if you were a necessary party and knew about the lawsuit and did not intervene then you will be bound by the results
			* but this is a cutting edge doctrine
			* **This is unusual so if you remember anything, remember that you almost always cannot be bound by a lawsuit in which you were not a party**
* **Hypo #9**
	+ 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?
	+ **Are they an intervener of right?**
		- **Yes they have an interest—they don’t want smelly dumps**
	+ **As practical matter, if they’re not joined, they may not be able to vindicate interests**
	+ **Is their interest adequately represented by gov’t?**
		- **Well maybe gov’t might settle b/c they have a lot of other things going on**
		- **It’s problematic when people intervene on side of gov’t, so it’s very common for their to be limitations of intervention**
			* **Via amicus brief b/c they are not bound**
		- **So then they say you can only intervene if it’s for purposes of bringing the appeal**
* Permissive Intervention
	+ **Very rare for ct to allow permissive intervention**
* **Supplemental jurisdiction**
* **Hypo #10**
	+ 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)
	+ 
	+ **idea that this is all one big case so the whole case can be sent to federal court as a CONSTITUTIONAL MATTER as long as it has the “arising under” hook**
	+ Pendant and ancillary
		- Together is the constitutional scope for their to be supplemental jurisdiction ASA A CONSTITUTIONAL MATTER
		- Pendant
			* applies to a plaintiff with an action that has its own source of SMJ who joins causes of action without their own source of SMJ but that arise from a *common nucleus of operative fact*
			* Green: “common nucleus of operative fact” shows that you are trying to show the constitutional scope
				+ Prefers for you to use this phrasing over “transaction or occurrence”, which is joinder-rule-talk
		- Ancillary
			* Two types:
				+ (1) Actions brought by someone other than the plaintiff that lack their own source of federal SMJ but have a common nucleus of operative fact with the action that does
				(compulsory counterclaims, cross claims)

still “common nucleus of operative facts” doing the work here

* + - * + (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

this one means if you bring action against someone and you win, you then have to collect that judgment you use state debt collection law

for those proceedings to continue in fed court, there must be supplemental jurisdiction for state law debt collection action

this has ancillary jurisdiction b/c trying to collect debt is started by fed judgment

**anything that has common nucleus of operative facts that gave rise to federal action, that’s still going to be constitutional case or controversy**

**and any action that is animated by the success of the action that has SMJ on its own, it will count in constitutional case or controversy**

Green: be sure to answer constitutional question separately

* **Hypo #11**
	+ P (NY) sues D1 (NJ) for brawl
	P joins D2 (NY) under R 20(a)
	+ **Supplemental jurisdiction has destroyed diversity**
	+ **So although this is constitutional (b/c P v. D2 is part of constitutional case or controversy with P v. D1)**
	+ Constitutional question is not the only question
		- Next step is if statute giving ct SMJ allows it?
		- in the past you looked to the particular statute at issue and you see is giving the action SMJ would frustrate its purpose
		- here it would because the requirement of complete diversity in 1332 would be frustrated
* after Finley….. the question is now answered by 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**.
	+ **1367(b) is only a problem if original jurisdiction is *only* diversity case, and then only if it’s a claim by P, you might be in trouble because an exception to supplemental jurisdiction might apply**
		- *