* + **-** 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**
* **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

Impleaders (aka third party complaints)

* Rule 14

P, D, and X, each driving their own cars, are in an accident
P sues D for negligence
D wishes to join an action against X for negligence in connection with the same accident
OK for D to implead X?

* D happens to have a claim against X involving the same transaction or occurrence. Can he bring it? No. X has to be liable to D for all or part of what D is liable to P
	+ Primary example is insurance company, which is liable to the original D for all or part that D is liable to P
	+ Indemnification, such as in employer-employee relationship
	+ Contribution, such as with joint tortfeasors
* Here Green’s rules don’t work – they are not adversaries but it is the same T/O so joinder should be permitted but not required – but it is forbidden

P, D, and X, each driving their own cars, are in an accident
P sues D for negligence
D believes that X is the one who was negligent and thus the one that is liable to P
OK for D to implead X?

* NO X has to be responsible to D for all or part that D is liable to P in order to be brought in. It cannot be simply that X is directly liable to P.
* D can claim that X is responsible at trial, but he cannot actually bring in X as a party.
* Third-party defendants are subject to the waiver of defenses and waiver of counterclaims rules. – can also bring up D’s defenses

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?
May Y implead its insurer I?
If P sues Z, may Z implead X?

Employer (Y) can implead employee (Z) – when there is respondeat superior action the employer can implead the employee for indemnification. . Employer (Y) can implead insurance company (I) – indemnification under the insurance contract

Employee (Z) can implead X but only under theory that X is a joint tortfeasor – if so, Z can be liable to P for all P’s damages, but Z will have a contribution action against X

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?

* The insurance company can claim that the defendant was not negligent. And this question would have to be re-litigated because I was not a party in earlier suit
* that is why it is so important to join under R 14

- P sues D for negligence
- D impleads X, his insurance company *-* D is found liable and it is determined that X must indemnify D under the insurance contract.
- Subsequently X sues D for premiums that were past due at the time of D's impleader against X
- May the suit proceed?

* This claim is probably precluded because it was compulsory CC

- X, employee of D, gets in car accident with P
- P sues D under theory of respondeat superior
- D impleads X for indemnification
- May X bring an action against P for X’s damages in the car accident?

YES see R 14

14(a)(2)
             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.

- Must he? NO
- 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 – not same T/O as P’s action against D

Intersection between joinder and PJ and venue

causes of actions joined under 18(a) by plaintiffs against defendants
each must satisfy venue statute and there must be PJ over the defendants for each

joinder of defendants under R 20
there must be PJ over each defendant, the venue statute must be satisfied with respect to all defendants

compulsory counterclaims by defendants against plaintiffs
PJ is considered satisfied (or waived)
venue statute need not be satisfied

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

Necessary Parties

easy to think someone is a necessary party when he isn’t

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?

* NO - Additional plaintiff is not a necessary party because he will not be bound by the finding in the first lawsuit. Additional plaintiff can have his own day in court. Cannot be bound if you were not a party.
* e.g. 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
* This might lead to inconsistent determinations of D’s negligence, but that’s just how it is.
* Inconsistency is fine as long as there are not inconsistent **obligations**.

COMPARE

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 – P was a party in the earlier suit

* the plaintiff who was found to be contributorily negligent in a case against one party cannot re-litigate the case against another potential defendant (for negligence).

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 offer defense that C did it – don’t need to make him a party to do that

* It is more likely that there will be necessary parties in cases where injunctive relief is requested.
* So when is there a necessary party? (1) If court cannot provide complete relief.
* - 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 - Relief is not possible if other parties are not brought into the case.
* - water flows from D’s property down to P’s, flooding it
- P sues D to erect a dam to protect P’s property
- if the dam is erected X’s property, upstream from D’s will be flooded
- Is X a necessary party?

YES

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.

* Often, the problem can be framed in terms of B(i) or B(ii). As a practical matter, you can look at the problem under either section.

could say that X will not be able to protect his interest because the injunction to build the dam will already have been litigated

or could say that if X is able to relitigate and win, then D could be subject to inconsistent obligations – build dam and tear it down

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?

* There can be a necessary party when ownership is disputed to avoid a party’s having to pay out twice on the same claim.
* assume Company loses to Glueck and gives him ½ of shares
* here if Haas is not made a party, he could sue Company and get all of the shares
* concerning ½ of shares Company will have paid out twice
* **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**