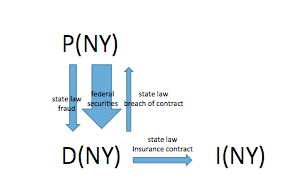
Civ Pro Notes 10/25

Supplemental Jurisdiction

Art III §2 Focuses on Cases and Controversies as a Whole

that is why it is constitutional for an action that does not have its own source of SMJ to be in federal court with one that does

but there remains the question of whether SMJ for the actions is statutorily allowed

* **Supplemental jurisdiction** 
  + 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** 
  + 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**

Supplemental Jurisdiction Statute 28 U.S.C. § 1367 passed to override SCt decision in Finley, codified supplemental jurisdiction requirements

1st Step: Constitutional Analysis- is the action part of the same constitutional case or controversy as the action with original SMJ?

e.g. does it share have a **common core of operative fact?**

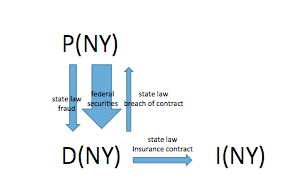
2nd Step (Only if Federal Action is based solely on Diversity): Statutory Analysis using §1367(b)

(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.

notice these exceptions are a problem only for actions brought by a **plaintiff**

so –

* **Hypo**
  + 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 of these actions have supplemental jurisdiction – they are all part of the same constitutional case or controversy and because the core action is federal question that is all that matters

what if the D is granted summary judgment on the federal securities action?  
  
must the court dismiss the state common law fraud action?

it does not have to – they still have supplemental jur

what if the D gets the federal securities action dismissed for failure to state a claim?

they still have suppl jur

it can at its discretion dismiss the actions however

(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.

- 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 the federal action is not colorable so it will be dismissed for lack of SMJ not failure to state a claim – as a result there cannot be suppl jur for the other actions

§1367(d) allows for claims dismissed under §1367(c) to be brought in State Courts, dictates a new tolling of the statute of limitations (possibly cuts into State’s authority over their courts)

§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.

* Jinks Case about the constitutionality of §1367(d), Court held that the statute helps encourage people to take claims to federal court without the fear of their state law claims being barred from state court on statute of limitations grounds if they are dismissed under 1367(c)
* it is constitutional even though Congress is regulating the procedure of state courts because the regulation is only to protect the jurisdiction of federal courts

Hypo- A (NY) sues B(NY) under fed securities laws   
  
A joins state common law fraud claim against C (NY), an auditor for B who was also responsible for the fraud

* Permissible Joinder under Rule 20(a)
* Supplemental Jurisdiction exists because action A -> C concerns the same nucleus of operative facts as claim A->B which has original jurisdiction
* Since A->B is federal question, that is the only question
* This is incidentally similar to the pendant party jurisdiction which the SCt rejected in Finley and Aldinger – it was those two cases that motivated Congress to pass 1367

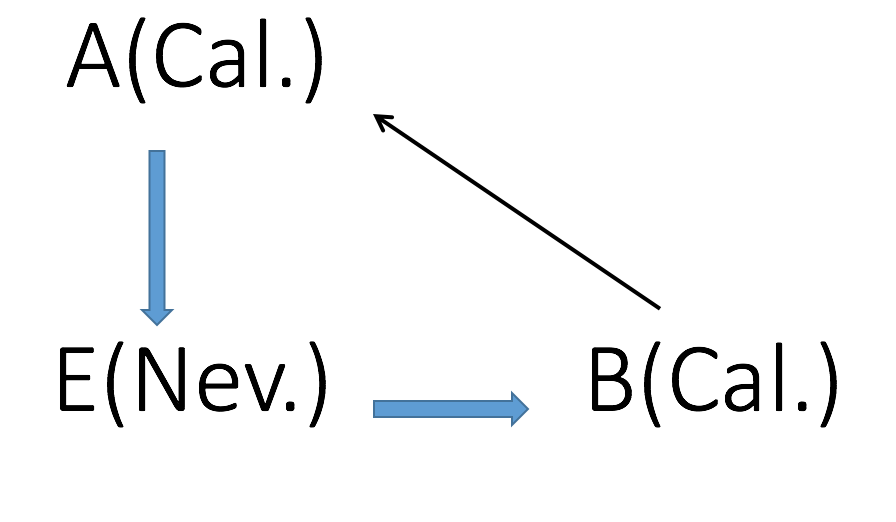
Assume A also joins a state law action for a battery occurring a few weeks before the fraud against C

* Allowed under 14(a) but no supplemental jurisdiction, not the same nucleus of operate facts

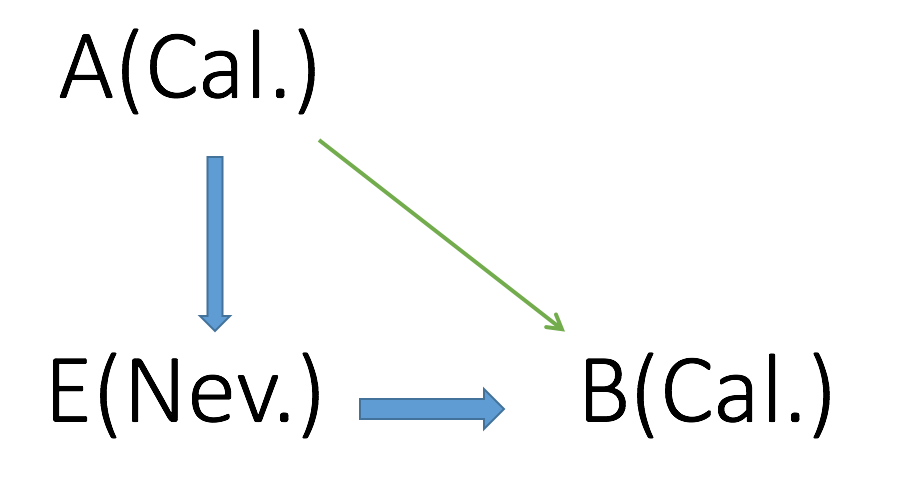
Hypo - A (Cal.) sues E (Nev.) (B’s employer) under state law for a battery committed by B (Cal.)

* E impleads B

Acceptable under Rule 14 (E claiming B is liable to E for all or part of E’s liability to A)

* There is suppl jur for this impleader
* B then brings joins an action against A on the harm done to B in their fight
* This is allowed under R 14
* 

Supplemental Jurisdiction exists, even though B and A are not diverse

* same const’l case or controversy as A v. E and even though one might have to woryy about the exceptions to suppl jur in 1367(b), because A v. E is solely a diversity case, B v. A is not brought by a plaintiff so the exceptions don’t apply
* What if you switch and it is A bringing an action against B?
* 

Acceptable joinder claim under Rule 14, but no supplemental jurisdiction because it falls under the exception of §1367(b) – it is a claim by a plaintiff against someone made a party under R 14, where exercising suppl jur would be inconsistent with the jurisdictional requirements of section 1332.

Hypo - P (Cal) sues D (Cal) under federal securities laws. D joins an action against P for battery, asking for $100k

No supplemental jurisdiction, claim D🡪P is not within the same core of operate facts as the original action – not part of the same const’l case or controversy

Hypo - 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 supplemental jurisdiction, D🡪 P is a permissive counterclaim (Rule 13(b)), so claim D🡪P is not part of the same const’l case or controversy
* Majority of Courts say cannot aggregate counterclaim amounts with the original amount to reach amount in controversy

Hypo - P (NY) sues D (NJ) for battery asking for $100K. D impleads X (NY) a joint tortfeasor for contribution   
X brings 14(a) claims against P from damages from same accident  
P brings compulsory counterclaim against X for damages from the accident

* is there suppl jur?
* there should be: P is not using suppl jur to try to get around the requirements for complete diversity – is only bringing P v. X because D impleaded X and X joined an action against P
* BUT argument that there is not –
  + Although part of same const’l case or controversy as P v. D, it falls under the exception to suppl jur in 1367(b)
    - Claim by P against someone made a party under R 14
  + Some courts try to get around this by saying that P v. X is a claim by a counterclaim plaintiff not a simple plaintiff

Hypo - P (NY) sues D1 (NJ) for state law battery asking $100k and D2 (NJ) asking $25K.

No supplemental jurisdiction, Exception applies because D2 made party under Rule 20, Claim P🡪D2 destroys diversity

Hypo - P1 (NY) sues D (NJ) under state law battery for $100k and joins with P2 (NY) who sues D for $25K.

Supplemental Jurisdiction exists – P2 v. D does not fall under this language

**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**,

* P2 v D is a claim by a person proposed to be joined as a plaintiff under **R 20**

This is what was held by the SCt in Allapattah

Hypo - 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

* No Supplemental Jurisdiction, it is a claim made by a person proposed to joined as a plaintiff under Rule 19

Hypo - P1(NY) sues D (NJ) for $100k and joins with P2 (NJ) who sues D for $100K

* No suppl jur – according to Allapattah
* To have Supplemental Jurisdiction, Court needs to have original jurisdiction over a claim and joining P2 infects the diversity of P1’s claims, so P1 v. D does not have original jurisdiction
  + Amount in Controversy not being reached by one claim does NOT ‘infect’ an original claim’s amount in controversy threshold

Hypo - P(Cal) sues D(Cal) in state court in Cal under 42 U.S.C. § 1983 for violations of his civil right. Joined to the action is an unrelated state law breach of contract action against D.  
May D successfully remove?

* No supplemental jurisdiction, state law contract action is not related to the original claim
* Triggers 28 U.S.C. §1441(c), allows case to be removed to Federal Court and the Fed Court can sever the two claims, remanding the state law claim back to state court

1. U.S.C. §1441(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).

**Terminating litigation before trial**

Ways actions can be dismissed before trial : 12(b)(6) failure to state a claim, 12(c) motion for judgment on the pleadings

* 12(c) motion does not look to the evidence but comes to a conclusion that a judgment for the plaintiff for defendant is possible simply by looking to the pleadings, the complaint and the answer
* A motion to dismiss for failure to state a claim brought after the period allowed under 12(b) will be in the form of a motion for judgment on the pleadings under 12(c)
* But plaintiffs can also bring motions for a judgment on the pleadings under 12(c)- for example the defendant may admit all of the plaintiff’s allegations and rely on a affirmative defense that is legally insufficient

Federal rules also create possibility that you can avoid trial due to evidentiary insufficiency

summary judgment

* Summary judgment generally happens at end of discovery period, because then you have all the evidence that would be presented trial. The standard for summary judgment is “No reasonable person could rule in favor of the non-movant”
* Directed verdict and judgment notwithstanding the verdict are same general idea as summary judgment, but happen at trial.

Burden of production: burden to get the ball rolling during trial by presenting sufficient evidence to show that a reasonable jury could find in your favor. P has this burden for cause of actions, D has it for affirmative defenses.

P satisfied his burden of production at trial concerning every element of the cause of action  
D offers no evidence  
directed verdict for P?

No – P has only offered enough evidence such that it is possible for reasonable jury to find in his favor, not of such that a reasonable jury must find in his favor

* The case goes to trial even though the defendant has no contrary evidence

- P sues D for negligence  
- P offers evidence that at trial would satisfy the burden of production concerning negligence and damages but nothing concerning causation  
- D offers no evidence and moves for summary judgment

- must be granted to D

summary judgment for defendant concerning a cause of action is appropriate when  
no reasonable jury could find for the plaintiff with respect to at least *one* element of the cause of action

* Just one element is all that is needed
* That is why it is easier for the defendant to get summary judgment in his favor and the plaintiff

summary judgment for plaintiff concerning a cause of action is appropriate when  
no reasonable jury could find for the defendant with respect to *each* element of the cause of action

- P sues D for negligence  
- P offers sufficient evidence concerning negligence, causation and damages such that a reasonable jury *would have* to find in his favor   
- D offers rebutting evidence concerning causation

- in this case partial summary judgment would be appropriate

P get summary judgment on negligence and damages, but the matter of causation goes to trial