Civil Procedure: LGL-507

* CLASS THIRTEEN
* CHAPTER 6 – JOINDER
* OF PARTIES AND CLAIMS

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Civil Procedure: LGL-507-1701

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IN GENERAL

* The court operates within the following constraints regarding the joinder of parties: (1) the action must be brought by the “real party in interest”; (2) the parties must have the “capacity” to sue or be sued; (3) persons joined must be “proper” parties if their joinder is to be permitted; (4) persons so related to the dispute that their joinder is “necessary if feasible” must be joined if that can be reasonably accomplished; and (5) actions may not proceed if persons “indispensable” to the litigation cannot be joined.

Tests for joining claims

Judicial efficiency, procedural rationality, and (especially when the fact-finder is a jury) the potential for confusion and prejudice

Claims from divergent areas of substantive law

* Claims from divergent areas of substantive law—for example, tort, contracts, and property—generally may be processed in the same action if they are sufficiently related to a single event or series of related events.
* "Factual Clusters" form the kernel of modern actions

§ 6.2 Consolidation, Separation, and Severance

* Three Devices to weed out inappropriately joined claims:
* Consolidation of actions, separation of claims, and severance of claims—are the means by which courts sort out the undesirable side-effects of liberal party and claim joinder under contemporary procedural regimes.

Unlimited discretion (almost)

* Except for these considerations, federal courts have **virtually unfettered discretion** regarding consolidation

Typcial application of separation

* Separation (oftentimes also referred to as bifurcation) is the division of an action into two or more claims or groups of claims. These groups are tried separately, but a single judgment encompassing the entire original action is rendered.

Severance

* Severance
* consists of dividing the claims in a single action into separate actions, with independent judgments entered on each of the severed claims.

Separate Trials

* The question whether **separate trials** should be ordered is addressed to the trial court's discretion. The test is broad and looks to whether one trial or separate trials will be most convenient, will avoid prejudice, and will minimize expense and delay.
* Underlying **this balancing test** is a desire to use the procedure most likely to result in a just final disposition of the litigation.

Separation Limits, typical use

* Separation cannot be used to deny a party's right to a jury trial on any of the issues.

* Typical use of separation is to divide the issue of liability from that of damages.

Who may request separation

* Any party may move for separation, or the court may order separation on its own motion. Ideally, the decision should be made at the pretrial conference stage, although it may be made later.

PARTIES TO THE ACTION

* A threshold issue in all civil litigation is whether the **parties to the action meet the necessary criteria to warrant them invoking the judicial process.** This question involves several different considerations. In particular, it is necessary to determine (1) whether the party is a "**real party in interest**";
* (2) whether the parties have the legal "capacity" to sue or be sued; and
* (3) whether the plaintiff has "**standing.**"

§ 6.3 Who Is a Proper Party:

* **Real Parties in Interest**: The rule about being a real party in interest with regard to that particular claim, in general, is that the named plaintiff possess, under the governing substantive law, the right sought to be enforced.
* Under modern procedure, the real party in interest need not be the person who ultimately will benefit from the successful prosecution of the action

In Federal Court

* In the federal courts, the real-party-in-interest requirement is found in Federal Rule 17(a), which provides that “every action must be prosecuted in the name of the real party in interest:”

Fed R Civ P 17: (a) (1)

* **(1)** *Designation in General.* An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:**(A)** an executor;
* **(B)** an administrator;
* **(C)** a guardian;
* **(D)** a bailee;
* **(E)** a trustee of an express trust;
* **(F)** a party with whom or in whose name a contract has been made for another's benefit; and
* **(G)** a party authorized by statute.

Fed R Civ P 17: (a)(3)

* **(3)** *Joinder of the Real Party in Interest.* The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

Real Party in Interest

* Since a challenge that the action has not been brought by the real party in interest presents a threshold defense, it should be raised in the answer or by a preliminary motion. In any event, the objection should be raised as soon as possible. If the objection is not interposed early, it may be considered **waived.**

Effect of accidental waiver

* Even if an objection to the plaintiff's real-party-in-interest status is sustained, the defect may not be fatal. The court usually will allow a reasonable time for the substitution or joinder of the real party in interest.

Capacity to sue

* Capacity is determined without regard to the nature of the action—a characteristic that distinguishes it from the real-party-in-interest requirement, which can change depending on the substantive rights at issue.

Incapacity

* In general, incapacity can be organized along two functional lines: (1) incapacity based on physio-psychological condition, and (2) incapacity due to organizational status or legal relationship.

Determining Law of Capacity

* Capacity of an individual, other than one acting in a representative capacity, is determined by the law of the individual's domicile; the capacity of a corporation is determined by the law under which it was organized.

Capacity: State Law

* The state in which the district court is sitting. There are only two exceptions to the applicability of state law: (1) partnerships and unincorporated associations that lack capacity under state law can sue under a common name in federal-question cases, and (2) federal receivers have special capacity under the United States Code, even if they lack capacity under state law

Capacity Rarely challenged

* Because capacity rarely is challenged, most contemporary procedural systems do not require the plaintiff to establish the parties' capacity to sue or be sued at the outset of the action.

Standing to sue

* Standing is a doctrine typically in issue when the plaintiff seeks to challenge a statute or an executive or administrative decision by a governmental agency.

Federal Standing

* Unfortunately, federal standing doctrine is in a nebulous state. As Justice Douglas commented: “Generalizations about standing to sue are largely worthless as such as such.”

Principals of Standing

* One principle with regard to the federal courts that can be stated with some confidence, however, is that all standing issues are rooted in the constitutional restriction that courts may adjudicate only “cases or controversies.

Two-Part Test

* Current standard is the two-part test announced by the Supreme Court in the companion cases of *Association of Data Processing Service Organizations, Inc. v. Camp*, and *Barlow v. Collins*. To have standing, a plaintiff must show: (1) that the challenged conduct has caused injury in fact, and (2) that the interest sought to be protected is within the zone of interests to be protected or regulated by the statutory or constitutional guarantee in question.

Evolving Standing Doctrine

* The evolution of standing doctrine seems to point to greater freedom of action for plaintiffs. However, the courts still have not articulated how the balance is to be struck between the relevant and often competing interests: the plaintiff's right to relief and the legislature's right to carry out its policies without judicial interference.

Judiciary's Ability to Create the Doctrine

* Nor has the judiciary's competence to rule on these interests been analyzed systematically or its limits defined. Courts essentially continue to be free to reconcile these competing values on an ad hoc basis.

Requirement to consider the merits

* Standing restrictions also require a partial consideration of the merits, as well as of broader policy concerns relating to the proper role of the judiciary in certain areas.

Joinder of Parties

* Common-law procedure severely limited the permissive joinder of parties by tying it to the substantive rights of the parties to the action. The interests of plaintiffs were classified as either joint or several: if joint, they could sue in the same action; if several, they could not.

Common law rules

* The common-law rules governing joinder of defendants were somewhat more flexible. Under the rules relating to multiparty liability for torts, a plaintiff could join joint tortfeasors or sue them separately.

Permissive Party Joinder

* The first requirement for permissive-party joinder under most modern procedural rules is that the persons to be joined must assert or have asserted against them some right to relief arising out of the transaction or occurrence or series of transactions or occurrences that comprise the subject matter of the action.

Second requirement

* The second requirement is that there must be a question of law or fact common to the parties who are to be joined and those already in the action. In the federal courts, both standards must be met in order to sustain joinder of parties. The two requirements seem straightforward; however, they have been subject to varying interpretations and applications.

The general method

* The general method for deciding joinder issues turns on an examination of the logical relationship between the claim involving the party to be joined and the rest of the case.

Logical-relationship test

* The logical relationship test represents only the most general guide for deciding permissive-joinder questions.

The second modern requisite

* The second modern requisite for permissive-party joinder is that a question of law or fact common to all the parties must be present. Whether a common question of law is involved, however, depends upon how broadly a court defines "question of law."

Fed Housing Adm’r v Christianson

* In *Federal Housing Administrator v. Christianson*, a United States district court held that the reference in the federal rules to common questions of law meant only those questions of law arising out of the claims in the particular case before the court—not those arising out of general principles of law.

Rejected by most courts

* Most other courts have rejected this narrow interpretation of the question-of-law requirement.

Permissive-Party Joinder

* Both parts of the test for permissive-party joinder are flexible. The policy goals underlying contemporary permissive-joinder provisions are much the same as those that quickened the equity rules: to render complete justice in one action, and, as a corollary, to avoid multiplicity of actions.

Balancing Factors

* Balanced against these objectives is the policy that joinder should not be permitted when it would prejudice the parties to be joined or those already involved in the litigation.

Alternative joinder

* Alternative joinder is illustrated by a suit by the spouse of a deceased railroad worker under the Federal Employers' Liability Act. If the spouse is unsure which of several companies employed the worker at the time of his death, she may sue them in the alternative in one action, recovering only from the company determined at trial to have been the worker's employer.

Misjoinder

* The general view is that no action will be dismissed merely for the misjoinder of a party. If a party is improperly joined, the appropriate remedy is to move to drop the party or for severance of the claim by or against that party. However, the party to be dropped or severed cannot be an indispensable party.

Misjoinder in the federal courts

* In the federal courts, misjoinder involves a party who would be proper but whose presence destroys diversity. The preferred course in this situation is for the court to drop the party rather than dismissing the action for lack of subject-matter jurisdiction.

Party Joinder

* Even if the claim-joinder requirements have been met, the party-joinder requirements also must be satisfied before parties can be added with regard to the new claims.

Easier to Join Claims than Parties

* Under modern procedural rules, it is easier to join claims than it is to join parties. As a result, modern procedural rules allow the joining of as many claims, counterclaims, crossclaims, and third-party claims as a party has against another party.

Broad Joinder

* Consistent with this impulse toward broad joinder, contemporary procedural rules commonly permit joinder of claims in the alternative so that the plaintiff need not make an election of legal theories or remedies at the pleading stage.

Compulsive Joinder

* With regard to compulsive joinder, the issue is the requirements of res judicata, which in a number of states demand that all the grounds or theories of a cause of action be asserted in one action or be barred in subsequent litigation.

Restraint on Joinder

* The major restraint on the joinder of claims results from jurisdiction and venue rules. Each claim generally must have an independent basis for subject-matter jurisdiction. Personal jurisdiction and venue also must be proper as to each claim.

Counterclaims

* Modern procedure encourages the use of the counterclaim as part of a policy of promoting the settlement of all disputes between two parties as expeditiously and economically as possible.

Counterclaim procedure

Counterclaim procedure has its roots in the common-law practices of set-off and recoupment.

Recoupment

* At common law, recoupment was available only to defeat or diminish the plaintiff's recovery—affirmative relief was prohibited.

Set-Off

* A set-off was a claim by defendant that was unrelated to the plaintiff's claims

Modern Set-Off

* Under modern procedural rules, the ability to interpose a counterclaim is not limited in any way as to nature, subject matter, or relationship to the original claim

Required claims

* Parties are required to assert any compulsory counterclaims they may have against opposing parties; if they fail to do so, they may not bring those claims subsequently as a separate action. Permissive counterclaims may be postponed at the pleader’s option without diminishing their future viability.

Necessary and Indispensable Parties

- FRCP Rule 12(b)(7) permits the court to dismiss an action for failure to join an indispensable party.
- Under Rule 19, someone outside the lawsuit may have an interest in the action and ought, for the sake of complete relief in a single suit, be joined in it.
- If joinder is impossible because the presence of the outsider would destroy subject matter jurisdiction, the **action may proceed** without that person **if** a court views the **outsider as only a necessary party**.
- On the other hand, **if** joinder is impermissible and the court finds the **outsider to be indispensable, the entire action must be dismissed**.

§ 6.8 Crossclaims

* A crossclaim is any claim asserted by one party against a co-party. Under Federal Rule 13(g), a crossclaim must arise out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein, or it must relate to property that is the subject matter of the original action. The same test is used in numerous states.

Impleader

- Any party in a defensive position hopes that there is a basis **to seek indemnity or contribution.**
- In the event the person against whom such a claim may be asserted is not already a party, **impleader** or third-party practice **is used to add that person to the suit.**

Interpleader

- If a person holds a "stake" in property that is subject to conflicting demands by two or more claimants, the interpleader action is an appealing procedural device.
- Statutory Interpleader
  - 28 USC §1335
  - Stake of $500.00 or more
  - At least two adverse claimants in different states
- Rule 22 Interpleader
  - Federal question under 28 USC §1331 **or**
  - Diversity plus a stake exceeding $75,000 under 28 USC §1332

Intervention

- Enables a person outside an action to enter the suit to present an interest or a claim or a defense relevant to the issues presented by the existing parties.
- Contributes to **judicial economy** and provides protection to a nonparty from having its interest adversely affected by the litigation conducted without that person's participation.

Intervention of Right

- FRCP 24(a) requires:
  - Timely application;
  - Applicant must have a protectable interest relating to the property or transaction involved in the suit;
  - The applicant's interest must be subject to impairment or impediment; and
  - That interest must be inadequately represented by existing parties to the suit.

Permissive Intervention

- FRCP 24(b) requires:
  - Timely application;
  - The applicant's claim or defense and the main action must have a question of law or fact in common; and
  - The intervention must not unduly delay or prejudice the existing parties to the action.

NEXT CLASS: **DISCOVERY**

* A. Analysis
* B. SCOPE OF DISCOVERY
* C. THE MECHANICS OF MODERN DISCOVERY DEVICES
* D. SPECIAL RULES AND PROBLEMS REGARDING THE DETAILS AND SCOPE OF DISCOVERY
* E. USE OF DISCOVERY AT TRIAL
* F. PUBLIC ACCESS TO DISCOVERED INFORMATION