

Civil Procedure

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Joinder Problem: Model Answers

Mrs. Claypool (a citizen of Pennsylvania), an aspiring society matron, hires Otis Driftwood (a citizen of NY) to act as her publicity agent. Driftwood arranges for Mrs. Claypool to meet Herman Gottlieb (a citizen of NY), director of the New York Opera Company, who is seeking a patron. Mrs. Claypool agrees to donate \$500,000 to the Opera Company, so that it can hire Rodolfo Lassparri (a citizen of NY), the greatest tenor in the world. In exchange, Gottlieb agrees to name the Opera House after Mrs. Claypool.

Driftwood goes to meet Lassparri, intending to sign him to a contract. Along the way, he meets Fiorello (a citizen of NY), a genial con artist, who tricks Driftwood into signing Lassparri's rival, Baroni (a citizen of NY), instead. When Gottlieb discovers what has happened, he reneges on his agreement to name the Opera House.

A furious Mrs. Claypool sues Gottlieb for breach of contract and promissory estoppel, seeking restitution of the \$500,000 she donated to the Opera Company. She also sues Driftwood for breach of contract and fraud, seeking restitution of the \$50,000 she paid Driftwood under their contract, and an additional \$50,000 in punitive damages on the fraud claim. Mrs. Claypool brings her suit in federal court.

Part A

Is joinder of Gottlieb and Driftwood as defendants proper under the FRCP, and does the federal court have subject matter jurisdiction over the claims?

Joinder is proper under Rule 20(a)(2). The rule permits joinder of co-defendants if (A) a plaintiff asserts at least one claim against each co-defendant arising out of the same (series of) transaction(s) or occurrence(s), and (B) the claims involve at least one common question of law or fact. Claims arise out of the same transaction or occurrence when they are logically related in some way that it makes sense to treat them as part of the same dispute.

Claypool is asserting claims against each defendant arising out of the same (series of) transaction(s). Claypool entered into separate contracts with each defendant. But the two contracts were each in furtherance of a common purpose: the Opera House deal. As such, the two contracts, and the claims arising out of those contracts, are logically related, satisfying the first requirement under Rule 20(a)(2). There will also be at least some questions of law or fact common to both claims (e.g. Gottlieb is likely to raise facts in his defense about Driftwood's actions, which will also be relevant to Claypool's claim against Driftwood), satisfying the second requirement of Rule 20(a)(2).

Since Claypool's claims arise under state law, the relevant basis for subject matter jurisdiction is diversity. This requires (1) that the plaintiff and defendant must be citizens of different states (and if there are multiple plaintiffs or defendants, that there be no common state of citizenship between any plaintiff and any defendant), and (2) and amount in controversy greater than \$75,000. Since there is complete diversity between Claypool (PA) on the plaintiff's side and Gottlieb & Driftwood (both NY) on the defendants' side, and since Claypool seeks more than \$75,000 from each defendant, the court has diversity jurisdiction.

Note that in these questions, you don't need to give a more detailed discussion of the rule for subject matter jurisdiction. As in the example above, you can simply explain how the facts satisfy (or fail to satisfy) the requirements.

Part B

For each of the following additional claims, explain whether joinder is proper under the FRCP and whether the federal court would have subject matter jurisdiction:

In a question with this format, once you have explained a particular joinder rule, you don't need to repeat that explanation if the same rule applies to a subsequent part. Just explain how the rule applies to the facts.

1. A claim by Driftwood against Mrs. Claypool for breach of contract, seeking \$25,000 he contends she still owes him for his services under their contract.

This is a compulsory counterclaim under Rule 13(a). A counterclaim is a claim by a party against an opposing party that has already asserted a claim against it. Here, Driftwood is a defendant asserting a claim against the plaintiff. Counterclaims are compulsory (i.e. they must be asserted in the same action or they are waived) if they arise from the same T/O as the opposing party's claim against the counterclaimant. This counterclaim arises from the same transaction as Claypool's claims against Driftwood, i.e. the contract between Driftwood & Claypool.

The court would not have diversity jurisdiction over this counterclaim, because the amount in controversy does not exceed \$75,000. But the court may exercise supplemental jurisdiction. As long as the court has jurisdiction over at least one claim in the suit, it may exercise "supplemental jurisdiction over all other claims that are so related ... that they form part of the same case or controversy". 28 USC § 1367(a). This requirement is met when the claims arise from a common nucleus of operative facts ("CNOF"). Compulsory counterclaims, which arise from the same transaction or occurrence as the plaintiff's claim, always satisfy the CNOF requirement for supplemental jurisdiction. Where the only original basis for the court's SMJ is diversity, § 1367(b) limits the exercise of supplemental jurisdiction over certain claims by plaintiffs, where it would destroy complete diversity over the underlying claim(s). But § 1367(b) does not apply to claims by a defendant. So supplemental jurisdiction is permitted over this claim.

2. A claim by Driftwood against Mrs. Claypool for battery, alleging that she poured a bowl of hot soup over his head when he clumsily attempted to woo her during a party to celebrate the ill-fated Opera deal. Driftwood seeks \$1020 in damages for the battery claim (\$500 for the cost of an emergency room visit to have the burns on his face treated, \$20 for the cost of having his suit dry cleaned, and \$500 for pain and suffering).

This is a permissive counterclaim under Rule 13(b). Otherwise they are permissive (i.e. they may be asserted either in the same action or a subsequent action). This counterclaim is permissive, because it does not arise from the same T/O as Claypool's claims against Driftwood. The fact that the soup incident occurred while celebrating the opera deal is not enough to bring the two claims within the same T/O. The claims are logically independent: they involve entirely distinct injuries resulting from entirely distinct wrongful conduct and there are no material facts or legal issues common to the soup claim and the breach of contract claims.

Since permissive counterclaims do not arise out of the same T/O as the claim(s) over which the court has original jurisdiction, they do not satisfy the CNOF requirement for supplemental jurisdiction. Instead, permissive counterclaims require an independent basis for subject matter jurisdiction (federal question or diversity). The requirements for diversity jurisdiction are not satisfied here. Even though Claypool and Driftwood are citizens of different states, the total amount in controversy for Driftwood's two claims against Claypool is less than \$75,000.

3. A claim by Gottlieb against Driftwood, seeking indemnification or contribution on Mrs. Claypool's breach of contract claim against Gottlieb.

This is a valid crossclaim under Rule 13(g). A crossclaim is a claim between co-plaintiffs or co-defendants arising from the same T/O as a plaintiff's original claim or a counterclaim. This may include, but is not limited to, claims for contribution or indemnification (i.e. a claim that the party against whom it is asserted is or may be liable to the claimant for all or part of the claimant's liability to another party). Here, Gottlieb is seeking indemnification or contribution from Driftwood in the event Gottlieb is found liable to Claypool.

As with compulsory counterclaims, crossclaims always satisfy the CNOF requirement for supplemental jurisdiction, since they arise out of the same T/O as an underlying claim over which the court already has jurisdiction. § 1367(b) does not apply to crossclaims between co-defendants, so the court may exercise supplemental jurisdiction.

4. A claim by Gottlieb against Driftwood, alleging that the Opera Company lost 50% of its anticipated season ticket sales because of the failure to sign Lassparri.

This is also a proper crossclaim under Rule 13(g). In this case, the claim is for Driftwood's liability directly to Gottlieb for breach of their contract. That contract was also in furtherance of the Opera House deal (which entailed procuring Lassparri to sing for the Opera Company), and thus forms part of the same T/O as Claypool's underlying claims against Gottlieb and Driftwood. As in the previous question, the court may exercise supplemental jurisdiction over this crossclaim between co-defendants.

5. A claim by Gottlieb against Driftwood for breach of contract in an unrelated business transaction in which Driftwood was to supply the Opera Company with costumes.

This is not a proper crossclaim under Rule 13(g), because it arises from a transaction unrelated to the Opera House deal. However, once a party has asserted a claim against another party, Rule 18 permits them to join any other claims they have against the same opposing party, regardless of whether or not they arise from the same T/O. Since Gottlieb has already asserted at least one valid crossclaim against Driftwood, he may join this additional claim, even though it arises from a different T/O.

Because this claim does not arise out of the same T/O as any underlying claim, the court may not exercise supplemental jurisdiction. Instead, there must be an independent basis for subject matter jurisdiction. There is no diversity jurisdiction over this breach of contract claim (regardless of the total amount in controversy between Gottlieb & Driftwood), because Gottlieb and Driftwood are both citizens of the same state.

6. A claim by Driftwood against Fiorello and Baroni seeking indemnification or contribution from each on Mrs. Claypool's breach of contract and fraud claims against Driftwood.

This is a proper third-party claim under Rule 14(a). This rule permits a defendant to join a new party as a third-party defendant to assert a claim for contribution or indemnification. Since Driftwood is joining Fiorello and Baroni to assert claims against them for indemnification or contribution in the event Driftwood is found liable to Claypool on her underlying claims, joinder is proper.

As with compulsory counterclaims and crossclaims, a third-party claim under Rule 14(a) arises out of the same T/O as a claim over which the court has original jurisdiction, and thus always satisfies the CNOF requirement for supplemental jurisdiction. The limitation under § 1367(b) does not apply to third-party claims by a defendant, so the court may exercise supplemental jurisdiction.

7. A claim by Driftwood against Fiorello and Baroni, jointly and severally, seeking \$25,000 in damages for defrauding him into signing Baroni to the Opera contract.

This is not a proper Rule 14(a) third-party claim, which, unlike a crossclaim, may not seek to hold the third-party defendant directly liable to the defendant/third-party plaintiff for the latter's own injury. However, because Driftwood has properly joined Fiorello and Baroni as third-party defendants to assert claims for contribution/indemnification, Rule 18 permits him to assert any additional claims he has against them, regardless of whether or not they arise out of the same T/O as Claypool's underlying claims against Driftwood.

These claims do arise out of the same T/O as Claypool's underlying claim against Driftwood: the alleged fraud pertains to the subject-matter of Driftwood's contract with Claypool, and the claim essentially is seeking to hold Fiorello and Baroni liable for the loss Driftwood incurs as a result of failing to procure Lassparri as part of the Opera House deal. Consequently, these claims satisfy the CNOF requirement for supplemental jurisdiction. Since § 1367(b) does not apply to claims by a defendant, the court may exercise supplemental jurisdiction.

8. A claim by Baroni against Driftwood for failure to pay Baroni in accordance with the contract that Driftwood signed.

Rule 14(a)(2)(B) refers to the counterclaim provisions under Rule 13, requiring a third-party defendant to assert any compulsory counterclaim, and allowing them to assert any permissive counterclaim, against the defendant/third-party plaintiff. This is most likely a compulsory counterclaim, because it arises from the contract between Driftwood and Baroni, which was part of the Opera House deal.

Assuming this is a compulsory counterclaim, the court may exercise supplemental jurisdiction (for the same reasons discussed above). If not, the court may not exercise supplemental jurisdiction, and there would be no diversity jurisdiction, because Baroni and Driftwood are both citizens of the same state.

9. A claim by Fiorello against Baroni, seeking \$10,000 in the unpaid commission that Fiorello was to receive as Baroni's agent in signing him to a contract with the Opera.

Rule 14(a)(2)(B) also refers to the crossclaim provision under Rule 13, permitting third-party co-defendants to assert crossclaims against one another. Under a broad application of the logical relationship test, this claim might be regarded as arising from the same T/O as Claypool's underlying claims, because it is related to Driftwood's failed effort to sign Lassparri as part of the Opera House deal. However, it might be regarded as arising from a different T/O, on the grounds that the arrangement between Fiorello and Baroni wasn't really in furtherance of the Opera House deal, but their own scam against Driftwood, and Baroni's failure to pay Fiorello's commission doesn't really have any connection to the underlying dispute over the Opera House deal.

As in the previous question, the court may exercise supplemental jurisdiction if this is a valid crossclaim. If not, joinder would be improper and there would be neither supplemental nor diversity jurisdiction.

10. A claim by Baroni against Mrs. Claypool for defamation, based on her statement to the press that, "This Baroni has a voice like a sick frog and isn't fit to wash Lassparri's socks."

Rule 14(a)(2)(D) permits a third-party defendant to assert claims against the plaintiff arising from the same T/O as the plaintiff's underlying claim against the defendant/third-party plaintiff. Even under a broad application of the logical relationship standard, Baroni's claim against Claypool would most likely be regarded as arising from a separate T/O from Claypool's underlying claims against Driftwood. The only relationship is that Claypool would presumably not have commented on Baroni's voice if he hadn't been signed to the opera contract instead of Lassparri. That is probably too slim a connection. The claims are logically independent, turning on different, non-overlapping, sets of material facts (i.e. the quality of Baroni's voice would not be relevant to the breach of contract claim against Driftwood, because the contract called for Driftwood to produce a particular singer, not any singer who sings as well).

If this claim did arise out of the same T/O as Claypool's underlying claims, then the court could exercise supplemental jurisdiction, since § 1367(b) does not apply to claims by a third-party defendant. Assuming Baroni could recover more than \$75,000 for defamation, there would also be diversity jurisdiction, since Baroni and Claypool are citizens of different states.

11. A claim by Mrs. Claypool against Baroni for battery, based on his pelting her with rotten tomatoes in retaliation for her statement.

Rule 14(a)(3) permits a plaintiff to assert claims against a third-party defendant arising from the same T/O as the plaintiff's underlying claim against the defendant/third-party plaintiff. As in the previous question, this claim probably does not arise out of the same T/O as Claypool's underlying claims, as it has no real connection to the Opera House deal.

However, assuming Baroni was allowed to assert his claim against Mrs. Claypool, then joinder of Claypool's claim against Baroni would be a proper counterclaim under Rule 13. Rule 14 does not specifically address counterclaims by a plaintiff against a third-party defendant. But Rule 13 defines counterclaims in terms of "the pleader" and "opposing party" (rather than Defendant and Plaintiff). If a third-party defendant asserts a claim against the plaintiff under Rule 14(a)(2)(D), they become opposing parties under Rule 13(a) and (b). Claypool's battery claim is compulsory, because it is based on Baroni's action in response to Claypool's allegedly defamatory comments about his singing, which would most likely be regarded as a single occurrence under the logical relationship standard.

Assuming this would be a compulsory counterclaim, the court would have supplemental jurisdiction. Although § 1367(b) applies to claims by a plaintiff against a third-party defendant, the exercise of supplemental jurisdiction in this case would not undermine diversity jurisdiction over Claypool's underlying claims against Gottlieb and Driftwood, because Claypool and Baroni are citizens of different states. If Claypool could recover more than \$75,000 on her battery claim, there would also be diversity jurisdiction.