

Civil Procedure

Eric M. Fink

efink@elon.edu

336.279.9334

Office Hours [by appointment](#)

Fall 2017

Room 206

Mondays, Wednesdays, & Fridays, 1:30 – 3:15 pm

Joinder

Problem 1

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.

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

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:

2. 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.

3. 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).
4. A claim by Gottlieb against Driftwood, seeking indemnification and contribution on Mrs. Claypool's breach of contract claim against Gottlieb.
5. 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.
6. 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.
7. A claim by Driftwood against Fiorello and Baroni seeking indemnification and contribution from each on Mrs. Claypool's breach of contract and fraud claims against Driftwood.
8. 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.
9. A claim by Baroni against Driftwood for failure to pay Baroni in accordance with the contract that Driftwood signed.
10. 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.
11. 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."
12. A claim by Mrs. Claypool against Baroni for battery, based on his pelting her with rotten tomatoes in retaliation for her statement.

Problem 2

Angelica Sanchez is a citizen of Mexico, where she lives with her boyfriend, Arturo Quiñonez (also a Mexican citizen). Angelica's two children, Roberto (age 10) & Carmen (age 7) lived with the couple until one year ago, when their aunt, Miriam Lopez (also a Mexican citizen), brought them across the border to El Paso, Texas. Lopez did so without Angelica's knowledge. When Sanchez learned what had happened, she contacted Lopez and demanded that she bring the children home to Mexico. Lopez refused, believing that the children would not be safe if they returned home, because Quiñonez was involved in drug trafficking. Instead, Lopez contacted the Texas Department of Children's Services ("DCS"), explaining that she feared for the children's safety, but was unable to care for them herself. DCS took custody of the children and placed them in the temporary care of the South Texas Children's Home ("STCH", a non-profit corporation incorporated and having its sole place of business in Texas). Lopez then returned home to Mexico.

The International Child Abduction Remedies Act ("ICARA") is a federal statute that establishes a cause of action for the parents or legal guardians of children who are abducted and brought to the United States from another country.¹ Under ICARA, the parent or guardian may sue the alleged abductor and anyone aiding or abetting the abduction.

Sanchez files a lawsuit in the U.S. District Court for the Western District of Texas (the district in which El Paso is located). In her complaint, Sanchez asserts an ICARA claim naming Lopez and STCH as co-defendant, seeking an order compelling the return of the children to her custody. She also asserts state law tort claims for interference with parental rights and intentional infliction of emotional distress, again naming Lopez and STCH as co-defendants and seeking a total of \$100,000 in damages against them jointly and severally.

Question 1

Are Lopez and STCH properly joined as co-defendants?

Question 2

May the Texas federal court exercise personal jurisdiction against the defendants (assume that the Texas long-arm statute provides for jurisdiction to the full extent permitted under the Constitution)?

Question 3

Are the ICARA and state-law tort claims properly joined and does the federal court have subject-matter jurisdiction over the suit?

¹ICARA is a real federal statute. Some of the provisions described here are fictional for purposes of this problem.

Question 4

Assume that the claims against Lopez and STCH are properly joined, and that the court has both subject matter and personal jurisdiction. For each of the following claims, explain (i) whether joinder would be proper, and (ii) whether the federal court would have subject matter jurisdiction:

- a) A claim by STCH against Lopez for contribution in the event STCH is found liable to Sanchez for damages.
- b) A claim by STCH against DCS for indemnification on Sanchez's tort claims.
- c) A claim by STCH against DCS for \$70,000 in expenses that STCH has incurred in the course of caring for children (other than the Sanchez children) placed in its care by DCS.

Model Answers

Question 1: Joinder of Lopez & STCH

FRCP Rule 20 permits the joinder of multiple plaintiffs or defendants if: (1) the claims by/against the co-parties, arise from the same (series of) transaction(s) or occurrence(s), and (2) the claims share at least one common question of law or fact. The first requirement is satisfied where the transactions or events giving rise to the claim are logically related in time, subject-matter, or other relevant respects.

Here, the claims against Lopez & STCH arise from the same sequence of events: Lopez's bringing the children from Mexico to Texas, where they were taken into DCS custody and placed under the care of STCH. This satisfies the first requirement for joinder under Rule 20. The claims will also share common questions of law & fact concerning the circumstances under which the children were brought to the US and the liability of the two defendants under ICARA and state tort law. This satisfies the second requirement for joinder under Rule 20. Joinder of the two co-defendants is proper here.

Question 2: Personal Jurisdiction

A court may exercise personal jurisdiction over a non-resident defendant if the defendant has minimum contacts with the forum state, such that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. A two-part analysis applies: First, a court assesses the defendant's contacts with the forum state, and their connection to the cause of action. Second, the court considers whether there are special circumstances making the exercise of jurisdiction so unreasonable as to offend due process.

Contacts are established when the defendant purposefully avails itself of the benefits and protections of the forum state, either by activity within the forum state, or activity elsewhere intentionally aimed at the forum state. For example, in *Shoe*, the defendant hired salesmen in the forum state to solicit orders from in-state customers, and the defendant then fulfilled the orders by delivering goods to those customers. The focus is on the defendant's conduct; mere acquiescence in unilateral acts of the plaintiff or third parties is not

enough. Thus, in Volkswagen, a car dealer in NY had no contacts with Oklahoma, where the dealer sold a car in NY to the plaintiffs, who then drove the car to Oklahoma.

Lopez, a resident of Mexico, took the children from their home in Mexico and brought them to Texas, where she left them in the custody of DCS. The suit thus arises from intentional conduct by Lopez aimed at and culminating in Texas.

As a Texas corporation, STCH is subject to general jurisdiction there. Even if STCH was an out-of-state organization, STCH would have minimum contacts with Texas, where it accepted responsibility for the children's care.

The reasonableness analysis balances various interests at stake in the choice of forum: the defendant's interest in avoiding a special or unusual burden, the plaintiff's interest in obtaining relief, the forum state's sovereignty and policy interests, and the competing sovereignty and policy interests of other states.

The inconvenience and expense of traveling from Mexico to Texas is not enough to make jurisdiction over Lopez unreasonable. See *Burger King*. Sanchez, who also lives in Mexico, has chosen to sue in Texas, where she can obtain the relief she seeks. Texas has an interest in this case, which involves the custody and legal status of children currently in the state. Mexico's interest in a custody dispute involving Mexican children is probably not so much greater as to outweigh the interests favoring Texas as a forum. Compare *Asahi* (exercise of jurisdiction unreasonable where original plaintiff had settled his claim and thus had no remaining interest in the case, and where the only remaining indemnification claim between two overseas companies with no significant impact on the forum-state's interests).

Question 3: Joinder of ICARA & Tort Claims

Rule 18 permits the a party join as many claims as it has against an opposing party, whether related or not. Having asserted an ICARA claim against Lopez, Sanchez may join her state tort claims under Rule 18.

Federal courts have constitutional and statutory subject matter jurisdiction over all cases arising under federal law. Under § 1331, the federal question must arise on the face of a well-pleaded complaint, and not as an affirmative defense or counterclaim. In this case, the court has federal question jurisdiction over the ICARA claims, which are based on a federal statute.

Federal courts have subject matter jurisdiction over state-law claims between citizens of different states, or between a citizen of a state and a citizen of a foreign state. Under § 1332, jurisdiction requires "complete diversity" (i.e. no common citizenship between any plaintiff and any defendant) and an amount in controversy exceeding \$75,000. Here, both Sanchez and Lopez are citizens of Mexico. Thus, the federal court would lack diversity jurisdiction under § 1332, even though the amount in controversy exceeds \$75,000.

Federal courts may also exercise supplemental jurisdiction over state-law claims that are related to other claims over which the court has original jurisdiction. Under § 1367(a), supplemental jurisdiction requires that the claims form a single constitutional case or controversy, i.e. arise from a common nucleus of operative fact. Where the court has original jurisdiction based on a federal question, supplemental jurisdiction over related state-law

claims is permitted without regard to the citizenship of the parties and amount in controversy.

The claims in this case share a common nucleus of operative fact, i.e. Lopez's bringing the children from Mexico to Texas. Because the court has original jurisdiction over the ICARA claim under § 1331, the limitations under § 1367(b) do not apply, so the fact that Sanchez and Lopez are both citizens of Mexico will not preclude the exercise of supplemental jurisdiction.

Question 4a: Cross-Claim by STCH against Lopez

Rule 13(g) permits a party to assert a crossclaim against a co-party, if the claim arises from the same transaction or occurrence that is the subject matter of the original action. Here, STCH and Lopez are co-defendants. The contribution claim arises from the same occurrence as the underlying claims by Sanchez: i.e. in the event STCH is found liable to Sanchez, STCH seeks to hold Lopez liable for all or part of any damages that STCH must pay to Sanchez. Rule 13(g) specifically identifies such a claim as a valid crossclaim.

The court might have diversity jurisdiction over the crossclaim. STCH is a citizen of Texas and Lopez is a citizen of Mexico. But it is unclear whether the amount in controversy on the crossclaim would exceed \$75,000. Regardless, the court may exercise supplemental jurisdiction over that claim. Since the crossclaim arises from the same occurrence as the original action, it forms part of the same case or controversy, satisfying § 1367(a). The limitation on supplemental jurisdiction under § 1367(b) does not apply where the court has federal question jurisdiction over the original action, and in any event does not apply to crossclaims between co-defendants.

Questions 4b & c: Third-Party Claims by STCH against DCS

Rule 14(a) permits a defendant to implead a third party for a claim seeking contribution or indemnification on a claim against the initial defendant. STCH may therefore implead DCS to seek indemnification on the tort claims by Sanchez against STCH.

The indemnification claim shares a common nucleus of operative fact with the original claims by Sanchez: i.e. the facts surrounding the children's being taken from Mexico to Texas where DCS placed them in the care of STCH. This satisfies the requirement for supplemental jurisdiction under § 1367(a). The limitation on supplemental jurisdiction under § 1367(b) does not apply here, because the court has federal question jurisdiction over the original action, and § 1367(b) does not apply to third-party claims by a defendant.

Once STCH impleads DCS with a valid third-party claim for indemnification, Rule 18 then permits STCH to assert any other claims it has against DCS. Joinder under Rule 18 does not require any relationship among claims. However, the court must have subject matter jurisdiction.

The claim by STCH against DCS for reimbursement of expenses unrelated to the Sanchez children does not share a common nucleus of operative fact with the original action. So the court may not exercise supplemental jurisdiction over that claim. STCH and DCS are both citizens of Texas. Therefore, the court would not have diversity jurisdiction over that claim,

even if the amount in controversy exceeded \$75,000 (which it does not). Consequently, while joinder is permitted under Rule 18, STCH may not assert that claim in this suit, because the federal court would lack subject matter jurisdiction.