Rule 18. Joinder of Claims

(a) IN GENERAL. A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

(b) JOINDER OF CONTINGENT CLAIMS. A party may join two claims even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties' relative substantive rights. In particular, a plaintiff may state a claim for money and a claim to set aside a conveyance that is fraudulent as to that plaintiff, without first obtaining a judgment for the money.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

Note to Subdivision (a). 1. Recent development, both in code and common law states, has been toward unlimited joinder of actions. See Ill.Rev.Stat. (1937) ch. 110, §168; N.J.S.A. 2:27–37, as modified by N.J.Sup.Ct.Rules, Rule 21, 2 N.J.Misc. 1208 (1924); N.Y.C.P.A. (1937) §258 as amended by Laws of 1935, ch. 339.

2. This provision for joinder of actions has been patterned upon [former] Equity Rule 26 (Joinder of Causes of Action) and broadened to include multiple parties. Compare the English practice, *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 18, r.r. 1–9 (noting rules 1 and 6). The earlier American codes set forth classes of joinder, following the now abandoned New York rule. See N.Y.C.P.A. §258 before amended in 1935; Compare Kan.Gen.Stat.Ann. (1935) §60–601; Wis.Stat. (1935) §263.04 for the more liberal practice.

3. The provisions of this rule for the joinder of claims are subject to Rule 82 (Jurisdiction and Venue Unaffected). For the jurisdictional aspects of joinder of claims, see Shulman and Jaegerman, *Some Jurisdictional Limitations on Federal Procedure* (1936), 45 Yale L.J. 393, 397–410. For separate trials of joined claims, see Rule 42(b).

Note to Subdivision (b). This rule is inserted to make it clear that in a single action a party should be accorded all the relief to which he is entitled regardless of whether it is legal or equitable or both. This necessarily includes a deficiency judgment in foreclosure actions formerly provided for in [former] Equity Rule 10 (Decree for Deficiency in Foreclosures, Etc.). In respect to fraudulent conveyances the rule changes the former rule requiring a prior judgment against the owner (*Braun v. American Laundry Mach. Co.*, 56 F.(2d) 197 (S.D.N.Y. 1932)) to conform to the provisions of the Uniform Fraudulent Conveyance Act, §§9 and 10. See McLaughlin, *Application of the Uniform Fraudulent Conveyance Act*, 46 Harv.L.Rev. 404, 444 (1933).

NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

The Rules ''proceed upon the theory that no inconvenience can result from the joinder of any two or more matters in the pleadings, but only from trying two or more matters together which have little or nothing in common.'' Sunderland, *The New Federal Rules*, 45 W.Va.L.Q. 5, 13 (1938); see Clark, *Code Pleading* 58 (2d ed. 1947). Accordingly, Rule 18(a) has permitted a party to plead multiple claims of all types against an opposing party, subject to the court's power to direct an appropriate procedure for trying the claims. See Rules 42(b), 20(b), 21.

The liberal policy regarding joinder of claims in the pleadings extends to cases with multiple parties. However, the language used in the second sentence of Rule 18(a)—''if the requirements of Rules 19 [necessary joinder of parties], 20 [permissive joinder of parties], and 22 [interpleader] are satisfied''—has led some courts to infer that the rules regulating joinder of parties are intended to carry back to Rule 18(a) and to impose some special limits on joinder of claims in multiparty cases. In particular, Rule 20(a) has been read as restricting the operation of Rule 18(a) in certain situations in which a number of parties have been permissively joined in an action. In *Federal Housing Admr. v. Christianson*, 26 F.Supp. 419 (D.Conn. 1939), the indorsee of two notes sued the three comakers of one note, and sought to join in the action a count on a second note which had been made by two of the three defendants. There was no doubt about the propriety of the joinder of the three parties defendant, for a right to relief was being asserted against all three defendants which arose out of a single ''transaction'' (the first note) and a question of fact or law ''common'' to all three defendants would arise in the action. See the text of Rule 20(a). The court, however, refused to allow the joinder of the count on the second note, on the ground that this right to relief, assumed to arise from a distinct transaction, did not involve a question common to all the defendants but only two of them. For analysis of the Christianson case and other authorities, see 2 Barron & Holtzoff, *Federal Practice & Procedure*, §533.1 (Wright ed. 1961); 3 *Moore's Federal Practice*, par. 18.04[3] (2d ed. 1963).

If the court's view is followed, it becomes necessary to enter at the pleading stage into speculations about the exact relation between the claim sought to be joined against fewer than all the defendants properly joined in the action, and the claims asserted against all the defendants. Cf. Wright, *Joinder of Claims and Parties Under Modern Pleading Rules*, 36 Minn.L.Rev. 580, 605–06 (1952). Thus if it could be found in the Christianson situation that the claim on the second note arose out of the same transaction as the claim on the first or out of a transaction forming part of a ''series,'' and that any question of fact or law with respect to the second note also arose with regard to the first, it would be held that the claim on the second note could be joined in the complaint. See 2 Barron & Holtzoff, supra, at 199; see also id. at 198 n. 60.4; cf. 3 *Moore's Federal Practice*, supra, at 1811. Such pleading niceties provide a basis for delaying and wasteful maneuver. It is more compatible with the design of the Rules to allow the claim to be joined in the pleading, leaving the question of possible separate trial of that claim to be later decided. See 2 Barron & Holtzoff, supra, §533.1; Wright, supra, 36 Minn.L.Rev. at 604–11; *Developments in the Law—Multiparty Litigation in the Federal Courts*, 71 Harv. 874, 970–71 (1958); Commentary, *Relation Between Joinder of Parties and Joinder of Claims*, 5 F.R.Serv. 822 (1942). It is instructive to note that the court in the Christianson case, while holding that the claim on the second note could not be joined as a matter of pleading, held open the possibility that both claims would later be consolidated for trial under Rule 42(a). See 26 F.Supp. 419.

Rule 18(a) is now amended not only to overcome the Christianson decision and similar authority, but also to state clearly as a comprehensive proposition, that a party asserting a claim (an original claim, counterclaim, cross-claim, or third-party claim) may join as many claims as he has against an opposing party. See *Noland Co., Inc. v. Graver Tank & Mfg. Co.*, 301 F.2d 43, 49–51 (4th Cir. 1962); but cf. *C. W. Humphrey Co. v. Security Alum. Co.*, 31 F.R.D. 41 (E.D.Mich. 1962) This permitted joinder of claims is not affected by the fact that there are multiple parties in the action. The joinder of parties is governed by other rules operating independently.

It is emphasized that amended Rule 18(a) deals only with pleading. As already indicated, a claim properly joined as a matter of pleading need not be proceeded with together with the other claim if fairness or convenience justifies separate treatment.

Amended Rule 18(a), like the rule prior to amendment, does not purport to deal with questions of jurisdiction or venue which may arise with respect to claims properly joined as a matter of pleading. See Rule 82.

See also the amendment of Rule 20(a) and the Advisory Committee's Note thereto.

Free joinder of claims and remedies is one of the basic purposes of unification of the admiralty and civil procedure. The amendment accordingly provides for the inclusion in the rule of maritime claims as well as those which are legal and equitable in character.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 18 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Modification of the obscure former reference to a claim ''heretofore cognizable only after another claim has been prosecuted to a conclusion'' avoids any uncertainty whether Rule 18(b)'s meaning is fixed by retrospective inquiry from some particular date.

Rule 19. Required Joinder of Parties

(a) PERSONS REQUIRED TO BE JOINED IF FEASIBLE.

(1) *Required Party*. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(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.

(2) *Joinder by Court Order*. If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(3) *Venue*. If a joined party objects to venue and the joinder would make venue improper, the court must dismiss that party.

(b) WHEN JOINDER IS NOT FEASIBLE. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

(c) PLEADING THE REASONS FOR NONJOINDER. When asserting a claim for relief, a party must state:

(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and

(2) the reasons for not joining that person.

(d) EXCEPTION FOR CLASS ACTIONS. This rule is subject to Rule 23.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

Note to Subdivision (a). The first sentence with verbal differences (e.g., ''united'' interest for ''joint'' interest) is to be found in [former] Equity Rule 37 (Parties Generally—Intervention). Such compulsory joinder provisions are common. Compare Alaska Comp. Laws (1933) §3392 (containing in same sentence a ''class suit'' provision); Wyo.Rev.Stat.Ann. (Courtright, 1931) §89–515 (immediately followed by ''class suit'' provisions, §89–516). See also [former] Equity Rule 42 (Joint and Several Demands). For example of a proper case for involuntary plaintiff, see *Independent Wireless Telegraph Co. v. Radio Corp. of America*, 269 U.S. 459 (1926).

The joinder provisions of this rule are subject to Rule 82 (Jurisdiction and Venue Unaffected).

Note to Subdivision (b). For the substance of this rule see [former] Equity Rule 39 (Absence of Persons Who Would be Proper Parties) and U.S.C., Title 28, §111 [now 1391] (When part of several defendants cannot be served); *Camp v. Gress*, 250 U.S. 308 (1919). See also the second and third sentences of [former] Equity Rule 37 (Parties Generally—Intervention).

Note to Subdivision (c). For the substance of this rule see the fourth subdivision of [former] Equity Rule 25 (Bill of Complaint—Contents).

NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

General Considerations

Whenever feasible, the persons materially interested in the subject of an action—see the more detailed description of these persons in the discussion of new subdivision (a) below—should be joined as parties so that they may be heard and a complete disposition made. When this comprehensive joinder cannot be accomplished—a situation which may be encountered in Federal courts because of limitations on service of process, subject matter jurisdiction, and venue—the case should be examined pragmatically and a choice made between the alternatives of proceeding with the action in the absence of particular interested persons, and dismissing the action.

Even if the court is mistaken in its decision to proceed in the absence of an interested person, it does not by that token deprive itself of the power to adjudicate as between the parties already before it through proper service of process. But the court can make a legally binding adjudication only between the parties actually joined in the action. It is true that an adjudication between the parties before the court may on occasion adversely affect the absent person as a practical matter, or leave a party exposed to a later inconsistent recovery by the absent person. These are factors which should be considered in deciding whether the action should proceed, or should rather be dismissed; but they do not themselves negate the court's power to adjudicate as between the parties who have been joined.

Defects in the Original Rule

The foregoing propositions were well understood in the older equity practice, see Hazard, *Indispensable*