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Prior West Virginia Equity Practice Regarding Necessary Joinder of Parties as Precedent under Rule 19

Some writers have observed that Rule 19 of the West Virginia Rules of Civil Procedure on necessary joinder of parties is simply a continuation of former West Virginia equity practice and that prior decisions will serve as precedents for both legal and equitable claims under this Rule.1 Similar observations have been made of Federal Rule 19 and prior federal practice.2 With the exception

1 LUGAR & SILVERSTEIN, W. VA. RULES 170 (1960).
2 3 Moore, Federal Practice § 1905(1) (2d ed. 1964). "Subdivision (a) of Rule 19 is a generalized statement concerning necessary and indispensable parties to be read in the light of cases at law and in equity. It was not intended to change the rules governing compulsory joinder that had been laid down in those cases." However, the observation has been made that Federal Rule 19 was intended to liberalize the practice of joinder of parties to the fullest extent compatible with doing justice between the parties in interest. Greenleaf v. Safeway Trails, 140 F2d 889 (2d Cir. 1944), cert. denied 322 U.S. 736 (1944).
of certain minor differences, West Virginia Rule 19 is identical to its federal counterpart. This note is intended to examine some of the many cases concerning necessary joinder of parties that have been decided under the Federal Rules in light of prior West Virginia equity decisions involving similar factual situations. This analysis hopefully will result in a workable and meaningful comprehension of the relationship between the two.  

Rule 19(a) provides that subject to Rule 23 (concerning class actions) and certain provisions of Rule 19(b), persons having a joint interest shall be joined and made parties on the same side as plaintiffs or defendants. The reporter's original note regarding this section stated that Rule 19(a) applies to "indispensable" parties or those without whom an action cannot proceed.  

Federal decisions have construed persons having a "joint interest" as meaning those who would be necessary or indispensable parties under the old practice and persons having an interest of such a nature that a final decree cannot be made without either affecting that interest or leaving the controversy in such condition that its

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3 Rule 19 has been subject to severe criticism. Reed, Compulsory Joinder of Parties in Civil Actions, 55 Mich. L. Rev. 327 (1957). Based upon alleged shortcomings, a number of changes have been proposed in the wording of the Federal Rule to "strengthen" it. The Advisory Committee's Note states that, "experience has shown that the rule does not point clearly to the proper basis of decision. The present rule does not state affirmatively what factors are relevant in deciding whether the action should proceed or be dismissed when joinder of interested persons is infeasible." Proposed Amendments to Rules of Civil Procedure for the United States District Courts (Mar. 1964 Draft). It is beyond the scope of this note to discuss the merits of the proposed changes. However, for a defense of the present rule and criticism of the changes, see Fink, Indispensable Parties and Proposed Amendment to Federal Rule 19, 74 Yale L.J. 403 (1965).

4 Prior West Virginia equity practice had allowed the use of so-called class suits when joinder was extremely difficult or inconvenient. Thus, a person holding a common interest with numerous others was allowed to sue on behalf of himself and the others without formally joining them in the suit. 1 Hocq, Equity Procedure § 43 (3d ed. 1943). Thus, ratepayers of a gas utility were allowed to bring a suit on behalf of many to question the legality of the rate and to recover the excess in Natural Gas Co. v. Sommerville, 113 W. Va. 100, 166 S.E. 852 (1932). In Standard Oil Co. v. Smith, 116 W. Va. 16, 178 S.E. 281 (1935), the West Virginia court held that because a contractor's bond to secure payment to materialmen and laborers was a covenant for the protection of a class, a member of the class could proceed for the benefit of all. It also has been held that a taxpayer might seek an injunction on behalf of himself and all other taxpayers similarly situated to enjoin the collection of an illegal tax. Williams v. County Court of Grant Co., 26 W. Va. 488 (1885).

5 Lugar & Silverstein, supra note 1.

final determination may be wholly inconsistent with equity and good conscience.\(^7\)

When Rule 19 (a) is read in conjunction with the modifying language of Rule 19 (b),\(^8\) which provides for the omission of persons who are not indispensable parties, it becomes clear that "persons having a joint interest" is intended to mean those without whom the court cannot proceed. Rule 19 divides parties into three classes according to their interest in the action: those who must be made parties (indispensable), those who should be made parties (necessary) and those who may be made parties (proper).\(^9\) The names given to the particular classes are different from those used in prior West Virginia equity practice. However, an examination of the categories will indicate no basic difference between the classes other than terminology.

The first category is the "indispensable" party. An indispensable party is a person having such an interest in the subject matter of the controversy that a final decree cannot be made without affecting his interest or leaving the controversy in such a situation that its final determination may be inadequate.\(^10\) Under prior West Virginia equity practice such person was termed "necessary."\(^11\)

The second category is designated "necessary" and consists of "those who have an interest in the controversy, but whose interests are separable and will not be directly affected by a decree rendered in their absence, which does full justice between the parties before the court."\(^12\) Previously, in West Virginia, such parties were termed "proper."\(^13\)

\(^7\) Currier v. Currier, 1 F.R.D. 683 (S.D.N.Y. 1941).
\(^8\) Rule 19(b) "Effect of Failure to Join. When persons who are not indispensable, but who ought to be parties if complete relief is to be accorded between those already parties, have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue, the court shall order them summoned to appear in the action. The court, in its discretion may proceed in the action without making such persons parties, if its jurisdiction over them as to either service of process or venue can be acquired—only by their consent or voluntary appearance; provided, however, that the judgment rendered in the action shall not affect the rights or liabilities of absent persons, except as provided in Rule 23(a)."
\(^9\) 2 BARON & HOLTZOFF, FEDERAL PRACTICE & PROCEDURE § 511 (1961). The terms used under the Federal Rules to designate classes are used in this note; although, these terms were not used in the same context in prior West Virginia decisions.
\(^11\) 1 HOGG, EQUITY PROCEDURE § 40 (3d ed. 1943).
\(^12\) 2 BARON & HOLTZOFF, supra note 9.
\(^13\) 1 HOGG, supra note 11.
"Proper" parties is the designation given the third category and consists of persons having an interest in the subject matter of the litigation which may be conveniently adjudicated, but who have no legal interest in the controversy between the immediate litigants and whose joinder is permitted but not required. Under prior West Virginia practice such parties were called "formal" or "nominal."

It has been long recognized that there is no precise or universal test to determine when a person's interest is such as to make him an "indispensable" party or merely a "necessary" party. The wording of Rule 19 does not establish an exact standard. However, Professor Moore observes that in spite of the large number of cases that have arisen in this area, the governing principles have remained comparatively simple and constant. Certainly, the name assigned a particular class does not determine joinder. The primary elements to be considered are the relationship of the parties to the pending action and the effect such action has upon their rights. The indispensability rule not only attempts to prevent interested persons not before the court from litigating their rights, but also seeks to protect the parties presently before the court and society in general from repetitious, abortive and vexatious litigation.

Based on the above judicial definitions of parties, an examination of some of the precedents in prior West Virginia equity practice will disclose the manner in which these precedents are compatible with similar situations decided under Federal Rule 19.

A fruitful source of joinder problems concerns persons having an interest in the same property. In a partition action involving restricted Indian land decided under the Federal Rules, a federal court stated, "Part owners or co-tenants in real estate are indispensable parties in an action for partition as there can be no proper,

\(^{14}\) 2 BARON & HOLTZOFF, supra note 9.

\(^{15}\) 1 HOGG, supra note 11.


\(^{17}\) Fink, Indispensable Parties and Proposed Amendment to Federal Rule 19, 74 YALE L. J. 403 (1965). The United States Supreme Court has observed that a holder of property is deprived of due process of law if he is compelled to relinquish it without assurance that he will not be held liable again in another jurisdiction or in a suit brought by another claimant who is not bound by the first judgment. Western Union Telegraph Co. v. Pennsylvania, 388 U. S. 71 (1961).
complete, or conclusive division or accounting without their actual or constructive presence.” Under early West Virginia equity practice, it was error not to make persons parties to an action where an uncertainty existed as to whether or not they had interests in land to be partitioned. In a partition action against a guardian involving lands in which infants were part owners, the infants were not referred to except incidentally as the wards of their guardian. The incidental reference to the wards was insufficient to make the infants parties to the suit, and because they were not parties, their rights could not be adjudicated. The court held that a decree of partition rendered in a suit in which all the persons interested were not parties was void. Following the same reasoning, a federal case held that in an action to partition personal property all persons having interests or liens on the property were indispensable parties and should have been joined as parties plaintiffs or defendants.

In a controversy involving two sets of lessees of the same property, it was held that co-tenants interested under either one or both of the leases were "indispensable" parties to the action because their rights could have been materially affected by the outcome. Also, where the lessee of an oil and gas lease brought suit against the lessees of an adjoining tract to prevent them from trespassing upon plaintiffs' land and prohibit the drilling of a well on property claimed by both parties, all persons having interests in the oil and gas which might be produced were "indispensable" parties. Similarly, a federal case held that where the lessor of oil, gas and mineral rights sued to cancel the lease and the lease-holder counterclaimed to confirm it, royalty grantees to whom the lessor had granted interests in the royalties reserved in the lease were indispensable. The court stated royalty grantees' relation to the controversy was so direct and vital that no adequate judgment could be entered without affecting their interest. It has been held that, "Under the Federal Rules, a court cannot adjudicate rights under conflicting oil leases of the same property executed by different lessors, and each providing for the payment

19 Grisso v. United States, 138 F.2d 996, 1000 (10th Cir. 1943).
25 Calcote v. Texas Pacific Coal & Oil Co., 157 F.2d 216 (5th Cir. 1946).
of royalty, in a suit by the lessee to which the lessors are not parties.” The court stated that the test of indispensability is whether the absent party’s interest in the subject matter of the litigation is such that no decree can be entered which will do justice to the parties actually before the court without injuriously affecting rights of absent parties. In a suit to cancel an oil and gas lease, in which a decision in favor of the lessors would result in terminating the lease and denying non-participating royalty holders their rights to royalties under the lease, the royalty holders were indispensable. The court stated that, “if a judgment effectively precludes them [the royalty holders] from enforcing their rights and they are injuriously affected by the judgment, they are indispensable.”

The West Virginia court has held that in a suit to cancel a cloud upon title to real estate, all parties who have or claim any interest, right or title under the instrument or instruments of writing sought to be cancelled are indispensable. Under the Federal Rules, if an action seeks to cancel a muniment of title or all relevant muniments of title, the court may not proceed to grant relief if any persons interested are not before the court.

Where trust property has been involved in litigation, the West Virginia court has generally held the trustee, as well as the beneficiary, to be an “indispensable” party. However, in a suit to charge a debt upon property, encumbered by mortgages to secure large issues of bonds in which the trustees were clothed with ample powers to protect and enforce the rights of the bondholders, it was held unnecessary to make the bondholders parties because the trustees fully represented them. The West Virginia court has indicated that there are instances in which the beneficiaries in a deed of trust, where the trustees are given full power and authority to do whatever is necessary to protect the rights of the parties, may not be indispensable parties to a suit seeking

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26 Lawrence v. Sun Oil Co., 166 F.2d 466, 469 (5th Cir. 1948).
29 Tardan v. California Oil Co., 323 F.2d 717 (5th Cir. 1963).
to affect the interest created by the trust deed. A federal case has stated that the result is uniform that beneficiaries need not be joined when the trustee himself sues a third party with reference to the trust property. The reason is that the trustee can adequately represent the beneficiaries' interests. However, the federal courts have developed the rule that when a beneficiary sues a trustee who has an adverse interest all beneficiaries are indispensable if the object of the action is to benefit not merely a particular beneficiary but the entire corpus. This rule is said to rest on practical considerations. Thus, it has been stated:

The refusal to allow a beneficiary of a trust or a legatee of a will to assert against his trustee or executor a claim benefiting the entire corpus unless all the co-beneficiaries are joined reflects considerations of fairness, for even if the defendant won he might be forced to litigate a second time.

West Virginia decisions have followed this same reasoning. Thus, in a suit brought by one or more distributees or general legatees of a decedent's estate for settlement and the recovery by the plaintiff of his distributive share, not only the administrator, but also all he distributees or general legatees were considered indispensable parties. However, a contrary conclusion was reached in an early federal case decided prior to the adoption of the present Rules. The legatees in a will were allowed to sue the executor to compel an accounting as their interests were severable and a decree without prejudice to the rights of other parties could be made.

On the other hand, in an action decided under the Rules to recover for damages caused by the defendant's failure to account for property entrusted to him by the defendant's father, an absent heir was considered an indispensable party. Here, the complaint revealed that no probate proceedings had occurred respecting the estate and also showed that another heir had a nonseverable interest with the plaintiffs.

The courts have recognized, both at common law and under the Rules, that joint obligees are indispensable in an action on a

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32 Maynard v. Shein, 83 W. Va. 508, 98 S.E. 618 (1919). This is dicta, however, because the trustee under the deed had only a bare power of sale and the beneficiaries were held to be indispensable parties.


36 Horn v. Lockhart, 17 Wall. (84 U. S.) 570 (1873).

37 Crutcher v. Joyce, 134 F.2d 809 (10th Cir. 1943).
contract. In a West Virginia case involving a contract to pay a sum of money to two persons, the court held that both parties must unite in an action for its breach; and when one sues alone the non-joinder of the other is fatal. The court reasoned that when the interests were joint, and several parties were permitted to bring actions for the same cause, it would be difficult to determine which of them should have the judgment. Likewise, where a contract provided for payment to landowners for the right to build a road through their land for an agreed sum, the contract was held to be for payment to joint obligees. Here, there was a single convenant in which the obligees were jointly identified. The court considered all parties indispensable to an action on the contract.

An action was brought under the Rules to recover a commission for obtaining a loan on the theory of quantum meruit rather than on the express contract. As the commission was jointly owed to both the plaintiff and another, the other person was considered an indispensable party. The court reasoned that, "Obligors have a 'right to stand upon their contract and insist that they shall not be harassed with different actions or suits to recover parts of one single demand'."

The observation has been made that this particular requirement works no hardship because an obligee who refuses to join in the action may be named as a defendant or an involuntary plaintiff. The provision in Rule 19 (a) allowing the joinder of a reluctant plaintiff as a defendant or, in a proper case, as an involuntary plaintiff is a technique long recognized in West Virginia equity practice. Equity allowed this because

in equity ... it is generally held to be sufficient if all persons interested in the subject matter of the cause be made parties thereto, either as plaintiffs or defendants. In equity all parties to a suit are, or may be, actors therein without regard to the formal positions on the record, ... for the court can make such decree as the exigencies of the case may require.

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39 Hatfield v. Cabell County Court, 75 W. Va. 595, 84 S.E. 335 (1915).
40 Bry-Man's Inc. v. Stute, 312 F.2d 585, 587 (5th Cir. 1963).
41 2 BARON & HOLZOFF, FEDERAL PRACTICE & PROCEDURE § 513.2 (1961).
42 HOGG, EQUITY PROCEDURE § 90 (3d ed. 1943).
As indicated above, there is no precise or universal test to determine indispensability, nor is it likely that a standard can be devised to determine in every situation whether a party will clearly fall into one category or another. However, an early federal case formulated a series of guidelines which are often quoted and appear to establish a useful set of standards, namely:

1. Is the interest of the absent party distinct and severable?
2. In the absence of such party, can the court render justice between the parties before it?
3. Will the decree made, in the absence of such party, have no injurious effect on the interest of such absent party?
4. Will the final determination, in the absence of such party, be consistent with equity and good conscience?

If, after the court determines that an absent party is interested in the controversy, it finds all of the four questions outlined above are answered in the affirmative with respect to the absent party's interest, then such absent party is a necessary party. However, if any one of the four questions is answered in the negative, then the absent party is indispensable.

The few cases reviewed in this article do not represent an exhaustive and comprehensive examination of prior West Virginia practice. However, the article's purpose has been accomplished if it has been satisfactorily demonstrated that present West Virginia Rule 19 creates no basic departure from prior equity practice regarding indispensable parties. Thus, the old equity standard requiring joinder of parties will still apply whenever it appears that persons not parties to the cause are materially interested in the subject matter or have rights that will be affected by the decree. Precedents and the nature of the parties' interests must be analyzed to provide the best possible guidelines in determining how a judgment may affect these interests.

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44 1 Hoo, supra note 11.
45 Washington v. United States, 87 F.2d 421, 427-428 (9th Cir. 1936).
46 Bristow v. Tyler, 82 W. Va. 629, 96 S.E. 1052 (1918).