

An investor has sued a broker in federal court for violation of federal securities law, claiming that the broker misrepresented the investments he made on the investor's behalf. The investor and the broker are citizens of State A. The broker would like to assert a breach of contract claim as a counterclaim to the investor's action, alleging that the investor failed to pay the broker for the investments he made on her behalf.

Can the broker join the contract claim?

- A. No, because the contract claim is governed by state law. (2%)
- B. No, because the parties are not diverse. (8%)
- C. Yes, because the contract claim is a compulsory counterclaim. (56%)
- D. Yes, because the contract claim is a permissive counterclaim. (32%)

Correct

56% Answered correctly

02 mins, 14 secs Time Spent

2023 Version

### Explanation:

The investor (plaintiff) has sued the broker (defendant) in federal court for misrepresenting the investments he made on the investor's behalf. The broker now seeks to recover payment for making those investments by joining (ie, asserting) a breach-of-contract claim against the investor in the same suit. The broker can do so by asserting a **counterclaim**—ie, a claim for relief asserted **against an opposing party** in response to that party's earlier claim. There are **two types** of counterclaims:

**Compulsory** – one that (1) arises from the **same transaction or occurrence** as the opposing party's claim and (2) does not require **adding** a party over whom the court cannot acquire jurisdiction, which **must be asserted** in the **pending lawsuit** or it is waived

**Permissive** – **all other counterclaims**, which **may be asserted** in the **pending lawsuit** or in future litigation

Since the investor's and the broker's claims arise from the *same* investments and no other party is required, the broker's claim is a compulsory—not permissive—counterclaim **(Choice D)**. As a result, the broker must join the contract claim to the suit or it will be waived.

**(Choice A)** Although the elements of the contract claim is a *substantive issue* governed by state law, whether the claim can be joined is a *procedural* issue governed by federal law.

**(Choice B)** The investor and the broker are not diverse because they are both citizens of State A. As a result, subject-matter jurisdiction over the broker's claim cannot be established through diversity jurisdiction. But the court has *supplemental jurisdiction* over this claim since it arises from the investments at issue in the investor's federal-securities-law claim.

### Educational objective:

A counterclaim is a claim for relief asserted against an opposing party in response to that party's earlier claim. A counterclaim is compulsory when it (1) arises from the same transaction or occurrence as the opposing party's claim and (2) does not require adding another party over whom the court cannot acquire jurisdiction.

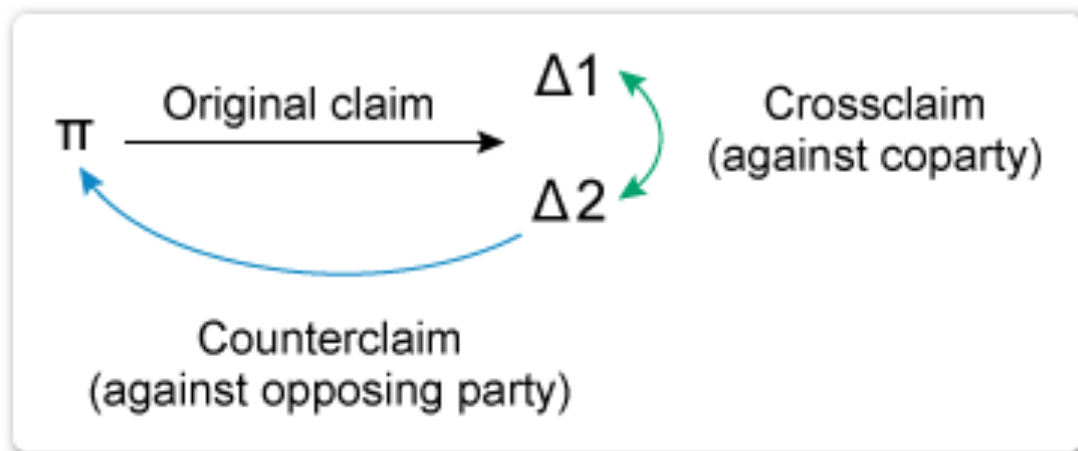
### References

Fed. R. Civ. P. 13(a) (setting forth the requirements for a compulsory counterclaim).

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## Claims for relief



$\pi$  = plaintiff,  $\Delta$  = defendant

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