

An artist living in State A entered into a contract with a gallery from State A that allowed the gallery to display and sell the artist's paintings, with the artist to receive a commission for any paintings sold. Shortly thereafter, the artist moved to State B, where he joined a local artists' collective. The gallery sold several of the artist's paintings but refused to provide the commission the artist thought he was due under the contract. The artist sued the gallery in a federal court in State A for breach of contract and requested \$100,000 in damages. The day after filing his complaint, the artist moved back to State A, claiming artistic differences with the artists' collective.

The gallery filed an answer that did not include a defense of a lack of subject-matter jurisdiction. The gallery then moved to dismiss the artist's complaint for lack of subject-matter jurisdiction.

How will the federal court most likely rule on the gallery's motion to dismiss?

- A. Deny the motion, because the gallery waived its subject-matter jurisdiction defense by failing to include it in its answer.
- B. Deny the motion, because there is diversity of citizenship and the amount in controversy is \$100,000.
- C. Grant the motion, because both parties are citizens of State A.
- D. Grant the motion, because state courts have exclusive jurisdiction over state-law claims.

Explanation:

A federal court can only hear the merits of a lawsuit if the court has **subject-matter jurisdiction**, which can arise under:

- federal-question jurisdiction – when a claim arises under the U.S. Constitution, a treaty, or federal law (not seen here) *or*
- **diversity jurisdiction** – when the amount in controversy exceeds \$75,000 and the opposing parties are **citizens** of different states (ie, are diverse).

Citizenship is determined on the date that the plaintiff's **complaint is filed** with the court.

Here, the artist's breach-of-contract suit against the gallery for \$100,000 in damages satisfies the amount-in-controversy requirement. And though both parties were State A citizens when they entered the contract and are currently State A citizens, the artist was a State B citizen when he filed the complaint. As a result, the parties were diverse when the filing occurred—satisfying the requirements for diversity jurisdiction **(Choice C)**. The federal court therefore has subject-matter jurisdiction to hear this suit and will likely deny the gallery's motion to dismiss.

(Choice A) Most defenses are **waived** if they are not asserted in a defendant's answer. But a defense based on lack of subject-matter jurisdiction is *never* waived and can be asserted by a party or raised by the court at any time—including after an answer has been filed.

(Choice D) State and federal courts have concurrent (ie, shared) jurisdiction over most state-law claims. The only substantive areas over which state courts have exclusive jurisdiction are probate matters (eg, authenticating a will) and domestic relations (eg, issuing a divorce).

Educational objective:

Subject-matter jurisdiction arises under diversity jurisdiction when (1) the amount in controversy exceeds \$75,000 and (2) the opposing parties are citizens of different states on the date the complaint is filed.

References

- 28 U.S.C. § 1332 (requirements for diversity jurisdiction).
- Grupo Dataflux v. Atlas Global Group, Ltd. P'ship, 541 U.S. 567, 570–71 (2004) (holding that the citizenship of the parties in a lawsuit is determined at the time the suit is filed).

Determining diversity of citizenship

