

An accounting firm incorporated and headquartered in State A advertised its estate-planning services. An attorney in State A saw the firm's advertisement and wrote a newspaper editorial claiming that the firm violated State A's statute on the unauthorized practice of law by not employing licensed attorneys. After the editorial was published, demand for the firm's estate-planning services significantly declined. The firm then sued the attorney for defamation in a State A federal court to recover \$150,000.

In his answer, the attorney asserted that the editorial contained truthful statements protected by the free speech clause of the First Amendment. The attorney also asserted a \$100,000 counterclaim to recover damages suffered as a result of the firm's suit. The attorney did not object to venue or jurisdiction. After the pleadings were filed and served, the court dismissed the case for lack of subject-matter jurisdiction. The firm appealed.

Is the appellate court likely to reverse the dismissal?

- A. No, because the final-judgment rule prevents the appellate court from considering the appeal.
- B. No, because the firm failed to establish subject-matter jurisdiction.
- C. Yes, because the attorney did not object to the court's jurisdiction.
- D. Yes, because the suit involves a federal question.

Explanation:

Subject-matter jurisdiction is a federal court's authority to hear the merits of a particular case or controversy. This is a pure legal issue that an appellate court reviews *de novo*, giving no deference to the legal conclusions made by the lower court. This jurisdictional requirement can be established through:

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

Federal-question jurisdiction must be **established on the face** of the *plaintiff's well-pleaded complaint*—as opposed to the defendant's answer or counterclaim.* This means that the complaint must show that the federal issue is a necessary element of the plaintiff's cause of action. If the asserted federal issue is frivolous or later abandoned, then federal-question jurisdiction ceases to exist.

Here, the firm sued the attorney for *defamation*, a state-law claim. The attorney defended on the ground that his editorial contained truthful statements protected by the First Amendment. Since this federal issue arose in the attorney's answer—not the firm's complaint—the court lacks federal-question jurisdiction **(Choice D)**. Therefore, the appellate court is *not* likely to reverse the dismissal.

*Congress created an exception that authorizes federal-question jurisdiction when a defendant (1) asserts a counterclaim arising from a federal patent or copyright statute and (2) removes the case from state to federal court.

(Choice A) The *final-judgment rule* generally precludes federal appellate courts from hearing an appeal until the federal district court has entered a final judgment—ie, a decision that fully resolves a dispute on the merits and leaves nothing for the court to do but enforce the judgment. A dismissal for lack of subject-matter jurisdiction is a final judgment, so the appellate court here can consider the appeal.

(Choice C) Subject-matter jurisdiction cannot be waived or consented to, so it is immaterial that the attorney did not object to the court's jurisdiction. Instead, a court must dismiss a case on its own initiative (ie, *sua sponte*) if, at any time, it determines that it lacks subject-matter jurisdiction.

Educational objective:

Federal-question jurisdiction exists when a claim arising under the Constitution, a federal law, or a federal treaty appears on the face of the plaintiff's complaint. A federal issue raised in the defendant's answer or counterclaim does not establish federal-question jurisdiction.

References

- 28 U.S.C. § 1331 (federal-question jurisdiction).
- Louisville & Nashville R.R. Co. v. Mottley, 211 U.S. 149, 152 (1908) (establishing the well-pleaded complaint rule).
- Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc., 535 U.S. 826, 831 (2002) (holding that a defendant's answer or counterclaim does not establish federal-question jurisdiction).

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Well-pleaded complaint rule (for federal-question jurisdiction)

Federal issue
= element of plaintiff's claim

George Smith's Diner Counter
d/b/a
Markham District of Texas
Dallas Division

John Smith, Plaintiff,
v. G. S.
Jane Doe, Defendant.

Case No. 0:07-cv-00000-00
JURY TRIAL DEMAND

COURT REPORT: JANE DOE, REGULARLY

I. Basis for Jurisdiction

1. *Plaintiff asserts that defendant committed trademark infringement in violation of the Lanham Act, 15 U.S.C. § 114.*

U.S. District Court for the District of Texas
Markham Division
Dallas, Texas

Case No. 0:07-cv-00000-00
JURY TRIAL DEMAND

COURT REPORT: JANE DOE, REGULARLY

Federal issue
≠ anticipated defense, counterclaim, answer

George Smith's Diner Counter
d/b/a
Markham District of Texas
Dallas Division

John Smith, Plaintiff,
v. G. S.
Jane Doe, Defendant.

Case No. 0:07-cv-00000-00
JURY TRIAL DEMAND

COURT REPORT: JANE DOE, REGULARLY

I. Affirmative Defense

1. *Defendant asserts that the state law violates the 14th Amendment of the U.S. Constitution.*

II. Counterclaim

2. *Defendant asserts that plaintiff engaged in discriminatory practices in violation of 42 U.S.C § 2000(e)-2.*

U.S. District Court for the District of Texas
Markham Division
Dallas, Texas

Case No. 0:07-cv-00000-00
JURY TRIAL DEMAND

COURT REPORT: JANE DOE, REGULARLY