

A bank loaned a borrower \$20,000 to buy a car. The borrower signed a promissory note to pay back the loan over the course of four years. After six months of payments, the borrower stopped paying because he heard a report that the bank was fined by a federal agency for systematically misrepresenting the terms in its loans.

The borrower sued the bank in a federal court for misrepresentations in the loan paperwork in violation of federal law. The bank believes that the borrower has breached the terms of the promissory note and seeks to recover the remaining balance due, which amounts to \$18,000.

In addition to denying the borrower's allegations in its answer, what should the bank do?

- A. Assert a compulsory counterclaim for breach of contract.
- B. Assert a compulsory crossclaim for breach of contract.
- C. Assert a permissive counterclaim for breach of contract.
- D. Assert a permissive crossclaim for breach of contract.

### Explanation:

Here, the borrower (plaintiff) sued the bank (defendant) for misrepresentations in the loan paperwork. The bank now seeks to recover \$18,000 from the borrower in the same suit. The bank 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 future litigation

Since the bank's and borrower's claims arise from the *same* loan and no other party is required, the bank's counterclaim is *compulsory* (**Choice C**). As a result, it must be asserted in the bank's answer.

**(Choices B & D)** A crossclaim is a claim for relief asserted against a *coparty* (eg, a defendant against a codefendant). This type of claim is always permissive (not compulsory) and can only be asserted if it arises from the same transaction or occurrence as another claim in the lawsuit. Here, since the bank and borrower are *opposing* parties, the bank's proper claim for relief is a counterclaim.

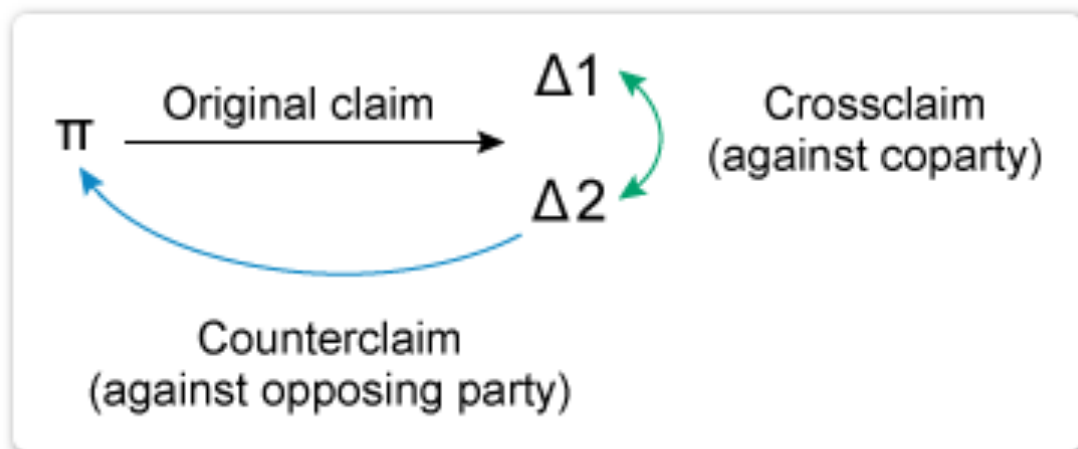
### Educational objective:

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 (compulsory and permissive counterclaims).

## Claims for relief



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

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