

An investor from State A sued a man from State B in a federal court in State A for defrauding the investor of \$100,000. The man filed a pre-answer motion to dismiss the investor's complaint for improper venue and lack of personal jurisdiction. The court denied this motion. The man then filed an answer denying liability. One month later, the man moved for judgment on the pleadings. The motion claims that the investor failed to state a claim on which relief can be granted.

Should the court consider the man's motion for judgment on the pleadings?

- A. No, because the man waived the right to challenge the pleading by not raising the issue in his answer.
- B. No, because the man waived the right to challenge the pleading by not raising the issue in his pre-answer motion.
- C. Yes, because the man's right to challenge the pleading was not waived.
- D. Yes, because the right to challenge a pleading can never be waived.

Explanation:

Most defenses are waived if they are not asserted in the defendant's answer.* However, a defendant has until the **end of trial** to assert the defenses of failure to join a **required party** OR failure to **state a claim** on which relief can be granted—as asserted in the man's motion for judgment on the pleadings. Since this motion was filed *before* the end of trial, the man has not waived his right to raise this challenge **(Choice A)**. Therefore, the court should consider his motion.

*Federal courts generally allow defendants to amend their original answer during and after trial to add defenses not previously asserted.

(Choice B) Lack of personal jurisdiction, improper **venue**, and insufficient process or service of process are the only challenges that are waived if not asserted in a pre-answer motion or answer, whichever occurs first.

(Choice D) Lack of **subject-matter jurisdiction** is the *only* defense that is never waived. All other defenses are subject to waiver.

Educational objective:

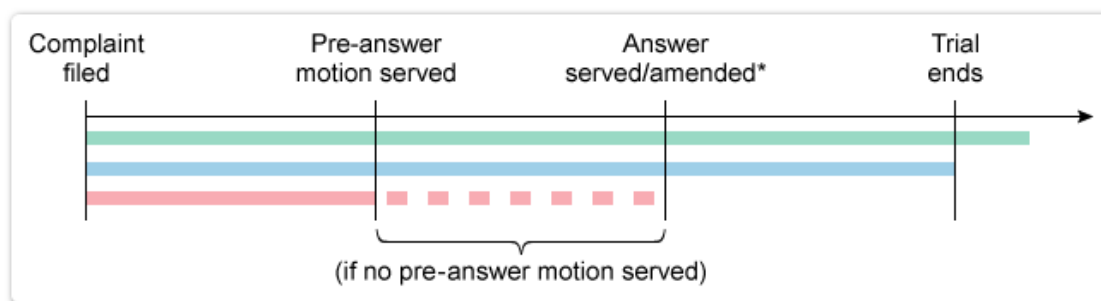
A defense is generally waived if it is not asserted in the defendant's answer. But failure to join a required party and failure to state a claim on which relief can be granted are defenses that can be asserted at any time before the end of trial.

References

- Fed. R. Civ. P. 12(h)(2) (waiver of failure to state a claim defense).

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Waiver of defenses timeline



— = no subject-matter jurisdiction

— = failure to state a claim / failure to join required party

— = no personal jurisdiction/improper venue/insufficient process or service of process

* All other legal defenses must be asserted in answer or amended answer

