

A pedestrian domiciled in State A was crossing a street in State B when he was hit by a car driven by a citizen of a foreign country. Both the pedestrian and the driver suffered injuries.

The pedestrian filed a negligence action against the driver in a federal district court in State B, seeking \$100,000 in damages. The driver believes that the pedestrian was crossing the street illegally and is therefore responsible for the accident. The driver seeks an attorney's advice on how best to respond to the action. Assume that State B is a contributory negligence state.

How should the attorney advise the driver to respond?

- A. File an answer raising the affirmative defense of contributory negligence and asserting a counterclaim for negligence, seeking damages for the driver's injuries.
- B. File an answer raising the affirmative defense of contributory negligence and move for judgment on the pleadings.
- C. Move to dismiss for lack of personal jurisdiction, because the driver is not a citizen of State B.
- D. Move to dismiss for lack of subject-matter jurisdiction, because the driver is not a U.S. citizen.

Explanation:

Contents of answer

Required	<ul style="list-style-type: none">• Admissions & denials• Motions not waived• Affirmative defenses• Compulsory counterclaims
Permitted	<ul style="list-style-type: none">• Permissive counterclaims• Crossclaims

A defendant must file an answer in response to a plaintiff's lawsuit unless the suit is dismissed (eg, when the court grants a [Rule 12\(b\) motion](#)).^{*} An **answer must include** the following items or else they are waived:

- **Admissions or denials** for each allegation
- **Motions** that have not already been [waived](#)
- **Affirmative defenses**—ie, assertions that can negate or reduce liability even if every element of the opposing party's claim is proven (eg, contributory negligence)
- **Compulsory counterclaims**—ie, claims asserted **against an opposing party** in response to that party's earlier claim that (1) arise from the **same transaction or occurrence** as the earlier claim *and* (2) do not require adding another party over whom the court cannot acquire jurisdiction

Here, the driver has an affirmative defense based on the pedestrian's contributory negligence in illegally crossing the street. The driver also has a compulsory counterclaim because his injuries arose out of the *same* accident as the pedestrian's claim and no additional party is required. Therefore, the attorney should advise the driver to file an answer raising the affirmative defense and the compulsory counterclaim seeking damages for his injuries.

^{*}The defendant must also [serve the answer](#) on the plaintiff. If the plaintiff is represented by an attorney, service must be made on the plaintiff's attorney unless the court orders otherwise.

(Choice B) A court can enter judgment on the pleadings when the undisputed material facts in the pleadings establish that the movant is entitled to judgment as a matter of law. But here, the material facts are disputed since each party claims that the other party was responsible.

(Choice C) Although the driver is not a State B citizen, the court has personal jurisdiction because the driver's minimum contacts with State B—driving on its roads—gave rise to the pedestrian's claim.

(Choice D) Subject-matter jurisdiction based on diversity exists in a suit involving a foreign citizen if (1) he/she is not a permanent resident living in the same state as the opposing party and (2) the amount in controversy exceeds \$75,000. Here, both requirements are satisfied.

Educational objective:

An answer must include (1) admissions and denials, (2) motions that have not been waived, (3) affirmative defenses, and (4) compulsory counterclaims.

References

- Fed. R. Civ. P. 8(c) (affirmative defenses).
- Fed. R. Civ. P. 13(a) (compulsory counterclaims).

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