

A plaintiff, a citizen of State A, sued a defendant, a citizen of State B, in a state court in State B. The complaint asserted a \$120,000 claim under state law.

Fifty days after service of the complaint, the plaintiff amended the complaint, adding a second defendant, a citizen of State C. The amended complaint asserted the \$120,000 state-law claim and a related federal-law claim against both defendants. Twenty-five days after service of the amended complaint, the second defendant removed the action to a federal court in State B with the first defendant's consent.

Was removal proper?

- A. No, because the first defendant was a citizen of the forum state. (38%)
- B. No, because the notice of removal was untimely. (13%)
- C. Yes, because the amended complaint asserted a claim under federal law. (28%)
- D. Yes, because the parties met the requirements for diversity jurisdiction. (19%)

Incorrect

Correct answer C

28% Answered correctly

01 min, 38 secs Time Spent

2023 Version

### Explanation:

A **defendant can remove** a case from **state to federal court** if the suit falls within the federal court's original subject-matter jurisdiction, which can arise from either:

**diversity jurisdiction** – when the amount in controversy exceeds \$75,000 and the opposing parties are **citizens** of different states (ie, are diverse) *or*

**federal-question jurisdiction** – when a claim arises under the U.S. Constitution, a treaty, or federal law.

Diversity jurisdiction seeks to protect *out-of-state* defendants from potential bias in state courts., but *in-state* defendants do not face the same risk of bias. As a result, the **forum-defendant rule** (ie, home-court advantage rule) **prohibits removal** when (1) subject-matter jurisdiction arises **solely from diversity jurisdiction** and (2) a defendant is a **citizen of the state** in which the **case was filed**. However, this **rule does not apply**—and removal is proper—when subject-matter jurisdiction also arises from **federal-question jurisdiction**.

Here, diversity jurisdiction exists because the amount in controversy is \$120,000 and the plaintiff (State A) and the defendants (States B and C) are diverse (**Choice D**). But since the first defendant is a citizen of State B—where the suit was filed—the forum-defendant rule prohibits removal solely on the basis of diversity jurisdiction (**Choice A**). However, federal-question jurisdiction also exists because the complaint was amended to assert a federal-law claim. Therefore, the forum-defendant rule does not apply, and removal was proper.

**(Choice B)** A defendant has 30 days from service of the summons or the receipt of a complaint that sets forth a removable case to file a notice of removal. Here, the case became removable when the plaintiff amended the complaint to assert a claim under federal law. Therefore, the second defendant timely filed the notice of removal 25 days after being served with the amended complaint.

### Educational objective:

The forum-defendant rule prohibits removal when (1) subject-matter jurisdiction arises solely from diversity jurisdiction and (2) a defendant is a citizen of the state in which the case was filed. But this rule does not apply—and removal is proper—when subject-matter jurisdiction also arises from federal-question jurisdiction.

### References

28 U.S.C. § 1441 (removal requirements).

28 U.S.C. § 1446 (removal procedure).

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## Requirements for removal to federal court

