

A bank from State A filed a debt-collection action against a man from State B in a state court located in State A. The bank alleged that the man was liable for credit card charges totaling \$80,000. The man filed an answer in which he asserted a counterclaim against the bank. He also joined a credit card company from State A to his counterclaim. The credit card company filed a notice of removal with the federal court in State A. The man moved to remand the action.

How will the court likely rule on the man's motion to remand?

- A. Deny the motion, because the federal court has exclusive jurisdiction over the action.
- B. Deny the motion, because the federal court has subject-matter jurisdiction over the action.
- C. Grant the motion, because the credit card company is not qualified to remove the action.
- D. Grant the motion, because the man did not consent to the action's removal.

### Explanation:

A **defendant** has the **power to** remove a case from **state court to federal court** when the case falls within the federal court's original (ie, subject-matter) jurisdiction. **Original jurisdiction**—which must be established on the face of the *plaintiff's* complaint—can arise from either:

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

However, the federal court should **remand** the case back to state court if there was a procedural error in the removal. Since only defendants listed in the complaint may remove a case, a procedural error occurs when a case is removed by a party other than a defendant. This includes a party joined to the suit by a defendant's counterclaim.

Here, diversity jurisdiction exists because (1) the amount in controversy is \$80,000 and (2) the man is from State B while the bank and credit card company are from State A (**Choice B**). But since the credit card company was joined by the man's counterclaim, it is not qualified to remove the action to federal court. Therefore, the court will likely grant the man's motion to remand the case.

\*After removal, if a plaintiff seeks to join additional defendants who would destroy diversity jurisdiction, the federal court may deny joinder and proceed with the case OR permit joinder and remand the case to state court.

**(Choice A)** Federal and state courts have **concurrent jurisdiction** over state and federal law claims unless the Constitution or Congress expressly provides federal courts with **exclusive jurisdiction** (not seen here).

**(Choice D)** When a case has more than one defendant, the consent of all defendants must be obtained before the case can be removed from state to federal court. But here, the man is the only defendant, so the fact that he did not consent to the action's removal is irrelevant.

### Educational objective:

Only defendants listed in the plaintiff's complaint have the power to remove a case from state to federal court. A party joined to the suit through a counterclaim is not considered a defendant for removal purposes.

### References

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

- Home Depot U.S.A., Inc. v. Jackson, 139 S. Ct. 1743, 1748–50 (2019) (holding that only defendants listed in the plaintiff's complaint may remove a case from state to federal court).

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### Requirements for removal to federal court



