

**COUNTERCLAIMS, CROSS-CLAIMS,
AND THIRD-PARTY CLAIMS**

RULE 22

A Counterclaims.

A(1) **Number.** Each defendant may set forth as many counterclaims, both legal and equitable, as that defendant may have against a plaintiff.

A(2) **Generally.** A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

B Cross-claim against codefendant.

B(1) **Generally.** In any action where two or more parties are joined as defendants, any defendant may in that defendant's answer allege a cross-claim against any other defendant. A cross-claim asserted against a codefendant must be one existing in favor of the defendant asserting the cross-claim and against another defendant, between whom a separate judgment might be had in the action, and must be one arising out of the occurrence or transaction set forth in the complaint or related to any property that is the subject matter of the action brought by plaintiff.

B(2) **Subject matter.** A cross-claim may include a claim that the defendant against whom [it] **the cross-claim** is asserted is liable, or may be liable, to the defendant asserting the cross-claim for all or part of the claim asserted by the plaintiff.

B(3) **On whom served.** An answer containing a cross-claim must be served on any party against whom relief is sought in the cross-claim and on all other parties who have appeared.

C Third-party practice.

C(1) **Generally.** After commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served on a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim

1 against the third-party plaintiff as a matter of right not later than 90 days after service of the
2 plaintiff's summons and complaint on the defending party. Otherwise the third-party plaintiff
3 must obtain agreement of parties who have appeared and leave of court.

4 **C(2) Objection to the addition of a third party. If a party objects to service of a**
5 **summons and complaint on any person not a party to the action, the court may nonetheless**
6 **grant leave to serve such a summons and complaint on an express finding that:**

7 **C(2)(a) the basis for the third-party claim could not have been discovered through**
8 **reasonable diligence within the 90-day period;**

9 **C(2)(b) the motion was filed promptly after the basis for the claim was or should have**
10 **been discovered; and**

11 **C(2)(c) granting leave will not prejudice any appearing party or unreasonably delay the**
12 **trial.**

13 **C(3) Response by the third-party defendant.** The person served with the summons and
14 third-party complaint, hereinafter called the third-party defendant, must assert any defenses
15 to the third-party plaintiff's claim as provided in Rule 21 and may assert counterclaims against
16 the third-party plaintiff and cross-claims against other third-party defendants as provided in
17 this rule. The third-party defendant may assert against the plaintiff any defenses that the
18 third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any
19 claim against the plaintiff arising out of the transaction or occurrence that is the subject matter
20 of the plaintiff's claim against the third-party plaintiff. **[Any party]**

21 **C(4) Claims that may be asserted; responses; motions to strike or to sever. Any party**
22 may assert any claim against a third-party defendant arising out of the transaction or
23 occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff,
24 and the third-party defendant thereupon must assert the third-party defendant's defenses as
25 provided in Rule 21 and may assert the third-party defendant's counterclaims and cross-claims
26 as provided in this rule. Any party may move to strike the third-party claim, or for its severance

1 or separate trial. **[A third-party]**

2 **C(5) Third-party defendant claims against non-parties. A third-party** defendant may
3 proceed under this section against any person not a party to the action who is or may be liable
4 to the third-party defendant for all or part of the claim made in the action against the
5 third-party defendant.

6 **[C(2)] C(6) Plaintiffs' equivalent right regarding counterclaims.** A plaintiff against whom
7 a counterclaim has been asserted may cause a third-party defendant to be brought in under
8 circumstances that would entitle a defendant to do so under subsection C(1) of this section.

9 **D Joinder of additional parties.**

10 D(1) **Generally.** Persons other than those made parties to the original action may be
11 made parties to a counterclaim or cross-claim in accordance with the provisions of Rule 28 and
12 Rule 29.

13 D(2) **In contract actions.** A defendant may, in an action on a contract brought by an
14 assignee of rights under that contract, join as parties to that action all or any persons liable for
15 attorney fees under ORS 20.097. As used in this subsection "contract" includes any instrument
16 or document evidencing a debt.

17 D(3) **Service of summons and time to answer.** In any action against a party joined under
18 this section of this rule, the party joined will be treated as a defendant for purposes of service
19 of summons and time to answer under Rule 7.

20 **E Separate trial.** On the motion of any party or on the court's own initiative, the court
21 may order a separate trial of any counterclaim, cross-claim, or third-party claim so alleged if to
22 do so would be more convenient, avoid prejudice, or be more economical and expedite the
23 matter.

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