



Lee Burgess: Welcome to the Bar Exam Toolbox podcast. Today, we're talking about Subject Matter Jurisdiction, as part of our "Listen and Learn" series. Your Bar Exam Toolbox hosts are Alison Monahan and Lee Burgess, that's me. We're here to demystify the bar exam experience so you can study effectively, stay sane, and hopefully pass and move on with your life. We're the co-creators of the [Law School Toolbox](#), the [Bar Exam Toolbox](#), and the career related website [CareerDicta](#). Alison also runs [The Girl's Guide to Law School](#). If you enjoy the show, please leave a review on your favorite listening app, and check out our sister podcast, the [Law School Toolbox podcast](#). If you have any questions, don't hesitate to reach out to us. You can reach us via the [contact form](#) on [BarExamToolbox.com](#), and we'd love to hear from you. And with that, let's get started.

Lee Burgess: Hi, and welcome back to the "Listen and Learn" series from the Bar Exam Toolbox podcast. Today, we are tackling another subject you'll remember from your Civ Pro class in law school, and one you'll definitely see somewhere on the bar exam – Subject Matter Jurisdiction, or SMJ.

Lee Burgess: You probably already understand the basic concept of jurisdiction – it has to do with whether the right people and topics are in the right court. As you know, when a lawsuit starts out, the plaintiff files in one court, but the defendant can sometimes try to get the case into a different court instead – one where the laws may be more favorable. For federal subject matter jurisdiction, the question is whether a federal court is the right place to adjudicate the claims. There are two types of actions that federal courts have jurisdiction over – those are one, federal questions; and two, diversity actions.

Lee Burgess: If you haven't already made your attack plans for Civ Pro, be sure to map out SMJ because it has quite a few moving parts, and on essays, it has a set structure that the graders want to see. Your main header obviously is "Subject Matter Jurisdiction," and you'll need a general rule about what SMJ is. Underneath that, you should have two sub-headers – one for "Federal Question" and another for "Diversity." And below each of these, you should put a short rule.

Lee Burgess: The rule for federal questions is pretty straightforward. The complaint filed by the plaintiff needs to show a right or interest founded substantially on federal law. Basically, the question here is whether the plaintiff is bringing an action for something federal. If so, his case belongs in federal court. The analysis here should be about whether the facts you are given about a plaintiff's complaint are substantially based on federal law or not. In order to determine this, you will



need to know what kinds of things typically fall under federal law. The exam writers may even make up a new statute so you have to guess, but this doesn't happen all that often. The important thing is that you can argue the facts you are given and explain your reasoning.

Lee Burgess: On the other hand, the rule for diversity actions – our other way of getting into federal court – is a little more detailed. This is the one that is commonly tested on bar essays. Under diversity, there are two sub-prongs. First, there needs to be what is called “Complete Diversity.” And second, there needs to be the right “Amount in Controversy”. These break down even further.

Lee Burgess: Complete diversity of citizenship means that “no plaintiff is a citizen of the same state as any defendant.” Okay, now, what does that mean? Well, if you imagine a lawsuit with all the parties written out with a “v” between their names, like *Joe and Jeff v. Carol and Howard*, complete diversity is only going to get checked off if no one on Joe's side is from the same state as anyone on the Carol side.

Lee Burgess: And “citizenship” here means domicile. You'll remember “domicile” means physical presence in a state with the intent to remain there permanently – basically, the place you call “home”. For example, maybe you're in law school in New York, but your mail gets sent to your family's home in California and you want to go back and practice there after graduation. That means that California is your domicile.

Lee Burgess: That's how to determine citizenship for people, but what about corporations? Often, the defendant is a company and not an individual. In that situation, you need to look at a couple of things. First, the state of incorporation, and second, the principal place of business.

Lee Burgess: Incorporation is sort of like where the company was founded, and it's either going to be given to you in the facts, or not. The facts may say something like, “Zoo Company, an Oklahoma corporation”, or even “Zoo Company was incorporated in Oklahoma.” You may also see phrases like “principal place of business” or “headquarters.” These tell you about where the corporation is making crucial decisions and taking action. You may not even be given any of these labels and just see a bunch of facts about different activities going on in various places. Remember, you're looking for where the corporation is at home, so search for facts about where the directors and officers make decisions, where the products are made, and where business operations take place.

Lee Burgess: I think the very easiest way to set up your analysis on an essay is to draw a quick column on your scratch paper plan for each state that is mentioned in the fact



pattern. Then, if the facts say something happened in a state, you just jot it down in the appropriate column. Cathy lived in California? Good, write her name under California. The defective coffee cup was manufactured in Illinois? Write that down. You get the idea.

Lee Burgess: Okay, so far we've been talking about the diversity requirement. There is also the amount in controversy requirement. When you're making your attack plan, imagine stair steps going down. "Amount in Controversy" is on the same level as "Complete Diversity". Both of these sub-headers go under the umbrella of "Diversity Jurisdiction". The rule for amount in controversy is that there needs to be "a good faith allegation of damages exceeding \$75,000, excluding interest and attorney's fees."

Lee Burgess: So, what does that mean? Basically, the plaintiff has to come to court with a problem she is asking to be fixed, and that problem has to be bigger than \$75,000 worth of damage. Normally, you will get dollar amounts in the fact pattern, but if you don't, you may have to state your rule and then use the facts to guess about whether the claim is serious enough to meet the threshold amount. For example, if the facts don't give you any numbers but you're told that "Cathy's burns were severe and she required multiple surgeries", you can explain why you think Cathy would allege that this problem probably cost more than \$75,000 to fix.

Lee Burgess: You may also see a fact pattern where there are various dollar amounts at play. Maybe the plaintiff sued for several things, like a personal injury and a breach of contract. Whether or not you can add these amounts in controversy together to get over the "more than \$75,000 hurdle" depends on whether you can aggregate claims.

Lee Burgess: The rule is that claim aggregation is allowed if you have one plaintiff against one defendant, or if the defendants are jointly and severally liable. Makes sense, right? So, if Carol sues Joe for a bunch of stuff, she can add it all together. But if Carol sues Joe and Jeff, she can't just mix everything together because that would make it harder to parse out which defendant is on the hook. We won't get too far into aggregation today, but it is a common topic on the bar, so you should definitely review this one on your own.

Lee Burgess: Okay, so these are the basic rules we need for subject matter jurisdiction. Let's get into some hypos to test them out. This first one is from the Civil Procedure essay on the [California bar exam in July 2012](#). Ready? Here we go:



Lee Burgess: “Pam and Patrick are residents of State A. While visiting State B, they were hit by a truck owned and operated by Corporation, a freight business. Corporation is incorporated under the laws of Canada and has its headquarters there, where its president and secretary are located. State B is the only state in which Corporation conducts its business. Corporation’s drivers and other employees work out of its warehouse in State B. Pam and Patrick jointly filed a lawsuit against Corporation in federal district court in State A. In their complaint, Pam demanded damages for personal injury in the amount of \$70,000, and for property damage in the amount of \$10,000. Patrick demanded damages in the amount of \$6,000. Does the federal court in State A have subject matter jurisdiction over the case?”

Lee Burgess: Well, first things first – which basis for federal subject matter jurisdiction are we going for here? Is there a federal question involved? No. This was a car accident, which means it falls under Tort law, and that’s state law, not federal. That means that we need to look for the other kind of federal subject matter jurisdiction – diversity.

Lee Burgess: Do we have complete diversity of citizenship? Well, Pam and Patrick are both residents of State A. Notice, it says “residents” and not “citizens” or “domiciled in...” This is a small hole in the facts. You should point out very quickly that since the test requires domicile, or in other words, residence plus the intent to remain, and there are no facts about Pam’s or Patrick’s intent to remain in State A, this could open up some ambiguity. Don’t spend more than one sentence on this; just say something like, “There is no evidence that Pam or Patrick does not have the intent to remain – thus, their residence in State A could probably also be considered domicile.”

Lee Burgess: Okay, so both of our plaintiffs are citizens of the same state. Is that a problem for diversity? You might be tempted to say “Yes”, but remember, the rule is that people on either side of the “v” need to be from different places. All the plaintiffs can be from the same state as each other, and that’s not a problem.

Lee Burgess: But what about the defendant? On your scratch paper, you could put columns for State A, State B, and Canada, since those are all the places mentioned in the facts. So, we know Corporation is incorporated in Canada. It also has its headquarters in Canada. And the facts say that the president and the secretary are in Canada as well. There’s also some stuff going on in State B, like the warehouse, and doing business, and the drivers and employees.

Lee Burgess: So, what do you think? Is Canada or State B the place of citizenship for Corporation? There are enough facts that you could argue for both, but your



conclusion should be Canada. Why? Because the decision-making power and the actual running of the business happen there. Remember, though, the graders want to see your thought process in your analysis, so use all these facts and explain your way to the conclusion. Say what is happening in State B, and then say why it is not enough to meet the test for citizenship.

- Lee Burgess: Is complete diversity checked off? We have two plaintiffs from State A and a defendant from Canada, so the answer is “Yes”. No plaintiff is a citizen of the same place as the defendant.
- Lee Burgess: Now, the next step in the analysis is: Is the amount in controversy met? Pam is alleging \$70,000 in personal injuries and \$10,000 in property damage. The threshold amount we need to get to is more than \$75,000. Think of this as \$75,000 plus one cent. So, neither amount on its own meets the requirement. Can we add them together or “aggregate”? Yes, because they are claims by one person against one defendant. So, since \$70,000 plus \$10,000 equals \$80,000, and \$80,000 is more than our required \$75,000 – Pam meets the amount in controversy requirement. I know this sounds overly simplistic to spell out such simple math, but that’s exactly what you should do on the bar. Show your whole thought process and go step by step.
- Lee Burgess: But what about poor Patrick? He demanded damages in the amount of \$6,000. That’s not more than \$75,000. Can he add his amount in controversy together with Pam? No, because that would be two plaintiffs against one defendant, and that breaks our rule.
- Lee Burgess: Now, there is another Civ Pro topic called “supplemental jurisdiction”. The rule there is basically that different claims can be tacked together when they are about the same stuff. The wording you want to remember is “common nucleus of operative fact”. If the two claims arise out of a common nucleus of operative fact, then they can be brought together.
- Lee Burgess: We don’t have enough time to cover this topic today, but you should look into this on your own because it’s commonly tested on the bar. There’s not that much law to remember, but it can change the outcome of your analysis significantly. Suffice to say, since the same car accident involved the same location and the same people and the same event, and we’re not worried about adding claims that could defeat diversity, we can say this meets the test. So, Pam and Patrick could tack their claims together. The court could get subject matter jurisdiction over the case.



- Lee Burgess: Is everything making sense so far? Let's try another example to be sure. This one is pulled from the [California bar exam's Civ Pro essay from February 2009](#), but we've edited this a bit to highlight the subject matter jurisdiction issue:
- Lee Burgess: "Copyco, Inc., a maker of copy machines, was incorporated in State A. Its main corporate office and president are also located in State A. Most of Copyco's employees work in State B at its sole manufacturing plant. Copyco also has a distribution center in State B. Sally is a citizen of State B. Sally was using a Copyco copy machine at Blinko, a copy center within State B, when the machine started to jam, severely injuring her hand. Sally filed a lawsuit against Copyco as the sole defendant in the State B northern district federal court. Her complaint alleges that Copyco was negligent and that she has suffered physical injury, and also seeks damages of \$100,000, exclusive of costs and interest. Does the federal court have subject matter jurisdiction over Sally's claim?"
- Lee Burgess: First step: Is there a federal question? No. Why not? Because Sally sued for negligence, and Torts law is state law, not federal. Look out for clues like this on the real bar exam. It might seem like background information telling you what the lawsuit was about, but it can check off this rule element by telling you no federal questions were involved.
- Lee Burgess: Next, can we get into federal court based on diversity jurisdiction? First sub-question there: Do we have complete diversity of citizenship of the parties? The facts say that Copyco was incorporated in State A. Easy enough. Put a column for that on your scratch paper. Add the president and the main office under State A as well. Then, we are told about a bunch of things that were going on in State B. There was the sole manufacturing plant, a distribution center, and most of the employees. So, what do you think? Which facts tell us Copyco's citizenship?
- Lee Burgess: Well, the Supreme Court has actually ruled that what it calls the "nerve center" is going to win when it comes to determining citizenship. That means you should look for where the corporation has its brainpower, versus where it has its manpower. In this situation, State A would win because that's where the top-level decisions are being made.
- Lee Burgess: So, is diversity defeated? Well, here we are told that Sally is a "citizen" of State B. That's actually more helpful than the word "resident", which we saw in the hypo above. That means that Sally is domiciled in State B. So, if you conclude that Copyco is a citizen of State A, complete diversity is met. If you happened to conclude that Copyco is a citizen of State B – remember, the important thing is that you explain how you got there. On most exams, even if you get the rule and



its application slightly wrong, you can still get partial credit by explaining more in your analysis and at least showing that you're applying the rule in a way that makes sense. If you got it wrong and found that diversity was destroyed, should you quit the analysis there? No, of course not. Just keep going.

Lee Burgess: Next step is the amount in controversy. Sally sued for \$100,000, and this is definitely more than \$75,000, so easy-peasy, this one gets checked off. Both the complete diversity and amount in controversy requirements are met, so the conclusion is, the federal court does have subject matter jurisdiction over the case.

Lee Burgess: Remember, as you prepare for your bar exam, it's important that you're well-versed in the laws that tie into subject matter jurisdiction, like aggregation of claims and supplemental jurisdiction. Also, know the precise definitions for things like "citizenship" and "domicile" for people and corporations, because these topics are also tested on the MBEs. Know what to do with foreign entities, or things that could defeat diversity, like joinder of a party. And of course, as always, be sure to practice writing your way through lots of past bar essays so you can get comfortable applying these rules before exam day.

Lee Burgess: And with that, we're out of time. If you enjoyed this episode of the Bar Exam Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We'd really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to myself or Alison at lee@barexamtoolbox.com or alison@barexamtoolbox.com. Or you can always contact us via our website [contact form](#) at BarExamToolbox.com. Thanks for listening, and we'll talk soon!

RESOURCES:

[Brainy Bar Bank – UBE \(MEE + MPT\)](#)

[California Bar Examination – Essay Questions and Selected Answers, February 2009](#)

[California Bar Examination – Essay Questions and Selected Answers, July 2012](#)

[Podcast Episode 72: Tackling a California Bar Exam Essay: Civil Procedure](#)

[Podcast Episode 87: Listen and Learn -- Homicide](#)

[Podcast Episode 88: Listen and Learn – Negligence Per Se](#)

[Podcast Episode 89: Listen and Learn – What Is Hearsay?](#)

[Podcast Episode 91: Listen and Learn – Logical and Legal Relevance](#)

[Frequently Tested Topics on the California Bar Exam vs the UBE: Civil Procedure](#)

[How to Cope If You Forget a Rule on the Bar](#)