



Lee Burgess: Welcome back to the Bar Exam Toolbox podcast. Today, we're doing the next in our "Listen and Learn" series, on supplemental jurisdiction in Civil Procedure. 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](#). And 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: Welcome back. Here is the next episode in our "Listen and Learn" series from the Bar Exam Toolbox podcast. Today we are going to chat about supplemental jurisdiction – a concept that you may remember from your Civil Procedure class in law school. It is not as prominent as the big topics of personal jurisdiction, which determines whether the court has power over the defendant being sued; or subject matter jurisdiction, which establishes whether the federal court has the power to hear the case at all, based on either a federal question or diversity of citizenship. But it ties into these big topics and still commonly appears on the bar exam in some fashion. You may encounter it as part of a larger essay question on civil procedure involving jurisdiction, or as a multiple choice question on the MBE.

Lee Burgess: So, what exactly is supplemental jurisdiction? Supplemental jurisdiction allows the court to hear claims that, on their own, would have been outside the federal court's subject matter jurisdiction, but are related enough to the original basis of jurisdiction, that it makes sense for them to be heard. In its most simple terms, supplemental jurisdiction allows a state claim to be heard if it shares the same "nucleus of operative fact" as the federal claim that gave rise to jurisdiction. This rule, and its additional nuances, can be found in 28 USC § 1367. Section 1367 breaks out into three main subsections: (a), (b), and (c). So, let's take them one at a time.

Lee Burgess: Subsection (a) grants the power described above. It's also known as pendant jurisdiction, and it allows parties to bring claims within the action that form part of the "same case or controversy" under Article III. This includes cases against joined or intervening parties, as long as – and this is super important – the allowance would *not* defeat diversity.



Lee Burgess: That brings us on to section (b). This section applies to cases where federal jurisdiction over the original claim was based solely on diversity under 28 USC § 1332. Now before we get into the details of subsection (b), when I said above that supplemental jurisdiction allows a state law claim to be heard if it shares the same “nucleus of operative fact” as the federal claim that gave rise to jurisdiction, you may have thought, “Well, how does diversity factor in?”

Lee Burgess: This is a great question, because the original claim could be in federal court for two reasons: it either arises under a federal question or it is there because of diversity. Section (b) applies to this second scenario – when the original claim arises solely from diversity – and it imposes an important limitation on exercising supplemental jurisdiction. Section (b) tells us that parties may not use supplemental jurisdiction to bring in claims against additional defendants, if those claims would not be consistent with diversity requirements. Thus, what we may have in this situation is an original claim that arises under state law and meets the amount in controversy requirement, and you might be trying to add in another related state law claim which does not separately meet an amount in controversy requirement. Section (b) tells you that you can only add the second state claim in if diversity is not defeated by adding the claim which could add in a new party.

Lee Burgess: Okay, so if Plaintiff sues Driver for negligence, and Plaintiff is from California and Driver is from New York, and the amount in controversy is \$80,000, then under diversity of citizenship the case can be brought in federal court. However, if the Plaintiff also wants to allege that Manufacturer was strictly liable for manufacturing a defective car, and Manufacturer is a citizen of California, then even though the claims are related, Plaintiff cannot sue Manufacturer in federal court under these facts using supplemental jurisdiction, because that would defeat diversity.

Lee Burgess: However, going back to subsection (a), the court may exercise supplemental jurisdiction if a defendant brings a crossclaim against another defendant from the same state. So, using the same facts above, let’s say Manufacturer is also from New York, and Driver is the one filing a claim saying that the issue is not that he was negligent, but rather that the car had faulty brakes. Then, even though Driver and Manufacturer are non-diverse, the court may still exercise supplemental jurisdiction over Driver’s crossclaim. This is because at the end of the day, defendants aren’t choosing to be in court in the first place, so courts want to give them some latitude in being able to defend themselves.



- Lee Burgess: Finally, in subsection (c), we are reminded that the exercise of supplemental jurisdiction is not mandatory, but rather courts have discretion to decide whether it would be appropriate to consider the supplemental claims. The factors the court should consider are whether, number one, the claim raises novel or complex issues of law; number two, the claim substantially predominates over the claims which the district court has original jurisdiction; number three, the district court has dismissed all claims over which it has original jurisdiction; or number four, in exceptional circumstances, there are other compelling reasons for declining jurisdictions.
- Lee Burgess: So now that we have our rule, let's see if we can tackle a fact pattern. This is an essay question from the [July 2012 California bar exam](#). I've pared down the facts a bit, because it was written to cover a range of civil procedure issues. We're only going to focus on supplemental jurisdiction today. If you listened to our [episode on subject matter jurisdiction](#), you might remember this fact pattern. If you did not, you can go back and listen to that episode to see how supplemental jurisdiction fits into the larger essay question here.
- 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. 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 totaling \$80,000. Patrick demanded damages in the amount of \$6,000. After trial, the court entered a judgment for Pam and for Patrick. Corporation has appealed on the grounds of lack of subject matter jurisdiction."
- Lee Burgess: Okay, so there are our facts. And for the purpose of using them, let's also say that Corporation properly filed a motion to dismiss, based on lack of subject matter jurisdiction before the trial, and that the motion was denied. So this objection has been properly reserved for appeal.
- Lee Burgess: Now, before we get to supplemental jurisdiction, the first step is to identify the original basis of jurisdiction. We don't seem to have subject matter jurisdiction based on federal question, because Pam and Patrick are suing under a state law tort claim for personal injury damages. Therefore, in order to proceed in federal court, we have to see if Pam and Patrick meet the requirements for diversity jurisdiction.
- Lee Burgess: Now first, they would both have to be completely diverse from the defendants in terms of citizenship. Here we have Pam and Patrick as citizens of State A, and



Corporation has its corporate citizenship of Canada. So, all plaintiffs are diverse from all defendants, which checks the first box of subject matter jurisdiction based on diversity.

Lee Burgess: Second, the amount in controversy has to exceed \$75,000. Here, Pam is suing for \$80,000, so that's a check for Pam and her case can be heard in federal court. Patrick, however, is only suing for \$6,000. So this is where we can ask, can the court exercise supplemental jurisdiction over Patrick's claim?

Lee Burgess: Well, let's go to our first subsection. Does Patrick's claim share the same nucleus of operative facts as Pam's claim, which is the claim that got us into federal court in the first place? Well, he is suing based on being in the same car during the same accident, so yes, we can definitely say that this claim shares a nucleus of operative fact, under the language of [United Mine Workers v. Gibbs](#). Using the statutory language, we can also safely say that this arises out of the same case or controversy as the claims that originally gave the court its jurisdiction. That would be Pam's claim. However, because this is a diversity of citizenship case, we still have to contend with subsection (b). Would the inclusion of Patrick's claim defeat diversity? He, like Pam, is from State A, and the defendants are from Canada. So diversity remains intact.

Lee Burgess: On these facts, things are looking good for Patrick. But just to be completely sure that supplemental jurisdiction would be appropriate, we want to move through subsection (c) and see if the court would be better off exercising its discretion and declining jurisdiction.

Lee Burgess: First, does the claim raise a novel or complex issue of state law? Now from the facts in front of us, this seems to be your run of the mill tort claim. So, without any complicating factors, I think we say it does not. Second, does the claim substantially predominate over the claims over which the district court has original jurisdiction? Well, it seems like with or without Patrick's claim, Pam is safely in federal court. So we can say no to that as well. Third, has the district court dismissed all claims over which it has original jurisdiction? Nope. Pam won her case, so we are good to go there. Finally, are there other compelling reasons for declining jurisdiction? We haven't been given any facts, and should generally not assume facts not in evidence. So, the court would have been right to exercise supplemental jurisdiction over Patrick's claim.

Lee Burgess: Now, this fact pattern happened to deal with a diversity case, but the steps could look just about the same if the original jurisdiction arose from a federal question. In that case, you wouldn't have been so concerned with subsection (b)



unless you're dealing with multiple defendants, in which case you would want to be on the lookout for diversity issues.

- Lee Burgess: Now, let's look at another example. This fact pattern was adapted from the [February 2015 MEE](#), and jurisdiction was one of the issues raised. I'll briefly recite the facts.
- Lee Burgess: "MedForms Inc. processes claims for medical insurers. Last year, MedForms contracted with a data entry company ("the company") to enter information from claims into MedForms's database. MedForms hired a woman to manage the contract with the company.
- Lee Burgess: A few months after entering into the contract with the company, MedForms began receiving complaints from insurers regarding data entry errors. On behalf of MedForms, the woman conducted a limited audit of the company's work and discovered its employees had been making errors in transferring data from insurance claims forms to the MedForms database.
- Lee Burgess: The woman immediately reported her findings to MedForms' supervisor and told him that fixing the problems caused by the company's errors would require a review of millions of forms and would cost millions of dollars. In response to her report, the supervisor said, 'I knew we never should have hired a woman to oversee this contract', and he fired her on the spot.
- Lee Burgess: The woman properly initiated suit against MedForms in federal court. Her complaint alleged that she had been subjected to repeated sexual harassment by her supervisor throughout her employment at MedForms, and that he had fired her because of his bias against women. Her complaint sought \$100,000 in damages from MedForms for sexual harassment and sex discrimination in violation of federal civil rights law.
- Lee Burgess: After receiving the summons and complaint in the action, MedForms filed a third-party complaint against the company, seeking to join it as a third-party defendant in the action. MedForms alleged that the company's data entry errors constituted a breach of contract. MedForms sought \$500,000 in damages from the company."
- Lee Burgess: So that we can focus on supplemental jurisdiction, let's assume for this hypothetical that MedForms is incorporated in California, and the woman is a resident of California, and the company is incorporated in California. Can the court maintain jurisdiction over MedForms' claim against the company?



- Lee Burgess: First, as before, let's understand the basis of the original jurisdiction. The woman's claims against MedForms cannot be based on diversity because they are both from California. But that's okay, because her claims include a federal civil rights claim, which gives the federal court jurisdiction over the federal question. So, we are all good there.
- Lee Burgess: But what about MedForms' claim against the company? We can see immediately that we have a diversity problem because they are both from California. Is there a federal question jurisdiction? The answer is no. It is a contract claim, so it will be a state law claim. The only option left for MedForms' claim to survive then is supplemental jurisdiction.
- Lee Burgess: You will need to analyze whether the claims between the woman and MedForms and MedForms and the company form part of the same case or controversy and if they share the same common nucleus of operative fact. There are definitely some shared facts between the two claims here. For example, the data entry errors will be pertinent to the woman's case as they relate to the circumstances of her firing, and also to MedForms' case as they are the basis of the breach of contract claim.
- Lee Burgess: But you need you be very careful and precise here. Don't rush this type as analysis, because broad strokes will often lead you to the wrong conclusion. You need to show more than just related facts, but a common nucleus of operative fact. The operative facts for the woman's wrongful termination suit are how she was treated by her company, the alleged harassment, and how her firing was related to gender bias. The operative facts for MedForms' claim against the company are its unsatisfactory performance of data entry under the contract that lead to all the data entry errors. Because these operative facts are so divergent, it is unlikely that federal court jurisdiction can be maintained over MedForms' claim.
- Lee Burgess: However, I just want to note that if we had been able to establish a common nucleus of operative fact, then the claim could stay. It would not matter that there is no diversity, because it is defendant MedForms who is looking to bring the additional claim. And you would of course have to go through the section (c) factors.
- Lee Burgess: Alright, that's our introduction to supplemental jurisdiction. Feel free to practice on some more fact patterns, to get more familiar with this broadening of the federal court's power to hear cases that wouldn't otherwise make the cut. Make sure to write out these, so that you can get more practice before exam day. And



remember that this topic commonly appears on the MBEs too, so it is important to understand the nuances of the rule so they do not trip you up there.

Lee Burgess:

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

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

[February 2015 MEE Questions and Analyses](#)

[United Mine Workers of America v. Gibbs, 383 U.S. 715 \(1966\)](#)

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