



Lee Burgess: Welcome to the Bar Exam Toolbox podcast. Today, as part of our “Listen and Learn” series, we’re talking about service of process – a subject that sometimes sneaks into Civil Procedure questions that you definitely want to be prepared for. In this episode you will learn about the general service of process rule under the Federal Rules of Civil Procedure, as well as the California-specific substitute service of process rules. 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: Hello, and welcome back to our “Listen and Learn” series. Today, we will be looking at service of process – what is commonly thought of in popular media as a tense moment when a process server hands a defendant a complaint and dramatically says, “You’ve been served.” What’s exciting about service of process is when it does come up on an exam question, it tends to be one of the first questions asked, because improper service is often grounds to dismiss a complaint – which is all more reason why it’s important to understand, but often overlooked, due to its simple nature and relative infrequency as a tested subject.

Lee Burgess: So, let’s jump in by starting with the rules from the Federal Rules of Civil Procedure. Service of process is governed by Rule 4 of the FRCP and includes a variety of rules that we won’t be able to fully cover, but hopefully just enough to get you comfortable with addressing these if they ever should come up on an exam question. As a general rule, service of process must be made by a person who is at least 18 years old and not a party to the case. Key here is that the person who serves the summons and complaint cannot be the plaintiff themselves. This is the first issue you want to check for when presented with a service of process issue: Was service made by someone at least 18 years of age and not a party to the case? If not, then the case may be dismissed for improper service of process.

Lee Burgess: After checking for the general rule, there are a number of other service of process rules that may apply depending on the fact pattern. It’s worth knowing each of these because they are commonly tested when service of process issues come up. Here’s a quick overview of the rules I’ll be going through, under the



federal rules: (1) serving individuals in the United States; (2) serving individuals in foreign countries; (3) serving corporations; and (4) substitute service of process under the California rules – this is for those studying the California Rules of Civil Procedure.

Lee Burgess:

Let's begin with the basic service of process issue – serving an individual in the United States. Under the FRCP, an individual may be served in a judicial district of the United States by, (1) following the state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or (2) delivering a copy of the summons and complaint to the individual personally, leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there, or delivering a copy of each to an agent authorized by appointment or by law to receive service of process. To keep this very simple, under the federal rules an individual may be served by either following the state law for service of process or one of three other ways: (1) personal service; (2) leaving a copy at their house with someone of suitable age and discretion; or (3) delivering a copy to an agent of the individual who's authorized to receive service of process.

Lee Burgess:

Now, sometimes a fact pattern may indicate that service of process was made in a different country, which are governed by slightly different rules than serving an individual in the U.S. Under the federal rules, an individual may be served at a place not within any judicial district of the United States if, (1) by any internationally agreed means of service that is reasonably calculated to give notice; or (2) if there is no internationally agreed means, service can be made by a method that is reasonably calculated to give notice such as prescribed by the foreign country's law for service in that country, as the foreign authority directs in response to a letter of request, or unless prohibited by the foreign country's law, by delivering a copy of the summons and complaint to the individual personally or using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or (3) by other means not prohibited by international agreement, as the court orders.

Lee Burgess:

This set of rules for service of process on an individual in another country can be confusing, but the main thing to focus on here is whether the means of service was reasonably calculated to give notice. Provided that the individual is in another country, the goal of the rule is to really make sure whatever method is used for service of process, it must be reasonably calculated to give notice to the individual. The various examples given to get at this standard from the rule illustrates what "reasonably calculated to give notice" might mean, such as



using the service of process rules prescribed by the foreign country, or using a form of mail that requires a signed receipt.

Lee Burgess: Finally, another common service of process issue is when service needs to be completed for non-individuals, like corporations. A domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served, (1) in a judicial district of the United States following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process, and if the agent is one authorized by statute and the statute so requires, by also mailing a copy of each to the defendant; or (2) at a place not within any judicial district of the United States, in a manner consistent with rules governing service of an individual in a foreign country. The takeaway here is to serve an entity like a corporation, the plaintiff needs to either follow the state rules for service of process, or deliver a copy to an officer or agent of the corporation, with the caveat that if the agent is authorized or required by statute, that you must also mail a copy to the defendant.

Lee Burgess: Let's do a quick recap so we're clear on service of process under the federal rules. As a general rule, service of process must be made by a person who is at least 18 years old and not a party to the case. For individuals under the FRCP, this can be accomplished by following state law or, (1) personal service; (2) leaving a copy at the house with someone of suitable age and discretion; or (3) delivering a copy to an agent. For individuals in foreign countries, remember that the means of service must be reasonably calculated to give notice. For entities like corporations, either follow the state rules for service of process, or deliver a copy to an officer or agent of the corporation.

Lee Burgess: So, let's briefly jump into the most important California distinction when it comes to service of process – substitute service. Under substitute service of process, if despite reasonable diligence the plaintiff cannot serve the defendant in person, substitute service is permitted by, (1) serving a responsible adult at home or place of business of the defendant, so long as the plaintiff sends a follow-up first-class mail with return receipt; (2) by publication if the plaintiff cannot serve the defendant in person or substituted service; (3) outside California, so long as the summons and complaint is mailed by first-class mail or airmail with prepaid postage if outside of California but within the U.S.; and (4) international service using any method the forum court prescribes or allowed



under the law of the place where the person is being served that would give actual notice.

Lee Burgess:

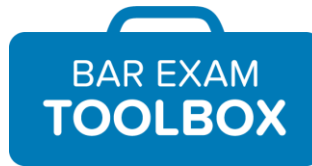
I know, that's a lot. And things may still not be clear to you, but that's okay. Sometimes it can be easier to understand a rule if we see it play out in context, so let's look at a sample question together. As I read the question, keep in mind what we've learned so far, especially in this podcast, and practice issue spotting. Can you spot the service of process issue? What specific service issues might be present? Is it service to an individual or corporation? Note it down. And remember – this is extremely important when you're answering an exam question – don't be too quick to make a conclusion. If you see something that could arguably be service of process related, note it, even if you don't think it will ultimately be a successful argument. The graders want to see your legal reasoning skills, so explain why it won't be successful. You'll get the most points by spotting possible issues and explaining why they are or are not applicable. So, don't skip something just because you don't think it's ultimately the best argument. With that said, let's get into the question:

Lee Burgess:

“Paul, a citizen of Mexico, was attending college in San Diego on a student visa. He drove to San Francisco to attend a music festival. While there, he bought and ate a bag of snacks from Valerie, a resident of San Francisco. The snacks had been manufactured in Germany by Meyer Corp., a German company with its sole place of business in Germany. The snacks contained a toxic substance and sickened Paul, who incurred medical expenses in the amount of \$50,000. Paul filed in action pro se against Valerie and Meyer Corp. in the Superior Court of California in San Diego. In his complaint, he alleged that Valerie and Meyer Corp. should have known the snacks were contaminated and demanded \$50,000 in compensatory damages. Paul drove to San Francisco where he personally handed Valerie a summons and copy of the complaint. He sent a summons and copy of the complaint to Meyer Corp. by ordinary mail to the company in Germany. Did Paul validly serve the summons on, (a) Valerie; and (b) Meyer Corp.? Discuss.”

Lee Burgess:

So, what do you think? Did Paul validly serve Valerie and Meyer Corp.? What service of process issues come up here? First, we want to briefly note that there are two parts to this question: We need to figure out whether service of process was properly done for both Valerie and Meyer Corp. Second, we want to make sure we understand what service rules apply. Here, the incident at issue occurred in California and the action is in the Superior Court of California in San Diego. Therefore, the service of process rules of California will apply.



Lee Burgess: Generally, California service of process rules mimic the federal rules, except for substitute service. Service of process in California can be accomplished by personally serving the defendant with a summons and copy of the complaint, so long as the server is at least 18 years of age and is not a party to the case. If personal service is not possible, substitute service may be attempted. Substitute service allows for, (1) serving a responsible adult at home or place of business of the defendant, so long as the plaintiff sends a follow-up first-class mail with return receipt; (2) by publication if the plaintiff cannot serve the defendant in person or substituted service; (3) outside California, so long as the summons and complaint is mailed by first-class mail or airmail with prepaid postage if outside of California but within the U.S.; and (4) international service using any method the forum court prescribes or allowed under the law of the place where the person is being served that would give actual notice.

Lee Burgess: Now that we got the rules out of the way, let's tackle each Valerie and Meyer Corp. separately. For Valerie, Paul actually drove to San Francisco and personally served Valerie with a copy of the summons and complaint. That seems legitimate, right? He handed the summons and complaint to Valerie; how much more personal can you get? Does anyone see anything wrong with this? Although Paul might be over the age of 18, he is nonetheless a party to the case, because he is suing Valerie for the bag of snacks that she sold him. Because he is a party to the case, he cannot properly serve the defendant on his own. Someone else who is at least 18 and not a party of the case must do so. Therefore, Paul did not validly serve the summons on Valerie. This answer seems pretty straightforward, but it really requires you to know the rule, otherwise it's easy points to miss!

Lee Burgess: Okay, let's move onto analyzing Meyer Corp. The first issue that is more obvious is the fact that Paul also served Meyer Corp. even when such service must be done by someone who is not a party to the case. Even though he sent a summons and copy of the complaint to Meyer Corp. by ordinary mail to the company in Germany, he can't personally do it himself because he is a party to the case. Second, Paul served Meyer Corp. by sending mail to Germany, where they have their sole place of business. This, of course, raises an international service of process issue, so let's quickly recap that rule under California law: International service may be accomplished by using any method the forum court prescribes or allowed under the law of the place where the person is being served that would give actual notice. Here, no method is described that the forum court prescribed, and it is unclear what Germany's law for service of process is.



Lee Burgess: Under the circumstances, it is good to use what you know about service of process rules to develop an answer that is consistent with what would give “actual notice”. For example, most service of process rules that allow for mailing a summons and complaint require some type of response from the recipient to show that they received the documents. California substitute service rules allow for serving a responsible adult at home, so long as the plaintiff sends a follow-up first-class mail with return receipt. FRCP rules for international service allow for service by delivering a copy of the summons and complaint to an individual by mail with a signed receipt. Here, the summons and complaint were mailed to Meyer Corp. by ordinary mail, which is unlikely to give actual notice because there’s no requirement for ordinary mail to be confirmed by the recipient. Therefore, it is unlikely that Paul validly served Meyer Corp.

Lee Burgess: I hope that hypothetical put these service of process issues into context and helps you picture what they might look like in the real world. Let’s take a look at another hypo together to see how else these service of process issues might play out:

Lee Burgess: “MedForms Inc. processes claims for medical insurers. Last year, MedForms contracted with a data entry company to enter information for claims into MedForms’ database. MedForms hired a woman to manage the contract with the company, but a few months after entering the contract MedForms began receiving complaints from insurers regarding data entry errors. The woman conducted an audit and found that the company’s employees had been making errors in transferring data from insurance claims forms to the MedForms database, and immediately reported her findings to MedForms supervisor. MedForms filed an action against the company, alleging that the company’s data entry errors constituted a breach of contract. MedForms sought \$500,000 in damages from the company. MedForms served the company with process by hiring a process server who personally delivered a copy of the summons and complaint to the company’s Chief Executive Officer at its headquarters. MedForms is incorporated in State A, where it also has its headquarters and document processing facilities. The company’s only document processing facility is located in State A, but its headquarters are located in State B, where it is incorporated and where its Chief Executive Officer was served with process. State A and State B each authorize service of process on corporations only by personal delivery of a summons and complaint to the corporation’s secretary. The company has moved to dismiss MedForms’s complaint for insufficient service of process. How should the District Court rule on the motion? Explain.”

Lee Burgess: So, what do you think? Did MedForms properly serve the company? Unlike the last problem, there’s only one defendant here to serve a summons and



complaint to, so our first real issue to determine is what service of process rules apply – the FRCP or state rules. Here, the question stem actually gives away the answer, because it asks how should the District Court should rule on the motion, suggesting we are in federal court where the FRCP governs. However, the fact pattern also suggests that there is specific state service of process rules which we will have to be aware of, because some of the FRCP rules defer to state rules. So, let’s dig into this answer by starting with a quick reminder of the applicable rule.

Lee Burgess: Under the FRCP, service upon a corporation may be affected within a U.S. judicial district by following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made, or by delivering a copy of the summons and of the complaint to an officer, a managing or general agent. Here, MedForms did not serve the secretary of the company and therefore did not comply with the service laws of either State A, where the District Court sits, or State B, where service was made. However, MedForms nonetheless properly served the company under the FRCP, because it delivered a copy of the summons and complaint to the company’s CEO. This service is likely authorized by the FRCP, because the FRCP does not specify which corporate representative counts as “officers” for the purpose of receiving service of process. But a court would almost certainly conclude that service on a CEO satisfies the rule, because they tend to be considered the top officer of a corporation.

Lee Burgess: Note that it is irrelevant whether the manner of service chosen by MedForms was in violation of state law – here requiring that service of process be made only by personal delivery of a summons and complaint to the corporation’s secretary – because we are in federal court and the FRCP ultimately governs the procedural issues of the case.

Lee Burgess: Alright, that’s all we have time for today. I hope you have a better sense of some of the primary rules governing service of process and how to analyze their applicability. 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 Lee 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. Thanks for listening, and we’ll talk soon!



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