



Alison Monahan: Welcome back to the Law School Toolbox podcast. Today, we're doing another episode in our "Listen and Learn" series, on subject matter jurisdiction. Your Law School Toolbox host today is Alison Monahan, and typically, I'm with Lee Burgess. We're here to demystify the law school and early legal career experience, so that you'll be the best law student and lawyer you can be. Together, we're the co-creators of the [Law School Toolbox](#), the [Bar Exam Toolbox](#), and the career-related website [CareerDicta](#). I also run [The Girl's Guide to Law School](#). If you enjoy the show, please leave a review or rating on your favorite listening app. And if you have any questions, don't hesitate to reach out to us. You can always reach us via the [contact form](#) on LawSchoolToolBox.com, and we would love to hear from you. With that, let's get started.

Alison Monahan: Hi, and welcome back to the "Listen and Learn" series from the Law School Toolbox podcast! Today, we are tackling another subject you're sure to see in your Civil Procedure class and later on the bar exam, and that's federal subject matter jurisdiction, or SMJ.

Alison Monahan: 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. 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 maybe the laws are 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 federal questions, and diversity actions.

Alison Monahan: If you haven't made your attack plans for Civ Pro yet, be sure to map out subject matter jurisdiction, because it has quite a few moving parts. Your main header is obviously SMJ, and you need a general rule for what this is about. Underneath that, you should have two sub-headers – one for federal question and another for diversity. Below each of those, you should put a short rule.

Alison Monahan: Now, the rule for federal questions is pretty straightforward. The complaint from 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 in the plaintiff's complaint are "substantially" based in federal law or not. In order to determine this, you will need to know what kinds of things fall under federal law. Your professor may even end up making up a new statute, so you have to guess. The important thing is that you argue the facts you are given and explain your reasoning.

Alison Monahan: 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 more commonly tested on law school finals. Under diversity, there should be two sub-prongs.



First, there needs to be what is called “complete diversity”. Second, there needs to be the right “amount in controversy”. And these break down even further.

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

Alison Monahan: And “citizenship” here means domicile. You’ll remember domicile means physical presence in the 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 back home in California, and you know that you want to go back and practice there after graduation. In this case, California is your domicile. That’s how to determine citizenship for people.

Alison Monahan: What about corporations? Often, the defendant is a company and not an individual. In that situation, you need to look at two different things – first, the state of incorporation; and second, the principal place of business. A corporation can have dual citizenship for this purpose – so if these are different, you could actually be a citizen of two different places. 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, for example, “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.

Alison Monahan: Personally, 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 can just jot it down into the appropriate column. Kathy lived in California – good, write her name under California. The defective coffee cup was manufactured in Illinois – write that down. You get the idea.

Alison Monahan: 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 up or 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.”

Alison Monahan: 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 damages. Normally, you’re going to 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 is going to cost more than \$75,000 to fix.

Alison Monahan: You may also see a fact pattern where there are various dollar amounts at play. Maybe the plaintiff sues for several different 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.

Alison Monahan: The rule is that claim aggregation is allowed if you have only one plaintiff against one defendant, or if the defendants are jointly and severally liable. This makes sense, right? If Carol sues Joe for a bunch of stuff, she can add it all together. 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 if your professor has covered this topic, which most do, you should definitely review this one on your own.

Alison Monahan: Alright, those are the basic rules we need for subject matter jurisdiction. Let’s get into some hypos to test them out. This one is from the Civil Procedure essay on the [California bar exam in July 2012](#). Here we go:

Alison Monahan: “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.

Alison Monahan: 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 this case?”



- Alison Monahan: First things first – which basis for 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 we need to look for the other kind of federal subject matter jurisdiction – diversity.
- Alison Monahan: 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 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 did not have intent to remain, thus their residence in State A could probably also be considered domicile.”
- Alison Monahan: Okay, so both 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 the people on either side of the “v.” need to be from different places. All the plaintiffs could be from the same state as each other, and that’s not a problem.
- Alison Monahan: What about the defendant? On your scratch paper plan, 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. The facts say the President and 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.
- Alison Monahan: 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 decision-making power and the actual running of the business happen there. Remember though, your professor wants 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 this is not enough to meet the test for citizenship.
- Alison Monahan: 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 any defendant.
- Alison Monahan: Next step in the analysis: 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. I know it sounds overly simplistic to spell out such simple math, but that's exactly what you should do on your exam. Show your whole thought process and go step by step.

- Alison Monahan: What about Patrick? He demanded damages in the amount of \$6,000. That is 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 the rule.
- Alison Monahan: 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.
- Alison Monahan: We don't have enough time to cover this topic today, but you should look into this on your own. There's not that much law to remember, but it can change the outcome of your analysis significantly. Suffice it to say, since the same car accident involves the same location and same people and 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.
- Alison Monahan: Is everything making sense so far? Let's try another example to be sure. This one is from the [California bar exam's Civ Pro essay administered in February 2009](#). And we've changed this one just a little bit to highlight the subject matter jurisdiction issue more directly. Here we go:
- Alison Monahan: "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.
- Alison Monahan: 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?"
- Alison Monahan: First step: Is there a federal question? No. Why not? Because Sally sued for negligence and this is Tort law, which is state law, not federal. Look out for clues like this on your exam. It might seem like background information to tell you



what the lawsuit is about, but it can check off this rule element by telling you that no federal questions were involved.

Alison Monahan: Next, can we get into federal court based on diversity jurisdiction? What's our first sub-question there? Do we have complete diversity of citizenship of the parties? The facts say that Copyco was incorporated in State A, which is easy enough. Put a column for that on your scratch paper. Add the president and 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. What do you think? Which facts tell us Copyco's citizenship? The Supreme court has actually ruled that what it calls the "nerve center" is going to win when it comes to determining citizenship. This 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.

Alison Monahan: Is diversity defeated? Well, 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 happen to conclude that Copyco is a citizen of State B – remember, the important thing is you explain how you got there. On most exams, even if you get the rule or its application slightly wrong, you can save yourself 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. Keep going.

Alison Monahan: Alright, next step – we have our 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.

Alison Monahan: Remember, as you prepare for your 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, and review hypos where your professor may have discussed topics like what to do with foreign entities or with 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 hypos so you can get comfortable applying these rules before exam day.

Alison Monahan: And with that, we're out of time! If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We would 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@lawschooltoolbox.com or alison@lawschooltoolbox.com. Or you can always contact us via our website [contact form](#) at LawSchoolToolbox.com. Thanks for listening, and we'll talk soon!

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

[Podcast Episode 215: Listen and Learn – The Commerce Clause](#)

[Podcast Episode 218: Listen and Learn – Supplemental Jurisdiction \(Civ Pro\)](#)

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