



Lee Burgess: Welcome back to the Law School Toolbox podcast. Today, we're doing another in our "Listen and Learn" series – this episode is on personal jurisdiction. Your Law School Toolbox hosts are Alison Monahan and Lee Burgess, that's me. We're here to demystify the law school and early legal career experience, so you'll be the best law student and lawyer you can be. 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 or rating on your favorite listening app. And if you have any questions, don't hesitate to reach out to us. You can reach us via the [contact form](#) on LawSchoolToolBox.com, and we'd love to hear from you. And with that, let's get started.

Lee Burgess: Welcome back! Today, in response to a listener request, we're discussing one of the most common topics on Civil Procedure essays, both in law school and on the bar exam – personal jurisdiction. When it comes to personal jurisdiction, the main question you're looking at is whether the court has authority to make a binding decision about a particular defendant. For example, if I live in California but I crash my car somewhere else, can I get pulled into a lawsuit in that other state? What if I make a product and it hurts someone in a different state – can I be required to defend a lawsuit there? These are the kinds of situations that commonly come up in essay fact patterns.

Lee Burgess: So, let's get into the rules. There are various ways of establishing personal jurisdiction. The first set of ways is called "traditional bases". This rule has three parts: domicile is number one; two, presence; and three, consent. Now, what does this mean? It means that if the defendant is domiciled or present in the place where the court sits, that court has jurisdiction over him. If the defendant is from somewhere else but consents to the court having jurisdiction, that is also fine. So, the first step in your attack plan and on any essay should be to look at these three types of "traditional bases" of jurisdiction – domicile, presence, and consent.

Lee Burgess: You might be wondering what the difference is between domicile and presence. Think of domicile as where you reside and have the intent to permanently remain. This could be the state where you have your apartment, or even the family home you go back to on school vacations if you go to school out of state. On the other hand, think of presence as just being physically there when served with process, even if you're just passing through. Presence has even been established on an airplane while flying over the forum state, so "passing through" in a transient way is not an exaggeration here. Consent is pretty self-explanatory – this gets checked off if you consent to jurisdiction in the forum state. And remember, appearing in the lawsuit without objecting to personal jurisdiction counts as consent.



Lee Burgess: You might be curious about how you could contest jurisdiction if appearing counts as consent. The answer is to make what is called a “special appearance”, for the sole purpose of contesting personal jurisdiction.

Lee Burgess: The second way of a court getting decision-making power over a person is through something called a “long-arm statute”, coupled with some kind of ties to the forum state. You need both the statute and the ties. Think of a long-arm statute as a rule that some states have about exercising jurisdiction over people from outside the state. For example, in California, there is a long-arm statute, and it says that personal jurisdiction is allowed to the same extent as it is allowed under the U.S. Constitution.

Lee Burgess: On your exam, you can write your rule like this: “In order to exert personal jurisdiction over a defendant who is not a resident of the forum state, the forum state must have a long-arm statute, and the constitutional requirements of due process must be met.”

Lee Burgess: The “long-arm statute” part might sound confusing, but it’s pretty easy. On an essay, all you need to do is look for whether you were given any facts about the forum court having its own long-arm statute. If you see a statute, apply the rule given to you in the fact pattern. Say whether the facts meet the given long-arm statute’s requirements. If you don’t see language about the state’s long-arm statute in the fact pattern, don’t skip this step. Quickly throw down a sub-header and a rule for “long-arm statute” and address it anyway. But, be aware: There might not be much to discuss.

Lee Burgess: Regardless of your conclusion on the long-arm statute issue, you should then move onto the next piece, which involves the defendant’s ties to the forum state. This is called a “minimum contacts test”, or “constitutional analysis”. This is generally a much more in-depth discussion on exams. We’ll do an example of this in a minute.

Lee Burgess: A constitutional analysis involves two parts: one, minimum contacts; and two, fair play and substantial justice. The very famous rule that gets drilled into every Civ Pro student’s head is from a case called *International Shoe*. The court said that in order to exercise jurisdiction over a non-resident defendant, she must have such minimum contacts with the forum state that the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice. In other words, if I have no connection whatsoever to the state where the court is, it’s probably wrong to force me to travel there to defend a lawsuit. That wouldn’t be fair at all.

Lee Burgess: So, what are minimum contacts? There are two ways to get there. You’ve got general jurisdiction and specific jurisdiction. Let’s look at both. General jurisdiction is the idea that an individual is domiciled in the forum state, or a



corporation basically “lives” in the forum state. What you’re looking for is whether the person or company getting sued is essentially “at home” in the place where the court sits. The rule for a corporation is that it will be considered “at home” in a state where it is incorporated, or where it has its headquarters. Keep in mind, these might be two different places, so it is possible to be at home in two places at once if the defendant is a corporation.

Lee Burgess: Specific jurisdiction, on the other hand, has less to do about where you live and more to do about what you did. What you’re looking for is some kind of connection between forum state and the underlying claims or controversy. You might see language about “purposeful availment” of the benefits of the forum state. So, for example, if you see a defendant driving his car through the state, he has availed himself of the benefit of using those roads, so this could establish a contact with the state and give rise to jurisdiction. That is a really clear-cut example, but be careful of things like sales and advertising, because there can be nuanced laws about this and if you’re not sure what they are, you should look these up, because there are too many to cover in this podcast.

Lee Burgess: So, you need to establish minimum contacts in the form of either general or specific jurisdiction. Then, onto the next prong of the rule: fair play and substantial justice. What are you looking for? It has to be reasonably foreseeable that the defendant could be “haled” into court in the forum state. In other words, is it fair to sue the defendant here? Could he have known that this was the place a suit could happen? The burden is on the defendant to show that the forum state is not a fair place to force him into court.

Lee Burgess: So, how does the forum court decide? When considering fair play and substantial justice, the court will look at three things: one, relatedness of the contact and the forum; two, convenience of the parties and the witnesses; and three, the state’s interests in providing a forum.

Lee Burgess: What you need to do for this analysis is gather up any facts you see about who the claim involves, what they did, how far they would need to travel, how much money they would need to spend, what happened and where it happened, and whether the plaintiff is from the forum state, because a state will always have an interest in providing a space for its citizens to seek redress. Sounds like a lot, right? Well, it is, but we’ll talk about how to keep everything organized.

Lee Burgess: Before we jump into some examples, make a note that personal jurisdiction is typically a very fact-heavy analysis. You can often recognize a personal jurisdiction question by all the references to who did what and in what state. I find it helpful to map out in a little chart on scratch paper if you’re allowed to use it, or on your screen in columns. Put a column for each place mentioned and then quickly jot down things like where the manufacturing plant is located, who is a citizen of what state, where the car accident occurred, where the hospital



that took care of the plaintiff is, and any other facts you get about things happening in various places.

Lee Burgess: So, let's get to some hypos. The first example comes from the [February 2004 Civ Pro essay from the California bar exam](#). We've shortened this a bit to focus on the personal jurisdiction issue. Here we go:

Lee Burgess: "Paul and Tom, both State X residents, were involved in an auto accident in State X. At the time of the accident, Tom, who was working as a delivery truck driver for Danco, was driving through State X to make a delivery to a customer located in State Y. Danco is incorporated in State Y and has its principal place of business in State Z. State Z is located adjacent to State X. Danco does no business in State X.

Lee Burgess: Paul filed a complaint against Danco in federal district court in State X on the basis of diversity jurisdiction, alleging \$70,000 in property and personal injury damages. Danco was properly served with the complaint at its principal place of business. Appearing specially in the State X federal district court, Danco filed a motion to dismiss the complaint on the grounds that the district court lacked personal jurisdiction. The district court denied Danco's motion.

Lee Burgess: Did the district court rule correctly on Danco's motion to dismiss Paul's complaint?"

Lee Burgess: Okay, like I said, lots of states and facts tied to those states. So, let's map out what's going on here. In State X, we can write down:

- P resides
- T resides
- Accident occurred
- T driving through
- D does no business there
- Adjacent to State Z
- P filed complaint there
- D specially appeared there and filed a motion

Lee Burgess: Next, let's look at State Y. What happened there? You can write on your own outline:

- T delivering to a customer there
- D is incorporated there

Lee Burgess: And finally, State Z. What do we write down there?

- Adjacent to State X
- D has its principal place of business there
- D served there



- Lee Burgess: It might seem like a lot of work to chart out all these facts, but it will make your analysis a lot easier, because you won't have to refer back to the fact pattern as much. Plus, there are points attached to using each of these facts in your analysis, so you can't skip any of them. This kind of planning is time well-spent.
- Lee Burgess: So, let's apply the rules. First, the question asked here is about whether the court in State X can exercise jurisdiction over D. It's important to be really clear on where the court is and who the defendant is. So, what do you think? Let's look at traditional bases first. Remember domicile, presence, and consent? Is D domiciled in State X? No. How do we know that? Because D is a corporation and the facts say that it is incorporated in State Y and has its principal place of business – often abbreviated as PPB – in State Z. Nothing about State X.
- Lee Burgess: Moving on, was D present in State X when served? No. How do we know? D was served at its principal place of business, and we know that is in State Z. So, D was not "present" in the forum when served.
- Lee Burgess: Consent? No. D did show up in the litigation, but it was a special appearance and only to say there was no personal jurisdiction. Does this count as "consent" to jurisdiction? No. This is a commonly tested fact scenario, so know when appearing in court counts as consent to jurisdiction and when it doesn't.
- Lee Burgess: Next step, the long-arm statute. Is there one? Well, nothing is mentioned. So, what you'd want to do on the exam is briefly IRAC out what a long-arm statute is and explain that there are no facts. However, assuming the jurisdiction did have a long-arm statute like the one in California, jurisdiction would be allowed to the full extent allowed by the U.S. Constitution. Then, move on and do the constitutional analysis, or minimum contacts test.
- Lee Burgess: First, look at purposeful availment. Did D derive any benefits from State X? Yes. D had its driver, T, use State X roads to get to States Y and Z, where it conducted most of its business. That is enough to check off this element.
- Lee Burgess: What about foreseeability? Is it foreseeable that D would be "haled" into court in State X? Yes. Why? Because anyone driving in the forum could have an accident, and any accident could give rise to a lawsuit in that state. D could have reasonably foreseen that its driver using the road in State X could get haled into court there.
- Lee Burgess: Next, let's look at the fair play and substantial justice factors. Here, you're trying to find a connection between the lawsuit and the forum. Are the two related? Yes. Why? What facts do we have? The accident happened in State X, but D was just passing through and does no business there. Is this enough of a contact? Yes. What about convenience of the parties and witnesses? What do we know? Well, both drivers who were involved in the accident are residents of State X, so



that is convenient for the plaintiff and the key witness. Plus, since the accident happened there, State X is where any evidence of the accident and witnesses like medical personnel or passersby would be located, so that is convenient for them too. D doesn't do any business in State X, so that doesn't sound too convenient for D. However, it does do business right next door in State Z, and we know D is a corporation, so asking a corporation to litigate one state over from where it does business is probably not too inconvenient, since corporations have money and may be able to travel more easily than individuals. This element is probably met as well.

Lee Burgess: How about State X's interest in providing a forum? This is met because the plaintiff is a resident of State X. Anytime you see a person suing in their home state, you can quickly check off this element, because a state always wants to help and protect its people from harm.

Lee Burgess: That sums up a full personal jurisdiction analysis. On your exam, make sure you put a header for each sub-part so you can get maximum points for hitting each prong of these rules. If you haven't already made an attack plan of headers and sub-headers required for this issue, you should.

Lee Burgess: Let's do another practice hypo together to make sure you're getting these rules down. This one is adapted from the [July 2016 bar exam in California](#):

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.

Lee Burgess: Paul filed an action 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 a copy of the complaint. He sent a summons and a copy of the complaint to Meyer Corp. by ordinary mail to the company in Germany.

Lee Burgess: Does the court in San Diego have personal jurisdiction over Valerie? Meyer Corp.?"

Lee Burgess: First, let's map out the events and places. What is happening here?

Lee Burgess: Under San Diego, we can put:  
- P attended college there



- P filed the suit there

Lee Burgess: What about San Francisco, obviously also in California? We could write:

- Music festival held there
- V is a resident
- V personally served by P

Lee Burgess: We've also got Germany:

- Meyer Corp. is a German corporation, which means it is incorporated there
- Meyer Corp. has its sole place of business there
- The snacks were manufactured there
- Meyer Corp. was served by mail there

Lee Burgess: And finally, Mexico. You can just write:

- P is a citizen of Mexico

Lee Burgess: That way, you don't forget to include that fact in your analysis.

Lee Burgess: As you probably noticed, there are two different California cities at play here – San Diego and San Francisco. Since the plaintiff sued in state court, we aren't battling over whether one of those two courts has jurisdiction. Remember, we aren't talking about venue. The question is really asking whether a California state court has personal jurisdiction over these defendants. So, let's go step-by-step.

Lee Burgess: On the exam, you want to separate out IRACs for Valerie and Meyer Corp. since they are two different defendants. First, let's consider Valerie. Any traditional bases? Valerie is a resident of San Francisco, which is in California. The legal test for traditional bases actually involves "domicile" though, which is a bit different than "residence". We know Valerie lives in San Francisco, but is it her permanent home? Does she intend to remain there indefinitely? It's not clear – you can point that out. Ultimately though, you could conclude that, without more information, V is most likely domiciled in California.

Lee Burgess: Now, what about presence? Paul drove to San Francisco and personally handed Valerie the complaint. This does raise an issue about service of process being improper, since the plaintiff is not the one who is supposed to go around serving their own complaints. You would want to point out that problem raised by the facts. However, that question aside, yes, Valerie was present in San Francisco, which is in the forum state, when she was served, so "presence" is technically met.

Lee Burgess: There aren't any facts to show Valerie consented to jurisdiction anywhere, so this can't be a basis for jurisdiction. However, since Valerie lives in the forum



state and was served there, there is a traditional basis of jurisdiction. We don't need to look at the long-arm statute or minimum contacts.

Lee Burgess: How about our next defendant, Meyer Corp.? Any traditional bases of jurisdiction? No domicile, because Meyer Corp. is in Germany. It was incorporated and has its sole place of business there. Presence also can't be checked off since Meyer Corp. was served by mail in Germany. There are no facts about consent, so we move to the next step.

Lee Burgess: Is there a long-arm statute? No information is given. However, the court we're looking at is in California, and we know California has a pretty broad long-arm statute, as we discussed earlier, so you could knock this out in a couple of short sentences. Just say, "Jurisdiction is allowed to the full extent of the U.S. Constitution", and then move onto your constitutional analysis.

Lee Burgess: First step, what kind of minimum contacts are we looking at here? What contact did our defendant, Meyer Corp., have with the forum state, California? Everything Meyer Corp. did, that we know of, happened in Germany. However, somehow, Valerie got her hands on these snacks and sold them to Paul in San Francisco. How is that possible? The problem is, we don't really know. There are holes in the facts. And, what do we always do with holes in the fact pattern? We point them out!

Lee Burgess: So, you can say that it is unclear how the pretzels got from Germany where they were manufactured, to San Francisco where Paul bought and ate them at the music festival. If Meyer Corp. is found to have done any advertising or shipping to California, this is enough of a minimum contact. What if Valerie went on vacation to Munich and grabbed up a bunch of pretzels and stuffed them in her checked luggage, and then proceeded to sell them in California? Is that a minimum contact for Meyer Corp.? No, because it wasn't involved in that process. Sometimes, when there aren't enough facts, you might have to say if X scenario happened, then Y is true. But ultimately conclude that without more information, the court could not find Meyer Corp. had any connection to California.

Lee Burgess: What you would want to do is point out the same hole in the facts for purposeful availment and foreseeability, and then march through the elements of fair play and substantial justice. Is the claim related to the forum state? Yes, Paul got poisoned there. Is California a convenient place for the parties and witnesses? It's convenient for everyone but Meyer Corp. When given the choice between forcing a corporation to travel for a lawsuit and forcing an individual person to travel, the court is going to side with the individual, because corporations have deeper pockets. Does California have an interest in providing a forum for Paul? Well, Paul is a citizen of Mexico and is only in California on a



student visa, but that is enough. Since everything happened in California, the court would have an interest.

Lee Burgess: So, that wraps up the analysis. One thing I want you to notice is when to stop the discussion and when to keep going. For example, once we found the traditional basis of jurisdiction for Valerie based on her domicile in the forum, it was not necessary to continue the analysis and look for a backup plan in minimum contacts. On the other hand, just because it wasn't clear whether Meyer Corp. had any connections with California, did we stop there? No, we kept going through the steps and discussing the ambiguity. Even if facts are missing, you need to use the facts you do have and make the best of it. Like I said before, pointing out holes in the facts, explaining your reasoning, and grappling with ambiguity is a great way to get points!

Lee Burgess: And with that, we're out of time! If you want some practice, you can go through and IRAC out these hypos on your own. Again, these were from the California bar exam Civil Procedure essays from February 2004 and July 2016.

Lee Burgess: 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'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 and Alison at [lee@lawschooltoolbox.com](mailto:lee@lawschooltoolbox.com) or [alison@lawschooltoolbox.com](mailto: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 2016](#)

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

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