



- Lee Burgess: Welcome back to the Law School Toolbox podcast. Today, we're doing another in our "Listen and Learn" series – this one is going to talk about venue, a Civil Procedure issue. 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 can 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 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! So, what exactly is venue? To understand this, it helps to distinguish venue from jurisdiction, because both can dictate where a case can proceed. Jurisdiction refers to the court's legal authority to adjudicate a particular case, and the court must possess both [subject matter jurisdiction](#) and [personal jurisdiction](#) over the defendants to have jurisdiction over the case.
- Lee Burgess: Venue, on the other hand, refers to the proper geographic location, or locations, in which a federal district court with jurisdiction may adjudicate a civil action. Venue is not governed by the Federal Rules of Civil Procedure, but by statutes, which explain the requirements for venue to be proper in a federal court, beginning with 28 U.S.C. § 1390. Sometimes, as we'll discuss shortly, venue issues are determined by whether a court possesses personal jurisdiction over a defendant, but venue and jurisdiction are nevertheless separate legal issues.
- Lee Burgess: In the federal system, venue is analyzed by federal court, not by state. Therefore, venue for a case might be proper in the Northern District of Illinois, but not the Central District of Illinois, even though they are neighboring districts in the same state.
- Lee Burgess: We'll start with the venue statutes, which are in Title 28 of the United States Code. The general venue statute is 28 U.S.C. § 1391, which governs venue in all civil actions filed in federal district courts. The statute provides three proper bases for venue in civil actions, in subsection (b). We'll explore them in turn, but it might help to remember the two primary concepts: residency of defendants and location of underlying events. If those fail, there's a "catchall" that allows venue where any defendant is subject to the court's jurisdiction in the case.
- Lee Burgess: The first ground for venue is based on residency of the defendants, and it states that venue is proper in a district in which any defendant resides, provided all defendants are residents of the state containing that district. For example, in a case involving three defendants, with one each residing in the Eastern, Middle, and Western districts of Pennsylvania, venue would be proper in any of these federal districts under this rule.



- Lee Burgess: So, what does residency of a defendant mean in the venue context? This is explained in subsection (c). First, individuals, including foreign nationals who are lawful permanent residents, are deemed to reside in the districts in which they are domiciled, which is the same domicile standard used to determine citizenship for assessing diversity jurisdiction. But note that, in the venue context, domicile is analyzed by individual federal district, not by state.
- Lee Burgess: Now, what about corporations or other entities that can be parties in litigation? Their residence is explained in subsection (c)(2), and it depends on whether they are defendants or plaintiffs. When they are defendants, they are deemed to reside in any judicial district in which they are subject to the court's personal jurisdiction in the case. Thus, when legal entities like corporations are defendants, the venue analysis essentially becomes a personal jurisdiction "minimum contacts" analysis. When such an entity is a plaintiff, however, it resides "only in the judicial district in which it maintains its principal place of business". This suggests a mnemonic device: "plaintiff principal place" for corporations.
- Lee Burgess: As we know, some states have multiple federal districts, so how does that affect venue? For defendant corporations who reside in states with multiple districts, this rule is slightly refined. As long as a corporate defendant is subject to personal jurisdiction in the state when the action is commenced, it resides in "any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State".
- Lee Burgess: Thus, for venue in cases against corporate defendants in states with multiple districts, the court needs to analyze the defendant's minimum contacts with each individual federal district. If, however, there is no district in which the corporate defendant has such minimum contacts, it "resides in the district within which it has the most significant contacts". Though this rule refers to defendant corporations, it has been applied to unincorporated associations as well.
- Lee Burgess: Finally, what about parties who are not residents of the United States? They may be sued in any judicial district, and their joinder would not affect where the action may be brought against other defendants. In other words, the residency of the other defendants dictates whether venue is proper under this rule: 28 U.S.C. § 1391(c)(3).
- Lee Burgess: Those are the basics for the first basis for establishing venue – the residency of the defendants. Let's move to the second basis for venue, which depends on the underlying facts of the case. This one is easy to remember, because it makes sense to allow cases to proceed where the relevant events happened. Under the rule, venue is proper in a district "in which a substantial part of the events or



omissions giving rise to the claim occurred”, or where a “substantial part of property that is the subject of the action” is located. This is found in § 1391(b)(2). Notice that this rule does not require that all events occurred in the district, or that all property in dispute is located within the district, but only a “substantial part” of either the events or the property. As a result, under this rule, venue could be proper in multiple federal districts, and it frequently is.

Lee Burgess: We’ve now reached the third basis for venue, in § 1391(b)(3). This “fallback” rule simply provides that if there is no proper district under the other subsections, the case may proceed in any district in which any defendant is subject to the court’s personal jurisdiction for that case.

Lee Burgess: Now that we’ve explored how venue can be properly established, let’s look at how venue can be changed. There are two ways, which are often confused with each other, so let’s make sure we keep them distinct.

Lee Burgess: First, a defendant can challenge the plaintiff’s chosen forum by moving to dismiss for improper venue under the Federal Rules of Civil Procedure § 12(b)(3). In these cases, the defendant is arguing that venue has not been established based on the residency of the defendant or where the underlying events occurred. If the court determines venue is not proper in the district in which the action was filed, the court has two options. It can either dismiss the case, or, if the court determines it is in the interest of justice, transfer the case to any district in which it could have been brought. This is in Section 28 U.S.C. § 1406(a). So, if the court identifies one or more other districts in which the court would have jurisdiction and venue would be proper, it need not dismiss the case, but can transfer it to one of those districts.

Lee Burgess: Second, a defendant can file a motion to transfer the case for the convenience of parties and witnesses and in the interests of justice – 28 U.S.C. § 1404(a). When the court grants a defendant’s motion for a transfer under § 1404(a), the court may transfer the case to any other district in which venue would have been proper when the action was filed, or to any district to which all parties have consented. For consent, the parties could simply agree to pursue the case in a particular district, and consent could also be found in a contract including a forum selection clause.

Lee Burgess: This is sometimes known as forum non conveniens, which must be kept distinct from a motion to dismiss for improper venue as we discussed before. When a defendant seeks a transfer for forum non conveniens, it is not arguing that the plaintiff’s chosen venue is improper under the general venue provisions. Rather, the defendant is requesting a transfer on the grounds that another district would be a more convenient, efficient place for the litigation.



- Lee Burgess: How do courts analyze these motions? When adjudicating transfer motions under § 1404(a), courts consider factors relevant to the practicality, efficiency, and fairness of managing the case in different districts in which venue would be proper under the general rules. These factors afford the court great flexibility and include things like the convenience for witnesses, the convenience for the parties, the location of the underlying events, and the location of relevant documents and other sources of proof. Courts sometimes consider the relative financial resources of the parties, and even the court’s familiarity with the law governing the dispute.
- Lee Burgess: While courts give some deference to the plaintiff’s chosen forum, it receives less deference when the plaintiff does not live there, and the underlying events did not occur there. Why? Because in those cases, it might appear that the plaintiff is forum shopping.
- Lee Burgess: With the flexibility of these factors, you have lots of flexibility in how to approach questions involving a possible transfer under § 1404(a), so try to consider every argument based on the practicality, efficiency, and fairness of the case proceeding in different federal districts.
- Lee Burgess: Before we move on to some examples, note that we have been exploring the general venue rules, but the venue statute also includes specific rules about actions against federal officers or employees, actions against foreign states, and for multi-party and multi-forum litigation. All of these rules allow venue where a substantial part of the underlying events took place, so you can apply that principle whenever a venue issue arises. For actions against federal employees and multi-district cases, you can also look to the residency of the defendants, as with other cases.
- Lee Burgess: Finally, some federal statutes creating private rights of action, like Title VII, have their own venue provisions. These are not covered in a typical first-year Civil Procedure course, and they are not likely to appear on the bar exam.
- Lee Burgess: So, let’s move on to some examples. Our first case is based on a question from the [July 2021 California bar exam](#), and provides a very straightforward application of the venue statutes:
- Lee Burgess: “Jeff is a California citizen residing in Tahoe, which is near Reno, Nevada. He operates a cleaning business. He entered into a contract with Shaver, a Nevada citizen who operates a barbershop in Reno. The contract was signed in Reno, and obligated Jeff to use due care in cleaning. While cleaning Shaver’s barbershop, Jeff knocked over an antique vase, which Shaver claimed was worth over \$100,000.



- Lee Burgess: Shaver sued Jeff for breach of contract in the United States District Court for the Eastern District of California, which includes Tahoe. He alleged that Jeff did not exercise due care, which led to destruction of the vase. Was venue proper in the Eastern District of California?”
- Lee Burgess: Remember our main options for establishing venue – the residency of the defendants and the location of the underlying events giving rise to the claim. If neither of those possibilities establishes venue in the plaintiff’s chosen forum, we’ll look to any district in which the court has personal jurisdiction over the defendant, in this case Jeff.
- Lee Burgess: Here, we only have one defendant, Jeff, so all defendants will necessarily reside in the same state. We also know that Jeff lives in Tahoe, which is located within the Eastern District of California, where Shaver filed his lawsuit. Because the only defendant lives in the district where the suit was filed, venue is proper based on the residency of that defendant.
- Lee Burgess: What about the location of the underlying events, or, to use the statutory language, a “substantial part of the events or omissions giving rise to the claim”? In this case, it appears all underlying events occurred in Nevada. The contract was signed there, Shaver’s business was located there, and Jeff’s alleged breach of contract destroying the vase occurred there. As a result, the events giving rise to the claim all took place in Nevada. And, to the extent that the vase might be considered “property that is the subject of the action” under the venue statute, it was located in Nevada as well. Therefore, venue would not be proper under the provision establishing venue where the underlying events occurred.
- Lee Burgess: But you don’t need to satisfy all statutory options to establish venue. Just one will do. Therefore, because the only defendant, Jeff, lives in the Eastern District of California, venue is proper there.
- Lee Burgess: For our second example, we’ll consider facts based on the [California bar exam from February of 2009](#):
- Lee Burgess: “Copyco, Inc. is a manufacturer of copy machines, and was incorporated in State A. Most of its employees, however, work in State B at its only engineering and manufacturing facility, which is in the Southern Federal District of State B. Copyco also has a distribution center in the Northern District of State B.
- Lee Burgess: Paula is a citizen of State B, and lives in the state’s Northern Federal District. While using a Copyco machine at Klinko, a copy center within the Northern District of State B, she was injured when she tried to clear a jam in the machine. Paula suffered severe hand injuries, and was treated at a nearby hospital in the Northern District of State B.



- Lee Burgess: Paula filed a lawsuit against Copyco, the only defendant, in the federal district court for the Northern District of State B, seeking over \$100,000 in damages. She asserted a products liability claim, alleging defective design and manufacture of the machine. The court had subject matter jurisdiction due to the parties' complete diversity of citizenship, but Copyco moved for a change of venue to State B's Southern Federal District under 28 U.S.C. § 1404(a), presumably because it viewed the Southern District as more convenient."
- Lee Burgess: Before considering Copyco's transfer motion, let's consider whether venue was proper in Paula's chosen forum, the Northern District of State B. First, we'll look at Copyco's residency. Which rule does this involve? It's governed by the rule about the residency of corporations in states with multiple federal districts. Under this rule, we have to consider whether the federal court in the Northern District of State B should exercise personal jurisdiction over Copyco if the Northern District were a separate state. This is from 28 U.S.C. § 1391(d). So, we need to look at Copyco's contacts with the Northern District of State B, which include a distribution center. Operation of a distribution center almost certainly satisfies the "minimum contacts" necessary for personal jurisdiction, so venue in the Northern District of State B would be proper on that basis.
- Lee Burgess: On the bar exam, you would want to provide more depth about the personal jurisdiction issue including the applicable legal standards, but here we're focusing on venue, so we're moving through jurisdiction quickly.
- Lee Burgess: Next, let's consider whether a substantial part of the events giving rise to the claim occurred in the Northern District of State B. This possibility is easily satisfied, because the accident giving rise to Paula's claim occurred at the Klinko's location in the Northern District of State B.
- Lee Burgess: Therefore, venue is proper in the Northern District of State B, so we're ready to analyze whether the court properly denied Copyco's motion to transfer the case to the Southern District of State B for the convenience of the parties and witnesses and in the interests of justice.
- Lee Burgess: Such a transfer is only possible if the case could have been brought in the Southern District of State B, so let's consider that first. Once again, we look at the provision about residency of corporations in states with multiple districts and analyze whether the federal court for the Southern District of State B would have personal jurisdiction over Copyco if the Southern District were a separate state. In this case, most of Copyco's employees work at its sole factory, which is in the Southern District of State B. Maybe even more conclusively than the distribution center, this manufacturing facility would provide the court in the Southern District of State B with personal jurisdiction over Copyco if the Southern District were its own state.



- Lee Burgess: Because Paula’s injury did not occur in the Southern District of State B, venue might not have been proper in that district based on the underlying events. However, because her claims implicate the design and manufacture of the copying machine, Copyco could argue that those were a “substantial part” of the facts underlying Paula’s claim, and that they occurred at its engineering and manufacturing facility in the Southern District. If so, venue would be proper in the Southern District on that basis.
- Lee Burgess: The court probably would not reach that complicated issue though, because Copyco’s residence in the Southern District of State B would be sufficient to establish venue there. And remember, just one basis for venue is enough!
- Lee Burgess: With that out of the way, we can consider whether the court should have granted Copyco’s motion to transfer for the convenience of parties and witnesses, or in the interest of justice generally. This is 28 U.S.C. § 1404(a). Courts have very wide discretion in these cases, so what are Copyco’s best arguments?
- Lee Burgess: Its best argument is probably about the location of its witnesses and other evidence in its possession. Paula’s product liability claim implicates the design and manufacture of the copying machine. As a result, Copyco could argue that many of its witnesses and lots of the evidence would be located at its only engineering and manufacturing facility, which is in the Southern District of State B. This consideration arguably favors a transfer, but most factors seem to pull in the other direction, and favor keeping the case in the Northern District of State B.
- Lee Burgess: What are some of these factors? Perhaps most importantly, the underlying accident occurred in the Northern District of State B, as did Paula’s medical treatment. This is a significant factor on its own, and means that much of the evidence is located in the Northern District of State B.
- Lee Burgess: What would be some of this evidence? Well, it would include potential witnesses, such as employees at Klinko’s, who might be familiar with the machine, Paula’s treating physicians, and Paula herself. Klinko’s might even have security camera footage of the incident. Indeed, the evidence in the Northern District probably includes the copy machine itself, which would be one of the most important pieces of evidence in the case.
- Lee Burgess: In addition, Paula’s residence in the Northern District of State B favors keeping the case in her chosen forum. This is especially true when Copyco probably has greater resources and, given its presence throughout State B, could litigate the case in the Northern District of State B without significant inconvenience or



expense. Also, both district courts would be equally familiar with the product liability law of State B, so that factor would not favor a transfer.

Lee Burgess: As a result, the district court properly denied Copyco’s motion to transfer the case to the Southern District of State B. Remember how we approached this issue, by first considering whether the case could have been brought in the district to which the defendant wanted it transferred, and then got into the factors about whether a transfer was appropriate for convenience and in the interests of justice.

Lee Burgess: And with that, we’re out of time! If you enjoyed this episode of the Law School Toolbox podcast, please 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. If you have any questions or comments, please feel free to reach out to myself or Alison at [lee@lawschooltoolbox.com](mailto:lee@lawschooltoolbox.com) or [alison@lawschooltoolbox.com](mailto:alison@lawschooltoolbox.com). Or you can always reach out to us via our website [contact form](#) at LawSchoolToolBox.com. Thanks for listening, and we’ll talk soon!

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