



Lee Burgess: Welcome back to the Law School Toolbox podcast. Today we're doing another episode in our "Listen and Learn" series – this one is on Civil Procedure, specifically removal. 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: Hello, and welcome back to the "Listen and Learn" series from the Law School Toolbox podcast! Today we will be focusing on Civil Procedure and removal. Focusing on removal will also lead to a refresher on [subject matter jurisdiction](#) – both diversity and federal question jurisdiction.

Lee Burgess: So, what exactly is removal? Removal is when a case that originally began in state court is transferred to federal courts. The authority for removal is in the federal statute under 28 U.S. Code § 1441-1446. Remember that a plaintiff cannot remove a case to federal court; only defendants may file for a case to be removed to federal court. The reasoning behind why only defendants may remove a case is because plaintiffs are the ones who select their forum of choice to file their claims. Thus, removal allows defendants a vehicle to switch up the forum and remove a case to federal court, if the case could originally have been filed in the federal district court.

Lee Burgess: Now, you may be wondering why some defendants would want to remove their case to federal court. This all depends on strategy, and there are numerous reasons why defendants may want to move a case to federal court. The decision to remove could be based on reasons such as there may be potentially better case precedents in the federal courts, perhaps there is more capacity in the federal court docket that would move the case along quicker, or the defendants counsel may be more familiar with the federal rules of civil procedure, opposed to the state rules of civil procedure, or maybe the defendants are more familiar with working with federal judges.

Lee Burgess: So, what is needed for a defendant to motion to move a case to federal court? The general rule for removal is that a defendant may remove a case to federal court, in a district where the state court case was originally filed if, one, the federal court has subject matter jurisdiction. This encompasses federal question jurisdiction and diversity jurisdiction. Two, all the defendants must agree or join the removal. Three, removal must be sought within 30 days of service of the summons or receiving the initial pleading – whichever is shorter. Also, specifically in the instance of removal based on diversity subject matter



jurisdiction, the additional requirement is needed that the defendant is not a resident of the forum state.

Lee Burgess: Also, specifically just for removal based on diversity jurisdiction, a matter cannot be removed more than one year after it was commenced in state court, unless the district court finds a plaintiff acted in bad faith in order to prevent a defendant from removing the action: 28 U.S. Code § 1446(c)(1).

Lee Burgess: So, as you can see, the elements for removal are quite straightforward. Therefore, when you come across a question involving removal, you want to first establish that there is subject matter jurisdiction. We have a prior “Listen and Learn” episode on subject matter jurisdiction. Check that episode out if you want a refresher. You can find a link in the show notes.

Lee Burgess: So then after establishing subject matter jurisdiction, you want to proceed to establish that all defendants agree or joined in on the removal. Also, be aware that the removal is time limited, and check when the defendants filed for removal and that the request for removal is filed within 30 days of the service of summons or within 30 days of receiving the initial pleading – whichever is shorter.

Lee Burgess: Lastly, if subject matter jurisdiction is based on diversity jurisdiction, you definitely want to check that none of the defendants are residents of the forum state. For this element, you would need to clearly identify the citizenship or domicile of each defendant, which you already should have done in your analysis for subject matter jurisdiction based on diversity.

Lee Burgess: However, even if there are valid grounds for removal to federal court, the federal court may still decline to hear the case based on the abstention doctrines. The abstention doctrines allow federal courts to abstain from hearing a case when it would intrude upon the powers of another court. Additionally, a court may stay a case arising from ambiguous state law to await the outcome of a pending state court case.

Lee Burgess: The abstention doctrines include the *Pullman* Doctrine, which gives federal court discretion to abstain when a case arises from unsettled areas of state law, and a state law court interpretation may remove the need to decide the case on federal grounds.

Lee Burgess: There is also the *Younger* Doctrine, which allows the court to abstain from hearing constitutional challenges to a state action when it would interfere with a state judicial proceeding.

Lee Burgess: The *Colorado River* Doctrine may apply when a federal court should abstain when parallel or substantially the same state or federal litigations are pending.



- Lee Burgess: There is also the *Burford Doctrine*, where abstaining is appropriate if federal adjudication would interfere with a state’s administration of a complex regulatory scheme.
- Lee Burgess: Thus, when there are claims that are simultaneously being litigated or heard on the state level, check to see how similar the already existing state claims are with your claim at issue to identify if any abstention doctrines may apply.
- Lee Burgess: So now, let’s get to a hypothetical. This hypothetical is modified from the [February 2014 California bar exam](#):
- Lee Burgess: “Peter, a resident of State A, worked as a manager at the only hotel in State A owned and operated by Hotel, Inc., a large national chain. Peter’s compensation was \$100,000 a year. Hotel was incorporated in State B, where the majority of its hotels are located. Hotel’s main corporate offices are located in State C. Hotel terminated Peter’s five-year employment contract when it had two years remaining. Peter timely sued Hotel in state court in State B, alleging wrongful termination of his employment contract. In his complaint, he sought reinstatement or, in the alternative, damages of \$200,000 for the two years remaining on his employment contract at the time of termination.
- Lee Burgess: After the complaint was served on Hotel at its main corporate offices in State C, Hotel timely removed the case to federal district court in State B and gave proper notice to Peter. Peter then filed a motion in federal district court to remand to state court. The federal district court denied the motion. Peter appealed the denial to the federal court of appeals.
- Lee Burgess: Did the federal district court correctly deny Peter’s motion to remand the case to state court?”
- Lee Burgess: So let’s review what elements we need to analyze to determine if removal was proper. First, was there subject matter jurisdiction? Here, there is clearly no federal question, because Peter’s claim was purely a contract claim based on a state law cause of action for wrongful termination. Therefore, we must analyze if there is diversity jurisdiction. To find diversity jurisdiction, there must be, one, complete diversity of citizenship, meaning no plaintiff is a citizen of the same state as the defendant; and two, the amount in controversy must exceed \$75,000, excluding interest and attorney’s fees.
- Lee Burgess: In this hypothetical, P is a resident of state A, so he would be considered a citizen of state A. For corporations, citizenship is determined by, one, where the state is incorporated; and two, the principal place of business. Hotel is incorporated in State B, but has its main corporate offices in State C. Thus, Hotel’s principal place of business is in State C. Therefore, Hotel is a citizen of



both State B and C, which is still in complete diversity to Peter, who is a citizen of state A.

Lee Burgess: In regards to the amount in controversy, the \$75,000 amount is satisfied, as Peter’s claim for relief requests \$200,000 for his lost wages. Therefore, diversity jurisdiction is met, and subject matter jurisdiction exists.

Lee Burgess: So, then we will proceed to analyze if all defendants agree to the removal. Here, there is only one defendant – Hotel – so that element is satisfied.

Lee Burgess: Then we will evaluate if the removal was timely. The facts indicate that the Hotel timely filed a removal claim, so the time limitations are met.

Lee Burgess: In this matter, since removal is based on diversity jurisdiction, we must remember that the defendant may not remove a case from state to federal court if the defendant is a resident of the forum state. Since we already determined citizenship for the Hotel in our analysis for subject matter jurisdiction, we see that Hotel is a citizen of State B and C. Since the forum state is in state B, Hotel is not entitled to remove the case to federal court in state B. Thus, the court erred in denying Peter’s motion to remand the case back to state court.

Lee Burgess: Here we have a perfect example of a question where subject matter jurisdiction is found. However, you must catch the fact that the defendant is attempting to remove the case to a federal court where the defendant is a resident of, which would be an improper removal. Thus, removal was improper, and the federal district court should have granted Peter’s motion to remand the case back to state court.

Lee Burgess: Now let’s go over another hypothetical to make sure you really understand how to go through a question that involves removal. This question is modified from the [February 2003 California bar exam](#):

Lee Burgess: “Petra, a State W resident, recently patented a new design for a tamper-free bottle cap for soft drinks. She contracted with Dave, who lives in State X, to design a manufacturing process to mass-produce the newly patented bottle caps. Under the contract, Dave was required to relocate to State W, where Petra had leased research and development facilities, and to keep confidential all design and production information concerning the bottle cap.

Lee Burgess: Dave promptly moved all his belongings to State W. After working for six months in State W, Dave had perfected the manufacturing process, but when Petra denied Dave’s request for additional compensation, he quit his job and disclosed the bottle cap manufacturing process to Kola, Inc.



- Lee Burgess: Kola is a regional soft drink bottler incorporated in State Y, with its principal place of business in State W. Kola flooded the market with bottled soft drinks capped with Kola's version of Petra's bottle cap months before Petra could begin production.
- Lee Burgess: When Petra discovered what had happened, she filed suit against Dave and Kola in state court in State W for violation of State W's patent infringement law. Petra's complaint sought damages of \$50,000 from Dave and \$70,000 from Kola. Unknown to Petra's lawyer, a federal patent law enacted shortly before Petra filed suit encompasses the type of claim pleaded by Petra and expressly preempts all state laws on the subject.
- Lee Burgess: Three weeks after being served with the complaint, Kola removed the entire action to the federal district court in State W. Dave joined in the action for removal to federal district court in State W. Petra immediately filed a motion to remand the case to state court in State W. The district court denied Petra's motion.
- Lee Burgess: Did the federal district court rule correctly on Petra's motion to remand the case to state court in State W? Discuss."
- Lee Burgess: So here, let's go through the elements for removal again. Is there proper subject matter jurisdiction that would allow the federal court to hear this claim? Here we will assess if there is diversity jurisdiction or federal question jurisdiction. We can establish that Petra is a resident of State W, because the facts state she is a resident of State W. Kola is incorporated in state Y and has its principal place of business in state W. Therefore, Kola has citizenship in both states Y and W. Dave is also a citizen of state W, because he moved to state W for this job and is now a resident of state W.
- Lee Burgess: Given that Petra is a resident of state W, Dave is a resident of state W, and Kola is also a resident of state W, there is not complete diversity. Therefore, diversity jurisdiction is not applicable under these facts.
- Lee Burgess: Let's evaluate if there is federal question jurisdiction. Here, the facts indicate that Petra filed suit under State W's patent infringement law. So, although at first glance Petra's claim does not seem to raise a federal question, it is important to note the hypo references the fact that a federal patent law, which encompasses the same issues of Petra's claim was enacted before Petra filed her suit.
- Lee Burgess: Here, Petra cannot try to cover up a federal question by failing to plead the federal statute. Under these facts, Petra's claims are completely preempted by an express federal law, therefore there is a federal question at hand. Thus, Kola may seek to remove to federal court based on federal question jurisdiction.



Since this is a removal based on federal question jurisdiction, it is important to note that although both Kola and Dave are residents of the same federal district court the case is being removed to – State W – this does not bar removal under federal question jurisdiction.

Lee Burgess: So now that we have established federal question jurisdiction, let's make sure all the defendants agree to removal. Here, the facts indicate Dave joined in the removal motion, so all defendants here agree to removal.

Lee Burgess: Now, let's check to see if the motion for removal was timely filed. The rule requires that motions for removals be made within 30 days of receiving the service of summons or the receiving of the initial pleadings. Kola filed the motion for removal three weeks after the complaint was filed. Thus, three weeks equates to 21 days, which is clearly within 30 days of receiving the initial pleading of the complaint. Therefore, the removal was timely filed.

Lee Burgess: Based on our analysis we can conclude that removal was proper, based on federal question jurisdiction. Therefore, the court was correct in denying Petra's motion to remand the case back to state court.

Lee Burgess: Whew! So, now we have gone through two different removal scenarios that required us to analyze diversity jurisdiction and federal question jurisdiction. Let's try one more hypothetical for good measure, modified from the [July 2016 California bar exam](#):

Lee Burgess: "Paul, a resident of New Mexico, is attending a six-month paralegal program in San Diego, California. He drove up 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.

Lee Burgess: The snacks had been manufactured by Meyer Corp., a company with its sole place of business in Washington.

Lee Burgess: The snacks contained a toxic substance and sickened Paul, who incurred medical expenses in the amount of \$50,000. Paul filed an action pro se against Valerie and Meyer Corp. in the Superior Court of California in San Diego.

Lee Burgess: 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 copy of the complaint to Meyer Corp. by ordinary mail to the company in Washington.



- Lee Burgess: A few days after Paul filed the complaint, Paul and Valerie had a deep heart to heart and came to a settlement agreement. Paul amended his complaint to remove Valerie and leave Meyer Corp. as the sole defendant.
- Lee Burgess: Is Paul’s action properly removable to federal court?”
- Lee Burgess: Okay, so let’s first assess if there is subject matter jurisdiction. Here, the claim is coming from a personal injury claim and is not based on any federal law. Therefore, there is no federal question.
- Lee Burgess: So let’s go on and see if there is diversity jurisdiction here, with complete diversity and an amount in controversy that exceeds 75,000. We will first review citizenship to assess if there is complete diversity. The facts indicate Paul is attending school in California for six months, but that Paul is a resident of New Mexico. Thus, you should conclude that Paul is a resident of New Mexico. Meyer Corp. is a citizen of Washington, because its sole place of business is in Washington. Thus, there is complete diversity between the parties here.
- Lee Burgess: However, we find that amount in controversy here is only \$50,000, based on Paul’s complaint. Since the amount in controversy falls below \$75,000, there is no diversity jurisdiction.
- Lee Burgess: Furthermore, since we are analyzing removal under diversity jurisdiction, we must remember the additional applicable prong that defendants cannot be residents of the forum state of removal. It is important to note that initially, Valerie was a defendant in the case. Valerie is a citizen of California, which is the same forum state that Paul filed his case in – San Diego, California. Therefore, when Valerie was still a defendant in the matter, even though there was still complete diversity between the parties, the defendants would not have been able to remove the case, because Valerie is a resident of the forum state of California.
- Lee Burgess: However, here, once Valerie was removed from the case, there is no longer a defendant who is a resident of the forum state of California, as Meyer Corp. is a resident of Washington. Thus, Meyer Corp. would have been able to file a notice for removal to federal district court, as long as Meyer Corp. filed their motion for removal within 30 days of the service of summons or receiving the amended complaint.
- Lee Burgess: However, since the amount in controversy failed to exceed \$75,000, removal would still be improper. Thus, the defendant, Meyer Corp., cannot remove Paul’s action to federal court.
- Lee Burgess: Alright, that’s all the time we have for today. If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating



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[California Bar Examination – Essay Questions and Selected Answers, February 2014](#)

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[Podcast Episode 263: Listen and Learn – Subject Matter Jurisdiction](#)