Lect 36

One sovereign’s law in another sovereign’s courts

Federal courts take state law actions, actions under the law of other nations

state courts take federal actions, sister state actions, actions under the law of other nations

we’re interested in especially in a fed ct taking state law action (diversity or supplemental jurisdiction)

Brings up a number of puzzles

First is – how does fed ct interpret state law?

Second – how much state procedure follows state law into federal court?

How to interpret state law

* One might think it is obvious that one must respect state SCt decisions concerning the common law in the state – but that was not always so

Swift v. Tyson (US 1842) (Story, J.)

P sues D in federal court in New York concerning commercial paper issued in New York.
The Supreme Court held that in interpreting the general common law prevailing in New York, a federal court need not follow opinions of New York state courts.

But there was a problem -

Rules of Decision Act
28 U.S.C. § 1652
The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

Story, J. – “laws” in the RDA refers to state statutes and to common law rules that are local – not to the general common law

Why no deference to state court decisions?

* was it because the general common law was federal law?
	+ - NO
		- if it were it would be binding in NY state court
		- But NY state courts were free to ignore what the USSCt said about the general common law in NY

WHY no deference then?

* The usual story is that *Swift* was committed to natural law
* - the common law is a “brooding omnipresence” that applies in New York whatever New York officials say
* that’s wrong – Swift was compatible with positivism

positivism – the existence and content of the law is solely a matter of social facts about people in a jurisdiction
e.g. if tomorrow everyone started acting as if Michael Green’s word was law, my word would be law

natural law theory – the existence and content of the law is not (or not solely) a matter of social facts

* Swift was compatible with positivism: the common law applies in New York only because New York officials say so, *BUT* New York officials *want* federal (and sister state) courts to come to their own judgment about what the common law in New York is – the common law standard is thought of as a standard that transcends the decisions of NY state courts, but it applies in NY only because NY officials say so

evidence of positivism in Swift

even under *Swift*, federal courts had to follow court decisions of common law jurisdictions concerning statutes and common law rules about local matters (e.g. real property)
and federal courts had to follow the court decisions of jurisdictions that do not have a common law system (e.g. Louisiana, Spain, Indian tribes).

Green’s reading:
under *Swift*, federal courts could come to their own conclusion about the general common law in a state because the states’ officials let them do so

But the Swift system had problems – forum shopping

Black & White Taxicab (US 1928) –
The P Corp. (Ky.) wants to sue the D Corp. (Ky.) concerning a Kentucky contract.
It likes the way federal courts have interpreted the common law on the matter better than the way Ky. state courts have.
So it reincorporates in Tenn. and sues the D Corp. in federal court in Ky.

Also state officials began to change their conception of the state’s common law – they began to understand their courts’ decisions as binding on sister state and federal courts when entertaining common law actions that arise within the state

So –

Erie R.R. v. Tompkins (US 1938)

Tompkins (a citizen of Pa) sued Erie RR (a citizen of NY) for negligence in connection with an accident in Pa in which he was trespassing on Erie’s property
What is the duty of care to trespassers?
Under *Swift*, a federal court could come to its own conclusion.

SCt held that Pa SCt decisions had to be respected

Upshot of *Erie*:

When entertaining a state law cause of action (e.g. in diversity, supplemental jurisdiction) the federal court should apply state law as interpreted by that state’s courts
- this applies to common law cases too!

NOTE: In Erie J. Brandeis said the following: “There is no general federal common law.”

Does that mean that there really is no federal common law (all federal law is statutory or constitutional)?

No –

First of all there is definitely federal procedural common law (e.g. claim and issue preclusion)

But there is also federal substantive common law

e.g. Boyle v. United Technologies Corp. (US 1988)
Estate of a serviceman sued a federal military contractor under Virginia tort law in federal court for a design flaw in a helicopter that led to his death.
Contractor asserted federal common law defense of immunity for federal military contractors.

This is federal substantive common law binding on state courts – it preempts or displaced state law

Thus, if there is a sufficient federal interest a federal court can have common law making power, but diversity or supplemental jurisdiction itself does not create such an interest

In the light of *Erie*, how to interpret state law?

Let’s state with the binding nature of state court decisions in the state court system

New decision announced by Va trial ct (circuit ct)

* + Not binding authority anywhere
		- That is, no court is obligated to follow that Va trial ct’s decision concerning Va law
	+ Strong precedential value for another Va trial ct deciding cases of Va law
		- Will strongly suggest how the law should be decided, but a Va trial ct could decide differently – i.e. could overrule
	+ A mere source for arguments for Va Ct App or the Va Supreme Court

Va Ct App asserts now decision on Va law

* + Binding authority over trial courts (circuit cts)
		- Such trial courts are obligated to follow that the Appellate Ct’s decision even if legal circumstances have changed and the appellate courts would surely decide differently now
	+ Precedential value for Ct App.
		- Will strongly suggest how the law should be decided, but a Va Appellate Ct. could decide differently – i.e. could overrule if legal circumstances have changed
	+ A mere source for arguments for the Va Supreme Court

The Va Supreme Court issues a new rule of Va law

* + Binding authority over trial courts and appellate courts within the state of Va
		- Such courts are obligated to follow the Supreme Court’s decision even if legal times have changed
	+ Precedential value for the Va SCt
		- Will strongly suggest how the law should be decided, but the Va Supreme Court could decide differently – i.e. could overrule if legal circumstances have changed

True for US SCt too

There is an old US SCt case on a matter of federal law that says X.
A state court or lower federal court feels that the US SCt would say ***not-X*** now.
Can the state court or lower federal court decide not-X?

NO – bound by old case

It is up to the USSCt to overrule itself

Now let us move to state law in federal court

- P sues D in federal court in diversity under Pennsylvania law
- The last Pennsylvania Supreme Court decision on point is 80-years old
– it looks like they would decide otherwise now
- Does the federal court follow the decision?

– problem – no appeal to Pa SCt possible from federal court system (although there is a possibility of certifying questions to the Pa SCt)

* So fed ct must predict what Pa SCt would say
* The last Pennsylvania Supreme Court opinion on point is an 80-year old case
* You think they would decide otherwise now
* The change in the law would be to your benefit
* Your case is a diversity case
* Where do you sue, in a Pennsylvania state trial court or in a federal district court?

 - fed ct, because you get the new Pa SCt decision right away – In Pa state court you must wait for appeal to the PaSCt

* You are federal district judge in the E D Va
* The only cases on point are a 20-year-old decision by the 4th Circuit and conflicting 5-year-old decision by a Va trial court
* Is the 4th Circuit decision binding authority for you?

 - No – The 4th Circuit was simply trying to predict what the VA SCt would do and now there is a new data point – the Va trial court decision

Now problem of procedural law

what is the procedural power of a court entertaining another sovereign’s cause of action?

e.g.
state court entertaining sister state action
federal court entertaining state action

let us start with: what is the procedural power of a state court entertaining a sister state cause of action?

* P and D (both Pennsylvanians) get into a car accident in Pennsylvania

P sues D in state court in Virginia under Pennsylvania law

Can the Virginia court use Virginia’s:
* rule on D’s duty of care?
	+ NO – that would be supplanting a part of the Pa cause of action
		- Va only has jurisdiction – it does not have power to legally regulate what Pennsylvanians do in Pennsylvania
* rule on who has the burden of proof for contributory negligence?
	+ NO – that rule is also surely bound up into the Pa cause of action
		- Pa officials would want that rule to follow the Pa cause of action into other court systems
* statute of limitations?
	+ This is a tough one
	+ Generally statutes of limitations are considered procedural
		- That means that the forum (e.g. Va) can use its own limitations period
		- BUT sometimes states appear to have bound up statutes of limitations into their cause of action
		- E.g. - P and D (both Pennsylvanians) get into a car accident in Pennsylvania
		- P sues D in state court in Virginia under Pennsylvania’s wrongful death statute
		- Pennsylvania’s wrongful death statute says “a plaintiff may not sue for wrongful death under this statute more than 2 years after the death occurs”
		- Virginia’s statute of limitations for wrongful death is 3 years
		- P has waited 2 and a half years after the death to sue
		- Which to use? Pa’s
			* Note that if Va. had a shorter limitations period than the Pa one, that could still be used by the Va ct because the dismissal would be without prejudice. There would be no supplanting of part of a Pa cause of action with Va law – the case would simply take place elsewhere
	+ service rule?
		- Easy – Va law – VERY unlikely that Pa would bind up service rules with its cause of action
	+ pleading standard – e.g. Twiqbal (some states have Twiqbal standards) v. notice pleading
		- probably Va law
* Thus, in a horizontal context (that is, when a state court takes a sister state cause of action) we can say the following:
* Substantive = state that created the rule wants it to follow the state’s causes of action into other court systems

Procedural = state that created the rule wants it to apply only in the state’s own courts

Forum entertaining a sister state cause of action has a duty only to respect the sister state’s substantive law (including sister state procedural rules bound up with the sister state cause of action)

NOTE: a state court might use the sister state’s statute of limitations not because it thinks the sister state’s officials want it to use their limitations period, but for its own reasons. EG

Virginia state courts have a generous 3 year statute of limitations for tort. Too many people are coming to Va. state court to sue under sister state causes of action.

So Virginia enacts a borrowing statute
The Va. statute of limitations for tort incorporates the time period of the state that provides the cause of action.

OK, now what is the procedural power of a *federal* court entertaining a state law cause of action?

At first, things start looking much like the horizontal inquiry

P sues D in federal court in New York under New York law.
New York law puts the burden of persuasion concerning lack of contributory negligence on the plaintiff.
Can the federal court use a federal common law rule putting the burden on the defendant to prove the contributory negligence of the plaintiff instead?

No – must use NY law - Palmer v. Hoffman (US 1943)

But then, things start turning out differently

Guaranty Trust v. York (U.S. 1945)

1) - class action by noteholders of Van Sweringen Corp sued their trustee (Guaranty Trust) for breach of trust/fraud

 - Ds move for sum judgment

 - granted on the ground of NY statute of limitations

 - 2d Cir reversed

 - NY statute of lims did not bar action because a federal judge-made doctrine (laches) should be applied instead

 - USSCt reversed

Was New York’s statute of limitations substantive in a horizontal sense? Did NY officials think the statute of limitations followed NY actions into other court systems

Probably NO-

But the SCt didn’t care

 - federal rule would substantially affect the enforcement of the state law right

It is therefore immaterial whether statutes of limitation are characterized either as "substantive" or "procedural" in State court opinions in any use of those terms unrelated to the specific issue before us. *Erie R. Co. v. Tompkins*...expressed a policy that touches vitally the proper distribution of judicial power between State and federal courts. In essence, the intent of that decision was to insure that, in all cases where a federal court is exercising jurisdiction solely because of the diversity of citizenship of the parties, the outcome of the litigation in the federal court should be substantially the same, so far as legal rules determine the outcome of a litigation, as it would be if tried in a State court.

York introduces a policy of vertical uniformity between federal and forum state court
 (if outcome determinative)

- this is not about respect for state lawmaking power

According to Kansas law, the statute limitations tolls upon service. According to the federal rule (suggested by Fed R Civ P 3) it is tolled upon filing. Which rule would determine whether statute limitations was met in a case brought under Kansas law in federal court in Kansas?

Ragan v. Merchants Transfer & Warehouse (US 1949)- must use Kansas’s tolling rule

Think of how different this is from the horizontal context

Imagine instead that the Kansas cause of action was brought in state court in Nebraska.
Which tolling rule would be used – Kansas’s or Nebraska’s? Nebraska’s.

- A Mississippi statute requires a corporation doing business within the state to designate an agent for the service of process before bringing suit.
- There is no such requirement under federal law.
- P (a Tennessee corporation doing business in Mississippi) is suing D in federal court in Mississippi.
- P has designated no agent for service of process in Miss.
- D moves for summary judgment on this ground.
- What result?

Granted – federal court in Mississippi must use the forum state rule

Woods v. Interstate Realty (US 1949)

Again – see how different this is from the horizontal inquiry. Would the Mississippi statute had applied had the action been brought in state court in Alabama? Clearly not

The 5th Circuit had concluded that Mississippi state officials thought that the statute applied only Mississippi state courts, not federal courts in Mississippi.
Does that matter? No – use the Miss rule to avoid vertical disuniformity even if Miss officials don’t care if it is used

* This is not about respect for state lawmaking power