**Erie R.R. v. Tompkins**

 **Facts**

* + Guy walking along rail road, gets hit by door
* **Issue**
	+ What level of duty is owed to trespasser🡪matter of **common law**
	+ Whether there is negligence standard on R.R. or recklessness standard
* **Outcome**
	+ **Pre-Erie:** Would treat as matter of general common law and not defer to Pennsylvania courts
	+ **Post Erie:** refer Pennsylvania common law as PA courts would interpret it
* Not just with respect to statutes and local usages, but for all common law, we refer to what the state’s courts say about the common law in their state
* **3 Justifications for conclusion offered by Brandeis in Erie:**
	+ (1) “Laws” in RDA means all laws including all common law —statutory solution,
	+ (2) Swift was bad because you could get different decision with vertical forum shopping. So Erie fixes this by creating vertical uniformity between federal and forum state courts.
		- in Blck & White Taxicab Out of state litigants lose their advantage of diversity by being able to choose between federal and state that two Kentuckians would not get
	+ (3) Swift v. Tyson is unconstitutional🡪**Green says wrong**
		- Problems with this reason: under Swift federal courts were doing what the states want them to do so how is this wrong? State courts expected federal courts to come to an independent judgment about the general common law in their state.
* **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!

**In Light of Erie, how do We Interpret State Law?**

* Binding nature of state decisions in the state court system
	+ New decision announced by VA trial court
		- **Not binding authority anywhere**🡪nobody is obligated to respect that opinion, not even that same VA trial court
		- **s**trong precedential value for another VA trial court
			* but they **can overrule** themselves
		- A mere source of arguments for Va Ct App or the Va Supreme Court
	+ Va Ct App asserts new decision on Va law
		- **Binding authority over VA trial courts,** such trial courts are obligated to follow that App Ct.’s decision even if legal circumstances have changed and the appellate courts would surely decide if differently now
		- **Precedential Value for VA Ct App**
		- Will strongly suggest how the law should be decided, but a VA Ct App *could decide differently* – could overrule itself
		- **A mere source for arguments** for the VA Supreme Court
	+ The VA Sct 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 VA SCt decision even if legal times have change
		- **Precedential value for the VA SCt**
		- Will strongly suggest how the law *should be decided, but the Va Sct could decide differently*
* **This system is true of US SCt decisions too**
	+ **There is an old US SCt case on point 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 – but let USSCt overrule itself**
* should a federal court deciding a matter of state law act like a lower state court and follow all state SCt cases?
* **Hypo:** P sues D in Federal Court in diversity under Penn law, last Penn decision is 80 years old in Penn S.Ct, it looks like they would decide otherwise now, does the federal court follow the decision?
	+ the problem is that there is no appeal from Federal Court to the Penn Supreme Court
	+ What should it do? To try and make things turn out as similar as possible in federal court as states court Federal Court should interpret PA law the way they think it would PA SCt would now
	+ **Not Swift v. Tyson – the federal court is predicting what the PA SCt would say**

So far we have been discussing interpretation of another jurisdiction’s law. But there is also the question of choosing between two jurisdiction’s laws. Let’s start with choice of *substantive* law in *state* court. A state court might choose between two states’ substantive laws (Nevada or California?), two countries’ laws (Germany or Brazil?), or a state’s law and a country’s law (Germany or California?)

Notice that choice between federal law and a state’s law is not an issue—the Supremacy Clause makes it clear that valid federal law wins.

Here is a choice of law problem. Two married Georgians get into an accident in California. The husband wishes to sue the wife for negligence. Ga. law has spousal immunity. Under Ca. law, spouses can sue one another for negligence. Which tort law should the court apply?

Assume the case is before a Virginia state court. It would use the old-fashioned principle of lex loci delicti—the tort law of the place of the harm applies. So the court would apply California law and allow the husband’s action to proceed. (A Ga. court would use that approach too and so would apply Ca. law.)

Assume the case is before a Pennsylvania state court. It would use a form of interest analysis. The jurisdiction with an interest in its law applying applies. Concerning spousal immunity, an interest analysis jurisdiction would apply the law of the place of the marital domicile—here Georgia. The purpose of spousal immunity is encouraging marital harmony and protecting against spouses staging accidents to defraud insurance companies. Georgia is interested in its law applying in this case because there is a GA married couple whose harmony is at issue and a suit that, if fraudulent, would have most of its effects in GA. So a PA court would apply GA law and bar the husband’s action. (A CA court, which would also use an interested analysis approach, would do the same thing.)

OK – that was choice of substantive law. But what about horizontal (state-state) choice of “procedural” law. Assume a Virginia state court is entertaining a California wrongful death action. Should it use Virginia’s or California’s: statute of limitation? service rules? pleading standards? In addressing this question I will use an understanding of a rule’s being substantive or procedural by looking to the views of the officials of the state that created the rule. A rule is “substantive” if the officials of the state that created the rule consider it part of the state’s cause of action, following those actions into other court systems. A rule is “procedural” if the officials of the state that created the rule want it to apply only in the state’s own courts, including to causes of action under other states’ laws.

So should our VA state court entertaining a CA wrongful death action use CA’s wrongful death statute of limitations or its own? How can you tell whether a California statute of limitations is substantive or procedural in the relevant sense? Will there be any California state court decisions on point? No-a CA state court has no occasion to talk about what other court systems should do with its statute of limitations. It only has occasion to talk about what it should do.

That said, we can get some indirect evidence.

Imagine that California’s wrongful death statute says “a plaintiff may not sue for wrongful death under this statute more than 2 years after the death occurs.” That is reason to think that California’s statute of limitations substantive in the relevant sense, because the limitation is in the statutory cause of action itself. On the other hand that is not dispositive.

One might also look to the purposes of CA’s statute of limitations. To the extent that it is about protecting the repose of defendants, it might be substantive. To the extent that it is about avoiding stale evidence, it might be procedural.

The point is that it is very hard to get any idea of whether a rule is substantive or procedural without certifying the question to the relevant state SCt.

Some states look take the scrupulous approach and do their best to determine what the sister state would want

others use a more formalistic approach

OK now let us move on to conflicts of substance and procedure. Imagine P sues D in Virginia state court under California law for wrongful death 2.5 years after the death. Consider the following scenarios:

Va’s WD time limitation 2-yr substantive & Ca’s WD time limitation 3-yr substantive? In this case the case proceeds—only CA’s rule applies.

Va’s WD time limitation 2-yr procedural & Ca’s WD time limitation 3-yr procedural? In this case the case is dismissed—only VA’s rule applies.

Va’s WD time limitation 2-yr procedural & Ca’s WD time limitation 3-yr substantive? In this case both apply. Is there really a conflict though? What would happen is that VA ct would dismiss the action but generally would do so without prejudice so it can be brought in a court system with a longer statute of limitations.

Va’s WD time limitation 3-yr procedural & Ca’s WD time limitation 2-yr substantive? In this case both apply and there really is a conflict. To apply the VA rule would mean allowing the case to proceed, but that is contrary to CA’s substantive rule. In this case state courts generally allow substance to trump procedure. We do not know if that is their constitutional obligation though.

Va’s WD time limitation 2-yr substantive & Ca’s WD time limitation 3-yr procedural? In this neither applies. Huh? That would mean that the plaintiff could sue decades later. It is for this reason that all states have a catch all procedural limitations period to capture actions that would otherwise fall through the cracks.

Does forum procedure always yield to sister state substance…? Assume P sues D in Virginia state court under California law for wrongful death. California has a service rule that it considers bound up with its wrongful death statute. Must Virginia law procedural law yield to it? That seems unlikely. That helps explain why service rules are always considered procedural. Most statues consider them procedural and even if there were a state (like CA in our example) that considered its substantive, the forum would apply its own procedural service rules anyway.

Matters are different for statutes of limitations. They were generally considered presumptively procedural, but an examination of a state’s limitation period could lead one to conclude that it is substantive, in which case the forum’s procedural statute of limitations would yield to it in the event of a true conflict (namely when the substantive one is shorter that the forum’s procedural one).

How about this example? P sues D in state court in Virginia under New York negligence law. New York law puts the burden of proof on the plaintiff to show his lack of contributory negligence. Under Virginia law contributory negligence is an affirmative defense. Here you have to determine whether NY’s rule is substantive, following their negligence actions into other court systems. The reasons to think that NY officials would want their burden of proof to follow NY negligence actions into other court systems are strong. That is why burdens of proof are general considered presumptively substantive, although it is possible that evidence could show them to be procedural.

We have been speaking of a court applying a system state rule because it considers that rule to be substantive. That is about respect for the sister state’s officials’ views about their law. But sometimes a state court will use a standard from sister state law for its own purposes. It will incorporate a standard from another jurisdiction’s law into forum law. Assume 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. That would be an example of borrowing sister state law. There is no suggestion that the sister state statute of limitations is substantive.