
Law Applied by Federal Courts

1. What law of negligence should the court apply?

A truck driver from State A and a bus driver from State B were involved in a collision in State B that injured the truck driver. The truck driver filed a federal diversity action in State B based on negligence, seeking $100,000 in damages from the bus driver.

- The court should apply the federal common law of negligence
- The court should apply the negligence law of State A, the truck driver's state of citizenship
- The court should consider the negligence law of both State A and State B and apply the law that the court believes most appropriately governs negligence in this action
- **The court should determine which state's negligence law a state court in State B would apply and apply that law in this action**

Note:
D is correct. In Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487 (1941), the Court made clear that in a federal diversity action a court must look to the choice-of-law rules of the state in which it sits to determine which of two competing states' laws should be applied to the action before it.

A is incorrect. There is no federal common law of negligence, and the federal courts are prohibited from creating general federal common law. Rather, they must adhere to state law in substantive matters.

B is incorrect. The court cannot simply select the law of the truck driver's state of citizenship as the governing law. In Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487 (1941), the Court made clear that in a federal diversity action a court must look to the choice-of-law rules of the state in which it sits to determine which of two competing states' laws should be applied to the action before it.

C is incorrect. If the court were to review both states' laws and select the one it found most appropriate, it effectively would be developing its own federal choice-of-law rules. This would violate both Erie R.R. v. Tompkins, 304 U.S. 64 (1938) and Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S.487 (1941). In Klaxon, the Court made clear that in a federal diversity action a court must look to the choice-of-law rules of the state in which it sits to determine which of two competing states' laws should be applied to the action before it.

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2. Should the court grant the university's motion?

Neither State A nor State B permits nonmutual issue preclusion. The individual investor's suit proceeded to trial. The state court ruled that the company's offering materials contained false information and awarded the investor a $25,000 judgment. The university immediately moved for partial summary judgment in its federal action against the company, arguing that the state court judgment bound the federal court on the issue of whether the company's offering materials contained false information. A university that had purchased the company's stock through the same offering sued the company in federal court in State B, claiming that the offering materials violated federal securities laws and seeking $1 million in damages. An individual investor purchased stock through a company's stock offering. When the price of the stock plummeted, the investor sued the company in a state court in State A, claiming that the company's offering materials had fraudulently induced him to purchase the stock and seeking $25,000 in damages.

- **No, because State A does not permit nonmutual issue preclusion**
- No, because the federal court sits in a state that does not permit nonmutual issue preclusion
- Yes, because federal law permits nonmutual issue preclusion
- Yes, because the issue of whether the materials contained false information was actually litigated and necessarily decided

Note:
When deciding which jurisdiction's preclusion law applies, courts will apply the preclusion law of the forum whose court rendered the earlier judgment. If the earlier judgment was rendered by a state court, that state preclusion law applies, under the Full Faith and Credit Clause. If the earlier judgment was rendered by a federal court that had federal question jurisdiction, federal preclusion law applies. If the earlier judgment was rendered by a federal court having diversity jurisdiction, federal preclusion law applies, BUT federal law calls for applying the preclusion law of the state in which the federal court sits. See Semtek Int'l Inc. v. Lockheed Martin Corp.

A is correct. In this question, the first case was decided in state court in State A. Therefore, the second court, the federal court in State B, must use the issue preclusion rules of State A which decided the first case. State A does not permit nonmutual issue preclusion. Therefore, the university in the second case is precluded from using the first judgment offensively against the company.

B is incorrect. This is the correct conclusion, but incorrect reasoning. When the first case was decided in a state court, the second court, even if a federal court, should apply the preclusion rules of the first court. Therefore, in this case, the federal court sitting in State B should apply State A law, not State B law.

C is incorrect. While it is true that federal law permits the offensive use of nonmutual issue preclusion, i.e., issue preclusion, in this case, the court must apply the preclusion rules of State A, not the federal rules.

D is incorrect. It is true that an issue must be actually litigated and necessarily decided for issue preclusion to apply. However, that is not the only requirement. In this case, the court hearing the second case must apply State A preclusion rules. Therefore, the offensive use of nonmutual issue preclusion is not permitted here.

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3. Which law governs whether relation back will be permitted under these circumstances?

The company moved to dismiss, arguing that the forum state had enacted a one-year statute of limitations for medical malpractice actions and that the company had been served after the limitations period had expired. The company also noted that the state's highest court has interpreted the limitations statute as forbidding any relation back of amendments adding parties in medical malpractice actions. The patient argued that the Federal Rules of Civil Procedure control, and that they allow relation back under the circumstances of this case. Ten months after surgery in a hospital, a patient who had suffered complications from the surgery sued the surgeon and the hospital in federal court for medical malpractice, seeking $750,000 in damages. Timely personal service was made on the surgeon and the hospital. Three months later, during discovery, the patient learned that the hospital was owned by a national health-care company and moved to amend the complaint to substitute the company for the hospital.

- **Federal law, because the Federal Rules of Civil Procedure govern over conflicting state rules that deny relation back**
- Federal law, because the state law on relation back is common law and federal courts are bound only by state statutory law
- State law, because statutes of limitation are substantive and state law controls substantive matters
- State law, because the Federal Rules of Civil Procedure authorize the use of state law for relation back

Note:
A is correct. The Federal Rules of Civil Procedure (FRCP) prevail over conflicting state rules unless it can be found that the federal rule at issue was promulgated in violation of the Rules Enabling Act. See Hanna v. Plumer, 380 U.S. 460 (1965). The Act authorizes the Supreme Court to prescribe federal procedural rules so long as they do not "abridge, enlarge or modify any substantive right." 28 U.S.C. § 2072(b). To date, no federal rule has been found to be in violation of the Act.

B is incorrect. This answer reaches the correct conclusion with incorrect legal reasoning. The Supreme Court has held that federal courts sitting in diversity are bound by both state common law and state statutory law under the Rules of Decision Act. Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938).

C is incorrect. Although state statutes of limitation are outcome-determinative and therefore controlling in federal diversity actions, the question posed here is whether the federal rules or state law controls the standards for deciding relation-back issues. See Guaranty Trust Co. v. York, 326 U.S. 99 (1945). Thus, the fact that the state limitations statute applies to the substantive claim does not answer the question of whether the court should allow relation back to avoid the consequences of missing the applicable statute of limitations deadline.

D is incorrect. State laws that prohibit relation back do not apply in federal courts. FRCP 15(c)(1)(A) specifically provides that federal courts sitting in diversity may follow the state law supplying the limitations statute when that law "allows relation back." This provision is designed to broaden the opportunity for actions to move forward even when the other provisions of FRCP 15(c) would not allow relation back. If, however, the state law prohibits relation back, the sole basis for determining whether relation back applies are the standards set out in Rules 15(c)(1)(B) and (C).

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4. May the State A federal court exert personal jurisdiction over the homeowner?

A gardener, a citizen of State A, sued a homeowner, a citizen of State B, in a State A federal court for breach of contract. The State A federal court may exercise personal jurisdiction without violating the Due Process Clause of the U.S. Constitution. However, State A's long-arm statute would not grant a state court in State A personal jurisdiction over the homeowner.

- Yes, because State A's long-arm statute is irrelevant given that the gardener's lawsuit was filed in federal court
- Yes, because no facts indicate that the homeowner was served more than 100 miles from where the summons was issued
- **No, because under the Federal Rules of Civil Procedure, State A's long-arm statute is applicable in federal court to the same extent as in state court**
- No, because State A's long-arm statute is applicable under the constitutional analysis established by the Erie decision

Note:
“Personal jurisdiction” is the court’s power to enforce a judgment against a party, typically the defendant.

Personal jurisdiction analysis involves two questions, including whether:

(i) the state’s long-arm statute grants jurisdiction; AND

(ii) the 14th Amendment Due Process Clause of the Constitution allows the court to enforce a judgment against the defendant.

A long-arm statute grants a court the authority to exercise personal jurisdiction over an out-of-state defendant on the basis of his actions in the forum state. The long-arm statute must give the court the ability to “reach” outside its jurisdiction and be able to enforce a judgment against a non-resident.

If the answer to the first question is no and the state’s long-arm statute does not grant the court authority to enforce a judgment against the defendant, the analysis ends. See McGee v. International Life, 355 U.S. 220 (1957) (holding that a non-resident defendant’s single transaction within a forum may support personal jurisdiction, this is insufficient if the state’s long-arm statute does not support jurisdiction over the defendant).

Federal Rule of Civil Procedure (FRCP) 4(k)(1)(A) directs federal courts to analyze personal jurisdiction as if it were a state court of the state in which it is located. Further, service of process may be made only within the territorial limits of the state in which the district court sits or anywhere else permitted by the long-arm of the state where the district court sits.

FRCP 4(k)(1)(B) also provides a special 100-mile bulge provision that allows for out-of-state service even if the local law does not permit this. When the provision applies, it allows service anywhere, even across a state boundary, within a 100-mile radius of the federal courthouse where the suit is pending. The bulge provision applies only where out-of-staters will be brought in as additional parties to an already-pending action.

C is correct. Pursuant to the FRCP, federal courts must analyze personal jurisdiction as if it were a court of the state in which it is located. Here, the facts state that State A’s long-arm statute would not grant a state court in State A jurisdiction, so the federal court in State A would also lack authority to exercise personal jurisdiction over the homeowner.

A is incorrect. This is an incorrect application of the law. FRCP 4(k)(1)(A) directs federal courts to analyze personal jurisdiction as if it were a court of the state where it is located. Therefore, for a federal court in State A, State A's long-arm statute is directly relevant to this analysis. As stated above, the court would lack personal jurisdiction because the long-arm statute does not allow it.

B is incorrect. A federal court may have an additional "100 mile" bump for purposes of service of process only with regard to a party joined under FRCP 14 or FRCP 19. Thus, this rule does not apply to the homeowner, an original defendant, in this case.

D is incorrect. Erie only arises when there is no controlling federal statute or Rule on point. State A's long-arm statute is applicable pursuant to the FRCP, which means this is not an Erie problem.

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5. Which motion should the retailer file to challenge the jury's damages award?

Under State A law, a judge who believes damages are "excessive" may offer plaintiffs the choice between a new trial or remittitur, and if the court believes the damages are "inadequate," it may offer defendants a choice between a new trial or additur. A retailer from State A filed a diversity action against a manufacturer from State B in federal court in State A, alleging a breach of contract and seeking $195,000 in damages. The case went to trial and after four days of testimony, the jury returned a verdict in favor of the retailer but awarded only $2.25 in compensatory damages. Under federal law, a judge who believes compensatory damages are so excessive as to "shock the conscience" may offer plaintiffs the choice between a new trial or remittitur of the excessive damages.

- Motion for a new trial or additur, on the ground that the jury's damage award shocks the conscience
- Motion for a new trial or additur, on the ground that the jury's damage award is inadequate
- Motion for remittitur, on the ground that the jury's damage award shocks the conscience
- **Motion for a new trial, on the ground that the verdict is inadequate**

Note:
The jurisdiction of federal courts is concurrent with state courts. This means that a particular controversy that is litigable in federal court may also be brought in state court. Where jurisdiction is concurrent, the plaintiff makes the initial decision whether to use state or federal court by filing his case. The defendant then may choose to remove or remain under the state court's jurisdiction.

When determining whether to do an Erie analysis, the threshold question is whether there is a controlling Federal Rule of Civil Procedure (FRCP) or federal statute. If any federal law controls (is "on point"), there is no Erie problem. However, in the absence of a controlling federal statute or Rule, the question becomes whether the issue at hand is substantive or procedural.

In the Erie decision, the U.S. Supreme Court held that a federal court sitting in diversity must apply state substantive law of the state in which it sits on all substantive issues in a case. This includes the state's conflict of law rules. For all procedural issues, a federal court sitting in diversity must apply federal procedural rules (the FRCP).

Exam tip: When a potential Erie analysis arises on the MBE, pay close attention to the facts. If the court is not sitting in diversity and is exercising federal question jurisdiction, federal law will apply and there is no need to examine applicable state law.

A motion for a new trial may be filed based on numerous grounds, including that the verdict is either excessive or inadequate. If a federal judge believes the jury's damages award is too high (excessive) such that it "shocks the conscience," or, in a diversity case, if the award meets the applicable state standard for excessiveness, the judge may order a new trial or offer the alternative of a reduction in damages ("remittitur"). See Gasperini v. Center, 518 U.S. 415 (1996) (requiring federal trial courts to apply a state standard when considering a motion for a new trial based on excessiveness of the verdict).

When a plaintiff is offered remittitur, he may choose between accepting an award less than given by the jury or submitting to a new trial. The court cannot simply lower the award given by the jury, it must offer the plaintiff the alternative option of receiving a lower award or a new trial. Hetzel v. Prince Williams County, 523 U.S. 208 (1998).

If the trial judge believes that the jury's compensatory damages are too low (inadequate), he may NOT offer the defendant the choice of accepting a higher award ("additur") or submitting to a new trial. "Additur" is not allowed in federal cases because it violates the Seventh Amendment. However, additur is permissible in many state cases because the Seventh Amendment does not apply. In federal court, if the judge believes damages are too low, the court may grant a new trial.

D is correct. The retailer should bring a motion for a new trial on the ground that the verdict is inadequate. This is a diversity case in federal court, which means when there is no controlling federal rule, the court should apply state substantive law of the state in which it sits (here, State A). There is a controlling federal rule, however, related to "additur."

*The retailer is seeking relief for inadequate damages. The only remedy available is a motion for new trial on this basis. "Additur" is the legal mechanism for increasing a damages award, but the U.S. Supreme Court has held additur unconstitutional under the Seventh Amendment, so it may not be used in any federal court, including those in diversity. This is the controlling federal rule and will prevail, even though in this situation, state substantive law would otherwise apply. As a result, the only option for the retailer is a motion for new trial on the ground that the verdict is inadequate.   *

A is incorrect. The retailer may ask for a new trial, but not on the basis that the award "shocks the conscience," which is the federal standard. This is a diversity case, so Erie requires application of federal procedural law and state substantive law. Thus, State A's standard of "inadequate" applies. The retailer may NOT ask for additur because it has been held unconstitutional in federal court, including in diversity cases.

B is incorrect. This answer is only partially correct. The retailer should file the motion for new trial on the basis that the damages are inadequate, as explained above. However, the retailer is not permitted to raise additur because it has been held unconstitutional in all federal cases, including diversity, by the U.S. Supreme Court.

C is incorrect. "Remittitur" is the wrong doctrine, as it is used to decrease, rather than increase damages. Moreover, this choice also references the "shocks the conscience" standard, which is the federal standard and does not apply here, where State A's substantive law would apply to damages that are either "excessive" or "inadequate."
