But, in two later cases, the Court contracted the application of *Erie* in matters governed by the Federal Rules. Thus, in the earlier case, the Court said that "outcome" was no longer the sole determinant and countervailing considerations expressed in federal policy on the conduct of federal trials should be considered; a state rule making it a question for the judge rather than a jury of a particular defense in a tort action had to yield to a federal policy enunciated through the Seventh Amendment of favoring juries.[1121] Some confusion has been injected into consideration of which law to apply—state or federal—in the absence of a federal statute or a Federal Rule of Civil Procedure.[1122] In an action for damages, the federal courts were faced with the issue of the application either of a state statute, which gave the appellate division of the state courts the authority to determine if an award is excessive or inadequate if it *deviates materially* from what would be reasonable compensation, or of a federal judicially created practice of review of awards as so exorbitant that it shocked the conscience of the court. The Court determined that the state statute was both substantive and procedural, which would result in substantial variations between state and federal damage awards depending whether the state or the federal approach was applied; it then followed the mode of analysis exemplified by those cases emphasizing the importance of federal courts reaching the same outcome as would the state courts,[1123] rather than what had been the prevailing standard, in which the Court balanced state and federal interests to determine which law to apply.[1124] Emphasis upon either approach to considerations of applying state or federal law reflects a continuing difficulty of accommodating "the constitutional power of the states to regulate the relations among their citizens . . . [and] the constitutional power of the Federal Government to determine how its courts are to be operated." [1125] Additional decisions will be required to determine which approach, if either, prevails. The latter ruling simplified the matter greatly. *Erie* is not to be the proper test when the question is the application of one of the Rules of Civil Procedure; if the rule is valid when measured against the Enabling Act and the Constitution, it is to be applied regardless of state law to the contrary.[1126]

[1121] Byrd v. Blue Ridge Rural Elec. Coop., 356 U.S. 525 (1958).

[1122] Gasperini v. Center for Humanities, Inc., 518 U.S. 415 (1996). The decision was five-to-four, so that the precedent may or may not be stable for future application.

[1123] *E.g.*, Guaranty Trust Co. v. York, 326 U.S. 99 (1945).

[1124] *E.g.*, Byrd v. Blue Ridge Rural Elec. Coop., 356 U.S. 525 (1958).

[1125] 19 C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 4511, at 311 (2d ed. 1996).

[1126] Hanna v. Plumer, 380 U.S. 460 (1965).