

Sec. 2—Judicial Power and Jurisdiction

Cl. 1—Cases and Controversies

B is applicable, perhaps because a contract was made there or a tort was committed there, the federal court is to apply State A's conception of State B's law.¹¹¹⁵

The greatest difficulty in applying the *Erie* doctrine has been in cases in which issues of procedure were important.¹¹¹⁶ The process was initiated in 1945 when the Court held that a state statute of limitations, which would have barred suit in state court, would bar it in federal court, although as a matter of federal law the case still could have been brought in federal court.¹¹¹⁷ The Court regarded the substance-procedure distinction as immaterial. "[S]ince a federal court adjudicating a state-created right solely because of the diversity of citizenship of the parties is for that purpose, in effect, only another court of the State, it cannot afford recovery if the right to recover is made unavailable by the State nor can it substantially affect the enforcement of the right as given by the State."¹¹¹⁸ The standard to be applied was compelled by the "intent" of *Erie*, which "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."¹¹¹⁹ The Court's application of this standard created substantial doubt that the Federal Rules of Civil Procedure had any validity in diversity cases.¹¹²⁰

¹¹¹⁵ *Klaxon Co. v. Stentor Manufacturing Co.*, 313 U.S. 487 (1941); *Griffin v. McCoach*, 313 U.S. 498 (1941); *Wells v. Simonds Abrasive Co.*, 345 U.S. 514 (1953); *Nolan v. Transocean Air Lines*, 365 U.S. 293 (1961).

¹¹¹⁶ Interestingly enough, 1938 marked what seemed to be a switching of positions *vis-a-vis* federal and state courts of substantive law and procedural law. Under *Tyson*, federal courts in diversity actions were free to formulate a federal common law, while they were required by the Conformity Act, § 5, 17 Stat. 196 (1872), to conform their procedure to that of the state in which the court sat. *Erie* then ruled that state substantive law was to control in federal court diversity actions, while by implication matters of procedure in federal court were subject to congressional governance. Congress authorized the Court to promulgate rules of civil procedure, 48 Stat. 1064 (1934), which it did in 1938, a few months after *Erie* was decided. 302 U.S. 783.

¹¹¹⁷ *Guaranty Trust Co. v. York*, 326 U.S. 99 (1945).

¹¹¹⁸ 326 U.S. at 108–09.

¹¹¹⁹ 326 U.S. at 109.

¹¹²⁰ *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949) (state rule making unsuccessful plaintiffs liable for all expenses and requiring security for such expenses as a condition of proceeding applicable in federal court); *Woods v. Interstate Realty Co.*, 337 U.S. 535 (1949) (state statute barring foreign corporation not qualified to do business in the state applies in federal court); *Ragan v. Merchants Transfer & Warehouse Co.*, 337 U.S. 530 (1949) (state rule determinative when an action is begun for purposes of statute of limitations applicable in federal court although a Federal Rule of Civil Procedure states a different rule).