

After a fire burned down a house that a tenant was renting, the tenant brought a federal diversity action against the landlord. The complaint alleged that the fire had been caused by the landlord's negligent failure to maintain the house's electrical system in accordance with the applicable housing code. The landlord's own investigation indicated that the fire had been caused by the tenant's leaving a soup pot unattended on a hot stove.

The landlord has moved to dismiss the action on the ground that the tenant failed to comply with a state law that requires plaintiffs suing for negligence to plead that they were not contributorily negligent. In opposition to that motion, the tenant argues that under federal law, contributory negligence is an affirmative defense that a defendant who wishes to assert the defense must plead in an answer or other responsive pleading.

Which law governs how the court should rule on the motion to dismiss?

- A. Federal law, because the burden of pleading on a motion to dismiss in federal court is substantive, not procedural. (3%)
- B. Federal law, because the Federal Rules of Civil Procedure control pleading in federal court. (49%)
- C. State law, because the application of federal law would be outcome-determinative. (30%)
- D. State law, because the assignment of the burden of pleading is bound up with the definition of the tenant's substantive rights. (16%)

Incorrect

Correct answer B

49% Answered correctly

05 mins, 32 secs Time Spent

2023 Version

Explanation:

A federal court sitting in diversity must apply **state law to substantive issues** and **federal law to procedural issues**. When it is **unclear** whether an issue is **substantive or procedural**, the court must determine if a valid **federal law** (ie, federal statute, rule, or constitutional provision) **directly addresses** the issue. If so, federal-rule analysis provides that the federal law **governs** over a conflicting state law **if the federal law is arguably procedural** and **does not modify a substantive right**.

FRCP 8 controls the requirements for pleadings in federal court. One requirement is that the *defendant* has the burden to plead affirmative defenses (eg, contributory negligence) in a responsive pleading (eg, answer). This valid rule* is procedural and does not modify a substantive right because it regulates the *process* of raising an affirmative defense—not a defendant's *right* to raise the defense. Therefore, federal law governs how the court should rule on the landlord's motion to dismiss.

*No FRCP has ever been found unconstitutional or invalid. This is likely because the Supreme Court reviews and sends proposed rules to Congress before they are enacted.

(Choice A) The burden of pleading in federal diversity actions is a procedural issue governed by federal law. In contrast, the burden of proving a defense is a substantive issue governed by state law.

(Choice C) Federal courts sitting in diversity use the Erie analysis to decide if federal common law should supplant state law when an issue is not directly addressed by a federal law. Under this analysis, an issue is considered substantive—and state law will therefore apply—if the issue is outcome determinative. But the court need not use the Erie analysis here because FRCP 8 directly addresses pleading affirmative defenses in federal court.

(Choice D) A federal court applying the Erie analysis will consider whether a state law is so bound up with a party's substantive rights that not applying that law would be outcome determinative. But the Erie analysis does not apply here because the burden of pleading affirmative defenses is directly addressed by federal law.

Educational objective:

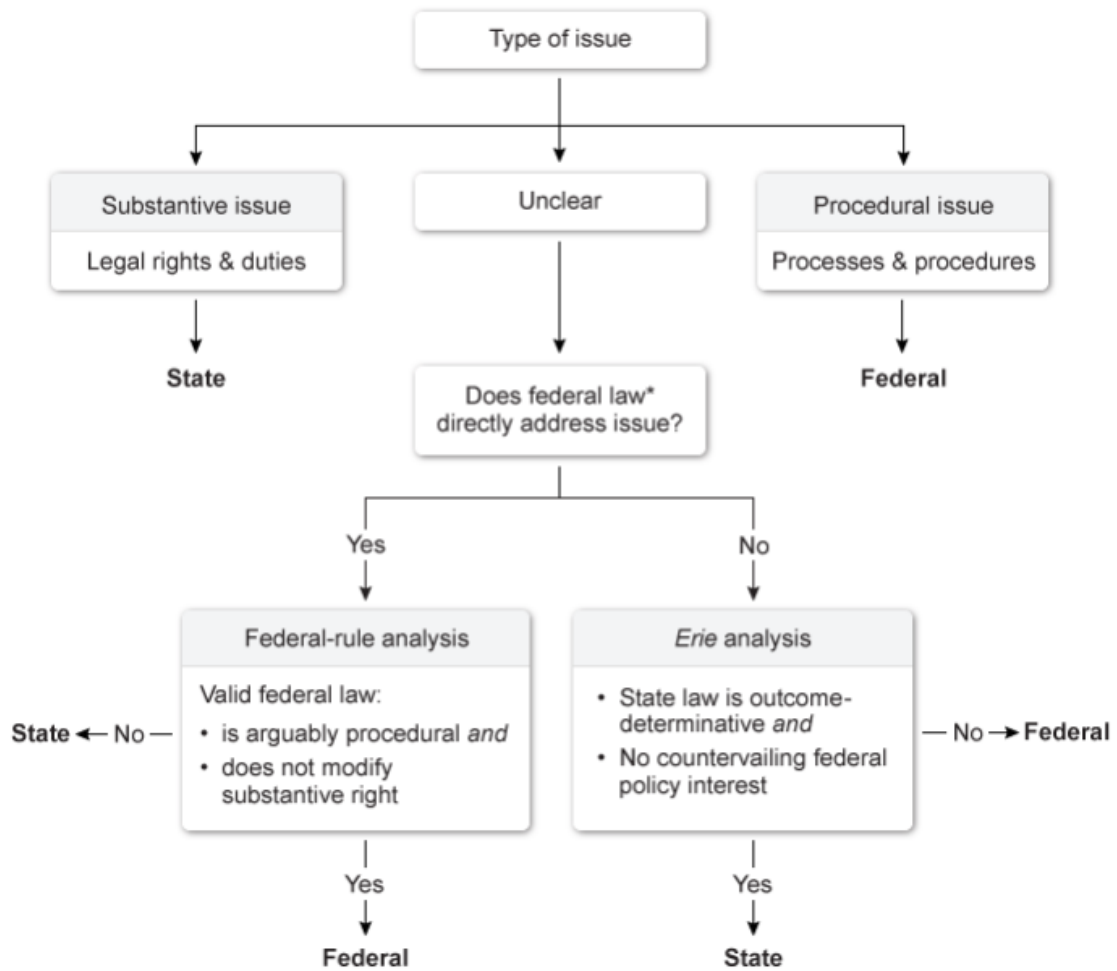
Under federal-rule analysis, a federal court sitting in diversity must apply a valid federal law that is arguably procedural and does not modify a substantive right.

FRCP = Federal Rule of Civil Procedure.

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Choice of law in diversity cases



*Federal law includes federal statutes, rules, and constitutional provisions