

A plaintiff brought a diversity action in State A federal court for breach of contract and negligence. The jury returned a verdict in favor of the plaintiff and awarded her damages. The court entered judgment accordingly. The defendant moved for a new trial on the ground that the jury awarded excessive damages.

Federal common law applies a "shock the conscience" test in a review of an allegedly excessive jury verdict. However, State A law applies a much more rigorous "materially deviates" test to prevent excessive awards.

What body of law should the federal court apply to rule on the defendant's motion for a new trial?

- A. Federal law, because the case was brought in federal court.
- B. Federal law, because the issue is procedural.
- C. State law, because a federal court sitting in diversity must apply state law.
- D. State law, because the issue is substantive.

Explanation:

Federal courts sitting in **diversity** must apply state law to substantive issues and federal law to procedural issues (**Choices A & C**). However, there are instances **when it is unclear** whether an issue is **substantive or procedural**—as seen here with review of a jury verdict. A court must then determine if a **federal law directly addresses** the issue. Federal law encompasses federal constitutional provisions, statutes, and rules—but not federal common law. As a result, **no direct federal law** applies here.

In such a case, the **Erie analysis** must be used to decide if a federal court should supplant state law with federal common law. Under this analysis, the issue will be **considered substantive** and **state law** will therefore **apply if** it is outcome determinative AND there is no countervailing federal policy interest. State law is **outcome determinative** if the failure to apply state law would result in:

- **forum-shopping** – litigants will be encouraged to sue in federal court to take advantage of benefits not afforded in state court *or*
- **inequitable administration of the laws** – the application of substantially different rules in federal and state court would cause unfair outcomes.

Here, failure to apply State A's test will result in forum-shopping because plaintiffs will want to take advantage of the federal courts' less rigorous test. It will also cause inequity because higher awards will be allowed to stand in federal court for the same harm. As a result, the state law is outcome determinative. And since there is no federal policy that justifies not applying the State A test, whether a jury verdict is excessive is a *substantive* issue. Accordingly, State A's test should be used to determine this issue (**Choice B**).

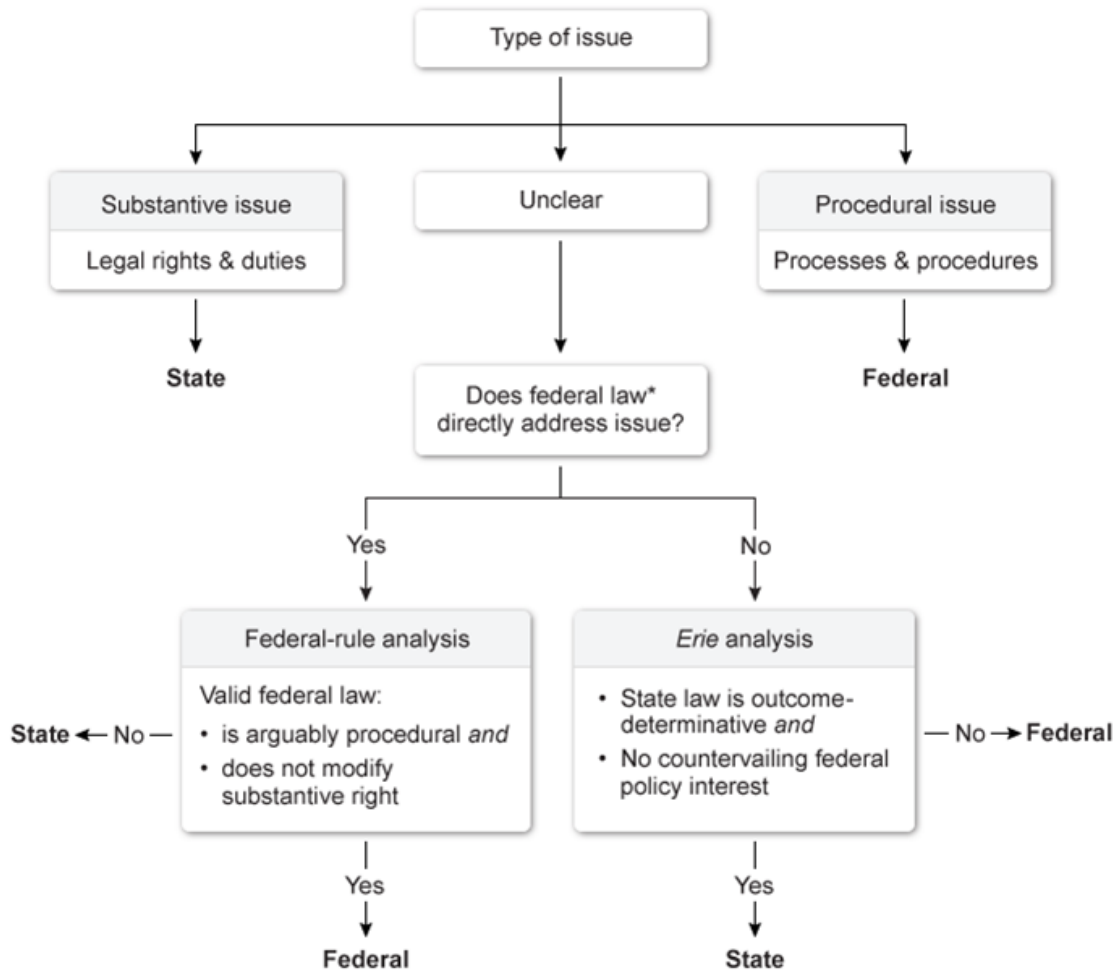
Educational objective:

The *Erie* analysis is used when it is unclear if an issue is procedural or substantive and no direct federal law applies. Under *Erie*, state law applies if (1) it is outcome determinative—ie, forum-shopping or inequitable administration of the laws would result if it is not applied—and (2) there is no countervailing federal policy interest.

References

- *Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 427–30 (1996) (explaining that a state law test to examine the excessiveness of jury verdicts is outcome determinative).

Choice of law in diversity cases



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

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