

A man was injured when a military drone crashed into his house in State A. The drone was manufactured for the U.S. government by a company incorporated and headquartered in State B pursuant to the government's design specifications.

The man filed a diversity action against the company in federal court in State A to recover \$100,000 in damages. The man claimed that the drone was defectively designed. In its answer, the company asserted a defense that a manufacturer of military equipment for the U.S. government cannot be held liable for injuries caused by defectively designed equipment. The company's defense is not explicitly authorized by a federal statute, but many federal courts in other jurisdictions have recognized this defense as federal common law.

State A law allows all manufacturers to be held liable for their defectively designed products.

Should the federal court look to federal law or state law to decide if the company can validly assert this defense?

- A. Federal law, because the man filed the suit in federal court.
- B. Federal law, because the uniquely federal interest at stake significantly conflicts with state law.
- C. State law, because the company's defense is not explicitly authorized by a federal statute.
- D. State law, because there is no federal common law on this issue.

## Explanation:

### Applicability of substantive federal common law

<b>Implied cause of action</b>	Allows recovery of damages against federal official for violation of Fourth, Fifth, or Eighth Amendment
<b>Diversity actions</b>	Governs substantive issues when uniquely federal interest significantly conflicts with operation of state law
<b>Gap-filling</b>	Fills gaps in federal statutory / regulatory scheme
<b>Statutory interpretation</b>	Interprets federal statutes, federal regulations, or U.S. Constitution

A federal court sitting in diversity (as seen here) almost always applies state law to [substantive issues](#) (eg, elements of a defense). However, in **extremely limited circumstances**, federal common law governs substantive issues. Federal common law consists of rules of law created by federal courts in judicial decisions instead of by Congress in statutes. In a diversity action, **substantive federal common law applies** when a [uniquely federal interest](#) significantly conflicts with the operation of state law.

In *Boyle v. United Technologies Corp.*, SCOTUS held that protecting military-equipment manufacturers from liability is a uniquely federal interest. That is because imposing liability on such manufacturers would adversely affect their contracts with the federal government (eg, by increasing costs). This uniquely federal interest significantly conflicts with State A's law that allows all manufacturers to be held liable for defectively designed products. As a result, the court should look to federal common law to decide if the company's defense is valid.

**(Choice A)** The fact that the man filed suit in federal court does not automatically mean that federal law applies. In the vast majority of diversity actions filed in federal court, state law governs substantive issues.

**(Choice C)** Although the company's defense is not explicitly authorized by a federal statute, federal common law recognizes this defense. And since State A's law significantly conflicts with the uniquely federal interest posed by this defense, federal common law governs the defense's applicability.

**(Choice D)** There *is* federal common law on this issue because many federal courts have recognized the company's defense.

### Educational objective:

A federal court sitting in diversity must generally apply state law to substantive issues. However, federal common law governs substantive issues in the rare instance when a uniquely federal interest significantly conflicts with the operation of state law.

**SCOTUS** = Supreme Court of the United States.

### **References**

- Boyle v. United Technologies Corp., 487 U.S. 500, 506–07 (1988) (holding that federal common law governs a defense in a diversity case because a uniquely federal interest significantly conflicts with state law).
- 32A Am. Jur. 2d Federal Courts § 364 (explaining that federal courts may create federal common law when a significant conflict exists between a unique federal interest and state law).

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