

## Civil Procedure Section 4

### Weeks 5 and 6

- I. Unit E Continued, state law in federal courts  
 a. Dual court system

i.		ii.	Federal law (statutes and cases)	iii.	State law (statutes and cases)
iv.	Federal court	v.	Federal question, 1331, federal law applied	vi.	1332, diversity jurisdiction, state law applied
vii.	State court	viii.	Federal question disputes can be heard in state courts. Must be decided under federal law. Removal by defendant to federal courts possible.	ix.	State law applied.

- x. Article VI: supremacy of the Constitution and laws made in the furtherance thereof, and the requirement that the judges of every state be bound by this law.  
 xi. 28 USC 1652: the rules of decision in civil actions is the laws of the several states. (typically where the trial is located/injury occurred/state laws say it should be tried).

- b. Erie Railroad Co. v. Tompkins, 304 U.S. 1938  
 i. Timeline

ii.	Division between rules of division between federal and state law on substantive and procedural questions.	iii.	Pre 1938	iv.	Post 1938
v.	Substantive law	vi.	Federal laws	vii.	State laws
viii.	procedural law	ix.	state laws at law and federal laws at equity (changed after equity and law were combined).	x.	federal laws

- xi. Facts of the case.  
 1. Tompkins was walking along the railroad's right of way when he was hit by something that was sticking out of the railroad and lost his arm, in Pennsylvania. Tompkins is a citizen of Pennsylvania (where there is a law that makes those who walk along the train tracks trespassers to whom the railroad does not owe a duty of care). Tompkins sues the railroad in NY where they are incorporated, and in federal court, where the "federal general common law" makes those who use the right of way

are licensees and there is a duty of care to protect Tompkins. Tompkins wins under federal law, RR appeals asking for PA law.

2. Note: at this time, if he had sued in state court, the "classic choice of law rules" would've applied PA law, where the accident occurred. Federal court in either NY or PA would've favored Tompkins, because they don't have to follow the laws of their state. Federalism is complicated!
3. SCOTUS: diversity jurisdiction is only supposed to mean neutral venue, not different law. PA law should be applied. PA law was an obstacle to Tompkin's recovery, and he did not get any money for his injuries (Sad)
4. Even though it is sad for Tompkins, we get the benefit of HORIZONTAL UNIFORMITY

- a. The prior rule had introduced grave discriminations against out-of-state citizens who were sued in-state in federal law. The plaintiff was allowed to choose which law they used.
- b. By applying the doctrine of Swift, these judges following "federal general common law" are stepping on state's rights by making state law.
- c. 28 USC 1652 should cover statutes and common law. Our experience following the doctrine of Swift v. Tyson has revealed disparate results, and no benefits. This is the best way to fix it.
- d. The courts have no power to declare substantive rules of common law applicable in a state, and according to this decision neither does Congress. This action is unconstitutional. (dissent: why would we reach a decision of unconstitutionality? Unnecessary. Over time, the rules morphs into Congress can pass these rules, but federal judges cannot).

5. What if there is no state law? Federal courts should rule based on how they think the relevant state appeals court would decide if the case were in front of them. There is procedure for certifying the questions to the state supreme court as well, to make it less of a guess. Erroneous federal readings of state law are not precedential, and if they make a mistake, shame on those parties for bring a state issue in federal court.
  - a. We don't really care if the law changes after someone was forced to pay money.
  - b. We care more if the law changes after someone is put into prison, but that isn't the current discussion.
  - c. Federal judges vary by district how much they are going to predict and how much they will follow the status quo.

- c. Klaxon Co. v. Stentor Electric Manufacturing Co., 313 U.S. 487 (1941). State choice of law. If an accident occurs in one state and is tried in another state, which law should apply?

- i. This is a contract dispute. The parties were originally both NY, but Stentor reincorporated in Delaware. Suit in Delaware Federal Court, in favor of Klaxon (Stentor breached). Includes an interest charge based on NY law. Klaxon appeals

the interest—is Delaware federal court, in a state issue, allowed to use law from NY (where the contract occurred)?

- ii. In diversity cases, the federal court should use the substantive law of the state that they sit in. Sometimes, the state substantive law will tell them they could consider where the conflict occurred. In this case, Delaware has no such substantive laws and Delaware does not authorize the courts to look at the laws where the incident occurred.
- iii. This could lead to the same sort of the “gaming the system” forum selection that we saw in *Black & White*.

d. United States v. Standard Oil Co. of California, 332 U.S. 301 (1947)

- i. A soldier is hit by one of Standard Oil's trucks in California. The gov't pays Etzel while he was in jail, and pays for his hospitalization. He hasn't lost anything, and he took 300 from Standard Oil to satisfy all claims against him. The Gov't sues Standard Oil to recover the cost of paying him while he wasn't working and for the hospital bills. US theory: their negligence expands past Etzel to include the gov't of the US.
- ii. Trial court ruled for the US. Standard appealed and the circuit court reversed, based on Erie. No applicable state law, this is not a master-servant situation, there is no state-law basis for indemnification/subrogation.
- iii. SCOTUS: affirms the decision of Circuit Court, but for different reasons. The court does not allow the law of any state to bind the United States. In some cases, where there is no state law on point, and it is a federal issue, the court can establish a federal common law. In a case of conflict between state law and federal law, state interest and federal interests, Federal law is meant to be supreme.
- iv. In this case, they decide not to make a rule. It is the purview of congress. 15 years later, Congress passes a law which allows the gov't to sue in cases such as this. Justices are a little afraid to expand liability during this period of time.
- v. Case rule changes have effect on cases in progress. Statutes only have effect on events that happen after the statute. If SCOTUS has changed the rule, Standard oil would've lost even though the right to sue didn't exist before standard oil hit the soldier.
- vi. This is a little unfair for the defendant. Uncle Sam: “We’re going to sue this company. Write us a law.” “Congress/judicial branch: sure, ok. Strict liability, low burden, federal jurisdiction, etc.”
  - 1. 28 USC 1345: the federal district courts have original jurisdiction over all civil actions commenced by the US, and any agency or officer of the US.
  - 2. Article 3: the judicial branch will have original jurisdiction over all cases to which the US is a party.
  - 3. 28 USC 1331 (federal question): Original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the US.
  - 4. This “federal common law” is not inconsistent with 28 USC 1652 (state laws of rules of decision) because 1652 only works where the state laws apply.

e. *Illinois v. City of Milwaukee*, Wis.