



- Lee Burgess: Welcome back to the Law School Toolbox podcast. Today, we are going to be discussing an issue in our “Listen and Learn” series related to civil procedure – the Erie Doctrine. Your Law School Toolbox hosts are Alison Monahan and Lee Burgess, that’s me. We’re here to demystify the law school and early legal career experience, so you’ll be the best law student and lawyer you can be. We’re the co-creators of the [Law School Toolbox](#), the [Bar Exam Toolbox](#), and the career-related website [CareerDicta](#). Alison also runs [The Girl’s Guide to Law School](#). If you enjoy the show, please leave a review or rating on your favorite listening app. And if you have any questions, don’t hesitate to reach out to us. You can reach us via the [contact form](#) on LawSchoolToolBox.com, and we’d love to hear from you. And with that, let’s get started.
- Lee Burgess: Hello, and welcome back to the “Listen and Learn” series from the Law School Toolbox podcast! Today we are going to talk about the Erie Doctrine, which you may remember from your first year Civil Procedure class. The Erie Doctrine sometimes causes students confusion on exams, but it can be pretty straightforward if we know when to look for it and take it step-by-step.
- Lee Burgess: So, what is the Erie Doctrine? And how and when is it going to show up on an exam question? If you have a diversity jurisdiction case and a choice of law issue, then you will most likely need to apply Erie.
- Lee Burgess: The Erie Doctrine states that a federal court is required to apply the substantive law of the state in which it is sitting, including that state’s conflict of law rules. However, federal procedural law should be applied. The purpose of the Erie Doctrine is to prevent forum shopping and to provide equitable and uniform administration of the law.
- Lee Burgess: You could find an Erie issue in either an essay or a multiple choice question. We will take a look at an example of each type of question in a few minutes. And when you are studying for the bar exam, choice of law issues are embedded in other essay topics. You could find a choice of law issue in a Torts, Contracts, Trusts and Estates, or a Property essay. But remember that the Erie analysis comes into play where you have diversity jurisdiction and a choice of law issue, so you will typically see Erie issues in Civil Procedure questions, where there is a question of whether to apply state or federal law.
- Lee Burgess: So, under the Erie Doctrine in federal diversity jurisdiction cases, federal courts should apply substantive state law of the state in which the court sits, and federal procedural law. But how do you know what is substantive and what is procedural? Well, this is where Erie can get a little bit complicated. However, we can break it down and apply a two-step analysis.
- Lee Burgess: Step one: We need to determine whether there is a federal law that conflicts with a state law directly on point. If there is a direct conflict, then we will apply



federal law if it is valid. Federal law is valid where it is “arguably procedural”. Typically, federal law is arguably procedural if it is related to a litigation process.

Lee Burgess: For example, Federal Rule of Civil Procedure 4 permits substituted service of process. What if the state court where the federal court is sitting does not permit substituted service of process? The federal court will still apply the federal rule because it is valid, on point, and arguably procedural.

Lee Burgess: Step two: If there is no federal law on point, then can we apply state law if it is “substantive”? Well, how do we know if it is substantive? We take a look at these factors to determine if a state law is substantive: one, whether the law is outcome determinative; two, we balance state and federal interests in applying their rules; and three, avoiding forum shopping.

Lee Burgess: There are four types of issues that are definitely considered substantive: one, elements of a claim or defense; two, statute of limitations rules; three, rules for tolling statutes of limitation; and four, conflicts of law rules.

Lee Burgess: Okay, so now that we have reviewed our general Erie Doctrine rule and two-step analysis for determining whether a law is substantive or procedural, let’s look at some examples:

Lee Burgess: “Mark, a resident of Massachusetts, is on a ski trip to Colorado when he falls from a chairlift and is injured. He sues the ski resort in federal court in Massachusetts for lost wages and his injuries. Massachusetts state law said that he can potentially recover \$1 million for his claims. A federal statute, however, limits recovery of lost compensation to \$100,000. Which law should the federal court apply? Should the court apply the federal law or the state law?”

Lee Burgess: Well, since it is substantive – since it creates a right or duty – the court should apply the state law here. The Massachusetts law would apply. Mark could sue for \$1 million.

Lee Burgess: Let’s try a longer hypo. This question is an essay question from the [July 2017 California bar exam](#):

Lee Burgess: “Buyer, who was living in New York, and Seller, who was living in California, entered into a valid contract, agreeing to buy and sell a painting claimed to be an original Rothko, supposedly worth \$1 million, for that amount. In a separate valid contract, Buyer agreed to buy from Seller a parcel of California real property worth \$5 million, for that amount. Buyer and Seller completed the purchase of the painting on June 1; they were to complete the purchase of the real property on June 30.



- Lee Burgess: On June 15, Buyer resold the painting, but obtained only \$200, because the painting turned out to be fake. Buyer promptly notified Seller of his intent to sue Seller for damages of \$1 million. Seller then informed Buyer that Seller would not go through with the purchase of the real property.
- Lee Burgess: Buyer filed suit against Seller in federal court in California. Buyer claimed fraud as to the painting, alleging only that Seller committed “fraud in the supposed value”, and sought \$1 million in damages. Buyer also claimed breach of contract as to the real property, and sought specific performance. Buyer demanded trial by jury on all issues.
- Lee Burgess: May the federal court apply California law to decide the breach of contract claim involving the real property?”
- Lee Burgess: So, remember that under the Erie Doctrine, in diversity cases, the federal court applies state substantive law, based on the law of the state in which the court sits, and federal procedural law. First, the court must ask whether there is a conflict between state and federal law. If so, then the court must ask whether there is a federal statute or federal rule that addresses that issue. If such a federal statute exists, the court must apply it. If a federal rule addresses the issue, the court must ask whether the rule expands, abridges, or modifies a substantive right. If so, then the court may only apply the rule if its effect on the right is incidental.
- Lee Burgess: If there is no federal statute or rule on point, the court must ask whether the failure to apply state law would change the outcome in the case. If so, then the court must apply the state law. Finally, if the inquiry reaches past this point, the court must consider the relative interests of the state and federal judiciaries in adjudicating the issue, as well as the need to dis-incentivize forum shopping.
- Lee Burgess: That said, here the Erie analysis is simple. There is no conflict between state and federal law with respect to the breach-of-contract claim, because there is no federal law of contract. Moreover, the law of contract is inherently substantive. Therefore, because the court sits in California, Erie dictates that it should apply California substantive law to resolve the claim.
- Lee Burgess: Even though the analysis here may seem simple and straightforward, make sure you go through the entire analysis – spotting the issue, defining the rule, applying the facts, and stating your conclusion – so that the essay grader can award you points!
- Lee Burgess: In addition to showing up on essay questions, you may find choice of law and Erie issues on multiple choice questions as well. So, let’s take a look at a multiple choice question, shall we?



- Lee Burgess: “Adam was injured while crossing the road in Ohio when Beth’s car collided with him. Beth collided with Adam because Catherine was intentionally distracting her from the passenger seat. Adam sued Beth and won. Afterwards, Beth sued Catherine for contribution as a joint tortfeasor in Ohio federal court under diversity jurisdiction. At the time of Beth’s lawsuit, the majority of states throughout the country refused to order contribution between joint tortfeasors. At the time of the lawsuit, Ohio had no statute governing contribution, but Ohio state courts typically followed the minority rule, allowing contribution. Should the federal court apply Ohio state law on contribution?”
- Lee Burgess: Now, even though this is a multiple choice question, we suggest approaching it in the same way you would an essay question. We will need to identify the issue, determine the rule or rules to apply, apply the rule or rules to the facts, and then reach a conclusion.
- Lee Burgess: So, here we have a federal diversity case and are asked about which law to apply. This is what tells us there is an Erie issue. We must first determine if the federal court should apply federal or state law on the issue of contribution. And there’s one additional wrinkle here: We also need to determine, if state law does apply, whether the court should apply the Ohio minority rule on contribution or the majority rule followed by other states.
- Lee Burgess: Now, here, there is no federal law on point. Tort issues, including contribution, are determined by state law; there is no federal general common law. Because there is no federal law on point, state law will apply if it is “substantive”. Contribution, a defense used to mitigate damages in tort claims, is a substantive issue and part of the state’s power to make rules governing torts issues. As a result, the federal court sitting in diversity jurisdiction must apply the state substantive law on the issue of contribution.
- Lee Burgess: Now, let’s take a look at our second issue: Does the federal court apply the Ohio minority rule on contribution or the majority rule from another state? Where the case is governed by a state’s law, the court must apply the state’s law, not the majority law. Even though Ohio follows the minority rule, the federal court must still apply Ohio law.
- Lee Burgess: Alright, before moving to reviewing the answer choices, let’s review our conclusion: The federal court sitting in diversity jurisdiction must apply Ohio state law, the minority rule, on the issue of contribution because it is a substantive state law. Let’s see if any of the answer choices match up.
- Lee Burgess: Remember, the question asks: Should the federal court apply Ohio state law on contribution?



- Lee Burgess: Option A: No, because Beth sued in federal court, and the court should apply federal common law on the issue of contribution.
- Lee Burgess: This answer choice is incorrect and misstates the law in a couple of different ways. First, there is no federal common law. Secondly, in diversity cases, federal courts must apply state substantive law. So, cross out this answer choice and keep going.
- Lee Burgess: Option B: No, because Ohio does not have a statute governing contribution, so the federal court must follow the majority rule regarding contribution.
- Lee Burgess: This answer choice is incorrect, misstates the law, and is a distractor. Federal courts sitting in diversity jurisdiction don't only apply state law when there is a state statute on point; they apply state law when that state law is substantive, even if it is state common law. Moreover, the federal court is sitting in Ohio and must apply Ohio state law on the issue (and there's no conflict of issue here), not the majority rule from a different state. So, cross out this answer choice and move on to option C.
- Lee Burgess: Option C: Yes, because federal courts sitting in diversity jurisdiction must apply state substantive law.
- Lee Burgess: This answer choice is correct and encompasses the totality of our analysis. Here, the case is in federal court under federal diversity jurisdiction. The state law at issue is contribution, which is a substantive law. Because federal courts sitting in diversity jurisdiction must apply state substantive law, the federal court must apply Ohio state law on contribution. Circle this answer choice as correct, but make sure to exclude the last answer choice as incorrect before leaving this question.
- Lee Burgess: Option D: Yes, because federal courts sitting in diversity jurisdiction must apply the law that will reach the fairest result for litigants.
- Lee Burgess: This answer choice is incorrect and is a distractor. Federal courts sitting in diversity jurisdiction must apply state substantive law. There is no rule dictating that they must apply a law that will reach the "fairest result for litigants". If that were the case, then federal courts will be allowed to apply whatever law they determined was best. Cross out this answer choice.
- Lee Burgess: Great job getting through this multiple choice question! Erie Doctrine questions can be intimidating, but a methodical approach will allow you to navigate right through them. This Erie question hit the basic rules that govern the vast majority of cases involving state versus federal law in federal diversity cases. Keep practicing these questions, and you'll get a handle on tackling those



questions that deal with even more complicated issues within the substance/procedure distinction as well.

Lee Burgess: And there you have it – the Erie Doctrine, demystified! We hope that this has been helpful. Remember to slow down and watch for choice of law issues, and that Erie requires federal courts to apply the substantive law of the state in which it is sitting, and federal procedural law. Also remember if you take the step-by-step approach that we reviewed, you should be able to handle these questions with confidence. Thank you so much for listening!

Lee Burgess: And with that, we're out of time. If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We'd really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to myself or Alison at lee@lawschooltoolbox.com or alison@lawschooltoolbox.com. Or you can always contact us via our website [contact form](https://www.lawschooltoolbox.com/contact-form) at LawSchoolToolBox.com. Thanks for listening, and we'll talk soon!

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