coggle

ERIE: WHICH LAW TO USE IN A DIVERSITY CASE? (NOTE: The Erie doctrine is a messy success are difficult to summarize in a neat flowchart. Also different teachers may have different approaches. This is the approach that I like to use, though I recognize that others may reasonably take other approaches.

1. DETERMINE CONTENT OF STATE LAW
2. DETERMINE CONTENT OF FEDERAL LAW
3. DETERMINE TYPE OF FEDERAL LAW THAT CONFLICTS WITH STATE LAW.
4. ANALYZE THE CONFLICT.

STEP ONE: DETERMINE CONTENT OF STATE LAW

Which state's law?

Klaxon, Under *Klaxon*, use the choice of law principles of the state the federal court is located in. Use those principles to determine which state's law might apply.

State constitution, statute, or other textual law. Determine the law.

Now that you have determined the relevant state law, go to the right-hand side of the Coggle.

State common law. Make an *Erie* prediction.

Use the common law enunciated by the highest court of the state.

1. If state has not spoken on the issue, then make a prediction on how the state supreme court would rule.
2. If state supreme court has spoken on the issue but would be likely to change law on that issue today, predict how the state supreme court would rule today.

Now that you have determined the relevant state law, go to the right-hand side of the Coggle.

STEP TWO: DETERMINE CONTENT OF FEDERAL LAW

Can federal law and state law co-exist? In other words, can both be applied at once?

If state and federal law do not conflict, then use both state law and federal law.

If state and federal law conflict, then continue the analysis.

STEP THREE: DETERMINE TYPE OF FEDERAL LAW THAT CONFLICTS WITH STATE LAW

Note that determining the type of conflict can often be debated.

The Supreme Court has not always been consistent on how to classify federal-state conflicts, sometimes treating the conflict as *Hanna I* and sometimes as *Hanna II*.

Guiding principle # 1: Determine the scope of the federal law.

Although the Supreme Court has not been entirely consistent in this regard, the *Shady Grove* case gives some guidance:

1. If FRCP rule is unambiguous, then it means what it means: Where a collision between the FRCP and state law is is unavoidable, read the FRCP to mean what it says (FN 8 *Shady Grove*). Do not try to resolve a textual conflict between the FRCP and state law by looking to the state law's ostensible objectives.
2. If FRCP rule is ambiguous: If two meanings are possible for a FRCP rule, then see if you can read to: a) avoid a reading that would cause the FRCP rule to violate the REA; and/or b) avoid conflict that might lead to substantial variations in outcomes between state and federal litigation (FN7 of *Shady Grove*).
3. Justice Steven's concurrence's rule of construction: If a FRCP appears to violate section 2072(b), then ask whether the FRCP rule can reasonably be interpreted to avoid that result. This seems similar to # 2(a) listed above.

Guiding principle # 2: When in doubt, analyze in the alternative.

That means you may have to consider the potential outcome in the alternative.

STEP FOUR: ANALYZE THE CONFLICT

U.S. Constitution (ex. First Am.) conflicts with state law

The Constitution is the law of the land and trumps conflicting state law. Use federal law.

Federal procedural statute conflicts with state law (ex. 28 U.S.C. 1404)

Is the federal statute a valid exercise of Congress' power under the Constitution? For example, Article III and the "Necessary and Proper Clause" give Congress the power to create jurisdictional statutes such as 28 U.S.C. 1404.

Federal statute valid: use federal law.

Federal statute invalid: use state law.

REA Rule such as a rule of the FRCP conflicts with state law. This analysis is a/k/a Rules Enabling Act or *Hanna II* analysis

Is Rule constitutional? It is presumed constitutional; and is constitutional so long as the rule is "arguably procedural."

If REA rule unconstitutional, use state law.

If REA rule constitutional, ask if REA rule is valid under the Rules Enabling Act, 28 U.S.C. 2072.

Scalia test for 2072(a) and (b): Does the rule "really regulate procedure"?

If the rule really regulates procedure, then use federal law.

If the rule does not really regulate procedure, use state law.

Stevens test for 2072:

1. 2072(a): does the rule "really regulate procedure" and
2. 2072(b): does the rule abridge, modify, or enlarge any substantive right?

If the rule really regulates procedure AND does not abridge, modify, or enlarge any substantive right, then use federal law.

If the rule does not really regulate procedure OR IF the rule abridges, modifies, or enlarges any substantive right, then use state law.

Judge made procedure conflicts with state law. This analysis is a/k/a *Hanna I*, Policy *Erie*, Unguided *Erie*, or Rules of Decision Act analysis.

The analysis used here is debatable, and different professors will use different approaches. To varying extents (best I recall), my approach incorporates materials from Professor Glannon's and Freer's books.

First step is *York* outcome-determination analysis: ask whether using federal law would substantially affect the outcome.

If not, then use federal law.

If so, then continue to second step: ask whether the use of federal law would lead to either inequitable outcomes or forum shopping (*Hanna I*'s "twin aims of *Erie*).

If neither inequitable outcomes or forum shopping, then use federal law.

If inequitable outcomes or forum shopping, then continue. Ask whether "countervailing considerations" require the use of federal law (*Byrd*). Note that the court has not used *Byrd* very much but it's worth noting in your Civ Pro JD exam.

No countervailing considerations requiring federal law. Use state law.

Countervailing considerations require the use of federal law, so use federal law.

Federal General Common Law conflicts with state law (such as the duty of care a railroad owes to a trespasser). This is also known as Constitutional *Erie*.

There is no federal general common law. Use state law.