

INTRODUCTORY NOTE ON THE LAW TO BE APPLIED IN FEDERAL COURTS



Determining that a federal district court has jurisdiction to hear a case does not necessarily determine what law it should look to in deciding the case. This problem is conventionally referred to as the Erie problem, after Erie Railroad Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), infra p. 498.

1. State Law as the Prima Facie Applicable Law

The starting place in the consideration of the question whether state law or federal law is to be applied to a legal controversy is the organization of our federal system. In a subtle and masterful treatment of the problem, Hart, The Relations Between State and Federal Law, 54 Colum.L.Rev. 489 (1954),\* Professor Hart says, in small part, 54 Colum.L.Rev. at 489-497:

"The law which governs daily living in the United States is a single system of law: it speaks in relation to any particular question with only one ultimately authoritative voice, however difficult it may be on occasion to discern in advance which of two or more conflicting voices really carries authority. In the long run and in the large, this must be so. People repeatedly subjected, like Pavlov's dogs, to two or more inconsistent sets of directions, without means of resolving the inconsistencies, could not fail in the end to react as the dogs did. The society, collectively, would suffer a nervous breakdown.

"Yet the sources of the laws which say what Americans can, may or must do or not do and what happens if they act differently, or which seek to influence by official action what they are able or choose to do on their own account in the infinity of situations in which they have to decide whether to do or not to do something, are exceedingly diverse. The problems of developing the necessary mechanisms for evoking or enforcing harmony are correspondingly complex.

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"In any system of government, responsibility for doing these things is divided among the government's various branches. In a federal system, it is further divided between the federal government and the governments of the states and their political subdivisions.

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"Nowhere is the theory and practice of American federalism more significantly revealed than in the constitutions of the states. These constitutions assume responsibility for dealing, and claim authority to deal, with the whole gamut of problems cast up out of the flux of every day life in the state, save only in the particular respects in which the Federal Constitution or statutes deprive the states of any competence whatever or provide for an overriding or displacing federal law. They announce clearly, in Madison's words, that whereas the powers of the federal government 'consist of special grants taken from the general mass of power [we, the state governments] possess the general mass with special exceptions only.'