Erbsen on Erie and Default Rules

Allan Erbsen (University of Minnesota Law School) has posted Erie's Starting Points: The Potential Role of Default Rules in Structuring Choice of Law Analysis on SSRN.

This contribution to a symposium marking the seventy-fifth anniversary of Erie Railroad Company v. Tompkins is part of a larger project in which I seek to demystify a decision that has enchanted, entangled, and enervated commentators for decades. In prior work I contended that the "Erie doctrine" is a misleading label encompassing four distinct inquiries that address the creation, interpretation, and prioritization of federal law and the adoption of state law when federal law is inapplicable. This article builds from that premise to argue that courts pursuing Erie's four inquiries would benefit from default rules that establish initial assumptions and structure judicial analysis. Considering the potential utility of default rules leads to several conclusions that could help clarify and improve decision-making under Erie. First, courts deciding whether a state rule has priority over a conflicting judge-made federal rule in diversity cases should default to federal law despite the intuitive appeal of state law. Second, when courts are considering whether to create federal common law, the proponent of a federal solution should bear the burden of persuasion. Third, the Supreme Court should replace the rule from Klaxon v. Stentor Electric, which requires federal courts to identify applicable nonfederal law by using the forum state's choice of law standards, with a default rule that favors forum standards while authorizing federal choice of law standards in appropriate circumstances. Reconsidering how federal courts choose applicable nonfederal laws would also provide an opportunity to reconcile Klaxon's irrebuttable preference for intrastate uniformity with the more flexible default rule in United States v. Kimbell Foods, which requires courts crafting federal common law to incorporate state standards unless there is a good reason to create nationally uniform standards. Finally, courts should develop a default rule — which one might label an "Erie canon" — to determine whether federal statutes and rules should be interpreted broadly or narrowly to embrace or avoid conflict with otherwise applicable state laws.

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year.