

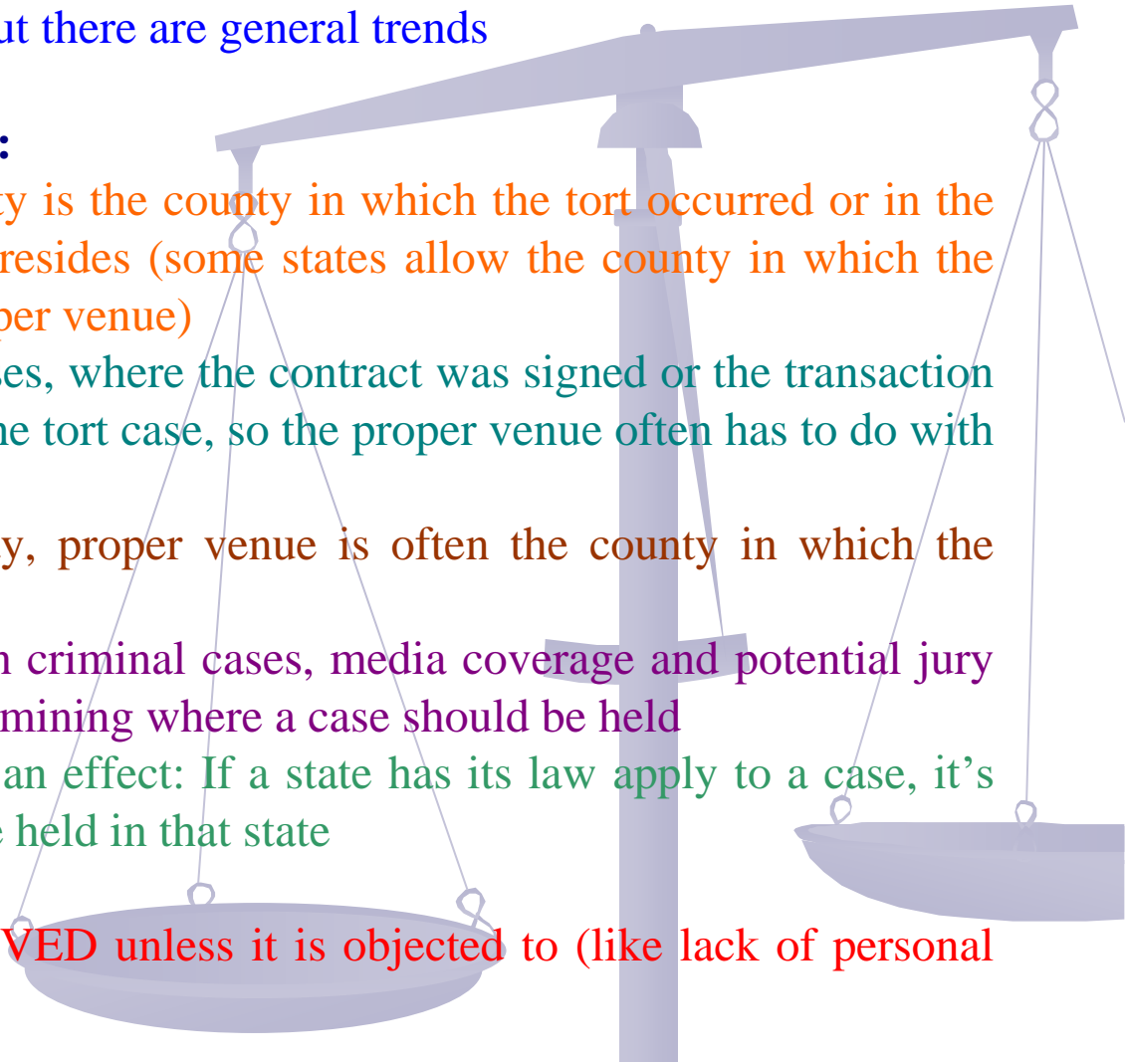
# Proper Venue – State Actions

- ✦ Only relevant once the court has jurisdiction; First make sure the court has jurisdiction and then worry about whether there is proper venue!
- ✦ Rules vary from state to state; but there are general trends

## General venue rules in state cases:

- ✦ In tort cases, the proper county is the county in which the tort occurred or in the county in which the defendant resides (some states allow the county in which the plaintiff resides as well as a proper venue)
- ✦ In contract or other business cases, where the contract was signed or the transaction done is not as significant as in the tort case, so the proper venue often has to do with the residence of the parties
- ✦ In cases involving real property, proper venue is often the county in which the property sits
- ✦ In some cases, and especially in criminal cases, media coverage and potential jury bias can also be a factor in determining where a case should be held
- ✦ Choice of law issues also have an effect: If a state has its law apply to a case, it's often preferable to have the case held in that state

Important: Improper venue is **WAIVED** unless it is objected to (like lack of personal jurisdiction)



# Proper Venue – Federal Actions

- ✦ Venue issues here can be important because there are many federal “diversity” cases; and so the question often arises as to which state should host the federal case in addition to which district within the state should host the case.
- ✦ Rules are similar to state actions discussed earlier; federal statutes are specific in terms of what constitutes proper venue.

In general, for most federal cases, proper venue is:

- - Where the defendant(s) reside, if they all reside in the same state
- - Where the events that gave rise to the action occurred
- - Where a substantial part of the property involved in the action is located
- - If none of these apply, it can be brought in any court that has jurisdiction over any defendant (or where the defendant “may be found).

# Proper Venue – Federal Actions (cont.)

## Other Rules:

- - A corporation or other business or organization is a “resident” of any district and state that has personal jurisdiction over it
- - For intellectual property cases (patents, trademarks, etc.), the venue rules are more strict; you generally need to sue the defendant where the defendant resides or may be found.

## **Forum *Non Conveniens* Rule**

This applies where the case is already in a proper venue, but a party or the court feels that there is a better, more appropriate venue for the case. The court can transfer the case to a more convenient form (e.g., where the evidence or witnesses are, etc.) that also has jurisdiction over the case.

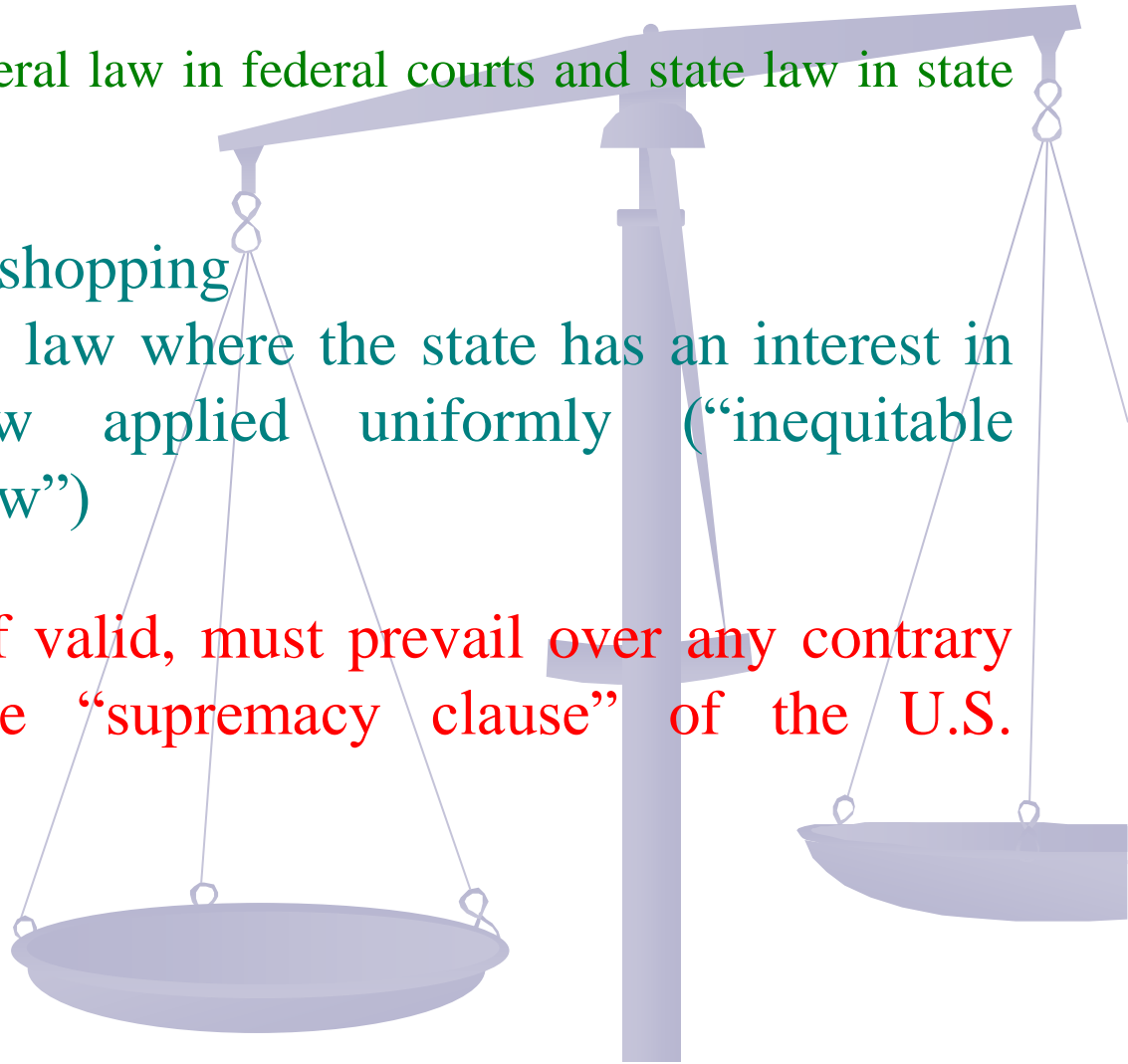
# Choice of Law

✦ This deals with the question of whether to apply state law or federal law in federal court.

✦ Why not just apply federal law in federal courts and state law in state courts?

- 1) the potential for forum shopping
- 2) unfair usage of federal law where the state has an interest in seeing its own law applied uniformly (“inequitable administration of the law”)

**Important: Federal law, if valid, must prevail over any contrary state law based on the “supremacy clause” of the U.S. Constitution.**

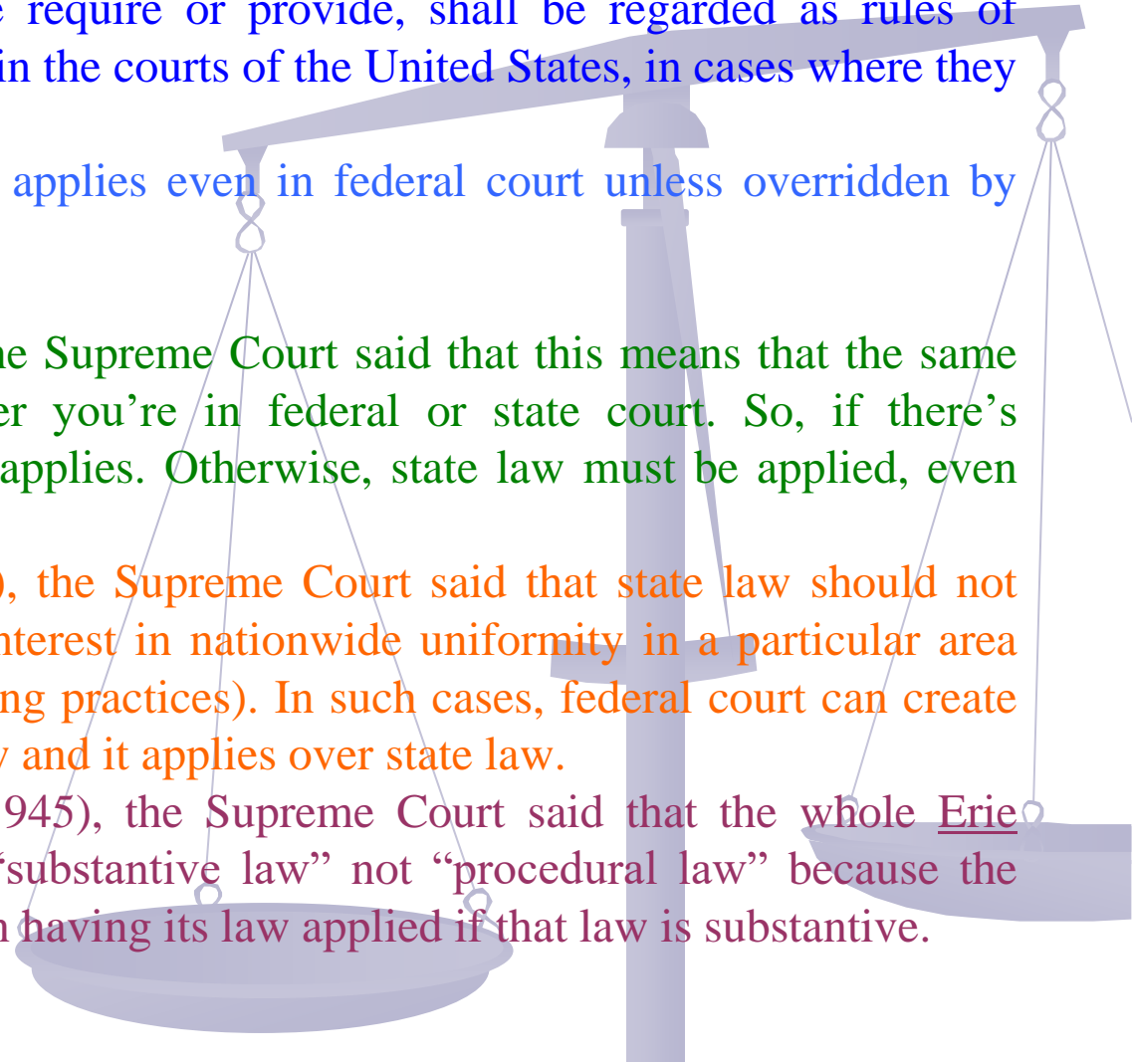


# The “Erie” Doctrine

The “Rules of Decision Act” of 1789 provided:

“that the laws of the several states, except where the constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision, in trials at common law, in the courts of the United States, in cases where they apply.”

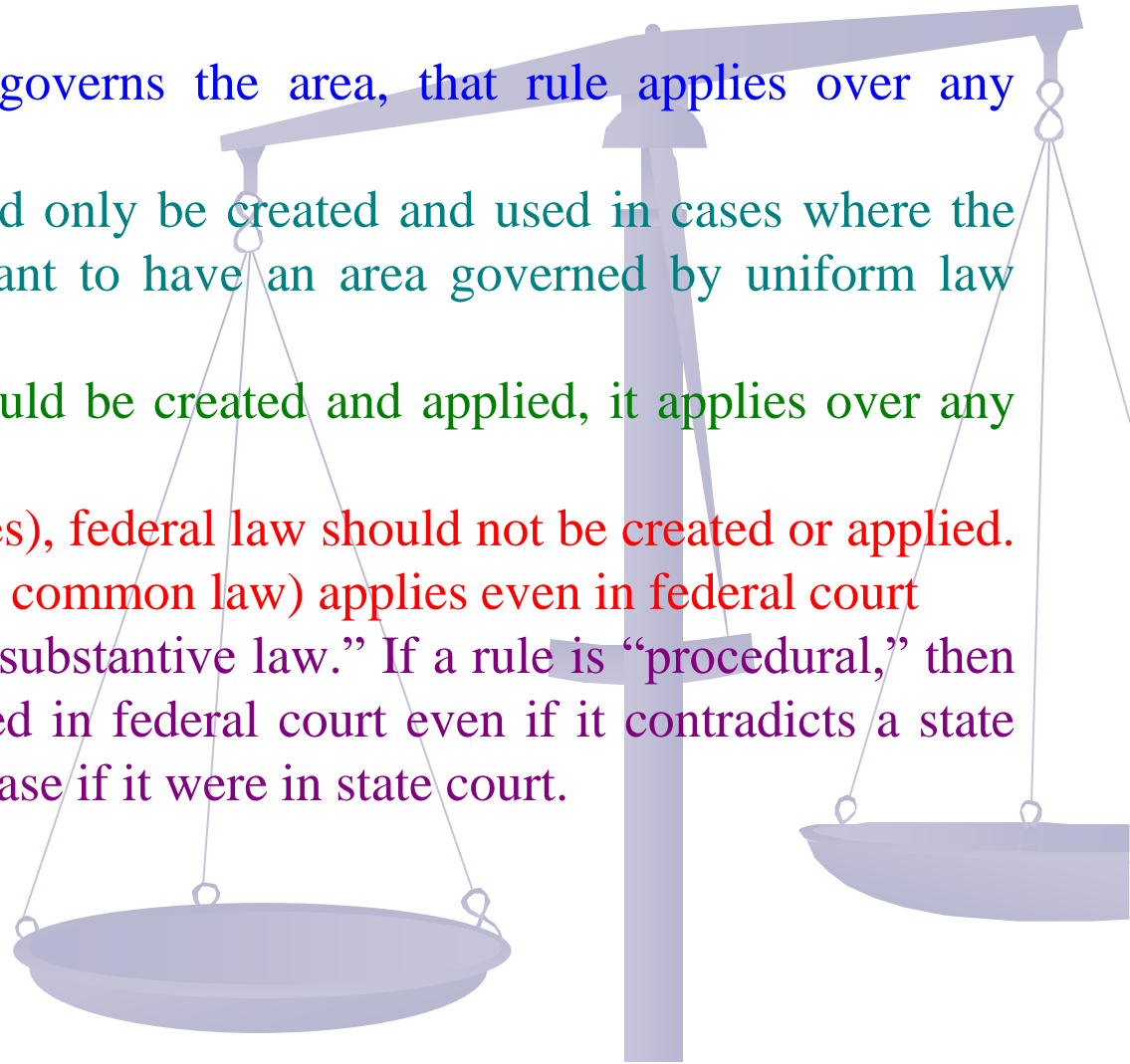
- In other words, state law applies even in federal court unless overridden by federal law.
- In the Erie case (1938), the Supreme Court said that this means that the same law should apply whether you’re in federal or state court. So, if there’s applicable federal law, it applies. Otherwise, state law must be applied, even state case law.
- In Clearfield Trust (1943), the Supreme Court said that state law should not apply where there is an interest in nationwide uniformity in a particular area (such as nationwide banking practices). In such cases, federal court can create federal common (case) law and it applies over state law.
- In Guaranty Trust Co. (1945), the Supreme Court said that the whole Erie doctrine only applies to “substantive law” not “procedural law” because the state only has an interest in having its law applied if that law is substantive.



# The Erie Doctrine – Summary of Rules

These rules come from Erie and its progeny regarding application of law in federal court:

- If a valid federal statute governs the area, that rule applies over any contrary state law
- Federal common law should only be created and used in cases where the court feels that it's important to have an area governed by uniform law throughout the country.
- If federal common law should be created and applied, it applies over any contrary state law
- In all other cases (most cases), federal law should not be created or applied. Thus, state law (statutory or common law) applies even in federal court
- All of this only applies to “substantive law.” If a rule is “procedural,” then a federal rule can be applied in federal court even if it contradicts a state law that would govern the case if it were in state court.

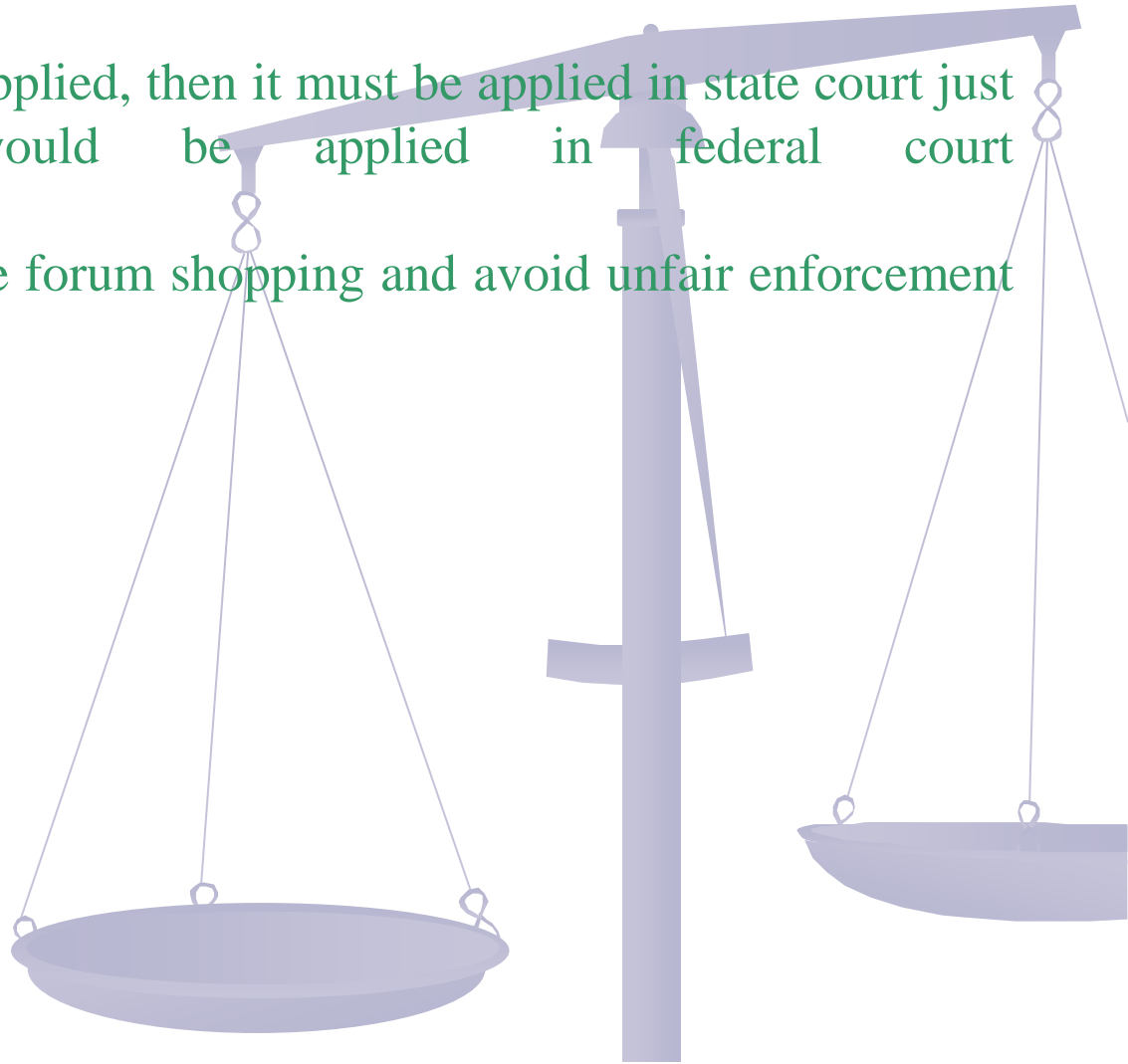


# The Erie Doctrine – Summary of Rules (cont.)

## Reverse Erie:

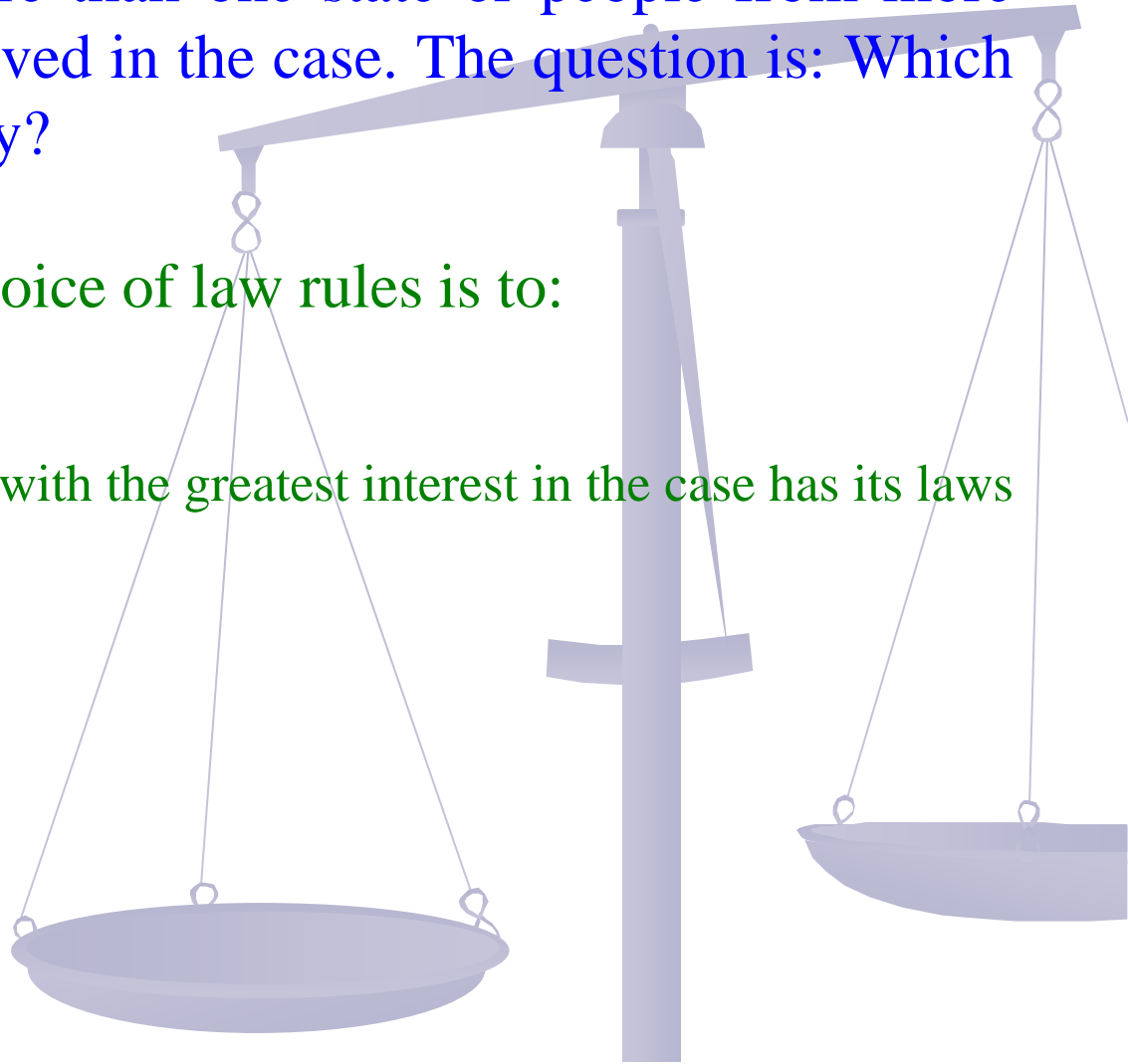
- If a federal law should be applied, then it must be applied in state court just as much as it would be applied in federal court

(Again, this is to discourage forum shopping and avoid unfair enforcement of the law.)



# Choice of Law – Conflicts of Laws

- ✦ This applied when more than one state or people from more than one state are involved in the case. The question is: Which state's law do you apply?
- ✦ Basic premise of the choice of law rules is to:
  - 1) avoid forum shopping;
  - 2) make sure that the state with the greatest interest in the case has its laws apply





# Choice of Law – Conflicts of Laws (cont.)

✚ Conflicts rules are generally matters of state law; here are some general rules that apply in many or most states:

- For tort cases: Generally, the law of the state in which the tort occurred will apply; unless that state really has a much weaker interest in the case than does another state
- For contracts cases: The state in which most of the activity happened in terms of the negotiation, execution etc. of the contract is the law that will govern the case, unless the contract has a choice of law provision.
- For property cases: The state in which the property sits will provide the applicable law
- For corporations and other business cases, the incorporation documents and state rules often provide for the choice of law issues that may arise

