

FORUM NON CONVENIENS - BACKGROUND

Forum non conveniens refers to a court's discretionary power to decline to exercise its [jurisdiction](#) where another court, or [forum](#), may more conveniently hear a case. Dismissing a case on forum non conveniens grounds is not a bar for [res judicata](#) purposes and, therefore, does not prevent a [plaintiff](#) from re-filing their case in the more appropriate forum. This doctrine may be invoked by either the [defendant](#), or [sua sponte](#) by the court.

Even if a plaintiff brings a case in an inconvenient forum, a court will not grant a forum non conveniens dismissal unless there is another forum that could hear the case and potentially recover [damages](#). Additionally, courts will not grant a forum non conveniens dismissal where the alternative forum's judicial system is grossly inadequate. For example, an American court would not grant a forum non conveniens dismissal where the alternative forum was Cuba.

Courts typically use a 2-part test to determine whether they will grant a defendant's forum non conveniens motion. The first part is a [balancing test](#) of both private and public factors, and the second part looks at what adequate alternative courts are available.

- Balancing Test
 - Private Factors
 - Ease of access to evidence
 - Interest of the two parties in their connections with the respective forums
 - The plaintiff's chosen court would be burdensome to the defendant
 - If a court finds this factor to be true, then that is often sufficient to dismiss the case and accept a forum non conveniens claim
 - Ease of obtaining witnesses
 - Enforceability of judgment
 - Public Factors
 - Whether the trial would involve multiple sets of laws, thus potentially confusing a jury
 - Having juries who may have a connection to the case
 - Local interest in having local interests heard at home

- Having the trial in a place where state laws govern
- Adequate Alternative Inquiry Test
 - The defendant must offer an alternate court that is able to hear the case
 - The alternate court must have the ability to provide a remedy to the plaintiff

A court will typically only invoke forum non conveniens sua sponte if it meets a 2-step test:

1. The court is a seriously inappropriate forum.
2. There is a substantially more appropriate court that is available for the plaintiff's claim.

Sometimes, courts attach conditions to forum non conveniens dismissals. For example, the court might require the defendant to waive defenses that would prevent the plaintiff from re-filing the suit in the alternative forum. Alternatively, a court might dismiss the case in favor of a foreign court, but only on the condition that the defendant allow [discovery](#).

On appeal, forum non conveniens decisions are evaluated using an [abuse of discretion](#) standard.

The Supreme Court considered forum non conveniens in [Piper Aircraft Co. v. Reyno](#), 454 U.S. 235 (1981). In that case, the Court held that so long as there was a [remedy](#) available in the alternate forum, it did not matter if the remedy was clearly insufficient. However, lower courts do not strictly follow this rule. Instead, they usually consider the adequacy of the alternative forum's remedy as another factor to be balanced when deciding whether or not to grant a forum non conveniens dismissal.

The Supreme Court has heard two cases on the issue of forum non conveniens in recent years:

In [Sinochem International Co. Ltd. v. Malaysia International Shipping Corp](#), the Supreme Court held that that a federal court may hear and pass a ruling on a forum non conveniens motion even if that court does not necessarily have subject-matter jurisdiction or personal jurisdiction over the case in front of the court. The Court decided that while courts typically need to consider [personal jurisdiction](#) and [subject-matter jurisdiction](#) before hearing a case [on the merits](#), this procedure does not necessarily apply when considering non merits issues.

The second case was [Atlantic Marine Construction Co. v. U.S. District Court for the Western District of Texas](#), which determined that courts should use [28 U.S.C. 1404\(a\)](#), which

allows for the transfer of cases between jurisdiction, for the purposes of granting a forum non conveniens motion.

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