

A woman domiciled in a foreign country brought a wrongful discharge action in federal court in State A against her former employer. The employer is incorporated in State A and headquartered in State B. The woman had worked at the employer's office in the foreign country. Her on-site manager, who had sole discretion over personnel matters, had made the decision to discharge her. The manager has now retired and continues to live in the foreign country.

Under the employment laws of the foreign country, if the woman succeeds in her action, her damages would be limited to two years' salary. If the woman succeeds in her action under State A employment law, her damages could be much greater and could include emotional distress and punitive damages.

The employer filed a motion to dismiss the action for insufficient service of process, which the court denied. The employer then moved to dismiss the action for forum non conveniens.

Is the court likely to dismiss the action for forum non conveniens?

- A. No, because the employer waived its right to challenge the forum by failing to include that challenge in its first motion to dismiss.
- B. No, because the remedies available to the woman under the foreign country's laws are less favorable than those available under State A law.
- C. Yes, because the foreign country is the more appropriate forum given that the discharge occurred there and the evidence is located there.
- D. Yes, because the woman is a foreign citizen and therefore her choice of forum is not entitled to deference.

## Explanation:

### Doctrine of forum non conveniens

<b>Definition</b>	<ul style="list-style-type: none"><li>• Power of federal court to dismiss or stay lawsuit when state or foreign judicial system is better suited to hear case</li></ul>
<b>Private interest factors</b>	<ul style="list-style-type: none"><li>• Accessibility of evidence</li><li>• Availability of witnesses</li><li>• Burden on defendant</li><li>• Enforceability of judgment</li></ul>
<b>Public interest factors</b>	<ul style="list-style-type: none"><li>• Ability to comprehend substantive law</li><li>• Choice of law</li><li>• Interest of jury/community</li><li>• Functionality of foreign judicial system</li></ul>

The doctrine of **forum non conveniens** allows a federal court to **dismiss or stay** a lawsuit if a **state or foreign judicial system** provides a **more convenient forum** to hear the case. In making this determination, the federal court must weigh several **private and public interest factors** (see table above)—none of which are determinative on their own.

Here, one factor that weighs *against* dismissing the woman's action is that the remedies available under the foreign country's laws are less favorable than those available under State A law. However, the following factors weigh *in favor* of dismissal:

- The foreign country has a heightened interest in having its courts adjudicate the action since the events occurred and the parties are located there.
- There is only a slight burden on the employer to litigate in the foreign country because it has offices there.
- The witnesses are readily available in the foreign country since the woman is domiciled there and the manager who discharged her lives there.
- The evidence is more easily accessible in the foreign country since the events leading to the discharge occurred there.

Therefore, the federal court is likely to dismiss the action for forum non conveniens **(Choice B)**.

**(Choice A)** A defendant **waives** certain defenses that are not asserted in a pre-answer motion or an answer, whichever occurs first. Unlike challenging the forum based on improper venue, forum non conveniens is not one of these waivable defenses.

**(Choice D)** A federal court generally gives less deference to a foreign plaintiff's choice of forum. However, the fact that the woman is a foreign citizen, by itself, does not determine whether the court should dismiss for forum non conveniens. Instead, the court must weigh private and public interest factors to determine the most convenient forum for the parties.

**Educational objective:**

Under the doctrine of forum non conveniens, a federal court can dismiss or stay a lawsuit if a state or foreign jurisdiction is a more convenient forum. To make this decision, the court will examine several factors, including the accessibility of evidence and witnesses.

**References**

- Piper Aircraft Co. v. Reyno, 454 U.S. 235, 257–60 (1981) (explaining how a court weighs private and public factors to make a forum non conveniens determination).

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