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***FORUM NON CONVENIENS: THE BATTLE
OVER THE MOST SUITABLE FORUM
FOR INTERNATIONAL LITIGATION***

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A. THE EQUITABLE DOCTRINE OF *FORUM NON CONVENIENS*

The doctrine of *forum non conveniens* permits a federal trial court to decline to exercise its jurisdiction “when an alternative forum has jurisdiction to hear [the] case, and trial in the chosen forum would establish oppressiveness and vexation to a defendant out of all proportion to plaintiff’s convenience, or the chosen forum is inappropriate because of considerations affecting the court’s own administrative and legal problems.”¹

The doctrine derives from a court’s inherent power, under Article III of the Constitution, to control the administration of the litigation before it, and to prevent a court’s own processes from becoming instruments of abuse, injustice, and oppression. As the Supreme Court long ago observed: “the equitable powers of courts of law over their own process, to prevent abuses, oppression, and injustice, are inherent and equally extensive and efficient.”² Through the *forum non conveniens* doctrine, courts can remedy the consequences of an oppressive, vexatious, abusive, and “most inconvenient” forum selection – even if that forum is legally proper.

In *Gulf Oil Corp. v. Gilbert*,³ long regarded as the seminal case concerning the application of the doctrine of *forum non conveniens* in the federal courts, the Supreme Court saw *forum non conveniens* as a doctrine to be employed in cases of plaintiff “harassment” through “misuse of venue:”

But the [federal courts’] open door may admit those who seek not merely justice but perhaps justice blended **with some harassment**. A plaintiff sometimes is under temptation to resort to a strategy of **forcing the trial at a most inconvenient place** for an adversary, even at some inconvenience to himself

[This “misuse of venue”] problem is a very old one affecting the administration of the courts as well as the rights of litigants, and both in England and in this country the common law worked out techniques and criteria for dealing with it.⁴

In such circumstances, the *Gilbert* Court concluded, “a court may resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute.”⁵

¹ See *Sinochem Int’l Co., Ltd. v. Malaysia Int’l Shipping Corp.*, ___ U.S. ___, 127 S. Ct. 1184, 1190 (2007).

² See *Gumbel v. Pitkin*, 124 U.S. 131, 144, 8 S. Ct. 379, 383 (1888); see also *Chambers v. NASCO*, 501 U.S. 32, 44, 111 S. Ct. 2123, 2133 (1991) (the power to dismiss an action on *forum non conveniens* grounds is based on the inherent powers of the federal courts).

³ 330 U.S. 501, 67 S. Ct. 839 (1947).

⁴ *Id.* at 507, 67 S. Ct. at 842 (emphasis added).

⁵ *Id.*

