

that was or would have been adopted by the transferor court. *Ferens v. John Deere Co.*, 110 S.Ct. 1274 (1990), carries the Erie-based, anti--forum--shopping rule of *Van Dusen* one step further. *Ferens* held that even where the plaintiff institutes the transfer, the transferor court's rules generally would govern in the transferee court.

b) No Federal Common Law in Diversity Cases - Apply State Law

Separate and apart from the issue of *which* state's law to apply, a federal court must not avoid state law when it does not agree with a state court's conclusion on a particular issue. As a general rule, there is no federal common law for diversity cases. Consequently, when a federal court is hearing a case under its diversity jurisdiction, it must apply the same substantive law that would have been applied if the suit had been filed in a court of the state where the federal court is located. *Erie Railroad v. Tompkins*, 304 U.S. 64 (1938). The federal court is not free to make its own independent judgment, from a policy standpoint, of the better construction of an ambiguous statute. *Id.* Instead, the federal court must try to predict from available state case law how the state's highest court would be likely to interpret the statute.

## II. RECOGNITION AND ENFORCEMENT OF OTHER STATES' AND FOREIGN JUDGMENTS

### A. Full Faith and Credit

The United States Constitution provides:

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

By statute, the Congress has required that full faith and credit be given to judgments between and among: 1) state courts; 2) federal courts; and 3) courts of the U.S. territories. Consequently, *assuming no "defense" set forth below applies*, "[t]he full faith and credit clause of the United States Constitution requires that a final judgment entered in a sister state must be respected by the courts" of another state. *See Karow v. Mitchell*, 110 Nev. 958 (Nev. 1994).

### B. Defenses to Recognition or Enforcement

1) OTHER STATE'S JUDGMENT

a) Lack of Jurisdiction

A court is not required to enforce the judgment of another court if 1) the other court lacked jurisdiction and 2) the party challenging the judgment did not litigate the jurisdictional issue (or have the opportunity to) in the other court.

b) Fraud; Equitable Defenses

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A judgment obtained by fraud is not entitled to full faith and credit. There are two types of fraud.

(1) Extrinsic Fraud

Fraud in the judgment is categorized as extrinsic fraud if it was procured by outright fraudulent tactics going to the heart of the judgment itself such as bribery of judicial officers.

(2) Intrinsic Fraud

Intrinsic fraud occurs when a party uses fraudulent documents or commits perjury. Essentially, it is fraud committed regarding an element of the overall case.

c) Not on Merits

A judgment that is entered “not on the merits,” is not entitled to full faith and credit. An elementary example should illustrate the point: If a case is dismissed in one state because of lack of subject-matter jurisdiction, the dismissal would not preclude the plaintiff from bringing the action in another forum *with* subject-matter jurisdiction.

d) Judgments Lacking Finality

Judgments that are on appeal, or otherwise not final, are not entitled to full faith and credit.

2) INTERNATIONAL JUDGMENT

International judgments are not subject to full faith and credit. A court would examine the following factors in determining whether to enforce such a judgment:

a) Lack of Jurisdiction

An international judgment rendered by a court which did not have jurisdiction is not enforceable in the United States. The court will not look to the jurisdictional determination of the foreign court, but rather will attempt to decide whether *due process* requirements have been met. If the American court finds that due process was violated, it will not enforce the judgment. Accordingly, if a foreign judgment rests on suspect jurisdictional grounds, it will not likely be enforced. Examples include jurisdictions which recognize personal jurisdiction over people even if only limited personal assets are in the jurisdiction. Other countries may find that jurisdiction exists merely if the person was once a resident of the country.

b) Public Policy

If enforcement of a forum judgment would offend the public policy of the forum court, the judgment will not be enforced. Examples may include judgments based on contracts involving involuntary servitude or other offensive subject-matter. Incidentally, public policy used to be a