

Case 189/87

Athanasios Kalfelis

v

Bankhaus Schröder, Münchmeyer, Hengst and Co. and Others

(reference for a preliminary ruling  
from the Bundesgerichtshof)

(Articles 5 (1) and 6 (3) of the Brussels Convention —  
More than one defendant — Concept of  
tort, delict and quasi-delict)

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Summary of the Judgment

- Convention on Jurisdiction and the Enforcement of Judgments — Special jurisdictions — More than one defendant — Jurisdiction of the court for the place where one of the defendants is domiciled — Conditions — Connection between the actions within the meaning of the Convention*  
(Convention of 27 September 1968, Art. 6 (1))
  - Convention on Jurisdiction and the Enforcement of Judgments — Special jurisdictions — Jurisdiction for 'matters relating to tort, delict or quasi-delict' — Concept — Independent interpretation — Action to establish liability unconnected with matter relating to a contract — Action based on several grounds — Exclusion of claims not based on grounds of tort or delict*  
(Convention of 27 September 1968, Art. 5 (3))
1. For Article 6 (1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters to apply, a connection must exist between the various actions brought by the same plaintiff against different defendants. That connection, whose nature must be determined independently, must be of such a kind that it is expedient to

determine the actions together in order to avoid the risk of irreconcilable judgments resulting from separate proceedings.

2. The expression 'matters relating to tort, delict or quasi-delict' contained in Article 5 (3) of the Convention must be regarded as an independent concept

covering all actions which seek to establish the liability of a defendant and which are not related to a 'contract' within the meaning of Article 5 (1).

A court which has jurisdiction under Article 5 (3) over an action in so far as it is based on tort or delict does not have jurisdiction over that action in so far as it is not so based.

## REPORT FOR THE HEARING delivered in Case 189/87 \*

### I — Facts and procedure

#### A — *The facts*

- (1) The course of the procedure before the national court

Bankhaus Schröder, Münchmeyer, Hengst und Co., now known as HEMA, is a private banking establishment whose registered office is at Frankfurt am Main and which is at present in liquidation. In Luxembourg it founded Bankhaus Schröder, Münchmeyer, Hengst International SA, a wholly owned subsidiary. Ernst Markgraf is a procurator holder for Bankhaus Schröder, Münch-

meyer, Hengst und Co. of Frankfurt am Main. At the material time he was employed in the foreign department of that bank.

Between March 1980 and July 1981, Athanasios Kalfelis concluded with Bankhaus Schröder, Münchmeyer, Hengst International SA (that is to say the Luxembourg bank), through Mr Markgraf and with Bankhaus Schröder, Münchmeyer, Hengst und Co. of Frankfurt am Main acting as intermediary, certain spot and futures transactions in silver bullion and at that time paid DM 344 868.52 to the bank established in Luxembourg.

Mr Kalfelis's futures transactions resulted in a total loss. He then brought proceedings against the two banking establishments and

\* Language of the Case: German.