

JUDGMENT OF THE COURT
6 OCTOBER 1976¹

**Ets. A. de Bloos, S.P.R.L.
v Société en commandite par actions Bouyer
(Preliminary ruling requested
by the Cour d'Appel of Mons)**

'Brussels Convention on Jurisdiction and the Enforcement of Judgments in
Civil and Commercial Matters, Article 5 (1)'

Case 14/76

Summary

1. *Convention of 27 September 1968 — Special powers — Matters relating to a contract — Obligation — Concept*
(Convention of 27 September 1968, Article 5 (1))
2. *Convention of 27 September 1968 — Special powers — Matters relating to a contract — Exclusive concession — Action brought by the grantee against the grantor — Contractual obligation — Concept — Compensation by way of damages — Action for payment — Powers of the national court*
(Convention of 27 September 1968, Article 5 (1))
3. *Convention of 27 September 1968 — Special powers — Grantee of an exclusive sales concession — Control of branch, agency or other establishment — Criteria for distinction*
(Convention of 27 September 1968, Article 5 (5))

1. For the purpose of determining the place of performance within the meaning of Article 5 of the Convention of 27 September 1968 the obligation to be taken into account is that which corresponds to the contractual right on which the plaintiff's action is based. In a case where the plaintiff asserts the right to be paid damages or seeks the dissolution of the contract by reason of the wrongful conduct of the other party, the obligation referred to in Article 5 (1) is still that which arises under the contract and the non-performance of which is relied upon to support such claims.
2. In disputes in which the grantee of an exclusive sales concession charges the grantor with having infringed the exclusive concession, the word 'obligation' contained in Article 5 (1) of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in Civil and Commercial Matters refers to the obligation forming the basis of the legal proceedings, namely the contractual obligation of the grantor which corresponds to the contractual

¹ — Language of the Case: French.

right relied upon by the grantee in support of the application.

In disputes concerning the consequences of the infringement by the grantor of a contract conferring an exclusive concession, such as the payment of damages or the dissolution of the contract, the obligation to which reference must be made for the purposes of applying Article 5 (1) of the Convention is that which the contract imposes on the grantor and the non-performance of which is relied upon by the grantee in support of the application for damages or for the dissolution of the contract.

In the case of actions for the payment of compensation by way of damages, it is for the national court to ascertain whether, under the law applicable to the contract, an independent contractual obligation or an obligation replacing the unperformed contractual obligation is involved.

3. When the grantee of an exclusive sales concession is not subject either to the control or to the direction of the grantor, he cannot be regarded as being at the head of a branch, agency or other establishment of the grantor within the meaning of Article 5 (5) of the Convention of 27 September 1968.

In Case 14/76

Reference to the Court under Article 1 of the Protocol concerning the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters by the Cour d'Appel of Mons, for a preliminary ruling in the action pending before that court between

ETS. A. DE BLOOS, S.P.R.L., Leuze, Belgium,

and

SOCIÉTÉ EN COMMANDITE PAR ACTIONS BOUYER, Tomblaine (Meurthe-et-Moselle), France,

on the interpretation of Article 5 of the Convention on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters signed in Brussels on 27 September 1968 by the six original Member States of the Community,

THE COURT

composed of: R. Lecourt, President, H. Kutscher and A. O'Keefe, Presidents of Chambers, A.M. Donner, J. Mertens de Wilmars, P. Pescatore, M. Sørensen, Lord Mackenzie Stuart and F. Capotorti, Judges,

Advocate-General: G. Reischl

Registrar: A. Van Houtte

gives the following