

Case C-281/02

Andrew Owusu

v

N. B. Jackson, trading as ‘Villa Holidays Bal-Inn Villas’ and Others

(reference for a preliminary ruling from the Court of Appeal (England & Wales)
Civil Division)

(Brussels Convention – Territorial scope of the Brussels Convention – Article 2 –
Jurisdiction – Accident which occurred in a non-Contracting State – Personal
injury – Action brought in a Contracting State against a person domiciled in that
State and other defendants domiciled in a non-Contracting State – Forum non
conveniens – Incompatibility with the Brussels Convention)

Opinion of Advocate General Léger, delivered on 14
December 2004 ?I - 0000

Judgment of the Court (Grand Chamber), 1 March 2005
?I - 0000

Summary of the judgment

1. *Convention on Jurisdiction and the Enforcement of Judgments – Jurisdiction – Dispute between parties domiciled in one Contracting State, which has connecting factors to a non-Contracting State – Applicability of Article 2 of the Convention (Brussels Convention of 27 September 1968, Art. 2)*
2. *Convention on Jurisdiction and the Enforcement of Judgments – Jurisdiction – Jurisdiction of the court of a Contracting State based on Article 2 of the Convention – Declining jurisdiction on the basis of the doctrine of forum non conveniens – Not permissible (Brussels Convention of 27 September 1968, Art. 2)*
1. Article 2 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, applies to a dispute before the courts of a Contracting State between parties domiciled in that State, which has certain connecting factors to a non-Contracting State but not to another Contracting State, thus such circumstances involving relationships between the courts of a single Contracting State and those of a

non-Contracting State rather than relationships between the courts of a number of Contracting States.

Although, for the jurisdiction rules of the Convention to apply at all the existence of an international element is of course required, the international nature of the legal relationship at issue need not however necessarily derive, for the purposes of the application of that provision, from the involvement, either because of the subject-matter of the proceedings or the respective domiciles of the parties, of a number of Contracting States. The involvement of a Contracting State and a non-Contracting State, for example because the claimant and one defendant are domiciled in the first State and the events at issue occurred in the second, would also make the legal relationship at issue international in nature.

Moreover, the designation of the court of a Contracting State as the court having jurisdiction on the ground of the defendant's domicile in that State, even in proceedings which are, at least in part, connected, because of their subject-matter or the claimant's domicile, with a non-Contracting State, is not such as to impose an obligation on that State, so that the principle of the relative effect of treaties is not affected.

(see paras 25-26, 30-31, 35)

2. The Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, precludes a court of a Contracting State from declining the jurisdiction conferred on it by Article 2 of that convention on the ground that a court of a non-Contracting State would be a more appropriate forum for the trial of the action even if the jurisdiction of no other Contracting State is in issue or the proceedings have no connecting factors to any other Contracting State.

No exception on the basis of the *forum non conveniens* doctrine was provided for by the authors of the Convention, and application of that doctrine would be liable to undermine the predictability of the rules of jurisdiction laid down by the Convention and consequently to undermine the principle of legal certainty, which is the basis of the Convention. Moreover, allowing *forum non conveniens* would be likely to affect the uniform application of the rules of jurisdiction contained in the Convention and the legal protection of persons established in the Community.

(see paras 37, 41-43 and operative part)