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CASE NOTE**



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Sample

Khorasandjian v Bush [1993] QB 727

- Court details

House of Lords.

- Procedural history

On appeal from the Court of Appeal's decision.

- Facts

The plaintiff was a young woman who was receiving harassing telephone calls at home from a former boyfriend. She lived with her parents in a house owned by her mother. The plaintiff was an 18 year old woman who was being harassed by the 23 year old male defendant. He had threatened her with violence, behaved aggressively when he saw her, shouted abuse at her and he would pester her with phone calls at her parents and grandparents house. He had spent time in prison for threatening to kill her. The Court of Appeal granted the woman an injunction against the defendant on the basis that the telephone calls constituted an actionable nuisance. The injunction was in civil law prevent him "using violence to, harassing, pestering or communicating" with her.

The defendant appealed against the injunction on the ground that the judge had no jurisdiction to grant such an injunction as harassing, pestering or communicating did not constitute any tort known to law. The defendant claimed that whilst the persistent telephone calls were capable of constituting the tort of nuisance, the claimant did not have an interest in the land and therefore had no cause of action in tort law.

- Issues

The issue was whether the injunction granted by the Court of Appeal that was used to restrain the defendant from various forms of activity directed at the plaintiff, and this

included an order restraining him from "harassing, pestering or communicating with" the plaintiff was actually valid in nuisance. The question before the Court of Appeal was whether the judge had jurisdiction to grant such an injunction, in relation to telephone calls made to the plaintiff at her parents' home as the plaintiff did not have a proprietary interest in the home and up until this time a proprietary interest was necessary for an granting an injunction in nuisance.

Therefore, it was up to the House of Lords to decide whether they should depart from the centuries old tradition that nuisance was only available to those who have a proprietary interest in land. If they were to do so they would be changing well established English common law through judicial interpretation.

- Reasoning / Decision (commentary)

Private nuisance

Private nuisance is essentially a land based tort. In order to bring a claim in private nuisance, a claimant must have an interest in the land in which he asserts his enjoyment or use has been unreasonably interfered with (*Malone v Laskey* [1907] 2 KB 141). This case asked the House of Lords to decide whether such precedent and legal reasoning should be followed. To not do so would be a break with a centuries old tradition in English law.

The home was the property of the plaintiff's mother, and it was recognised that her mother could complain of persistent and unwanted telephone calls made to her. However, the defendant submitted that the plaintiff, as a mere licensee in her mother's house, could not invoke the tort of private nuisance to complain of unwanted and harassing telephone calls made to her in her mother's home.



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