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What constitutes a continuing private nuisance?

Jalla and another (Appellants) v Shell International Trading and Shipping Co Ltd and another (Respondents) (2023) UKSC 16

This appeal concerned the tort of private nuisance in the context of a major oil spill. The question at issue was whether there was a continuing private nuisance and hence a continuing cause of action. This was an important question because it affected when the limitation period for the bringing of claims started to run.

The claimants and appellants were two Nigerian citizens. The defendants and respondents were both companies within the Shell group of companies.

The Bonga oil field is located approximately 120km off the coast of Nigeria. On 20 December 2011, at 3:00am an oil leak lasting about six hours occurred during a cargo operation. The leak was caused by a rupture in one of the flowlines when crude oil was being transferred to a waiting oil tanker (the "Bonga Spill"). It is estimated that the equivalent of at least 40,000 barrels of crude oil leaked into the ocean. The defendants were alleged to be liable for the operation behind the Bonga Spill.

It was further alleged that the oil migrated from the offshore Bonga oil field to reach the Nigerian Atlantic shoreline where it was claimed it had had a devastating impact and had not been removed or cleaned up. Although the defendants dispute these claims, maintaining that the spill was successfully contained and dispersed offshore and that it did not impact the shoreline, it was assumed for the purposes of this appeal that some quantity of oil reached the Nigerian Atlantic shoreline within weeks of 20 December 2011.

The issue of limitation arose when the claimants sought to make certain amendments to their claim form and particulars of claim over six years after the Bonga Spill.

The claimants argued that so long as undue interference with their land was continuing, because oil on their land had not been removed or cleaned up, there was a continuing cause of action for the tort of private nuisance that was accruing afresh from day to day.

The Supreme Court unanimously rejected the appeal.

It was being assumed for the purposes of this appeal that the tort of private nuisance may be committed where the nuisance emanates from the sea or is a single one-off event. (The defendants' application for permission to cross-appeal on these issues was refused).

The tort of private nuisance is committed where the defendant's activity, or a state of affairs for which the defendant is responsible, unduly interferes with (or, as it has commonly been expressed, causes a substantial and unreasonable interference with) the use and enjoyment of the claimant's land. A claim in private nuisance is actionable only on proof of damage and is not actionable per se. This requirement is satisfied by establishing the undue interference with the use and enjoyment of the land. That includes physical damage to the land itself and damage to buildings or vegetation growing on the land. But commonly there will be an undue interference with the use and enjoyment of land – as by the impact of noise or smell or smoke or vibrations or being overlooked – even though there is no physical damage to the land or buildings or vegetation.

A continuing nuisance is in principle no different from any other continuing tort or civil wrong. In principle, and in general terms, a continuing nuisance is one where, outside the claimant's land and usually on the defendant's land, there is repeated activity by the defendant or an ongoing state of affairs for which the defendant is responsible which causes continuing undue interference with the use and enjoyment of the claimant's land. For a continuing nuisance, the interference may be similar on each occasion but the important point is that it is continuing day after day or on another regular basis. So, for example, smoke, noise, smells, vibrations and overlooking are continuing nuisances where those interferences are continuing on a regular basis. The cause of action therefore accrues afresh on a continuing basis.

Applying the relevant principles to the facts of this case, the claimants' argument that there is a continuing nuisance, because on the assumed facts oil is still present on their land and had not been removed or cleaned up, was rejected.

The effect of accepting the claimants' submission would be to extend the running of the limitation period indefinitely until the land was restored.

There was no continuing nuisance in this case because outside the claimant's land, there was no repeated activity by the defendants or an ongoing state of affairs for which the defendants were responsible that was causing continuing undue interference with the use and enjoyment of the claimants' land. The leak was a one-off event or an isolated escape. The cause of action accrued and was complete once the claimants' land had been affected by the oil.

To accept the claimants' submission would undermine the law on limitation of actions, which is based on a number of important policies principally to protect defendants but also in the interests of the state and claimants, because it would mean that there would be a continual re-starting of the limitation period until the oil was removed or cleaned up.

It was not surprising that the claimants could cite no case directly supporting the position they were advocating. And while there may be no authority that directly contradicts that submission, it was contrary to principle and would have the unfortunate consequence of undermining the law of limitation.

The full judgment may be found at: [Jalla and another \(Appellants\) v Shell International Trading and Shipping Co Ltd and another \(Respondents\) \(supremecourt.uk\)](https://www.supremecourt.uk/judgments/JJ130101.html)

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