

A case study on:

**The Chancellor, Masters & Scholars of the
University of Oxford and Ors.**

Vs.

Rameshwari Photocopy Services and Ors.

By

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Innovative Assignment

Submitted To:

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ACKNOWLEDGEMENT

We would like to thank Prof. Garima Panwar for guiding us at each step about the assignment and to clear the general doubts that we had in the subject. Mam was really friendly and was always willing to lend a helping hand towards the making of this assignment. This being an entirely new subject for us, we were completely unaware of the sources from which we can get the information from, mam showed us the correct direction (and the websites) so that we knew which source is trustworthy or not. What mam taught in the lectures was instrumental for understanding this case fully. Also, she was the one who suggested us to take up this case for this assignment. We are extremely grateful for all her support.

WHY WE CHOSE THIS CASE

First of all, we would like to thank Prof. Garima Panwar for suggesting us to take up this case.

The reasons which support our choice:

1. This case deals with copyright and its infringement, which is the most interesting and fascinating topics in the entire course of Law for Engineers.
2. The case concerns students and the way they purchase and study books. This, in particular, is very relevant to us being students ourselves. We also purchase second hand books or sometimes get parts of books photocopied. This particular case interests and bothers us as well.
3. This case also helps us to understand the Sections 52(1)(h) and 52(1)(i) in absolute detail.
4. This case also not being very old and relatively new, is very relevant and relatable. Old cases end up being very archaic and uninteresting.
5. This case also proves to be a landmark case in the history of the Copyright Act. This helped us to get the essential information without much efforts. It was very easy to find the case and result of the case on many websites. At the same time, we also learnt that every source is not trustworthy and we should select the sources of information wisely.
6. Final reason is, that the judgement ended in the favour of the university which is in turn in the favour of students and any person who is pursuing research.

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CHAPTER - 1

INTRODUCTION

1 Copyright Law of India

The Copyright Act, 1957 (as amended by the Copyright Amendment Act, 2012) gives rights to the creators of literary, dramatic, musical and artistic works and the producers of cinematographic films and sound recordings. These rights include the rights of reproduction of the work, communication of the work, adaptation of the work and translation of the work.

These rights are different from rights like right to equality or freedom etc., these rights are basically negative rights which prohibit others from reproduction, communication, adaptation and translation of the works. Unfair use of these works amounts to copyright infringement.

2 Copyright Infringement

Copyright infringement is the use of works protected by copyright law without permission, which infringes certain rights which are exclusively granted to the copyright owner which include-

- Reproduction
- Communication
- Adaptation
- Translation

The copyright owner is typically the work's creator, producer or the creator's employer if the work was created under a company's employment contract.

3 Exceptions to Copyright Infringement

Some intellectual property may be granted to promote public interest. This is done to promote research and learning in that field. Certain works may enlighten millions of people. The Berne Convention provides that an exception or limitation to copyright is permissible only if:

- it covers special cases
- it does not conflict with the normal exploitation of the work; and
- it does not unreasonably prejudice the legitimate interests of the author.

In India, Section 52 of the Copyright Act, 1957 (as amended by the Copyright Amendment Act, 2012), provides certain acts which won't amount to infringement of copyright i.e. fair dealing with a literary, dramatic, musical or artistic work not including computer programs.

This particular case focuses heavily on the clauses 52(1)(h) and 52(1)(i).

- Section 52(1)(h) –

The publication in a collection, mainly composed of non-copyright matter, bona fide intended for instructional use, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for such use in which copyright subsists:

Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years.

- Section 52(1)(h) –
the reproduction of any work-
(i) by a teacher or a pupil in the course of instruction; or
(ii) as part of the questions to be answered in an examination; or
(iii) in answers to such questions;

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MATERIAL FACTS

1. Rameshwari Photocopy Services is a shop in the premises of the Delhi School of Economics (Delhi University) authorized by the same to facilitate research and education.
2. The professors at DSE had authorized the shop to prepare “course packs” from the Plaintiffs’ publication books.
3. Average price of book = Rs.2542 average percentage of entire book copied = 8.81%.
4. The professors also instructed the shop owners to sell these course materials at 50p/page.
5. Thereafter in the year 2012, the respondents filed a case in the Delhi High Court, challenging the Rameshwari Photocopy Service Shop and the Delhi School of Economics (Delhi University) against infringement of copyright of their material.
6. Despite the main plaintiffs withdrew the case, Indian Reprographic Rights Association(IRRO), made an attempt to move a petition in Supreme Court challenging the judgment passed by the Division Bench of the Delhi High Court on December 9, 2016.
7. This appeal was not entertained as the Supreme Court the High Court’s decision.

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CASE OF THE PLAINTIFFS

The plaintiffs asserted that the inclusion of specific from their works into these “course packs” amount to infringement of copyright:

1. Plaintiffs claimed that the professors of the Delhi School of Economics issued books, through its library, to the Rameshwari Photocopy Service Shop.
2. They further claimed that the shop was operating commercially by charging 50p/page instead of 20-25p/page charged at other photocopy shops.
3. They added that the “course packs” or compilations became competent in the market, as the students won’t purchase the actual books because of being costly and will find the actual books of less use.
4. On legal grounds, the plaintiffs said that the reproduction carried out cannot be considered as a “reproduction by a teacher or pupil in the course of instruction”.
5. Furthermore, if the reproduction is considered under section 52(1)(i) then the section 52(1)(h) will become useless, hence they urged the court to merge these two sub-sections.
6. Further, they added that the section 52(1)(h) only allows copying of two passages from the work of the same author, which was violated as many passages were copied.

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DEFENCE'S ARGUMENTS

1. The Rameshwari Photocopy Service Shop pleaded that they produced copies abiding by the fair use within the meaning of Sections 52(1)(a) and (h).
2. They also pleaded that the course packs were charged according to the nominal rates as decided in the License Deed between the Delhi School of Economics and the Rameshwari Photocopy Service Shop.
3. The purpose, they stated, was that the students couldn't afford all the books as listed in the syllabi made by the Delhi School of Economics.
4. Apart from this, the Delhi School of Economics stated that the Section 52(1)(i) permitted the university's professors and pupils to copy any works or portions of those works for research and educational purposes.
5. The term "reproduction" mentioned in Section 52(1)(i) did not limit the educational institutions on the quantity of the copies made. Limits are only applied in Section 52(1)(h), where only two passages may be copied.
6. Also, the words "reproduction" used in Section 52(1)(i) and "publication" used in Section 52(1)(h) are completely different. "publication" refers to 'making a work public' (Referring to Section 3), where the term "public" represents a scope far wider than the term "students".

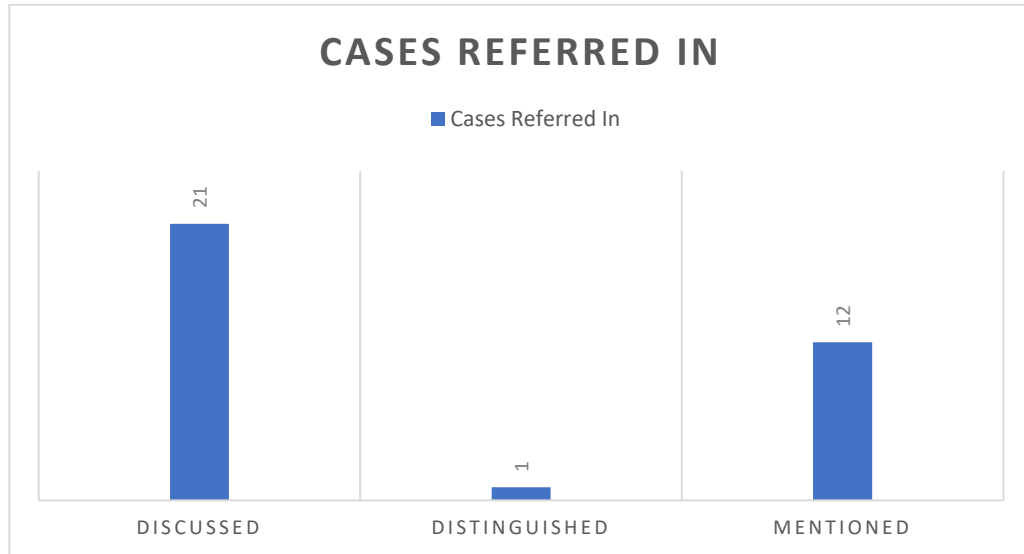
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JUDGEMENT

1. The judgement clarified the plaintiffs are not facing any competition from the “course packs” or compilations because, even if there were no “course packs” the students could have issued books from the library which is completely free. Ultimately, the books don’t face any additional competition from the “course packs”.
2. The court considered that the purpose of copyright infringement is above everything else. If the generation of course packs facilitates the process of research and education, then it is included in the Doctrine of Fair Use.
3. The cost of actual books was way higher than that of the compilations.
4. The test of fairness of use is not quantitative but qualitative. The university distributed the course packs only to the students with identity cards and no one else and did not allow profit of more than 2p/page.
5. The court then proceeded to the Section 52(1)(i) which was the core issue of the case. It held that the word “reproduction” which means ‘making a copy of’ also included its plural. And the terms “teacher” and “pupil” also included their respective plurals.
6. Next, the court also defined the phrase ‘in the course of teaching’. It asserted that the phrase would mean the entire process or programme spanning throughout the semester and not just the process carried out in the classroom alone. They further relied on the judgement of the High Court of New Zealand in Longman Group Ltd. v. Carrington Technical Institute Board of Governors [(1991) 2 NZLR 574], wherein the words ‘in the course of instruction’ in Section 21(4) of the New Zealand Copyright Act, 1962 were interpreted to include “anything in the process of instruction with the process commencing at a time earlier than the time of instruction, at least for a teacher, and ending at a time later, at least for a student. So long as the copying forms part of and arises out of the course of instruction it would normally be in the course of instruction”.
7. The court refused to grant an interim injunction in favour of the publishers and only directed the Rameshwari Photocopy Service Shop to maintain records of the photocopies pertaining to the “course packs” and file the same in the suit every six months.
8. The court considered that it doesn’t matter if the students themselves take the books to get photocopied or the shopkeeper does it beforehand. Moreover, Justice Endlaw felt that it would take approximately a day to get these many books photocopied if the student goes on his own. So, it’s better if they have them photocopied and spiraled already.

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CASE REFERRED IN



Notable cases include:

1. Entertainment Network (India) Ltd. vs. Super Cassette Industries Ltd.¹
2. Krishika Lulla and Ors. vs. Shyam Vithalrao Devkatta and Ors.²
3. Nand Kishore Mehra vs. Sushil Mehra³
4. The J.K. Cotton Spinning & Weaving Mills Co. Ltd. vs. The State of Uttar Pradesh and Ors.⁴
5. Commercial Tax Officer, Rajasthan vs. Binani Cements Ltd. and Anr.⁵

¹ MANU/SC/2179/2008

² MANU/SC/1174/2015

³ MANU/SC/0421/1995

⁴ MANU/SC/0287/1960

⁵ MANU/SC/0121/2014

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CONCLUSIONS

1. The above case law is an excellent example to understand the exceptions to infringement of copyright especially the cases involving educational and research purposes.
2. Justice Endlaw places the purpose of use above all other factors.
3. The above case also establishes the fact that the legal system doesn't always go by the books and necessary definitions and explanations can be added to protect the needy ones.
4. The case values that the right to get an education is absolutely essential and the institutions which try to bring down the cost of education need to be encouraged and safeguarded.
5. Fair use must consider the quality of reproduction instead of the quantity. Here the institute distributed the "course packs" only to the students having the university I-cards.
6. The main plaintiffs withdrew the case from the Delhi High Court as they felt that competing with their stakeholders viz. the institutions is futile. Besides, the judgement was contested in the Supreme Court by Indian Reprographic Rights Association(IRRO). Given that the original suit filed before the Delhi high court had been withdrawn by the publisher plaintiffs (OUP etc.) and the IRRO was merely an intervenor in the lower court proceedings, Supreme Court decided to not to interfere in the High court order.
7. This case proves to be a landmark for the Copyright Act, 1957.

APPENDIX

Below is a list of the useful websites that were used in the making of this assignment under the guidance of the concerned faculty.

1. manupatra.com – for the actual case and the judgement
2. <http://www.livelaw.in/delhi-university-photocopy-shop-judgement-landmark-access-knowledge-movement-india/>
3. <https://spicyip.com/2016/12/du-photocopy-appeal-decision-another-landmark-victory-for-educational-access-in-india.html>
4. https://en.wikipedia.org/wiki/Rameshwari_Photocopy_Service_shop_copyright_case
5. <https://indiakanon.org/doc/114459608/>