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that house till



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BUSTER**

The section requires that there must be a positive act or an illegal omission on the part of the accused. This act or omission must cause a common injury, danger or annoyance to the public or to the people in general who live nearby or who occupy property in the neighbourhood. If such is not the case then the act or omission must definitely cause injury, obstruction, danger or annoyance to those persons who may have opportunity to use any public right. Liability for public nuisance does not cease to exist even if it causes some convenience or advantage. Parking one's car in front of the house of a person every night and remaining in that house till late in the night might have brought bad name to that family and might have put to shame the people of that locality, but it could not be public nuisance within the meaning of this section as it could not be held to be an annoyance to the public or to the people in general. But overhanging of trees dangerously over the neighbour's premises was held to be a public nuisance. Prostitution carried on in a clandestine manner in a house cannot be held to be a public nuisance even though persons come to know about the same and they feel their moral values outraged by the same.

A witness who utters words against another witness during cross-examination does not commit public nuisance. Playing of a radio at a high pitch during a particular time does not amount to public nuisance, and this act is also a trifle act. Violating another's trademark and thereby increasing the sale of his own brand of cigarettes does not amount to public nuisance, and though smoking is injurious to health it is not banned by law and is thus not eligible for a public remedy under section 91, Code of Criminal Procedure. Offending the sentiments of certain people by keeping meat

exposed to view does not amount to public nuisance. An absent owner of the premises in which public nuisance is being caused is generally not liable as the liability generally is that of the occupier of the premises.

It is not necessary that annoyance must be caused to each person within the range of the public nuisance; it is enough if some of them are injuriously affected. Lawful cremation of dead bodies at the appointed place does not amount to public nuisance even though it may cause annoyance to persons living nearby. Gambling at a public place may be a public nuisance if essentials of the section are met. But gambling at a private place in a clandestine manner may not be public nuisance as it does not cause annoyance to the public or to the persons generally living in the area. Liability under the Gambling Act may, however, exist. Prescriptive right cannot be claimed with respect to a public nuisance.

A nuisance may, however, be legalised by statutory authority. Public nuisances are punishable under the respective sections under this chapter depending upon the kind of public nuisance committed. There is a general provision, section 290, as well which is applicable when no specific provision applies.