



Expat Counsel

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CRIMINAL LAW IN THAILAND

Part XLIII: The criminal trial — proving elements of the crime



It's time to discuss the trial. Let's say you have been arrested and formally accused as discussed in earlier columns, but you deny the charges. The matter will be tried before a judge.

At this stage, as with other stages of criminal matters in Thailand, you have a right to a lawyer, a translator and to be present with your friends or family members. If you can't afford a lawyer and/or translator, one will be appointed for you at the state's expense.

For you to be convicted, it must be proved that you committed each element of the crime. For example, the important elements of the crime of theft are as follows — a dishonest intent to permanently deprive another of their property.

And we'll assume for this example you are accused of stealing Mr X's car. Let's analyse whether you committed the crime from the point of view of each of its elements. First, let's assume you did drive somewhere in Mr X's car without his permission. Thus we have to admit that at least two of the elements mentioned above, that the car is the property of another, are satisfied.

Dishonesty is a term of art and means you received a benefit in the property to which you are not entitled under law.

Certainly the law doesn't allow people to drive other people's cars without permission, so let's assume this element is also satisfied.

But let's look at more of what really happened. Your wife was crossing the street with you and was hit by a car. She was seriously bleeding. You desperately needed a car to drive her to the hospital. You saw Mr X's car sitting at the side of the road with the keys in it. You told a man standing there that you were just borrowing the car.

In the matter above, you would argue and present evidence at your trial that an element of the crime — the intent to permanently deprive Mr X of his property — is missing.

Permanently in this context means the defendant intended to acquire the car and had no intention to give it back. In this case, you were only borrowing it in an emergency.

And that's what criminal trials are about — deciding whether the defendant committed all of the elements of the crime.

Because even if most of the above elements were satisfied, you're not guilty unless all of them are.

But if you think making these decisions is a pretty simple matter, let's add a few facts to the above example.

What if the prosecutor argues you did plan to acquire the car permanently and says he can prove it. After you took the car to the hospital, you drove the car to your house, and that's where the police found it parked, four hours after the accident. If you didn't intend to take the car permanently, why didn't you take it back to where you'd found it?

Then you add some more evidence. The doctor at the hospital told you your wife had lost a lot of blood and should be taken home to rest immediately. You simply drove her home with the car, were helping her inside and planned to take the car back as soon as she was settled. Then the police showed up, so you never had the chance to return it.

Who's right? Who decides whether you are guilty or not, and what standards are used? We'll discuss these topics next time. ■

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