



Expat Counsel

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CRIMINAL LAW IN THAILAND

Part LXXI:

Nudity at clubs



Last time we discussed public nudity, such as tourists on a beach. Under Section 388 of Thailand's Criminal Code, it is a petty crime, punishable by a fine of 500 baht.

What about nudity in entertainment and nightlife? That, too, is illegal. As with beach nudity, those going nude in private clubs and bars are considered to be doing so in public, because it can be seen by members of the public, however willing.

Furthermore, Section 388 prohibits revealing clothing in the same context. There is no hard and fast definition of "revealing clothing" and this is defined by Thai custom and local tradition and the context of the act. For example, going topless in a bar would be considered a violation of Section 388, whereas breastfeeding in a public market would not.

Nudity in bars is illegal, you say? Obviously you, the authors of this column, have been spending too much time researching law at your desks. Why don't you pop over to Soi Cowboy, do a little on-the-ground reporting, and tell us what you see?

In fact, we understand these laws are spottily enforced. From the point of view of the law-enforcement tax dollar, arresting a bunch of low-income go-go dancers and fining them each 500 baht is not a high priority.

But the reason we raise the issue is that arrests do take place. For whatever reason, there are periodic crackdowns where the police do in fact make arrests for nude dancing. We recalled the last of these was a couple of years ago in February, 2009.

Our point, however, is that Thai law with respect to nudity in entertainment is consistent with that we have described in connection with other victimless crimes — it's not the underlying sex issue that is punishable, but the fact that it is done in public and/or may involve minors that has been singled out for potential punishment.

You'll recall, for example, that in the case of prostitution, paying for sex on an individual, private basis in one's own home or hotel room is not, as a practical matter, a serious

legal threat for either the prostitute or the customer. When the sex for hire is advertised, made available in places to which the public has access, is organised as a business by a third party or involves minors, Thailand's criminal laws may be invoked. And they are serious.

Of course, prostitution is punished under different provisions of the Thai criminal laws, but we use this point to emphasise the point we made above — that sex crimes are most likely to be punished in Thailand when they are committed in public.

So what happens if you're innocently sitting in a nightclub enjoying a little nude entertainment and the police show up and start arresting people?

Can you be arrested?

Generally, under Section 106 of the code, you cannot, because violations of Section 388 are petty crimes and supporters of petty crimes are not punishable.

On the other hand, for example, if you operate the nightclub and pay the employees to get naked, you will, under Section 86 of the code, be guilty of an offence, too.

Likewise, as discussed in earlier columns, if the police take the position that one or more of the nude dancers is a prostitute, or that there are prostitutes on the premises, all of the penalties in connection with prostitution would be applicable. For example, Section 6 of the Prevention and Suppression of Prostitution Act BE 2539, discussed at length in earlier weeks, would subject you to criminal penalties. Section 6 provides that anyone mingling in a place of prostitution for the purpose of prostitution of others or themselves shall be imprisoned for up to a month and a fine. ■

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