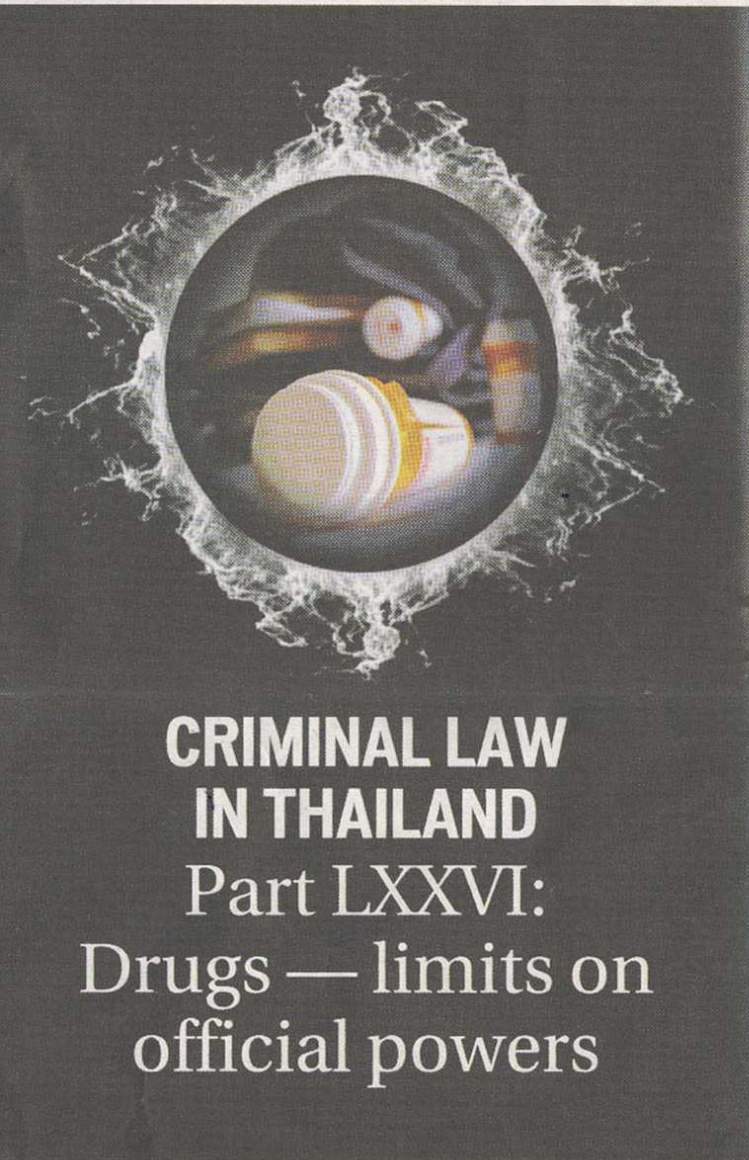




Expat Counsel

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CRIMINAL LAW IN THAILAND Part LXXVI: Drugs — limits on official powers

Last week we talked about the powers that drug enforcement agencies have to investigate, search and arrest in drug cases. What are the limits on these powers? Let's look, for example, at a variation on an example we talked about last week.

Suppose an off-duty police officer is eating in a restaurant. The place is filled with characters that look like they come straight out of *Trainspotting* and she senses somebody in the place is selling illegal drugs. The owner periodically unlocks a door and lets a customer in the back room. Later the door opens and the customer comes out. Can the officer demand to be allowed into the back room and search for drugs? Or if this request is refused could she call for backup and break into the room? The answer depends on a lot of factors relating to the law of arrest, search and seizure. We covered these issues in some depth in a series that ran in this column from April to August, 2010.

In general, a police officer must have a warrant to search for illegal drugs. A warrant is written permission from a judge, which must be signed and sealed by the judge. The idea is that society needs a neutral party to balance sometimes conflicting interests of society. These interests are the privacy of the individual and the need of society to protect itself against criminal activity.

The judge is a neutral party who is supposed to balance these interests and do what is most fair for everybody. Of course, getting a warrant takes time. Somebody has to go to a judge and discuss this with him or her. In legal circles, one of the traditional exceptions to the warrant requirement is what we call exigent circumstances, when the time needed to get the warrant will make an arrest impossible. Imagine in our example that the officer leaves and comes back a day or so later with a warrant. Maybe by this time the owner will have run out of drugs to sell or

have been tipped off that the police are on his trail. The standards the police officer would use on the spot are in Section 14 of the Narcotics Control Act, mentioned last time. First, the officer must have reasonable grounds to believe there are illegal drugs on the premises. Second, she must also reasonably believe that unless she acts immediately the drugs will be removed, hidden or destroyed. If both of these conditions are met, she can take action without a warrant. In the example mentioned above, there might be no real reason to think that the officer couldn't come back in a day or so and see the same deals going on. But what if another officer is walking his beat and sees a known drug dealer selling something to a bunch of known drug users out of the back of the dealer's car? Because of the inherent mobility of a car, the dealer will likely drive away with any evidence that he may have. This will, moreover, happen long before the officer can get a warrant. So he

is likely to be justified in using the exception to the warrant requirement mentioned above. Let's say the officer searches without a warrant, finds drugs and arrests the dealer. But what if the dealer later claims that the officer didn't have proper grounds for believing that the drugs would be removed, hidden or destroyed? It will be a judge that decides this. If the judge agrees with the dealer, the drugs found by the officer might not be used to convict the dealer. ■

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