



Expat Counsel

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CRIMINAL LAW IN THAILAND

Part LXXIX: Drugs — quantity means guilt, and don't be generous



There is a special assumption in the criminal law that we alluded to a couple of weeks ago. It is the concept of disposal. In the 1979 Narcotics Act, to dispose of means to sell, distribute, give away or exchange.

Of course, disposing of drugs is what a criminal doesn't want to be convicted of. As we'll discuss later, the penalties for this are higher than for mere possession. It reflects a commonly held belief that having a drug for your own use is less culpable than having it to sell or even give away.

In general, the Thai criminal law allows an accused to rebut all accusations.

For example, if you are to be convicted of theft it must be shown that you intended to permanently deprive the owner of whatever it is you're accused of stealing.

If you are tried for this, you have the right to show that though you may have taken something belonging to someone else, it was for another reason. For example, perhaps your intent was only to borrow it during an emergency.

With disposal, it's different. The facts may give rise to an irrebuttable presumption. For example, if you are in possession of 25g of heroin and are arrested with it, you will be tried for disposal, even though you have evidence that you were just going to use it yourself and not sell, distribute, exchange or give it away.

Here's an example that illustrates the irrebuttable presumption. Let's say you're a rich addict and periodically buy heroin in large quantities for your own use. You don't sell it or even give it away. You just take it yourself and have been doing this for years. If you're arrested with the 25g, can you introduce testimony from friends and relatives that you only use it yourself, so that what you're doing would not be considered disposal? No. Even though you really don't sell or distribute, because of the quantities involved the legal system will assume that you do, and the heavier penalties will be applicable to you.

Under Section 66 of the Narcotics Act this could include life imprisonment, a fine of up to five million baht, or even the death penalty.

If you really weren't disposing, it is unlikely you'd get the death penalty, because the judge has wide discretion to reduce a sentence based on mitigating circumstances. We'll cover these circumstances in a later column.

The presumption of intent to dispose applies not just to the most dangerous drugs, such as heroin. It also applies to recreational drugs such as marijuana. For example, arrest for possession

of, say, a few grammes of marijuana for personal use will expose you, under Section 76 of the Act, to imprisonment not exceeding five years and a fine of up to one hundred thousand baht.

If you're arrested with 10kg of marijuana or more, however, the irrebuttable presumption is that it's for disposal and you are, under Section 76/1 of the act, subject to a sentence of two to 15 years and a fine of from 200,000 baht up to 1.5 million baht, or both.

Here's another example. What if you're growing small amounts of marijuana in a field beyond your house? You live in a remote area and never sell any. You just harvest it and occasionally give friends a few grammes. It turns out that one of your friends is a police agent and you are arrested for disposing of marijuana. In this case there's no presumption of disposal, because what you are giving away is less than 10kg. But by giving it to someone you are in fact disposing, however, and are exposed to the penalty under Section 76/1 of the act; two to 10 years imprisonment and a fine, in this case, of up to 200,000 baht. ■

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