

A kidnapping statute in State A makes it a crime for a person, including a parent, to "take a child from the custody of his custodial parent, knowing he has no privilege to do so." After a bitter court battle, a woman and man were divorced, and the woman was given custody of their daughter.

The man later moved to State B, where he brought an action to obtain custody of the daughter. A local judge awarded him custody. His attorney incorrectly advised him that, under this award, he was entitled to take the daughter away from the woman. The man drove to State A, picked the daughter up at her preschool, and took her back to State B with him. He was indicted for kidnapping in State A, extradited from State B, and tried.

At trial, he testified that he had relied on his attorney's advice in taking the daughter, and that at the time he believed his conduct was not illegal.

If the jury believes the man's testimony, what should be its finding?

- A. Acquitted, because he acted on the advice of an attorney.
- B. Acquitted, because he lacked a necessary mental element of the crime.
- C. Convicted, because reliance on an attorney's advice is not a defense.
- D. Convicted, provided a reasonable person would have known that the attorney's advice was erroneous.

Explanation:

Mistake of law v. Mistake of fact

	Definition	Applicability
Mistake of law	Defendant mistakenly believes conduct not prohibited by law	No defense unless: Law prohibiting conduct was unavailable Defendant reasonably relied on invalid law Mistake negates mens rea*
Mistake of fact	Defendant is mistaken as to a matter of fact	When mistake negates mens rea: Specific intent – defense if honest mistake General intent & malice – defense if honest & reasonable mistake Strict liability – no defense

*Mens rea – state of mind necessary to be guilty of criminal offense.

A defendant's mistaken belief that his/her conduct was not prohibited by law (ie, **mistake of law**) is rarely a defense to criminal liability. But it is a **valid defense** when it **negates** the **required mens rea** (ie, **mental state**) for the crime.

Here, State A's kidnapping statute makes it a crime for any person to take a child from his/her custodial parent, *knowing* that he/she has no privilege to do so. And though the man took the daughter away from the woman (her custodial parent) in State A, his attorney had incorrectly advised him that he was legally entitled to take her. As a result, the man's mistake of law negates the necessary mental element of the crime, and he should be acquitted.

(Choices A, C & D) Erroneous legal advice from an attorney is not itself a valid defense—regardless of whether a reasonable person would have known that the advice was erroneous or relied on it. But it may negate the required mental state for the crime (as seen here). In that case, a mistake-of-law defense is appropriate.

Educational objective:

A defendant's mistaken belief that his/her conduct was not prohibited by law (ie, mistake of law) is a defense to a crime when it negates the required mens rea.

Copyright © 1997 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

