

In which of the following situations would a court applying common law doctrine be most likely to convict a defendant of the crime charged, despite the defendant's mistake?

- A. The defendant was charged with assault with intent to rape a woman who he mistakenly believed had agreed to have sexual intercourse with him.
- B. The defendant was charged with bigamy. He married his neighbor four years after her husband was reported missing at sea. The rescued husband returns alive. A state statute provides that a person is presumed dead after five years of unexplained absence. The defendant believed the statutory period was three years.
- C. The defendant was charged with burglary. He had broken into an office where he once worked and had taken a typewriter that he erroneously believed had been given to him before he was fired.
- D. The defendant was charged with murder after he shot and killed a man who had extorted money from him. The defendant mistakenly thought the victim had raised his hand to shoot when, in fact, the victim was shaking his fist at the defendant to frighten him.

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.

Mistake of fact is a **defense** to criminal liability for:

specific intent crimes – when the defendant's **honest mistake**, even if unreasonable, negates the requisite mens rea *and*

general intent crimes – when the defendant's **honest and reasonable mistake** negates the requisite mens rea.

But **mistake of law** is **almost never a defense** to criminal liability. As a result, the court would likely convict the defendant of bigamy—ie, marrying someone who already has a living spouse—despite his mistaken belief that the neighbor's husband was presumed by law to be dead.

(Choice A) Assault with intent to rape requires proof that the defendant specifically intended to commit rape—at common law, sexual intercourse with a woman (other than the defendant's wife) against her will by force or threat of force. Since the defendant's mistaken belief that the woman had agreed to sexual intercourse shows that he did not intend to rape her, he would not be convicted of assault with intent to rape.

(Choice C) Common law burglary is the breaking and entering of another's dwelling at night with the specific intent to commit a felony therein. Here, the defendant's mistaken belief that the typewriter was his negates the necessary intent to commit a felony (no intent to steal). Therefore, he would not be convicted of burglary.

(Choice D) Common law murder is an unlawful killing committed with *malice aforethought*. But murder may be reduced to voluntary manslaughter when, as here, the defendant mistakenly believed that deadly force was necessary for self-defense. So the defendant would likely be convicted of voluntary manslaughter—not murder.

Educational objective:

An honest mistake of fact is a defense to specific intent crimes (even if *unreasonable*) and general intent crimes (if *reasonable*) when it negates the requisite mens rea. But mistake of law is almost never a defense.

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