

A drug dealer agreed with another individual to purchase heroin from the individual in order to sell it on a city street corner. Unbeknownst to the drug dealer, the other individual was an undercover police officer whose only purpose was to arrest distributors of drugs. The drug dealer made a down payment for the heroin and agreed to pay the remainder after he sold it on the street. As soon as the undercover officer handed over the heroin, other officers moved in and arrested the dealer.

The jurisdiction follows the common law approach to conspiracy.

Could the dealer properly be convicted of conspiring to distribute drugs?

- A. No, because there was no overt act.
- B. No, because there was no plurality of agreement.
- C. Yes, because neither an overt act nor plurality of agreement is required at common law.
- D. Yes, because the dealer believed that all the elements of conspiracy were present and cannot take advantage of a mistake of fact or law.

### Explanation:

**Common law conspiracy** is (1) an **agreement** between **two or more persons** to commit a crime that is (2) entered with the **specific intent** to accomplish that crime. This requires proof of at least two guilty minds (ie, plurality of agreement). As a result, a defendant **cannot be convicted** of this crime if the other alleged conspirators **feigned agreement**.

Here, the drug dealer and another individual agreed to purchase and distribute heroin. But since that individual was an undercover police officer whose only purpose was to arrest drug distributors (not to commit a crime), there was no plurality of agreement. As a result, the dealer cannot properly be convicted of conspiracy in this common law jurisdiction.

**(Choices A & C)** Although common law conspiracy requires plurality of agreement, it does not require an overt act—discernible evidence that a conspiracy is at work (eg, the dealer's payment for drugs).

**(Choice D)** **Mistake of law** is rarely a defense to any crime. And **mistake of fact** is only a defense to conspiracy if that honest mistake *negates* the specific intent to commit a crime. Here, the dealer's mistaken belief that all elements of conspiracy were present would *support* that intent. But these defenses need not be considered since no conspiracy occurred.

### Educational objective:

Common law conspiracy requires proof of at least two guilty minds (ie, plurality of agreement), so the defendant cannot be convicted of conspiring with persons who feigned agreement.

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### Common law conspiracy



