

In which of the following situations would the defendant's mistake most likely constitute a defense to the crime charged?

- A. A local ordinance forbids the sale of alcoholic beverages to persons under 18 years of age. Relying on false identification, the defendant sells champagne to a 16-year-old high school student. The defendant is charged with illegal sale of alcoholic beverages.
- B. Mistaking the defendant for a narcotics suspect, an undercover police officer attempts to arrest him. The defendant, unaware that the person who has grabbed him is an officer, hits him and knocks him unconscious. The defendant is charged with assault.
- C. Relying on erroneous advice from his attorney that, if his wife has abandoned him for more than a year, he is free to marry, the defendant remarries and is subsequently charged with bigamy.
- D. The defendant, aged 23, has sexual intercourse with a 15-year-old prostitute who tells the defendant that she is 18. The defendant is charged with the felony of statutory rape under a statute that makes sexual relations with a child under 16 a felony.

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** when that misbelief, if true, would have **justified** the defendant's **criminal act**. Here, the defendant was charged with assault for knocking the police officer unconscious after the officer attempted to arrest him. But since the defendant mistakenly believed that he was being grabbed by an aggressor—not an undercover police officer—his use of reasonable force to resist that arrest was justified. Therefore, the defendant's mistake would constitute a defense to his assault charge.

Mistake of fact is also a defense when that **misbelief negates** the requisite **mens rea** for the charged crime. Therefore, mistake of fact is **no defense to strict liability crimes** because they have no mens rea requirement. And since (1) an ordinance forbidding the sale of alcohol to minors and (2) a statute criminalizing sex with an underage person both impose strict liability, mistaking a person's age is no defense **(Choices A & D)**.

(Choice C) Mistake of law is almost never a criminal defense. So relying on an attorney's erroneous legal advice—eg, that an abandoned spouse is free to remarry after a year—is no defense to bigamy.

Educational objective:

Mistake of fact is a defense if that misbelief (1) would have justified the defendant's criminal act had the belief been true or (2) negates the requisite mens rea for the charged crime. But it is never a defense to strict liability crimes.

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