

A man was charged with violating a state statute making it a crime "to hold or promote an illegal gambling event." The statutory definition of illegal gambling event includes "any private gathering held for the purpose of gambling in which the host charges an entrance fee or takes a percentage of the wagered money or players' winnings." At trial, it was established that the man arranged and hosted a private high-stakes poker tournament at his large estate and, in violation of the statute, took a \$10,000 entrance fee from each player.

Which of the following facts, if proved at trial, would serve as the man's best defense?

- A. At the time of trial, the statute making the man's conduct illegal was being challenged in the state's highest court.
- B. The man had just moved to the state and was unaware that his conduct was illegal.
- C. The man relied on the advice of his attorney, who erroneously told the man that his conduct was legal.
- D. The statute making the man's conduct illegal was not reasonably made available prior to the conduct.

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 generally **not a defense** to **criminal liability (Choice B)**. But mistake of law **is** a defense when:

the **charged conduct** is classified as a **malum prohibitum** offense—ie, an offense that is not inherently or obviously wrong (eg, gambling) *and* the **statute** making the conduct illegal was **not reasonably made available** prior to the conduct.

Here, the man arranged and hosted a private high-stakes poker tournament and, in violation of the state statute, took a \$10,000 entrance fee from each player. But if the man can establish that the statute making his conduct illegal was not reasonably made available prior to the tournament, he can rely on a mistake-of-law defense. That is because the charged offense is malum prohibitum (ie, not inherently wrong).

(Choice A) The fact that the statute making the man's conduct illegal was being challenged in the state's highest court at the time of the man's trial would not serve as a defense. A mere challenge to a statute does not invalidate it.

(Choice C) Erroneous legal advice from an attorney generally is not a valid defense, regardless of whether a reasonable person would have known that the advice was erroneous or relied on it. However, such advice may serve as a defense if it negates a

mental state required by a statute—eg, a statute requiring that the defendant knowingly violate the law or act without legal privilege (not seen here).

Educational objective:

Mistake of law is a defense to criminal liability when (1) the charged offense is classified as a malum prohibitum offense and (2) the statute making the defendant's conduct illegal was not reasonably made available prior to the conduct.

Copyright © UWorld. All rights reserved.