

Mistake

Mistake of Fact

- Is a complete defense to the alleged crime committed, if it serves to *negate an element of a crime*
- Most applicable to *specific intent crimes*, where it serve to negate the specific intent, even if the mistake is unreasonable
- Split in jurisdictions if an unreasonable mistake is a defense to a general intent crime; MPC allows the “unreasonable mistake” defense, as it negates the commission of a crime
- Unreasonable mistake *never a defense to reckless or negligent crimes*

Mistake (cont.)

Mistake of Law

General rule: *Ignorance of the Law is no excuse!*

Exceptions:

- If it negates a necessary element of mens rea for a specific intent crime
- Mistake in *reliance of statute* later found to be unconstitutional
- Mistake in *reliance of a judicial opinion* that ruled that the action was legal
- Mistake in *reliance on a government official* who presides or has jurisdiction over that specific area of law (reliance on a lawyer or a police officer in the street is not enough)
- Some statutes specifically state that lack of intent is a defense (e.g. tax evasion)

Necessity and Duress

Necessity - Elements

- a) Reasonable belief that
 - b) the criminal act is necessary
 - c) to prevent another harm
 - d) that is imminent and
 - e) that is greater than the harm that will result from the current criminal act; and
 - f) there is no less harmful way to achieve that objective
- Defendant himself cannot be the cause of the greater harm now sought to be avoided!

Necessity and Duress (cont.)

Duress- Elements:

- a) A person is threatened with a *harm*
 - b) (under common law, a severe bodily harm only)
 - c) that is *imminent*; and that
 - d) *cannot be avoided* in a non-criminal manner
- The threat cannot be defendant's fault
 - Not a defense to homicide or attempted homicide

Defenses – Entrapment

Elements:

- (a) A law enforcement official or agent of a law enforcement office
- (b) Seduces or convinces the defendant
- (c) To commit an illegal act
- (d) That he had no pre-disposition to commit

Burden of proof:

- Defendant must prove **entrapment** by a **preponderance of the evidence**
- Once proven, **prosecution** must prove **pre-disposition** beyond a reasonable doubt

QUIZ TIME

Consent

- An absolute defense where one of the elements of the crime is lack of consent
- Otherwise, generally not a defense
- Can be a defense to minor assaults
- Can be express or implied
- Never a defense to strict liability crimes

Consent – Absolute Defense	Consent – Partial Defense	Consent – No Defense
Forcible Rape Kidnapping	Murder (i.e., assisted suicide) Severe Assault during an athletic event	Statutory Rape