

CASEBRIEFS

The Understanding Video Lecture Series™

Mistake and Impossibility

What is it?

- Mistake of law – not knowing the law, or being mistaken on what the law means.
 - NEVER a defense. Ever. (well, almost never)
- Mistake of fact - being mistaken as to an important fact. - SOMETIMES
- Legal Impossibility – Always a defense
- Factual Impossibility - SOMETIMES

Let's Compare

	Specific Intent	General Intent
<u>Legal Impossibility</u>	Always a defense (if something is not illegal, no crime)	Always a defense
<u>Factual Impossibility</u>	No defense (think an unloaded gun, just because it will not factually be able to kill someone, the defendant can still be guilty of attempted murder)	No Defense
<u>Factual Mistake</u>	A defense, even if the mistake is reasonable (if it negates the required intent for the crime – think larceny: If you mistakenly take a coat, thinking it's yours, it is a defense to larceny)	Only a defense if mistake is reasonable
<u>Mistake of Law</u>	No defense (not even if your attorney advised you! Or a cop!)	No defense

Bad Advice

Caitlin, celebrating a recent promotion at work, took her best friends out for a delicious meal at the Top of the Bean Restaurant.

Unfortunately, it is a cash only establishment, and Caitlin has only thirty cents. Her friends have already left to catch the last train home. Caitlin's boyfriend, a lawyer at a prominent law firm in downtown Boston, who hasn't used cash for the last ten years, tells her that it's not a crime to accept services, such as a meal, without paying for them. Caitlin knows that her boyfriend is a smart and honest guy, and so the two leave without paying for the meal.

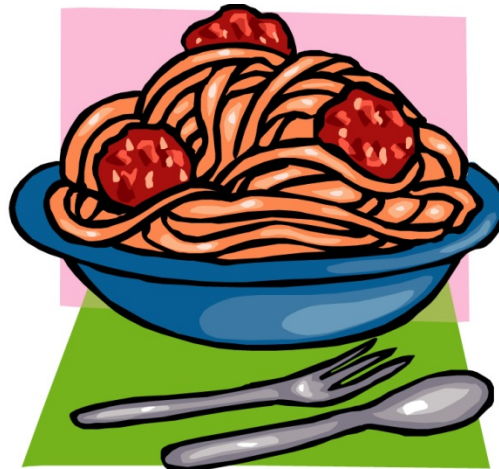
Unbeknownst to either Caitlin or her boyfriend, that very morning, the Massachusetts legislature amended its criminal statutes to expand their definitions of property to include services and other intangibles such as gas and electrical power. As is the usual practice, this amendment was set to be made available to the public the next morning in all of the local newspapers and television news programs.

The manager of the restaurant calls the police, who arrive and place Caitlin under arrest for larceny.

You are a criminal defense attorney that comes highly recommended by Caitlin's boyfriend. Advise Caitlin of the charge against her, her possible defenses, if any, and the probable result.

Mistake of Law

- This is one of the ONLY situations where mistake of law will work, there was no notice.
- However, had the legislature made the change available even an hour before dining, this would not be an applicable defense



Let's try another

- Leanne wants to kill Katy, but she also wants to be discreet about it. She assumes that Katy is deathly allergic to peanuts, so bakes her cookies with peanut butter in them. She delivers the cookies to Katy, who promptly eats them. In fact, Katy loves peanut butter and isn't allergic at all. Is Leanne guilty of a crime?

Attempt

- This is factual impossibility, the peanut butter is not going to kill Katy. However, Leanne still had the requisite intent to Kill, therefore attempted murder might be appropriate.



Remember this one?

- D's bicycle is stolen by persons unknown. A week later, D sees what he thinks is his bike in front of a store 3 blocks from where it was stolen. D takes the bike. It turns out D was wrong; it is a different bike that belongs to V. D discovers the error and returns the bike. What's D's worst crime?



Mistake of Fact

- He was mistaken as to whether the bike was his – so because larceny is a specific intent crime, his mistake can be reasonable OR unreasonable, and it's still a defense.

Let's try another crime

- Bob goes to a house party, and finds Alyssa very attractive. She's being very flirty, and he follows her upstairs. Alyssa clearly states "I just want to make out ,nothing more" but Bob is drunk and takes the flirtation to mean that she DOES want more. Bob forces her into intercourse, but claims that he honestly made a mistake, and thought she was consenting. Is this a valid defense?

No, no does mean no!

- So even if Bob's mistake was honest, if it's unreasonable, unlike with a specific intent crime, it won't work as a defense. Rape is a general intent crime, and therefore any mistake has to be REASONABLE.