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## General Principles

### 1. The police officer's claim of self-defense should be

*While walking home one evening, an off-duty police officer was accosted by a stranger. The stranger had been drinking and mistakenly thought the police officer was a man who was having an affair with his wife. Intending to frighten the police officer but not to harm him, the stranger pulled out a knife, screamed obscenities, and told the police officer he was going to kill him. Frightened and reasonably believing the stranger was going to kill him and that using deadly force was his only salvation, the police officer took out his service revolver and shot and killed the stranger. The police officer is charged with murder.*

- **Sustained, because the police officer reasonably believed the stranger was planning to kill him and that deadly force was required**
- Sustained, because the killing was in hot blood upon sufficient provocation
- Denied, because the stranger did not in fact intend to harm the police officer and the police officer was incorrect in believing that he did
- Denied, because the police officer was not defending his home and had an obligation to retreat or to repel with less than deadly force

Note:

*A is correct. To succeed in a claim of self-defense to a murder charge, the defendant must show that the defendant believed that the action taken was necessary to prevent imminent death or great bodily harm to himself from unlawful force and that the belief was reasonable. The question itself indicated that not only did the police officer believe that the stranger was going to kill him, but also that that belief was reasonable. Therefore, the police officer's self-defense claim should be sustained.*

*B is incorrect. It deals with the difference at common law between murder and manslaughter and does not involve the police officer's self-defense claim at all.*

*C is incorrect. This answer choice is contradicted by the wording in the question. The question states that the police officer's belief that the stranger was going to kill him was reasonable. In addition, the actual intent of the stranger, as well as the question of whether the police officer's reasonable belief was, in reality, correct, would not enter into the deliberation regarding the propriety of the police officer's self-defense claim.*

*D is incorrect. This answer is also contradicted by the wording of the question, which clearly indicates that the police officer's belief that using deadly force was "his only salvation" was also reasonable. The threat to the police officer was immediate and deadly, thereby allowing his self-defense claim to succeed. The police officer was not required to retreat or repel with less than deadly force. He only shot the stranger because he reasonably believed that it was necessary to prevent imminent death or great bodily harm from the stranger's unlawful use of force, so his claim of self-defense should be sustained.*

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## 2. Has the warehouse owner committed attempted arson?

Arson is defined in this jurisdiction as "the intentional burning of any building or structure of another, without the consent of the owner." The warehouse owner believed, however, that burning one's own building was arson, having been so advised by his lawyer. The owner of an old warehouse decided to destroy the warehouse because the taxes on the structure exceeded the income that he could receive from it. He crept into the building in the middle of the night with a can of gasoline and a fuse and set the fuse timer for 30 minutes. He then left the building. The fuse failed to ignite and the building was not harmed.

- Yes, because factual impossibility is no defense
- Yes, because a mistake of law, even on the advice of an attorney, is no defense
- No, because his mistake negated a necessary mental state
- **No, because even if his actions had every consequence he intended, they would not have constituted arson**

Note:

*D is correct. The warehouse owner, even if everything went as he had intended, could not have committed the crime of arson, nor can he be convicted of attempted arson. Arson requires that the building being burned be owned by "another" and that it be burned without the consent of the owner. Because he owned the building and consented to the burning, it was legally impossible for him to commit the crime of arson. Legal impossibility is a defense to an attempt charge, so the owner did not commit attempted arson.*

*A is incorrect. Although factual impossibility is not a defense, the owner also had a legal impossibility claim that served as a defense to the attempt charge.*

*B is incorrect. Mistake of law can be a defense, and it confuses the mistake of law defense to a criminal charge with the legal impossibility defense to an attempt charge. It was impossible for the owner to commit the crime of arson, regardless of whether the owner made the mistake of believing it was. This kind of legal impossibility is a defense to a charge of attempted arson.*

*C is incorrect. The owner's "mistake" did not negate a necessary mens rea. The owner did have the requisite mental state for arson, which is intentionally burning a building. However, he could not be convicted of attempted arson, because the building he intended to burn was his own.*

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### 3. If the man is charged with attempting to violate this statute, he is

A statute in the jurisdiction provides: "A person commits rape in the second degree if he has sexual intercourse with a girl, not his wife, who is under the age of 16 years." A girl told a man she would like to have sexual intercourse with him and that he should come to her apartment that night at 7 p.m. After the man arrived, he and the girl went into the bedroom. As the man started to remove the girl's blouse, the girl said she had changed her mind. The man tried to convince her to have intercourse with him but after ten minutes of her sustained refusals, the man left the apartment. Unknown to the man, the girl was 15 years old. Because she appeared to be older, the man believed her to be about 18 years old.

- Guilty, because no mental state is required as to the element of age
- Guilty, because he persisted after she told him she had changed her mind
- Not guilty, because he reasonably believed she had consented and voluntarily withdrew after she told him she had changed her mind
- **Not guilty, because he did not intend to have intercourse with a girl under the age of 16**

Note:

Statutory rape is a strict liability crime, for which no criminal intent is required. Because statutory rape is a strict liability crime, a defendant's reasonable mistake regarding the victim's age would not be a defense if he were charged with the offense itself.

Attempt is a specific intent crime; a person cannot attempt to commit a crime without meaning to engage in conduct that would result in that crime occurring. Attempt requires that a defendant act with the specific intent to commit the target crime, regardless of the intent required by that target offense itself. Therefore, although strict liability crimes do not require criminal intent, an attempt to commit a strict liability crime requires the defendant to act with the intent to bring about the specific result proscribed by the law.

To withdraw from an attempt, a defendant must completely and voluntarily renounce his or her criminal purpose, as well as prevent the successful completion of the crime, and usually, the attempt is complete after the defendant takes a substantial step beyond mere preparation toward committing the crime.

D is correct. The man here is not being charged with statutory rape, but rather, attempted statutory rape. Therefore, the man must have acted with the specific intent to have sexual intercourse with a girl under the statutory age limit of 16. The man believed that the girl was almost 18, and therefore, he did not have the specific intent to engage in conduct that would have violated the statute, and he cannot be held guilty of attempt.

A is incorrect. The man is being charged with attempted statutory rape, not statutory rape itself. Thus, the man must have acted with the specific intent to commit statutory rape. Going to the girl's house, starting to remove her blouse, and trying to convince her to have intercourse with him may constitute substantial steps beyond mere preparation toward committing statutory rape. However, in order to be guilty of attempt, the man also would have needed the intent to have sex with a girl under the age of 16. Because he believed that the girl was about 18 years-old, the man did not possess the specific intent for attempted statutory rape. Without that intent, the man cannot be held guilty of attempt even if his acts constituted substantial steps.

B is incorrect. This answer ignores the specific intent requirement for a charge of attempted statutory rape and instead addresses the issue of whether the man's conduct constituted a substantial step toward the commission of the offense. However, as noted above, he cannot be found guilty even if he committed that substantial step because he lacked the requisite mental state for attempt.

C is incorrect. Because statutory rape is a strict liability crime, the required intent is just to take actions that result in having sexual intercourse with a person under the age limit designated by the statute (here, 16), and any mistake on the part of the defendant or even actual consent by the minor, is not a defense.

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**4. If the statute is interpreted to create strict liability and the general manager is convicted of violating it, his contention that his conviction would violate the federal Constitution is**

*The general manager and chief executive officer of a knitting mill delegated all operational decision making to the supervising manager of the mill. The child labor laws in the jurisdiction provide, "It is a violation of the law for one to employ a person under the age of 17 years for full-time labor." Without the general manager's knowledge, the supervising manager hired a number of 15- and 16-year-olds to work at the mill full time. He did not ask their ages and they did not disclose them. The supervising manager could have discovered their ages easily by asking for identification, but he did not do so because he was not aware of the law and believed that company policy was to hire young people.*

- Correct, because it is a violation of due process to punish without a voluntary act
- Correct, because criminal liability is personal and the knitting mill is the employer of the children, not the general manager
- Incorrect, because regulatory offenses are not subject to due process limitations
- **Incorrect, because he was in a position to exercise control over the hiring employees for the knitting mill**

Note:

*D is correct. Because the general manager is the person who delegated the authority to the supervising manager, he will bear criminal responsibility for the actions of his agents who are acting on his behalf. Here, the general manager had control over the hiring of employees for the knitting mill, and he delegated that authority to the supervising manager, he will therefore be responsible for the actions taken in the hiring of children by his agent. The offense is a strict liability crime and neither the general manager nor the supervising manager needs to have actual knowledge that the children were under the age of 17.*

*A is incorrect. The general manager is criminally responsible for the actions of his agents; there is no violation of due process even if he did not do the act of hiring the children himself. Assigning the responsibility to his agent was a sufficient actus reus for criminal liability.*

*B is incorrect. Corporate officers, such as the general manager and the supervising manager, can be held criminally liable for strict liability crimes involving corporations. Although the named employer is the knitting mill, the supervising manager, as the hirer, and the general manager, as his superior, will bear responsibility for those corporate actions in strict liability crimes.*

*C is incorrect. Even regulatory offenses are subject to certain due process limitations. Because the general manager had the authority to hire the children, and he specifically delegated that authority to the supervising manager, he will bear criminal responsibility for the supervising manager's actions that violated the strict liability crime of hiring children.*

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## 5. Which of the following, if found by the jury, would be of the most help to the bartender?

The evidence showed that the bartender worked in a tavern and sold a bottle of beer to a person who was 17 years old and that the bartender did not ask for or see the purchaser's driver's license or any other identification. A bartender is charged with the statutory offense of "knowingly violating a regulation of the State Alcoholic Beverage Control Board" and that he knowingly violated regulation number 345-90 issued by the State Alcoholic Beverage Control Board. That regulation prohibits the sale of alcoholic beverages to any person under the age of 18 and also prohibits the sale of any alcoholic beverage to a person over the age of 17 and under the age of 22 without the presentation of such person's driver's license or other identification showing the age of the purchaser to be 18 or older.

- The purchaser had a driver's license that falsely showed his age to be 21
- The bartender had never been told he was supposed to check identification of persons over 17 and under 22 before selling them alcohol
- The bartender did not know that the regulations classified beer as an alcoholic beverage
- **The bartender mistakenly believed the purchaser to be 24 years old**

Note:

When an MBE question provides a statute, a stringent application of the statute is necessary over common law. Here, this question provides a statute and asks which of the following, if found by the jury, would be of the most help to the bartender. The bartender is charged with "knowingly violating" a regulation prohibiting the sale of alcoholic beverages to any person under the age of 18 and prohibiting the sale of any alcoholic beverage to a person over the age of 17 and under the age of 22 without the presentation of such person's driver's license or other identification. The key to successfully answering this question is the word "knowingly." When a crime requires that the defendant act knowingly, he must have been aware that his conduct was of a particular nature, or at least know that his conduct will necessarily or very likely cause a particular result.

D is correct. This answer provides the bartender's best argument because the statute requires "knowledge," and if the jury finds that the bartender mistakenly believed the purchaser to be 24 years-old, then he did not "knowingly" violate the regulation. Believing the purchaser was 24 would negate the possibility that he knowingly sold an alcoholic beverage to a person under the age of 18 or that he knowingly sold an alcoholic beverage between 17 and 22 without the presentation of identification.

A is incorrect. As discussed above, the bartender's best argument is to show he did not knowingly violate the regulation. This answer choice does not provide the bartender with a good argument because the fact that the purchaser had a driver's license that falsely showed his age to be 21 does not excuse the bartender from failing to ask for it. The regulation includes the prohibition of the "sale of any alcoholic beverage to a person over the age of 17 and under the age of 22 without the presentation of such person's driver's license." (emphasis added). Because this answer does not provide the bartender with a helpful argument, it is incorrect.

B is incorrect. Mere ignorance of the regulation does not excuse the bartender. Even if the jury believes the bartender that he was not told he has to check identification, this does not affect the mens rea required for the conviction of the crime. This does not provide the bartender with a good argument because even if he did not know he was required to check IDs, he'd still be guilty of knowingly selling to a minor. When a crime requires that the defendant act knowingly, he must have been aware that his conduct was of a particular nature or at least, conduct that would necessarily or very likely cause a particular result. This answer choice states that he was ignorant of the law and this argument would not help because it does not excuse that he was aware of the fact that he was selling to a minor, or to someone between the ages of 17 and 22.

C is incorrect. Not knowing that the regulations classified beer as an alcoholic beverage does not excuse the bartender from violating the regulation. If the jury were to believe that the bartender did not know beer was classified as alcohol, the bartender would still be convicted because the only possible argument to be made is that he did not knowingly sell to minors and he did not knowingly fail to ask for ID from 17 to 22-year-olds. The bartender's only hope is if the jury finds that the bartender mistakenly believed the purchaser to be 24 years-old, and so, the bartender could argue that he relied on the statute's requirement of identification from 17 to 22-year-olds. Thus, he could argue that he did not meet the mens rea requirement of the regulation.