‘Mistake of Fact’ as a Defence to Traffic and Criminal Charges

Being charged with a crime can be distressing, especially if you were mistaken as to key facts and this mistake gave you a reason to believe you weren’t doing anything wrong. For a number of charges, a mistake of fact is considered a valid defence, and if you made an honest and reasonable mistake that led to you committing a crime, you can often avoid a guilty verdict and a criminal conviction.

What is mistake of fact?

Mistake of fact is also known as an honest and reasonable mistake and it means that at the time you committed an alleged offence you genuinely didn’t believe that you were doing anything wrong, and that your belief was reasonable in all of the circumstances.

An example of mistake of fact could be a drink driving charge where your drink was spiked and you weren’t aware that you were intoxicated when you were driving, but you instead thought that you were tired or ill. Under those circumstances, your criminal responsibility is removed and you cannot be found guilty.

Another example might be where you were driving whilst suspended but did not know you were suspended because the RMS sent the suspension letter to the wrong address. In that situation, however, your mistake would not be reasonable if the failure to receive the letter was because you neglected to inform the RMS of your new address. Your mistake would also be unreasonable if you suspected that you may have been suspended but did not make the appropriate enquiries.

There is an important difference between mistake of fact and mistake of law. Mistake of law means that you knew what you were doing but you weren't aware it was illegal. Mistake of fact does not delve into whether or not you knew your act was illegal, but whether you knew of the existence of a certain fact or facts that would be required to consitute a criminal offence, eg the fact that you had alcohol in your blood system.

Mistake of fact is used as a defence against strict liability charges, which are cases that don't require any proof of intent to commit the crime, and there are a many different circumstances under which honest and reasonable mistake can be argued.

Can mistake of fact be used in sexual assault cases?

Until 2003, the defence of mistake of fact was also applicable in cases of unlawful sexual intercourse with a child under the age of 16, as long as:

(1) the child was older than 14,

(2) had consented the the act, and

(3) the mistake was considered reasonable.

This defence was removed in 2003, and there have been a raft of changes to consent laws in sexual assault cases since then, as well as a range of restrictions upon the types of materials that can be accessed by the defence, and the nature and form of questions that the complainant can be asked in court.

In 2008, an appeal by a 17-year-old male against a conviction of unlawful sexual intercourse with a 15-year-old girl on the basis that he thought she was 16 was thrown out of court.

Sexual assault cases often rely on the idea of consent, and to be found guilty, the prosecution has to show that the defendant not only didn't have consent but that they were

aware they didn’t have consent, or were at least reckless as to whether or not the other person was consenting.

Despite amendments to the law, an honest and reasonable belief that the other person was consenting can lead to a successful defence in many sexual assault cases, depending on the particular circumstances of the case.

Mistake of fact can be a strong defence

Mistake of fact is a complete defence, which means that it can lead to a defendant being found not guilty. The defence can be strongest where the defendant has evidence to explain how and why they made the mistake. Once the defence has been raised, the onus will be on the prosecution to disprove it and this is often very difficult for them to do.

If you are facing criminal charges and are unsure whether mistake of fact applies in your case, speak to a criminal lawyer to find out.