"Frankenexam 2 - Question # 1A"

Answer-to-Question-_1_

A.

I. Jezebel and Statutory Rape

Although we cannot charge Jezebel with an act of prostitution for engaging in sex with Chip, we can charge her with statutory rape since Chip is 15, under the age of majority in Marvinland. Statutory rape under the common law is a strict liability crime. The principles of moral wrong play a significant role in the common law (*Regina v. Prince*), and engaging in sex with a minor is included. As a strict liability crime, there is no need to prove mens rea, the mental connection to the crime, that Jezebel knew Chip was under 18; there is only a need to prove the act occurred, which Biff witnessed, albeit while likely intoxicated. Jezebel may try to raise the mistake of fact defense, that she did not know that Chip was under 18 since he had an "over 18" stamp on his hand and had to present ID at the door. Additionally, she said he was "too cute" to charge payment when he innocently asked whether she would have sex with him, which also should have alerted her to his young age. She may try to say that Chip did not realize that normally he would have to pay for sex with her ("I didn't know she was a prostitute!"), and thus should have known what he was getting into, but the law is concerned with her actions with a minor, not with his thoughts. It is therefore likely that we may charge Jezebel with statutory rape for engaging in sex with Chip, voluntarily. She has no defenses that she did not voluntarily engage in sex with him.

Under the MPC (¶2.04), however, mistake of fact may be a defense if she honestly believed he was over 18, although this will be hard for her to prove as statutory rape is a strict liability crime, and mistake of fact even under the MPC would be difficult to defend. Under the MPC, an honest mistake will provide a defense where it negatives the purpose, knowledge, belife, recklessness or negligence required to estabilish a material element of the crime (2.04(1)(a)). Mistake of fact is allowable under the MPC for victims older than 16 (¶213.3, class notes), and in the MPC Commmentaries, mistake of fact depends on the gravity of the crime. Chip is 15 and a minor. However, rape in the MPC specifies "a male who has sexual intercourse with a female not his wife" and does not state the other gender (¶ 213.1). It may be possible for Jezebel to try the defense that since she is a woman engaging in sexual conduct with a man, that she is not liable for statutory rape; however, statutory rape involves engaging in sexual conduct with minors, which is gender neutral. She may even try to turn it around and suggest that Chip engaged in sex with her, though this is unlikely to hold, since he had never had sex before (I am presuming from his awkwardly asking and his brother's goal to keep his "purity") and did not force her without her consent to engage in such conduct.

It is most likely that both under the MPC and common law, we would be able to charge Jezebel with statutory rape of Chip.

II. Jezebel and Transmission of HIV

We may also be able to charge Jezebel for violating ¶ 18-601.1 Transmission of HIV. First, however, we will need to find out if Chip has To charge her with violating the statute, we will look to the meaning of the statute and whether both the actus reus and the mens rea elements have been satisfied. First, it is likely that the voluntary act element is satisfied in that she "engaged in sex" with Chip, so this is not likely to be contested. However, the "thereby transmits or attempts to transmit" may be contested as either an act element requiring voluntariness or fact element. The defense may argue that she did not willingly and voluntarily under the common law transmit or attempt to transmit HIV, which I will discuss below in whether Jezebel satisfies the mens rea element of the statute, which I will discuss further below.

Under the common law, mens rea generally distributes to all elements. However, it is relatively unclear that this is always the case. There are several factors to look at to determine whether "knowingly" in the statute distributes to the elements of "engages in intercourse," "while HIV positive," and "thereby transmits or attempts to transmit the HIV to another individual." Courts have decided both ways, for example in *Liparota,* the mens rea distributed to all elements and *Int'l Mineral & Chemical Co*, the Court found that the mens rea did not distribute to all elements. In *Dauray*, the court looked to the plain meaning of the statute, canons of construction (lists and other associated terms, statutory structure, statutory amendments, avoiding absurdity), and legislative history. Other factors to determine whether the mens rea does not distribute are common law history of the offense, type and degree of punishment, relative immorality of the offense, and high barriers into the field.

First, we look to the factors n this statute, we look to whether knowingly distributes to "while HIV positive." In the statute, the plain meaning is unclear since while HIV positive is clause attached to the engages in intercourse; one could argue either way. We do not know the statutory structure of the statute nor if there have been any amendments. There does not seem either to be any absurdity if we interpret the statute either way (knowingly attached to both). Nor do we know the legislative history of the offense, but we may presume that this was in response to the growing concern regarding the spread of HIV.

As for the next four factors, the common law history of the crime is most likely not a considerable factor, in that HIV has not been a known disease until the second part of the 20th century. Common law crimes with long histories are more likely to be strict liability crimes, so this may lead us to an analysis that knowingly was meant not to distribute. The more dangerous the activity, the more likely it is to be strict liability, and this offense can carry with it significant health problems and death, as well as the fact that it has been transmitted sexually, which in today's world may not be considered as immoral as it may have in the past, but likely still carries with it a stigma of immorality. For high barrier of entry, Jezebel knew she was working a field where HIV transmission was omnipresent, and she chose (this is possibly debatable) to work in this field where this danger is present. The degree of punishment is a $2500 dollar fine and/or up to three years in prison, which is rather significant, but considering the dangers at issue (life-long health problems and death), this is not that severe. It is more likely than not that a court would find that knowingly does not distribute, thus removing the mens rea to the element "while HIV positive."

Next, if Jezebel had to have known that she was HIV positive, her defense is that she did not know she was HIV positive and had only found out after engaging in sex with Chip when she was tested at the hospital. However, under the common law, willful ignorance may rebut this defense, in that as a sex worker, she knew that HIV was a danger and had "frequently" used condoms to prevent such transmission; however, not only did she not always use condoms, but she had not been tested (we do not know how recently she was last tested). We could argue that she was willfully ignorant in not having reasonably made an inquiry into whether she had HIV.

Under the MPC (2.02, 2.05), generally has the mens rea distribute to all elements unless otherwise specified in the statute. As for Jezebel's defense that she did not know she was HIV positive at the time of the offense, a high probability suffices for knowledge under the MPC, and could be argued that she knew that HIV was an omnipresent danger, similar to the willful ignorance defense above.

"Frankenexam 2 - Question # 1B"

Bertha Motel Alford Plea

The defendants are likley raising this plea on the grounds that charging any of them with possible conspiracy to prostitution is not allowed because the prostitutes cannot be charged under the Marvinville statute that bans prostitution. The law has not been enforced against sex workers in ten years and for some time have only been enforced against management level participants. They will argue that the prostitutes cannot be charged because enforcing the law against the sex workers would violate the principle of legality which violates the due process clauses of the 14th and 5th amendments. The principle of legality requires that law be promulgated, written, publicized, clear and comprehensible, impose achievable limits on conduct, ensure internal consistency among rules, *enforced regularly and consistently*, and that they can only be enforced prospectively. Charging the prostitutes obviously violates the regularl and consistent enforcement requirement. Thus, under a conspiracy charge they cannot be charged with the prostitutes crimes if the prostitutes cannot themselves be charged with the crime.

"Frankenexam 2 - Question # 1C"

Bertha Charges

Accessory

Bertha may be charged with assessory to prostitution if we can show that she 1) had the intent that another engage in criminal conduct 2) she provided assitance by act or omission that was minimally effective or counseled, commanded or encouraged the principal 3) incompleting the crime 4) whether or not that assistance was necessary or determinative. Bertha will likely claim that she was unaware of the prostitution going on in her bar; however, we can show that she had the constructive knowledge that her motel rooms were used for prostitution and that she had the intent that they use her rooms for such purposes. She stated to Scrub that she did not have any "girls" but that the bar would be open to "usual clientel," which according to Bertha's reputation includes prostitutes, and that they would "show ya'll a good time." Her statements may be construed as encouragement to Scrub, which he actually received, and she could be liable for that encouragement whether or not it was actually necessary or determinative.

The difficulty in charging Bertha will lie in whether or not she had the necessary *intent* that Scrub and the girls engage in prostitution. If she merely had knowledge of the unlawful activity, then she cannot be charged. We must show that she intended that they engage in criminal activity. We will have a difficult time showing accessory if all we have is a statement that her usual clientele will show the men a good time, thus we need to conduct further investigation into any encouragement that she may have given other customers.

Conspiracy

We can show that Bertha is guilty of conspiracy if she came to an agreement with one or more other persons to commit an unlawful act. Her situation seems very much like Lauria in which the defendant ran an answering machine business and was aware that prostitutes used his business and were probably using it to further their illegal activity. However, the court in this case held that he could not be liable for the activity of the prostitutes unless it could be shown that he specifically intended for the prostitutes to engage in illegal activity. This specific intent could be shown if we can prove that Bertha had a legitimate stake in the venture (Thomas), that the hotel rooms lacked a legitimate use (McLauhlin (horse racing information wired for booking lacked a legitimate use) and Shaw (prostitution directory lacked a legitimate use)), that the volume of reservations to prostitutes was disproportionate or constituted a high percentage of Bertha's sales (Direct Sales) or that she was aware of the illegal use of her services (Morse (defendant sold a plane with extra cargo space for a high price to two young buyers for cash payments, didn't register the sale and evidence showed he knew it was used to smuggle weed)). We must investigate records of her room reservations by prostitutes or Johns in order to show whether or not she actually had a stake in this venture so that we can show that she had the necessary specific intent.

Under Pinkerton liability she may be charged with J's violation of 18-602.1 because the liability extends to all acts in furtherance of the conspiracy . However, it would be difficult to show that transmitting HIV is actually *in furtherance* because that would actually hinder the conspiracy. There is no possibility of her being charged for this substantive crime under MPC 5.03 because it requires specific intent for all substantive crimes of coconspirators, which we are unlikely to be able to prove.

"Frankenexam 2 - Question # 1D"

D.

I. Murder

We could charge Scrub for the death of Bob. There are two charges we would try to convict him under: murder or voluntary manslaughter (with adequate provocation). Murer under the common law is the unlawful killing of another with malice aforethought. Under murder, the unlawful killing must be a voluntary act, which is likely provable in that he did the killing without any involuntary twiches. The intent of malice aforethought would require depraved indifference to human life or even wanton recklessness. His intent was to kill Ted, and in the common law, intent transfers, therefore allowing us to charge his intent to kill Ted as intent to kill Bob. He was "furious" and grabbed the large pewter tankard to throw at Ted, thus willfully acting. The majority of courts find that the Ds form the intent as they kill, therefore only requiring 1 order of reflection.

II. Manslaughter and Provocation

However, we may also try to charge him with voluntary manslaughter, if we allow him the provocation defense which requires that the murder be under adequate heat of passion and provides a partial excuse (thus mitigating murder to manslaughter). Or if we argue that his intent was not strong enough to be malice aforethought but instead that it was reckless, in that he unjustifiably took a known risk in throwing the tankard. it is more likely that he will try to argue the defense of provocation, that he heard Fred and Ted saying malicious things to each other about him. Provocation is that reason at the time of the act be disturbed or obxucred by passion to an extent which might render ordinary men of fair average disposition to act rashly and from passion. (*Girouard*). In Scrub's case, however, he will claim provocation from words, which in the common law, do not suffice for adequate provocation, except in some cases for the cuckold defense, which is not at issue here.

III. Involuntary Intoxication

involuntary intoxication is another defenses we should prepar to rebut. Involuntary intoxication is an excuse defense which limits the D of forming the mens rea to be held fully liable for a criminal offense, where the offense requires a high level of mens rea. For murder, involuntary intoxication may provide a mitigating influence in his inability to form malice aforethought. First, however, we would look to the nature of the involuntary intoxication. He was at a bar, and knew the effect that alcohol had on him, thus tried to avoid drinking too much. The bartender gave him Long Island Iced Teas instead of non-alcoholic iced teas. The problem with this, however, that we could argue is that Scrub knew the effect of alcohol on him and would have felt the effects as they increased, which after one Long Island, he would have noticed. Additionally, an intoxication defense will not stand when it only lowers ones inhibitions, as in the case *Kingston*. It is highly unlikely that an involuntary intoxication defense will stand.

Also for causation, Rick's omission to act was not enough of an intervening actor to cut the causal chain. To prove causation, one looks to the cause in fact (but for), and proximate cuase (foreseeability and efficiency). In Scrub's case, intervening actors do no apply where the nature of the risk is within the scope of the conduct, in that throwing the tankard was going to kill him and the fact that someone did not intervene to save him does not break the chain of causation. Scrub was the but for cause of Bob's death and the proximate cause (There were no attenuating facts, no intervening actors.) (*Kibbe*).

IV. MPC

Under the MPC (210), murder requires purpose in the unlawful killing of another. Extreme emotioanl distress (EED) (210) is a defense to mitigate murder into manslaughter; however, this is based on a reasonable person, objective, standard, and would be more difficult to prove for Scrub that a person instigated by such words would be disturbed enough. However, in the MPC, words can be adequate for an EED defense. Involuntary intoxication is also a defense under the MPC and can be raised to negate high levels of mens rea as similarly under the common law.

Under the MPC, there are similar factors for attempts, and the mens rea required is purpose.

"Frankenexam 2 - Question # 1E"

Rescue Rick

Rick could be charged for the death of Bob under an omission theory if we can show that he had knowledge of an opportunity to act and that he had a legal duty to act. We should be able to assume from the record that he did have knowledge of the opportunity to act because he had just entered the bar, saw the event unfold, and he has the necessary training to respond to the situation and knows that he is capable of doing so. However, we need to do more legal research into whether or not he has a legal duty to act. Under the common law, a legal duty to can arise from a statute (which we should look for), a certain status relationship (such as parent and child or spousal, we do not have that here), voluntary assumpotion of care and seclusion of that helpless person so as to render others unable to aid him (we do not seem to have that here as the event was in a busy bar), a contractual duty (we do not have that here), or if Rick created the perilous situation (we do not have that here). Our best bet is to search for a statute stating that licensed EMTs have a legal duty to respond to emergency medical situations even when they are NOT on the job. I cannot say for sure, but there is a strong possibility that such statute does exist as I was once told in a first aid training class that in some states licensed EMTs and similar professionals have a legal duty to render aid in a medical emergency, so long as they are capable of doing so. We should also check to see if that legal duty hinges on the actor's ability to render aid, as Rick may have been drinking too much to render aid to Bob, though he just entered the bar after a shift, so it is unlikely that he was incapable of rendering aid.

Another issue that we must research is a causal link between Rick's omission and Bob's death. Courts will not hold actor's liable for homicide by omission if the victim would not have survived had the actor rendered aid (Bradley (defendant not guilty for manslaughter by omission because there was no proof that calling a doctor in response to his daughter's burns would have prevented death) and Lowe (defendant not guilty of murder by omission because there was no evidence that her calling a doctor would have prevented the woman in delivery from death by infection and complications). The record seems to show that Rick's omission would be a but for (actual) and proximate (foreseeable and efficient) cause of Bob's death because although severing the C1 vertebra rendered Bob unable to breath on his own and the record states that rescue breathing would have saved his life. However, we should be sure to check with a medical expert to make certain that there were no other causal factors involved and that nothing breaks the causal chain between Rick's omission and Bob's death.

"Frankenexam 2 - Question # 2"

Answer-to-Question-_2__

To: Professor Ko G. Tayson

From: Ace Terp

RE: Amendments to the Model Penal Code

First I will briefly explain the nature of the original Model Penal Code (MPC) section 1.02(2)(a-c). The MPC is overwhelmingly utilitarian, meaning that the overarching goal is to promote the greatest good for the greatest number of people and minimize the amount of suffering for a minimum number of people. Utilitarianism is *prospective* in nature, meaning that it looks toward how to most benefit society in the future through punishment of criminal offenders. The alternative to utilitarianism is retributivism, which has its roots in Kant's Categoriacal Imperative, which holds that the pure rational contect of any action (the maxim) should become universal law. This theory makes an act like theft irrational because to make theft universal would obliterate the concept of property. For this reason, a crime can only be satisfied if the criminal offender suffers the natural ends of the universal law he proposes. From this notion we have retributivism, the idea that punishment should be commensurate with the crime and must represent the internal logic of the crime. Retributivism is retroactive because it focuses primarily on the criminal act itself, the severity of the harm done, the gravity of the crime, and the blameworthiness of the actor. This theory is the rationale behind practices like taking victim statements in the sentencing phase of capital cases. The logic is that the blameworthiness of the criminal's conduct is reflected in the victim's qualities which speaks to the gravity of the harm the criminal caused. The common law is a blend of both retributivist and utilitarian concepts, whereas the MPC is overwhelmingly utilitarian. Some states and jurisdictions vary in their approaches. For example, the California Penal Code is more retributive whereas the U.S.C. 3553(a) is more utilitarian. Nonetheless, the common law is a blend of both strains of thought.

Because of its utilitarian nature, the original MPC 1.02(2) stated that the purpose of the provisions governing both "sentencing and treatment of offenders." The proposed change to this article would strike the term "treatment" entirely, which reflects a shift away from utilitarianism. The focus is now placed on the punishment, which is more retributive. MPC 1.02(2)(a-c) goes on to say that the purposes are to prevent offenses, promote correction and rehabilitation of offenders, and to safeguard offenders against excessive, disproportionate and arbitrary punishment." Again, this is a very utilitarian approach, and this section seems to disproportionately focus on the offenders, rather than society at large. Granted, preventing offenses and correcting and rehabilitating offenders is a benefit to society.

In the proposed changes, the focus has broadened significantly, and for the most part the changes are positive. These changes include a focus on the sentencing of offenders that now includes a new point of focus: on proportionate punishment (although this was mentioned in the negative in the original article), the harm done, and blameworthiness. This shift clearly aims to add retributive principles to the article, which again, will place focus on the criminal conduct and not just on future benefit to society and the offender. By adding this new clause, the MPC would begin to more accurately reflect the common law approach, which I recommend you fully support. The MPC should reflect the moral outrage that society feels when criminals violate laws and harm both victims and society at large. You should support an ammendment that would ensure that society be able to express its outrage; however, do keep in mind that retributivism is not about vengeance.

Another significant change is that the propsed section lists the uses of punishment (rehabilitation, general deterrence, incapacitation) and more utilitarian goals such as restoration and reintegration, and a goal that both retributivists and utilitarians would support: proportionality. However, these goals are to be pursued "when reasonably feasible." This phrase is a very significant shift from the original MPC. I would recommend that you strike this phrase from the proposed article because it essentially gives us an "out," a way to shirk these goals if we can construe them as "reasonably" unfeasible. The other additions are very useful because, while the original article is quite vague and seems to only begin to skim the surface of these underlying issues, the new article would explicitly spell out these goals, making them more clear and comprehensible. Furthermore, "specific deterrence" should be included as well, so that we aim not only to deter society at large but to ensure that the punishment is significant enough to deter the specific criminal. I also recommend that you fully support the proportionality clauses in both 1.02(2)(ii-iii) because to state that goal in the positive gives is more clarity as something we should strive for rather than saying that disproportionality is something to be avoided.

The take-away from this memo is that if you are to support this proposed change to the MPC, which I recommend you do with the necessary amendments described above, then you will be helping to bring the MPC closer to the common law in terms of theoretical purposes of punishment. Taking a holistic approach to punishment by espousing both retributivist and utilitarian goals will enable the ALI to satisfy both society's need for retribution and society and offender's need for restoration.

"Frankenexam 2- Question # SA1"

1) Common law defenses have three categories. Affirmative/Negative, excuse/justification, and complete/partial. Here, we discuss the line between excuse and justificiation defenses.

Excuse defenses are available when one or more of the actus reus/mens rea elements either has not be prover or that even if proved facially, not proved to a substantial level warranting criminal liability. Duress, Intoxication, and insanity fall under this category. These defenses acknowledge that conduct was wrong but provides an excuse which lessens liability.

Duress, Intoxication and insanity are excuse defenses. Specifically, duress implicates that the voluntariness, actus reus requirement was not proven. For example, where someone told you to steal a car and you did under influence of a percieved threat, the required voluntariness, to prevent that action, speaks tot eh voluntariness of the cirminal conduct. Intoxication and Insanity can speak to the ability to form the required mental connection for a crime. Where these elements are not proven, an excuse may exist. Where one is too drunk to or has a mental disease which renders them unable to be aware either they are doing the conduct or that it is wrong, the requisite mens rea is likely impacted.

Justification defenses occur where a defendant admista all actus reus and mens rea requirements for the crime, but despite this, maintains taht it was the right thing to do. Justification defenses are granted where a defendant was justified in their course of criminal conduct.

Necessity and self defense are examples of these justification defenses because while the defendant does admit to committing the crime, it was the correct response. When under immediate threat of death or serious bodily harm, one is justified in killin (assuming all elements are met-actual or apparent threat that is unlawful and immediate from teh vicitm, that puts the D in actual and reasonable fear of death or severe bodily harm and there is not reasonable chance of excape of whicht eh D is actually aware). Where necessity is allowed, a course of criminal conduct is justified. When faced with overwhelming circumstances from nautre, the law simply expects to do best, to do the "correct thing" looking at the circumstances. These are justification defenses.

"Frankenexam 2 - Question # SA2"

2) If I was an advocate for Gore in his criminal appeal before the fourth circuit, I would say that United State v. Perrin should probably not control in this case because it does not speak to the issue raised on appeal.

In US v. Perrin (posession of a firearm by a felon in violation of 18 US 923) the court identified immediacy and inevitability as two seperate concepts. Inevitability provides for a number of options (couldve run away etc.) The issue in Perrin was immediacy (Imminence is supported as issue in common law and ahas been affirmed by 4th circuit as a necessary element).

As with GOmetz, the nature of the threat as a deadly threat was not an issue in either of the cases. Issue not there so should not look to it for analysis.

In this case, Gore claims he ought to be able to use proportional non deadly force, which seems consistent with the principle justification for self defense. The court has recognitzed that as a matter of common law, defendants have a right to use defensive nondeadly force to repel unlawful excessive force by prison guards. Starr v. US says that individuals who are subject to an attempt arrest by law enforcement can claim self defnese if use force to repel an officer who fails to id themselves or steps outside what law enforcement allowed to do. IF possible the court should look to the unreported 4th cirucuit opinion in Harris, which in turn cites Black. Balck correctly states the law of self defense, which teh courts applied in an unreported opinion. Self defense standard for 111 is exactly the standard in black. Harris foundt eh district coured erred as a matter fo alw in failing to see that black controlled.

I think it would also be important to cite to LaFave and Scoot, elaborating on the commmon law rule with a long history. There was no indication in the reading, or it should at least be discussed if the legislature meant to change the common law rule of self defense (proportionate) argument. (Morissette) The court should look to common law and its previous decisions, and we should find a way for them to consider the unreported case if possible.

"Frankenexam 2 - Question #SA3"

3. Accessory to manslaughter

_____False. Generally, one cannot be an accessory to manslaughter in the common law, since it is an unlawful killing either with malice aforethought and provociation, or with wanton recklessness or recklessness. There are situations such as the drag racing cases we studied where wanton or reckless conduct did not bar the D from being convicted for involuntary manslaughter (*McFadden*) in Iowa, or where in New York, white men asautled and chased African-American men one whom died when ran onto a highway. The court found that there was a sufficiently direct cause (*Kern*). Additionally in MA, in *Atencio*, those playing Russian Roulette were found to have a duty not to participate in the game and found guilty as accesories to manslaughter.

"Frankenexam 2 - Question # SA4"

4. Insanity defense: Cognitive and Volitional

M'Naghten test v. Irresistible impulse test v. MPC

The M'Naghten test is the cognitive approach which focuses on a presumption of sanity, and that at the time of the act, the D was laboring under such a defect of reason caused by a mental disease as not ot know the nature and quality of the act he was doing or did not know that what he was doing was wrong. This focuses mostly on whether the D knew that what he was doign was wrong.

In contrast, the irressistible impulse test, a volitional test, looks to whether by virtue of D's mental disease could he not control his impulses. It focuses more on the control that D has at the time of act over his impulses and actions.

The MPC (4.01) takes an approach that combines the two cognitive and volitional tests. It states that a person is not responsible for criminal conduct if at the time tof such conduct as a result of mental disease or defect he lacks the **substantial capacity** either to **appreciate** the cirminality of his conduct or to conform his conduct to the requirements of the law (emphasis added). The MPC requires a less strict approach than the M'Naghten test in requiring a substantial capacity that requires impairment to be substantial but not complete. Additionally in the M'Naghten test, the D must not **know** what he is doing is wrong, whereas in teh MPC, the D must not be able to **appreciate** what he is doing is wrong, whic is less strict as well and allows for more flexibility.

"Frankenexam 2 - Question # SA5"

5. Mistake of law

False. In attempts, mistake of law is an excuse. If what the defendant attempted was not illegal, even if he or she thought it was, it is not a a chargeable crime. This falls under the element of likelihood of success of an attempt, where the D does everything they intend to do believing it is illegal, but it is not, then the D has a defense.

This is in contrast to mistake of law for a completed offense, which is not a defense. When the D does everything he intends to do and believes it is legal, this is not a defense. There is a presumption that everyone knows the law. However, there are two excpetions, where the D relies on an official statement of someone who can enforce and interpret the law (such as a judge or law enforcement official). And where there is no fair warning, a violation of the legality principle, there is also an exception to mistake of law.
