

MISTAKE OF FACT „IN A WIDER SENSE“ AND SERBIAN CRIMINAL LEGISLATION – A THEORETICAL FRAMEWORK

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Summary: The Serbian and earlier Yugoslav doctrine of criminal law usually differentiated mistake of fact “in a wider” and mistake of law “in a narrower sense”. This distinction is also recognized by the Serbian Criminal Code, which in Art. 28 differentiates between a mistake of fact about some statutory element of the criminal offence and a mistake of fact about some circumstance, which, had it existed, would have rendered such act permissible. The place of the mistake of fact “in a wider sense” in the system of criminal offence and its effects, both in terms of its relation to the mistake of fact “in a narrower sense” and its relation to the mistake of law, is the subject of various theoretical concepts. The most important theories are the theory of guilt and the theory of intent. The author discusses these theories from the perspective of the Serbian law, arguing that the Serbian solution is presented within the so-called limited theory of guilt.

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