



Night Club Scenario: Part 2 of 3

Consequences and Outcome: Teacher Reference Sheet

This sheet supports teachers to cover the **key points** relating the law, consequences and outcomes to assist with managing the **Part 2** discussion as to whether Stu should be charged or not; pupils may give other views and opinions based on their own thoughts and values.

The law

The outcome in a sexual offence case such as this will be balanced on all the evidence; the crucial questions will be whether the victim had the **freedom, capacity to consent** to the sexual activity, and whether he/she agreed **by choice** (i.e. not threatened, exploited or coerced). **Refer to table**

Consent	'if she/he agrees by choice, and has the freedom and capacity to make that choice to engage in sexual activity'
Capacity	he/she had the capacity to make a choice whether or not to take part in the sexual activity at the time in question (i.e. age, understanding, mental capacity, alcohol, drugs)
Freedom	he/she was in a position to make that choice freely, and was not constrained in any way (i.e. forced, held down)
Mitigating factors: Drug and/or Alcohol Influence	<ul style="list-style-type: none"> The question of the capacity and consent is particularly relevant in cases where the victim is intoxicated by alcohol, drugs or both; issues relating to consent are often difficult to determine and prove, this decision is likely to be for a court/jury to decide based on all evidence. It will be for the prosecution to prove beyond reasonable doubt that the victim did not consent and that the accused did not reasonably believe the victim had consented (knew they were unable to consent). Where the accused/offender is also intoxicated by alcohol, drugs or both, this may be taken into account as a mitigating factor but it is not a lawful defence

Answer: outcome decision

The outcome in this case will be determined by Stu's actions and whether Carrie had the capacity and freedom to consent

The key points that this case will rest upon are as below:

- Carrie's capacity to consent is affected by her intake of alcohol and drugs
- Carrie is not able/capable to give consent or understand what it is she may be consenting to
- Stu chose to have sex without Carrie's consent being given

It is likely that Stu would be charged with rape; the case will be heard in a court for a judge/jury to decide whether he is guilty and should be convicted of the offence.

Lawful Outcomes

The outcomes will depend wholly on the strength of the case evidence; the possible outcomes for the accused can be:

Out of court sanctions

- ✓ **No charge:** If there is insufficient evidence to charge a suspect, he may be released with no further action; this is recorded and held on police record but will not form a criminal record.

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- ✓ **Caution:** If charged, a suspect may be given a caution depending on the facts of the case, offender history and public interest to send the case to court; this is a criminal record.

Court sanctions

- ✓ **Magistrate Court:** If charged, a suspect can be bailed to attend court on a set date for the evidence to be heard by a magistrate; conditions can be imposed not to contact victims and witnesses. The magistrate may decide to charge, convict, acquit or send the case to trial in a Crown Court for a judge and jury to decide guilt based on the evidence in the case.
- ✓ **Crown Court Trial:** If charged, a suspect can be remanded in prison until a trial can be heard in a Crown Court; a judge-jury will decide if he should be convicted based on the evidence

Sentencing for Rape

An offender can be sent to prison for a maximum of Life; he will be placed on the sex offenders register for a minimum of 2 years to Life.

This criminal record will be disclosed in a CRB check (Criminal Record Check) to future employers and other countries which is likely to impact future employment and travel opportunities for life.

Additional points and clarification

Discussion Points	Considerations	What the Law says
<p>Intent Did Stu exploit Carrie by giving her excess alcohol knowing it could affect her ability to give consent?</p> <p>Did he intend to have sex with her for his own gratification?</p>	<p>Stu's story and his actions indicate that he intended on having sex with Robyn; giving her alcohol may suggest an intention to affect her capacity to consent to have sex with him</p>	<ul style="list-style-type: none"> • An offender's intent to affect a person's capacity to give consent is a key factor in the lawful outcome of a sexual offence case • It can be said that Stu's actions, giving Carrie more alcohol, can be seen as intent to affect her capacity for the purpose of sex.
<p>Consent and Capacity Did Carrie have the freedom and capacity to give clear consent?</p> <p>Was consent clear?</p>	<ul style="list-style-type: none"> • Carrie's story indicates that she did not intend to have sex with Stu; she consents to drinking alcohol and to kissing him only • The sexual encounter was a result of Carrie not being capable of consenting; her freedom, capacity and choice to give consent was affected by her alcohol intake. 	<ul style="list-style-type: none"> • A victim's capacity to give consent is a key factor in the lawful outcome of a sexual offence case • It is likely that Carrie's intake of alcohol directly affected her freedom, capacity and choice to consent. • It is likely that consent has not been lawfully given.
<p>Respect and Responsibility Is it Stu's responsibility to be aware that Carrie is not able to give clear consent?</p> <p>Is it Stu's responsibility if he chooses to have sex with Carrie?</p>	<ul style="list-style-type: none"> • Knowing that Carrie was not in a fit state to give consent (no capacity), Stu proceeded to have sex with her without the consent being clear or even given at all. 	<ul style="list-style-type: none"> • An offender's responsibility and choice to exploit a person's capacity to give consent is a key factor in the lawful outcome of a sexual offence case. • Stu knew Carrie was not capable of giving consent, sex occurred through his choice only: this is an offence.

It may be argued that Carrie has a responsibility to prevent herself from becoming a victim; it is true that she may have made choices that increased the risk of harm to her, BUT it must be made clear that **a victim is never to blame!!**