



House Party Scenario: Part 2 of 3

Consequences and Outcome: Teacher Reference Sheet

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

The law

The outcome of 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 and 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 Dan's actions and whether Robyn had the capacity and freedom to consent

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

- Robyn's **capacity to consent** is affected by her intake of alcohol and drugs
- Robyn is not able/capable to give consent or understand what it is she may be consenting to
- Dan supplied the drugs and alcohol to Robyn for the purpose of having sex with her
- Dan chose to have sex without Robyn's consent being given

It is likely that this case that Dan **would be charged** with Rape; the case will be heard in court for a judge/jury to decide whether Dan is guilty and should be convicted of rape or other sexual offence.

Lawful Outcomes - overview

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 may impact future employment and travel opportunities for life.

Additional points and clarification

Discussion Points	Considerations	What the Law says
<p>Intent Did Dan knowingly intend to exploit Robyn by giving her alcohol and drugs for the purpose of having sex with her?</p>	<p>Dan's story and his actions indicate that he intended on having sex with Robyn; giving her M-Cat mixed with alcohol with the 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 Dan's actions, giving Robyn alcohol and drugs, shows intent to affect her capacity for the purpose of sex.
<p>Freedom and choice Did Robyn have the freedom to engage in sex of her own choice?</p>	<ul style="list-style-type: none"> • Robyn's story indicates that she did not intend to have sex with Dan; she consents to taking drugs and alcohol and to kissing him only • The sexual encounter was a result of Robyn not being capable of communicating consent; her freedom to give consent was affected by intoxication. 	<ul style="list-style-type: none"> • A victim's freedom to give consent is a key factor in the lawful outcome of a sexual offence case. • It can be said that Robyn's intake of drugs and alcohol affected her freedom and choice to consent. • It is likely that consent has not been lawfully given.
<p>Consent and capacity Did Robyn have the capacity to give clear consent?</p>	<ul style="list-style-type: none"> • Affected by alcohol and drugs to the point of 'semi-unconsciousness' confirms Robyn did not have the capacity to consent (not capable) • Dan was aware that Robyn was unable to consent and continued to have sex with her without any consent or communication at all. 	<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 can be said that Robyn's drug and alcohol induced state had a significant affect on her capacity to give consent. • It is likely that consent has not been lawfully given.
<p>Responsibility and choice Dan made a choice to have sex with Robyn without her consent</p>	<ul style="list-style-type: none"> • Dan describes Robyn as 'out of it', allowing him to undress her, not resisting when he had sex with her; this is because she was unable to. • Dan had a responsibility not to take advantage of Robyn but made a choice to ignore this 	<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. • Dan knew Robyn was not capable of giving consent, sex occurred through his choice only: this is an offence.