

June 2021

Consent Construct



- ! Informed, knowing, and voluntary (freely given)
- ! Active (not passive)
- ! Creates mutually understandable perceptions



1. Was force used by the Respondent to obtain sexual or intimate access?
2. Was the Complainant incapacitated?
 - a. If so, did the Respondent know, or
 - b. Should the Respondent have known that the Complainant was incapacitated

Note: The intoxication of the Respondent can not be used as a reason they did not know of the Complainant's incapacity.

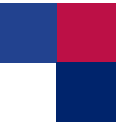
3. What clear words or actions by the Complainant gave the Respondent permission for each specific sexual or intimate act that took place as it took place?



Types of force to consider:

- ! Physical violence: hitting, restraint, pushing, kicking, etc.
 - ! This may also involve alleged violations of other policies (e.g., harms to persons, violation of law, etc.)
- ! Threats: anything that gets someone to do something they wouldn't ordinarily have done absent the threat
 - ! This requires an analysis as to the viability of the threat and whether a reasonable person would believe the Respondent could or would carry out the threat





Evidence of incapacity context clues:

- ! Slurred speech

- ! The smell of alcohol on the breath in combination with other factors

- ! Shaky equilibrium; stumbling

- !



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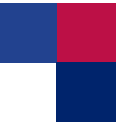
- ! Known Blackout
- ! Although memory is absent in a blackout, verbal and motor skills are still functioning
- ! Outrageous or unusual behavior (requires prior knowledge)



- ! Rate of consumption
- ! Strength of drink
- ! Food in the stomach
- ! Body weight
- ! Body type and body fat percentage
- ! Gender
 - ! E.g., enzymes, hormones, body fat, and water in body
- ! Functional tolerance
- ! Medications
- ! Illness and dehydration
- ! Fatigue
- ! Caffeine
- ! Genetics
- ! Ethnicity



!



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