

Lesson 3

Consent

Activity 4

Reading and Discussion: Consent and Alcohol

Alcohol impairs judgment. This has been taught in many a health class throughout the nation. This is why there are police officers who wait, hidden, on Saturday nights, ready to pull over any car that wavers a bit over the center yellow line. But people who have been drinking generally tend to feel as if their judgment is not impaired, and unless a person is visibly very drunk, people tend to believe that other people's judgments are not impaired. How impaired does a person have to be to invalidate their ability to consent to sex?

Take the policy at Brown University. It isn't a policy about drinking; that is to say, drinking doesn't invalidate consent. But impairment does. They write that it's an offense to have sexual relations with another who has a "mental or physical incapacity or impairment of which the offending student was aware or should have been aware" (Brown University, Office of Student Life).

Now consider the following he/she scenarios (although note that any of these could occur in homosexual couples):

- If she has been drinking but he can't tell if she's drunk, can he trust her consent? How much consent does he need? Why?
- If he has been drinking and just vomited, how does that affect his ability to consent? Why?
- If he is passed out unconscious, can she proceed to do something sexual to him? Why?
- If she has been drinking and asks him to come back to her room to have sex, is that invitation valid? Why?
- If he has been drinking and asks her to come back to his room and have sex, does that make his invitation invalid? Why?
- Are these last two different in some way because of gender? Why or why not?

So what exactly are the indications of impairment? For example, if he asks her to have sex and she asks him to use a condom, does her asking him to use a condom mean that her judgment was not that impaired and her consent to have sex was valid? You might say yes to this question. And if so, what if it's a different question, like whether or not he would prefer to go to her room? What makes each of these questions an indication or not an indication of mental soundness/mental impairment even when she has been drinking?

The Context of the Drinking

Some cases of consent and lack of consent are more clear, not because of the drinking but because of the circumstances of the drinking. For example, if someone has spiked the punch so the alcohol level is way higher

than she expects, is she intoxicated against her will? On the other hand, what is she purposely drinks in order to have fun and hook up that night? Does that make her drunken consent more valid?