

Lesson 3

Consent

Activity 5

Exercise: Alcoholic Consent, Some Unusual Examples to Consider

From Wertheimer (2003), Ch. 11, Intoxication

Partying. A and B have dated, but have not had sex. A says, “Is tonight the night?” B says, “Yeah, but let’s have a few drinks first.” Later on, B gets quite high and responds positively to A’s advances.

- Does this count as consent?

Inhibitions. A and B have dated. B has said that s/he is not ready for sex. From her/his own experience and from other sources, B knows that alcohol consumption distorts judgment. Still, without thinking much about it, B consumes several drinks at a party. When A proposes that they have sex, s/he feels much less inhibited than usual, and s/he half-heartedly says “there has to be a first time.”

- Does this count as consent? Would A be wrong to press on?

Fraternity Party. B is a college freshman. S/he has never had much to drink. S/he attends her first fraternity party and is offered some punch. S/he asks, “Does this have alcohol?” A responds, “Absolutely.” S/he has several glasses, and becomes quite “high” for the first time in her/his life. When A proposes that they go to her/his room, s/he agrees.

- Does A have her consent? Is A wrong? Would this be rape?

Spiked. B attends a fraternity party for the first time. There is a keg of beer and a bowl of punch that has been “spiked” with vodka but labeled as nonalcoholic. B has several glasses of punch and becomes quite high. When A proposes that they go to his room, she agrees.

- Does A have her consent? Is A wrong? Would this be rape?

Dutch Courage. A and B have dated. B is a virgin and feels frightened of and guilty about sex. Believing that s/he will never agree to sex if sober, s/he consumes 4 drinks in one hour. After some kissing and “petting”, A says “Are you sure it’s OK?” B holds up her glass, smiles, and says “It is *now*.”

- Does A have consent? Is A or B wrong? Would this be rape?

Aphrodisiac. An aphrodisiac has been developed (in reality, there aren't any). A slips a pill into B's drink. Having become excited, B, who has never shown much interest in sex, proposes they have intercourse.

- Does A have consent? Is A wrong? Would this be rape?

Lactaid. B refuses to have sex with A because s/he has been experiencing abdominal pain. After testing positive for lactose intolerance, s/he begins taking lactaid pills. S/he feels much better on this "drug" and agrees to have sex.

- Does A have consent? Is A wrong? Would this be rape?

Discussion: Consent and Alcohol

1. Is there a difference between alcohol affected consent and intoxicated consent?
2. Is it really possible to know at what point a person's "free will" is affected?
3. In the examples above, was there a difference for you if the drunkenness was self-induced vs. other-induced? Is there "more consent" if the person got drunk on purpose? And what if she got drunk on purpose in order to have the courage to have sex?
4. Some people might have argued that A has a responsibility to protect B from herself in some of the examples above. Why would that be so? Can you take a Kantian view now and develop a law that you would like to have applied to all people?
5. How is autonomy affected by alcohol?
6. Where does respect enter the picture in terms of the treatment of other people when they are drunk?

Philosopher Alan Wertheimer (2003) wonders how consent and alcohol pertain to intoxicated gamblers. Should we ask hotels to pay them back? If not, then in some ways we hold people responsible for what they do when they're drunk if they get drunk on their own accord. In one study, when college students were asked to rate different scenarios as "rape" or "not rape," when they were presented with a scenario that indicated the "woman was severely impaired by alcohol and/or drugs and did not have the ability to resist," only 18% of college students labeled that rape.

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?

Drinking and Responsibility

Alcohol weakens the capacity to act on the basis of reason. Because of this, we tend to say a person is not responsible for their behavior when they have been drinking, but responsible for drinking to the point that they cannot be responsible.

But the problem is that alcohol rarely takes away all of a person's reason. If we really stood by the idea that a person has no responsibility when he or she is under the influence of alcohol, then people would do all sorts of things and get away with them by drinking first.

Is a person morally responsible for his or her intoxicated behavior? If one person ISN'T capable of consent, then why is the other person held responsible for going ahead and having sex when he or she was drinking too?

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