

RAPE

Under the common law definition, a rape occurred only when there was sexual penetration of the female by the male without the female's consent. There is no consent if a woman submits as a result of force or threats of bodily harm. Likewise, there is no consent if a woman is unconscious or mentally incompetent or if her judgment is impaired by drugs or alcohol.

Some states have rewritten rape statutes. Can you think of some factors which states must take into account today?

STATUTORY RAPE

Under the law, statutory rape does not require force. Whether the male believes the female consented, if sex took place with an underage female*, it is a crime. Mistake as to the age is not a defense.

AGE OF CONSENT

The age at which a person can consent to sexual intercourse varies from state to state. It ranges from 16 to 18. In most states, it's 16.

EVIDENTIARY ISSUES

What issues should be taken into account when considering evidence in a rape charge?

Should prior sexual conduct be admissible?

Should states require independent corroboration of the act?

PROBLEM

For each of the following cases, assume that 1) the man and the woman have sexual intercourse; 2) the woman later reports the activity to the police; and 3) the man contends that the woman consented. Should the man be prosecuted? Give your reasons.

- A. At midnight, a man breaks into the home of a woman he does not know. He goes to her bedroom, awakens her, pulls out a knife, and threatens to stab her unless she has sex with him. She tells him that she does not want to have sex. But then she says, "If you are going to do this, you'd better use a condom." He agrees.
- B. A famous boxer serves as a judge at a beauty contest. After the contest, he invites an 18-yr. old contestant to his room. She meets him there. Later, she says he forced her to have sex.
- C. A male high-school student, aged 17, and a female high-school student, aged 14, go out on a date. After attending a party, they agree to have intercourse in his car. The next day, he brags about this at school, and she goes to the police. There is some evidence that he is part of an informal organization of high school seniors who are involved in a competition to have sex with as many girls as possible.
- D. Lydia and Alex, both 27, have been living together for two years. After a particularly severe fight over finances, they make up and begin to kiss. She later claims that he then forced her to have sex with him against her wishes.
- E. Scott and Sherri are college juniors who have had 3 dates. On these dates, they have never engaged in any sexual activity beyond a brief good-night kiss. On their fourth date, he invites her to an all-night drinking party at his fraternity house. She drinks too much, goes up to his room alone around 1am, and falls asleep. In the morning, she wakes up to discover that they had intercourse during the night.