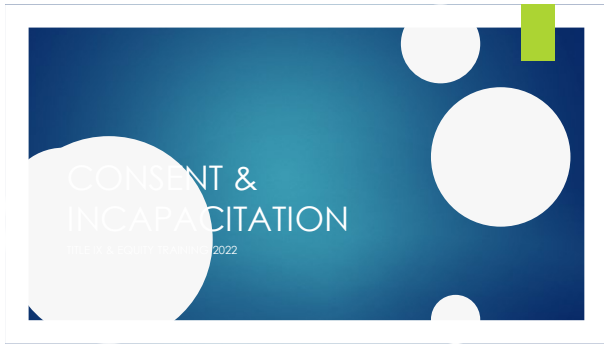
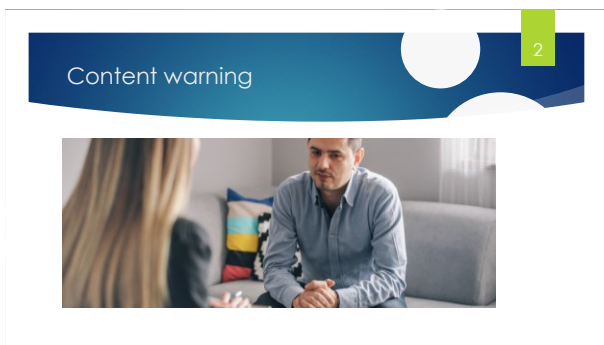
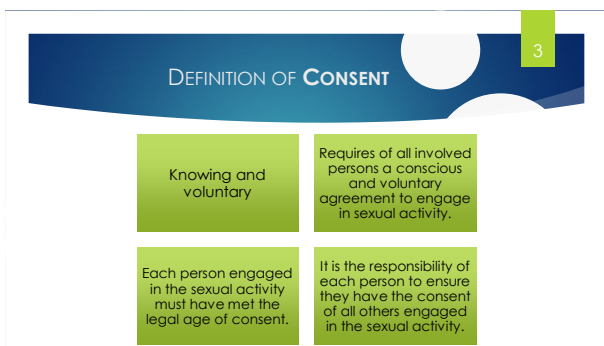








4

DEFINITION OF CONSENT

Must be obtained at the time of the specific activity and can be withdrawn at any time.	Consent, lack of consent, or withdrawal of consent may be communicated by words or non-verbal acts.
Someone who is incapacitated cannot consent.	Silence or absence of resistance does not establish consent.

5

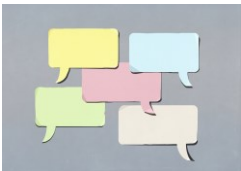
DEFINITION OF CONSENT

The existence of a dating relationship or past sexual relations between the Parties does not alone = consent.	Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.	Coercion and force, or threat of either, invalidates consent.

6

Ok, but it's not that simple

- ▶ The One with the Videotape
- ▶ Friends Season 8 Episode 4
- ▶ Differing accounts of a sexual encounter



Let's Unpack

7

- ▶ Overall issue – people will remember situations differently
- ▶ Consent to sex – presumably
- ▶ Consent to videotaping – clearly not
 - ▶ She didn't know! Did not volunteer to be recorded!
 - ▶ Had Ross asked if he could record their encounter, Rachel said yes, but later changed her mind – her consent is withdrawn
 - ▶ What if Ross asked Rachel if he could record them having sex and she just glared at him without responding – consent?
 - ▶ What if Ross and Rachel previously recorded their sexual activity and Rachel was 100% on board with that – consent for this one?
 - ▶ What if Rachel was known to have a library of sex tapes she consented to be in, so surely this one must be ok Ross thinks – consent?

CONSENT

8



- Phoebe asked Joey to come over to hook-up, being explicit that she wanted a "Netflix and chill" vibe. After about an hour of making out and fondling, Joey told Phoebe that he did not feel like messing around anymore. Phoebe got really angry and told Joey, "This was why I invited you over. You knew that and agreed. You cannot leave until we have sex."
- Is this acceptable?

CONSENT

9

- Janice came to campus for orientation and met Chandler who was a senior orientation leader. They began texting daily, and during the first week of classes, Chandler asked Janice to meet and study. Janice was very excited because Chandler was so good looking and popular. However, after one hour of studying, Chandler wanted to go back to his fraternity house to "chill out" with some beers. After a couple of hours eating a pizza and drinking a few beers, Janice **wanted to leave and told Chandler she had an early class the next morning**. Chandler said that "cool girls" who date guys in his frat always end the evening by providing sexual gratification to their dates. Janice said she did not feel comfortable engaging in sexual activity this soon after hanging out with him. Chandler laughed, said she needed to "get on board" with being in college, and that clearly, she was not cut out to be part of the inner crowd at his fraternity. Janice was anxious to fit in, and Chandler insisted that all college girls did this, so she agreed to give him oral sex.
- Does Chandler have consent?

CONSENT

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- ▶ Monica and Phoebe are freshman roommates. Monica is a virgin and considers herself straight. She's been raised to "wait until marriage" but has become more curious about sex since coming to college. Phoebe is more sexually experienced and identifies as pansexual. One night, Monica asks Phoebe about her vibrator, having never seen one before. Phoebe is very open and explains how it works, then asks Monica if she would like to try it. Monica agreed but asked Phoebe to help her because of her inexperience. Phoebe cleans the vibrator and begins to slowly penetrate Monica with it. Monica gets uncomfortable and tells Phoebe to stop because she's "not ready for that yet," so Phoebe pulls the vibrator out completely and uses it to stimulate Monica without penetration, which Monica seems to enjoy based on her reaction. They finish sex and fall asleep cuddling in the same bed together.
- ▶ A couple days later Monica's high school boyfriend from home visits and learns about what happened from a suitemate. Monica is instantly uncomfortable and full of regret. She reports to the Title IX Office that Phoebe sexually assaulted her both with an object and by fondling her, without her consent.
- ▶ Did Phoebe violate our policy against sexual assault?

CONSENT

11

Rachel reported that last night she and Paul were kissing. Rachel states that she was really into the kissing, but as the kissing became more intense, Paul put his hand down her pants, and she became really uncomfortable. Rachel could tell Paul was really into it, however. Rachel said that she didn't know what to do. Rachel said she felt really confused, just froze and laid there doing and saying nothing while Paul proceeded to penetrate her with his finger.

Did Paul have consent?

CONSENT

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- Ross and Chandler are roommates. Last Tuesday, Ross and Chandler had consensual sex. On Thursday, Ross and Chandler go out with Joey and have several drinks. That night Ross passes out on his bed and when he wakes up the next morning finds Chandler in bed with him. They're both naked, but Ross doesn't remember anything after returning to the apartment. He asks Chandler what happened, and Chandler says, "Ross, we had sex on Tuesday, so I figured you were okay with doing it last night."
- Did Chandler have consent?

13

DEFINITION OF INCAPACITATION

A state in which rational decision-making or the ability to consent is rendered impossible because of a person's **temporary or permanent physical or mental impairment**, including but not limited to physical or mental impairment resulting from **drugs or alcohol, disability, sleep, unconsciousness or illness**.

Consent does not exist when the Respondent **knew or should have known** of the other individual's incapacitation.

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DEFINITION OF INCAPACITATION

- Incapacitation is more than intoxication, but intoxication can cause incapacitation.
- Incapacitation is determined based on the totality of the circumstances.



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FACTORS IMPACTING DRUG/ALCOHOL INCAPACITATION

Amount consumed	Rate/Speed of consumption	Body weight & type (BMI)	Gender/Sex
Food in the stomach	Enzymes or hormones	Hydration levels	Other medications, drugs, caffeine
Illness	Sleep deprivation	Mood	Genetics

FACTORS IN DETERMINING DRUG/ALCOHOL INCAPACITATION
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Lack of awareness of surroundings	• An inability to understand the who, what, where and how and/or why of the circumstances • Blackout state
Inability to physically or verbally communicate coherently	• Slurred or incoherent speech • Outrageous or unusual behavior
Lack of full control over physical movements	• Difficulty walking or standing without stumbling or assistance • Inability to keep eyes open
Physical symptoms	• Vomiting or incontinence • Bloodshot or blurry eyes

INCAPACITATION
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Respondent's Awareness

"Consent does not exist when the Respondent knew or should have known of the other individual's incapacitation."

CRR 600.010, 600.020

- Respondent's own intoxication does *not* negate their obligation to comply with policy standards.

Tea and Consent
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▶ Tea Consent (Clean) by Blue Seat Studios

▶ <https://youtu.be/fGoWLWS4-kU>



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INCAPACITATED?

Phoebe and Joey met at a party. Phoebe drank 5 cups of spiked punch and Joey drank 7. After a few hours, they decide to go to Joey's apartment. At the apartment, Joey goes into the kitchen to make sandwiches, but comes out to the living room to find Phoebe asleep on his couch. Joey starts kissing Phoebe, and she wakes up and kisses him back. After a couple minutes, however, Phoebe falls back asleep. Joey continues to kiss Phoebe and proceeds to undress her, ultimately penetrating her while she remains asleep.

Did Joey have consent?

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INCAPACITATED?

- ▶ Rachel and Ross met at a beginning of the semester campus event. Rachel and some friends started drinking around 7 p.m., then met Ross and his friends at the event around 9 p.m. Rachel said she had 3 drinks between 7 and 9 p.m. After only 30 minutes the group headed back to Ross's dorm room. Ross and his friend Gunther smoke a joint, offering some to Rachel but she declines. After another hour or so, everyone leaves except Rachel and Ross, and they start kissing. Ross then put his hands down Rachel's pants and asked her if that felt good. Rachel reported she didn't really know what to say, so she said, "yes." Rachel reported that the next thing she remembered was being naked on the lower bunk bed with Ross on top of her and inside her, having sex. She remembers this briefly, then next remembers waking up around 3 a.m. to find Ross on the top bunk watching a movie on his laptop, and then again remembers Ross's alarm going off at 6 a.m. when she got up and left the dorm room.
- ▶ When investigators talk to Ross, he says during sex Rachel was grabbing on to the sheets, acting like she enjoyed it, and even got on top of him at one point. He says when they finished, Rachel fell asleep almost right away. Ross did also mention that he saw Rachel fall down some stairs while walking back to the dorm.
- ▶ What more information do you want to determine if Rachel was incapacitated?
- ▶ Based on this information alone, should Ross have known if Rachel was incapacitated?

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CONSENT & INCAPACITATION

Evaluating Credibility & Finding Corroboration

- Confront issues surrounding consent, and ask the necessary questions to ascertain:
 - What did the Parties communicate to each other?
 - How did the Parties communicate consent (or lack thereof)?
 - Was consent given for each escalation of sexual activity?
 - Was Complainant incapacitated due to drugs, alcohol, sleep or any other reason?
 - Could Respondent have reasonably known Complainant was incapacitated?

FINAL CONSIDERATIONS

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► Power dynamics

- EX: professor and student, supervisor and subordinate employee, coach over athlete, police officer over detainee
- Real-life examples: Larry Nassar, Bill Cosby, Harvey Weinstein, Jeffrey Epstein

► Social Identities/Factors

- EX: vulnerable populations, immigrants, refugees, abusive relationships

Affirmative Consent Example

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► The One with the Truth about London

► Friends Season 7 Episode 16

- Great example of gaining continuous consent – Monica and Chandler's first kiss



Questions?

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