

Sexual Misconduct Scenarios
September 9, 2013

Yale University is committed to creating and maintaining a campus that is safe and respectful—where sexual misconduct of any kind has no place. Accordingly, any alleged violation of Yale’s sexual misconduct policy that is brought to the attention of the University will be pursued to the extent possible and, if substantiated, disciplined effectively and appropriately (policy at <http://smr.yale.edu/definitions-sexual-misconduct-consent-and-harassment>).

In order to provide general information about sexual misconduct at Yale and to engage the community in frank and open discussion, the University publishes semi-annual reports of complaints of sexual misconduct brought to the attention of the Title IX Coordinators, the University-wide Committee on Sexual Misconduct (UWC), and the Yale Police Department. The most recent semi-annual report has generated a number of thoughtful questions and concerns. While we cannot answer those questions in the context of actual cases, we have attempted to address many of them through a statement and Frequently Asked Questions (posted at <http://provost.yale.edu/title-ix/reports>). The scenarios in this document are intended to provide additional information and to encourage further discussion.

The majority of recent questions and concerns relate to Yale’s use of the term “nonconsensual sex” and the disciplines imposed when the UWC finds that nonconsensual sex has occurred. Yale’s definition of consent requires positive, unambiguous, voluntary agreement at every point during a sexual encounter – the presence of an unequivocal “yes” (verbal or otherwise), not just the absence of a “no.” The category “nonconsensual sex” includes rape but is more expansive than rape. In disciplining the full range of nonconsensual sexual activity, not just those acts that would meet a criminal standard, the UWC aims to uphold Yale’s high community standards, creating a campus that is safe for all.

The following scenarios have been developed to help illustrate a range of behaviors that Yale and the UWC would characterize as “nonconsensual sex” – and thus, a violation of Yale’s sexual misconduct policy. For comparison, the scenarios include examples of consensual sex. The scenarios also provide examples of penalties—ranging from expulsion to reprimand—that might be imposed as a result of a violation.

The scenarios are not drawn from actual cases heard by the UWC; the details of those cases are held in the strictest confidence. Rather, the scenarios draw upon the extensive research literature on both consensual and nonconsensual sex on college campuses. It is likely that these scenarios reflect incidents on our campus too, but examples of this full range of circumstances have not yet been heard in formal UWC cases. The names chosen for the scenarios are gender neutral to reflect the fact that sexual misconduct occurs in all gender configurations.

The scenarios are concise and do not capture the complexities that may emerge during the UWC formal complaint process, which is designed to provide a fair and thorough review of each complaint and thus includes independent fact finding, a formal hearing, and an appeal process (procedures at <http://provost.yale.edu/uwc>). Furthermore, the disciplinary outcomes described in these scenarios presume that the UWC has determined that there is sufficient evidence (i.e., a

preponderance of the evidence) to conclude that the conduct occurred as presented in each scenario. The scenarios also presume that the UWC has determined each penalty based solely on the nature of the sexual misconduct found to have occurred. In an actual case, the penalty may be influenced by additional factors, such as the prior disciplinary record of the respondent and the wishes of the complainant.

Finally, the conduct described in some scenarios would be criminal and, as such, subject to criminal prosecution. The Title IX Coordinator reports all cases of possible sexual assault to the Yale Police Department (YPD), and the University fully supports all individuals who pursue their complaints with the YPD.

Yale is committed to addressing sexual violence and sexual misconduct, to increasing awareness of sexual misconduct on our campus, and to engaging the community in creating a culture of respect and responsibility. We hope these scenarios are informative, and that they generate productive discussion and suggestions.

Note: the descriptions in some of the scenarios below may be disturbing to some readers.

The discipline imposed in each scenario presumes that the facts described below have been substantiated in the UWC fact finding and hearing processes.

1. Ryo and Casey are dating. Casey is uncertain about whether they should have sex, but Ryo is persuasive and finally obtains Casey's voluntary agreement. As they engage in sex, Casey says "wait – stop – that hurts." Ryo nonetheless continues for several more minutes, restraining Casey. Afterwards, Casey is upset. Ryo apologizes, but says they were past the point of interruption.

While there was initial consent, that consent was withdrawn. The UWC penalty would be expulsion.

2. Jessie and Vic have been flirting all semester, and agree to meet at a party. After dancing closely together for a while, Vic proposes going to one of their rooms and Jessie agrees. On the walk to Jessie's room, they send a few texts, letting Vic's friends know not to worry and asking Jessie's roommate to please sleep somewhere else. Once in the room, they begin touching. Each is interested in hearing what the other wants, and each is paying attention to the other's signals. They reach and sustain clear agreement upon mutually desired sexual activities.

This is consensual sex: Vic and Jessie reached positive, voluntary, unambiguous agreement to engage in sexual conduct together.

3. Sidney and Harper are dating. On several occasions they are physically intimate, but within limits set by Sidney, who is opposed to having sex at this stage of their relationship. One night, when they are being intimate within their mutually agreed upon boundaries, Harper begins to cross them. Sidney expresses concern, but Harper is encouraging, saying “it will be okay just this once.” Sidney replies “we shouldn’t do this,” but continues to touch Harper in an intimate way. As Harper initiates sex, Sidney says “this is a bad idea” and begins to cry, but embraces Harper and the two proceed to have sex.

Initial consent was followed by ambiguity. Sidney’s acquiescence to sex was accompanied by too much dismay to constitute unambiguous agreement, especially given Sidney’s longstanding prior refusal to engage in sex. The UWC penalty would likely fall in the range of probation to suspension.

4. Jamie and Cameron are at a party. It is crowded on the dance floor and they are briefly pressed together. Later, Jamie encounters Cameron in the hallway and smiles. Cameron, who is now very drunk, follows Jamie into the bathroom and forces Jamie to have sex.

There was no consent to have sex. The UWC penalty would be expulsion.

5. Devin and Ansley are engaging in a consensual sexual encounter, which Devin begins to intensify. Ansley responds by pulling away slightly, moving Devin’s hands and saying “not so fast; I’m not sure.” Devin cooperates briefly but then intensifies the contact once more. Ansley inches backwards and then becomes still. Nonetheless, Devin has sex with Ansley.

While the initial sexual activity was consensual, that consent was not sustained. The UWC penalty would likely range from multi-semester suspension to expulsion.

6. Alexis and Riley are studying together in Riley’s room. During a break in their studying, they rub each other’s shoulders. Alexis then introduces some intimate touching. Riley moves closer and says “Okay, but I don’t want to go too far – we still have a lot of work to do.” Alexis continues to touch Riley in an intimate way. Riley willingly agrees to some contact, but mostly sets boundaries. Alexis jokes that they deserve to have sex as a reward for their hard work studying; Riley laughs. After their studying is done, Alexis suggests again that they should have sex. Riley responds they should probably get some sleep but continues to touch Alexis. After a few more minutes, Alexis asks once more. Riley pauses, then says okay and pulls Alexis closer. They have sex.

This is consensual sex. Despite initial hesitation, the ultimate agreement to have sex was voluntary and unambiguous. There is no violation of the sexual misconduct policy. The UWC would likely counsel Alexis about the inappropriateness of sexual pressure, and recommend SHARE’s sensitivity training program.

7. Morgan and Kai are friends who begin dancing and kissing at a party. They are both drunk, although not to the point of incapacitation. Together they decide to go to Kai's room. They undress each other and begin touching each other. Morgan moves as if to engage in oral sex and looks up at Kai questioningly. Kai nods in agreement and Morgan proceeds. Subsequently, without pausing to check for further agreement, Kai begins to perform oral sex on Morgan. Morgan lies still for a few minutes, then moves away, saying it is late and they should sleep.

There was initial agreement, but the bounds of that agreement were not clear. Kai may have thought that Morgan had consented to reciprocal oral sex, but took no steps to obtain unambiguous agreement. The UWC penalty would likely be a reprimand.

8. Tyler and Jordan are both drinking heavily at an off-campus event. Tyler becomes extremely drunk. Jordan offers to take Tyler home. On the way, Tyler has trouble walking, and makes several wrong turns. Once in Tyler's room, Jordan initiates sexual activity. Tyler looks confused and tries to go to sleep. Jordan has sex with Tyler.

There was no consent to have sex. A person who is incapacitated—lacking the ability to make or act on considered decisions to engage in sexual activity—cannot give consent. The UWC penalty would be expulsion.