

## INTRODUCTION

This program is designed to provide a review of basic concepts covered in a first-year criminal law class and is based on Kadish & Schulhofer, *Criminal Law: Cases and Materials*. You have accessed the tutorial for Chapter 4, “Rape.” Prior to doing these exercises you should read the relevant material in Chapter 4.

## OVERVIEW





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## EXERCISE

Each question gives you a fact pattern, and then you must choose an answer that best reflects the law as you understand it. Be careful to read the question and the suggested answers thoroughly. Select your answer by clicking on it. If you give an incorrect answer, you will be given feedback on what was wrong with your answer. By clicking on the feedback you will be taken back to the question to try again. Once a correct answer is selected, click on the feedback to go to the next question.

You may begin the exercise by click on a question number below. Throughout the tutorial three Shortcut Buttons will be located in the bottom right-hand corner of each page. The Return Button  brings you back to this page allowing you jump to questions of your choice if you prefer. The Home Button  takes you to the Criminal Law Tutorial Home Page.

## Questions:

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## Question 4-1

4-1 Jimmy Swinehart, a middle-aged TV evangelist, has a side to his personality that is not usually highlighted during his TV program. He likes to read (or shall we say look at) magazines that portray or suggest acts that he denounces from the pulpit as immoral. One evening at 10 p.m. he was out on the street looking for female companionship. He went to a part of town where prostitutes are known to ply their trade. He entered a run-down hotel and began talking to a woman who introduced herself as “Sherri.”

Suppose Sherri is 15 years old. If Swinehart has sexual intercourse with her, would he be guilty of rape, MPC § 213.1?

- (A) No, so long as Sherri consents.
- (B) No, if Swinehart is unaware of her age.
- (C) Yes, if because of her age Sherri lacks the capacity to make an informed decision.
- (D) Yes, because Swinehart is more than four years older than she is.



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**(a)** is correct, since rape is defined as occurring when the defendant uses force or the threat of force to engage in sexual intercourse. If the victim consents, presumably there is no use of coercive force. Swinehart may be committing Seduction of Minors, but that is not rape under § 213.1.



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**(b)** is incorrect because it makes the answer contingent upon whether Swinehart knows her age. For purposes of MPC § 213.1, age is only relevant if the victim is less than 10 years old.



# DeWolf, Criminal Law Tutorial, Chapter 4 – Rape

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**(c)** is incorrect. Rape is defined as occurring when the defendant uses force or the threat of force to engage in sexual intercourse, or if the victim is less than 10 years old or unconscious. If the victim consents, presumably there is no use of coercive force. Swinehart may be committing Seduction of Minors, but that is not rape under § 213.1.



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**(d)** is incorrect. Rape is defined as occurring when the defendant uses force or the threat of force to engage in sexual intercourse, or if the victim is less than 10 years old or unconscious. If the victim consents, presumably there is no use of coercive force. Swinehart may be committing Seduction of Minors, but that is not rape under § 213.1.



## Question 4-2

George has sexual intercourse with Martha, a woman not his wife. Which of the following is correct?

- (A) George would be guilty of rape if Martha did not expressly consent, but did not resist because she was afraid of George;
- (B) George would be guilty of rape if Martha had passed out from alcohol consumption, and George was aware of the risk that she had passed out, but thought it more likely that she was just really tired;
- (C) George would be guilty of rape if Martha was below the age of 14;
- (D) All of the above.
- (E) None of the above.





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- (C) George would be guilty of rape if Martha was below the age of 14;
- (D) All of the above.
- (E) None of the above.

(a) is not correct; there must be force or threat; Martha's fear is not enough to establish that;



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- (C) George would be guilty of rape if Martha was below the age of 14;
- (D) All of the above.
- (E) None of the above.

**(b) is correct;** George would be at least reckless with respect to her being unconscious, and that is sufficient to establish liability;



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- (C) George would be guilty of rape if Martha was below the age of 14;**
- (D) All of the above.
- (E) None of the above.

(c) is incorrect; It is rape if the victim is below the age of 10, but that's not the case here.



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(d) is incorrect; only one of the preceding answers is correct.



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- (D) All of the above.
- (E) None of the above.**

(e) is incorrect. One of the answers is correct.



## Question 4-3

Jean was the daughter of Mark, the doorman at a very expensive apartment building in BigCity. Richard, who lived in the apartment building with his mega-rich parents, spotted Jean one day when she was bringing her father some prescription medicine he had left at home. Richard asked Jean on her way in the door if she wanted to play pool with him. "Uh, I don't think so," said Jean, and hurried off to find her father. When Jean gave her father the medicine he said to her, "I'm really worried. You know the Corleones, the big crime family -- they live in this building. I might be in real trouble." "We'll talk about it tonight," said Jean. As she was leaving, Jean saw Richard, who was waiting for her. "Do you know who I am?" he asked. "No," she said, but saw that he had a briefcase that said "Corleone" on it. "If you miss this opportunity, you'll be sorry." he said. "C'mon. Have a drink with me?" "Uh, okay," said Jean. After they reached Richard's apartment, he began to kiss and fondle her. She did not resist, but she started crying. Richard ignored her crying and took her into the bedroom, where he proceeded to have sexual intercourse with her. Richard then left the room and she got dressed and left. Under the MPC, could Richard be convicted of rape?

- (A) Yes, if Jean's acquiescence was not truly consensual;
- (B) Yes, if Jean reasonably believed that if she did not consent Richard would use force against her;
- (C) Yes, but only if Jean did not resist out of fear that otherwise her father would suffer serious bodily harm and Richard was at least reckless in ignoring that risk;
- (D) None of the above.



# DeWolf, Criminal Law Tutorial, Chapter 4 – Rape

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Jean was the daughter of Mark, the doorman at a very expensive apartment building in BigCity. Richard, who lived in the apartment building with his mega-rich parents, spotted Jean one day when she was bringing her father some prescription medicine he had left at home. Richard asked Jean on her way in the door if she wanted to play pool with him. "Uh, I don't think so," said Jean, and hurried off to find her father. When Jean gave her father the medicine he said to her, "I'm really worried. You know the Corleones, the big crime family -- they live in this building. I might be in real trouble." "We'll talk about it tonight," said Jean. As she was leaving, Jean saw Richard, who was waiting for her. "Do you know who I am?" he asked. "No," she said, but saw that he had a briefcase that said "Corleone" on it. "If you miss this opportunity, you'll be sorry." he said. "C'mon. Have a drink with me?" "Uh, okay," said Jean. After they reached Richard's apartment, he began to kiss and fondle her. She did not resist, but she started crying. Richard ignored her crying and took her into the bedroom, where he proceeded to have sexual intercourse with her. Richard then left the room and she got dressed and left. Under the MPC, could Richard be convicted of rape?

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(A) is incorrect, because the MPC requires use of force, not lack of consent;



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(D) None of the above.

(B) is incorrect, because the belief of the victim is not the relevant standard; it is the mens rea of the perpetrator;





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- (D) None of the above.

**(C) is CORRECT** because it accurately states the force standard in the MPC;



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- (D) None of the above.**

(D) is incorrect; there is at least one correct answer.



## Question 4-4

Susan Ostrich went to a drinking establishment where she met William Kennedy Jones. He invited her to accompany him to his house to go swimming. Before reaching the house Jones pulled the car into an isolated area, ripped off all his clothing in a seemingly uncontrolled fashion and said, "This is the way I like it!" and lunged for her. Ostrich did not resist him because she was afraid that if she resisted he might kill her. Suppose the two had intercourse. Afterward Jones drove her home. The next day Ostrich charges him with rape. He admits having intercourse but claims it was consensual.

Which of the following is correct:

- (A) Jones is not guilty of rape if at the time he was unaware of the risk that she did not consent to intercourse.
- (B) Jones would be guilty of rape if, at the time he invited her to his house he had no intention of going there, but instead planned to stop in a deserted place.
- (C) Jones would be guilty of rape if Ostrich honestly believed that she was going to be killed if she did not submit, even if her belief was unreasonable.
- (D) Jones would be guilty of rape so long as his conduct would lead a reasonable woman to believe that her life was in danger.



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(A) That's correct. Rape (MPC § 213.1(1)) requires at least recklessness with respect to her lack of consent; if he is in fact unaware of the risk that she is not consenting--and however hard that might be to believe, it is a question of fact for the jury--then he cannot be found guilty.



# DeWolf, Criminal Law Tutorial, Chapter 4 – Rape

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(B) Sorry, that's incorrect, because being devious is not enough; the jury must find that he *compelled* her to have sex (MPC § 213.1(1)). He might have planned to have sex but believed it to be consensual.



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(C) Sorry, that's incorrect; Ostrich doesn't have to believe that she will be killed; the issue is whether Jones compelled her by using force or threats against her. If the jury finds that he did so, whether purposely, knowingly, or recklessly, then he is guilty. What she believes is not determinative.



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## Question 4-5

Doug has sexual intercourse with Linda without her consent. She tells him “No” repeatedly, but he is too drunk to realize that she has not consented. Charged with rape, Doug will likely be

- (A) Convicted, because he should not have had intercourse while intoxicated.
- (B) Convicted, because intoxication negates the *mens rea* only when the defendant was too drunk to realize he was having intercourse.
- (C) Acquitted, because Linda did not demonstrate any physical resistance.
- (D) Acquitted, because his intoxication prevented him from realizing there was a lack of consent, which is an element of rape.





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- (C) Acquitted, because Linda did not demonstrate any physical resistance.
- (D) Acquitted, because his intoxication prevented him from realizing there was a lack of consent, which is an element of rape.

**(A)** is incorrect. Having consensual intercourse while intoxicated is not a crime; the question is whether or not he had the required *mens rea* for rape.



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- (D) Acquitted, because his intoxication prevented him from realizing there was a lack of consent, which is an element of rape.

(B) is correct. Intoxication is not a defense to rape unless the defendant is so intoxicated that he does not realize that he is having intercourse



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- (D) Acquitted, because his intoxication prevented him from realizing there was a lack of consent, which is an element of rape.

**(C)** is incorrect because physical resistance is no longer generally required to be proven by the victim.



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- (D) Acquitted, because his intoxication prevented him from realizing there was a lack of consent, which is an element of rape.**

**(D)** is incorrect because intoxication is not a defense to rape unless the defendant is so intoxicated that he does not realize that he is having intercourse. If recklessness is sufficient *mens rea* with respect to the fact that the victim submitted as a result of coercion or fear of the use of force, then



END

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