Table of Contents

[Table of Authorities 1](#_Toc403844077)

[Statement of Issues 2](#_Toc403844078)

[Introduction 4](#_Toc403844079)

[Statement of Facts 4](#_Toc403844080)

# Table of Authorities

* CAL. PEN. CODE § 261 : California Code - Section 261
* State v. Brown, 78 Wn. App. 891 (Wash. Ct. App. 1995).
* State v. Garnica, 20 P. 3d 1069 - Wash: Court of Appeals, 3rd Div. 2001
* CAL. PEN. CODE § 647 : California Code - Section 647 -
* Penal Code 243.4 PC
* "Elements of Common-Law or Forcible Rape." Rape Elements of CommonLaw or Forcible Rape Comments. US Legal, Inc. Web. 15 Nov. 2014. <http://rape.uslegal.com/common-law-or-forcible-rape/elements/>
* United States v. King, 32 M.J. 558 (A.C.M.R. 1991).
* United States v. Clark, 35 M.J. 432 (C.M.A. 1992).
* 2002 Cal. App. Unpub. LEXIS 1748. LexisNexis Academic. Web. Date Accessed: 2014/11/03.
* People v. Stuedemann, 156 Cal. App. 4th 1 (Cal. App. 4th Dist. 2007).
* Brown v. State, 138 Ga. 814 (Ga. 1912).
* SIDDLE, J. (2014). The sex was consensual: Teacher defends actions over rape claims. Liverpool Echo, 17.
* In re John Z., 29 Cal. 4th 756 (Cal. 2003).

# Statement of Issues

At what level of intoxication does a person lose their right to give consent to have sex and thus leads to situation of rape in the event sexual intercourse occurs.

The facts of the case do not stipulate the exact nature of the sexual intercourse nor if Kim Kardashian intended to rape Bill Cosby. In State v. Brown, 899 P.2d 34 (Wash. Ct. app. 1995) it is clear that ‘the courts have long established that intent is not an element of rape’ and thus Kim Kardashian did not rape Bill Cosby.

In addition, California defines rape as an act of sexual intercourse with someone who you are not married to, and where the other person is: incapable of giving legal consent; against a person will by means of force, duress, violence, menace or fear; where a person is unable to resist; and other instances (CAL. PEN. CODE § 261). While many of these apply due to both parties being intoxicated, it is clear they both agreed they had sex, and at one point both consented to have sex.

In State v. Garnica, the court required the victim to resist, in this case there is no resistance stipulated by the factual course of events that parties have agreed to. However, we do have both parties agreeing to socialize at the bar, agreeing to drink, agreeing to leave together, and agreeing they both had sex.

California penal code 647, in describing public intoxication, requires the person to be: unable to exercise care for their safety; having interfered witjh, obstruct, or prevent others from using streets, sidewalks – none of these instances arise in this case. Both parties are seen amicably in public, socializing, and drinking in a responsible manner. After drinking, they are sensible enough to take a cab home, and continue the night together in a consensual manner.

* Other issues that need to be addressed in this case:
  + What is rape?
  + What is sexual intercourse?
  + Was there sexual intercourse?
  + What type of sexual intercourse?
  + Were there multiple types of sexual intercourse?
  + Which of the sexual acts were forced?
  + Which of the sexual acts were threatening?
  + Did the guy resist?
  + Did the guy give his consent to sex?
  + Did the guy withdraw his consent to sex?
  + Did the woman know that the guy withdrew his consent to sex?
* Target the elements of intoxication
  + Was the guy in a state or condition of being intoxicated
  + Was the level of intoxication enough to raise ‘a defense based on inability to form the requisite specific intent to commit a crime due to intoxication’ (Intoxication).

# Introduction

Bill Cosby and Kim Kardashian walked into a bar. After socializing and drinking they agree to leave together and hangout some more. Once arrive at their destination, they have sex. In the morning, Bill Cosby claims Kim Kardashian rapes him. However, Kim Kardashian says the sex was consensual.

# Statement of Facts

* The two were at a bar 21+ both had enough drink (.08-2.0) not blacked-out.
* Guy claims rape after having sex.
* The girl says its consensual.
* Both agree they had sex.
* She takes him home in a taxi.
* There are bodily fluids, empty alcohol bottles & witnesses who saw them leave together.