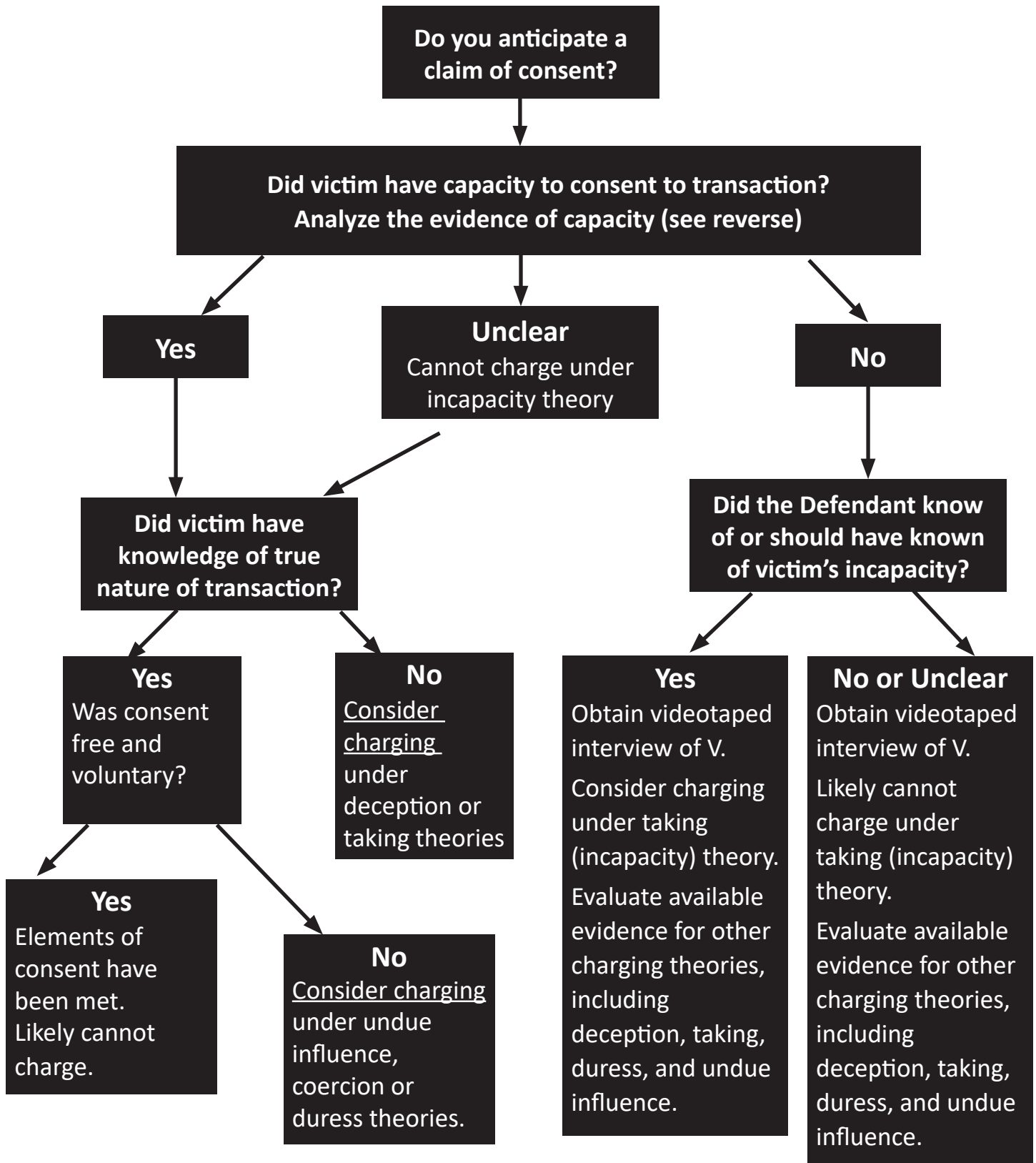


Analyzing Charging Theories in Elder Abuse Cases When Consent May Be an Issue



*This chart applies to non-fiduciary cases. If perpetrator and victim are in a fiduciary relationship, consider theft based on embezzlement irrespective of victim's capacity.

May still need to prepare for consent claim.

Always consider whether other crimes have been committed.

Possible evidence to show incapacity of victim was evident to perpetrator

- Relationship and history between victim and perpetrator
- Videotaped interview of victim to demonstrate abilities close in time to incident (See Olsen and Ulrey (2020) Interviewing Guidelines for Victims with Questionable Capacity.)
- Statements by perpetrator re: victim's cognitive impairment
- Victim's medical records
 - Statements by health care providers to perpetrator
 - Statements by perpetrator to health care providers
- Photos or videos of victim with perpetrator
- Capacity evaluator's opinion as to how evident victim's incapacity is to layperson
- Notes, writings, reminders victim made to him/herself that would have been seen by perpetrator
- Witnesses to relevant conversations between victim and perpetrator

Possible evidence to prove incapacity to consent of victim

- Capacity assessment – retrospective, if possible
- Videotaped interview of victim (See Olsen and Ulrey (2020) Interviewing Guidelines for Victims with Questionable Capacity.)
- Victim's medical records (primary care provider, specialists, hospitalizations)
 - Diagnoses, testing, oriented x3, complaints by victim/others about memory, cognition
 - Medications to treat symptoms of dementia
 - Capacity screening tests
- Observations of victim, statements made by victim to those close to him/her
- Evidence of victim's inability to manage finances, handle self-care
- Suspect's statements
- Videos of victim