

Examination Questions and Answers

Question 1

Derek met Anne one night at a disco. After the dancing had finished, Anne invited him back to her flat for a drink. Derek accepted and escorted Anne home where she drank several whiskies and became very drunk. Derek proposed sexual intercourse but Anne resisted. As she lay on the floor, he inserted his fingers into her vagina. She felt too ill to stop him. She then fell unconscious whereupon Derek had sexual intercourse with her both vaginally and anally. The following week, Derek invited Bina out for a meal and afterwards they returned to her flat. Derek told Bina that he was David Beckham's brother and that if she had sexual intercourse with him he would arrange a meeting with the famous football player. None of this was true but Bina naively agreed. Six months later, both Anne and Bina discovered that they were infected with HIV. Derek later stated that he knew he was HIV+ but claimed to be ignorant of the risks of transmission.

Discuss.

- *Assault of A by penetration: lack of capacity to consent (s74 & Bree) – defence: consent/mistaken belief in consent?*
- *Rape of A: lack of consent by virtue of s74/s75 SOA 03 – defence: Mistaken belief in consent?;*
- *Rape of B if B's consent is negated by relevant fraud under s76(2)(b) – but 'known personally'?*
- *HIV: S20 OAPA 1861 subject to recklessness/s18 if intentional.*

Question 2

Harry gives Belinda his front door key so that she can stay in his flat for two weeks. One night on a date, Belinda shares a couple of bottles of wine with Reg. Belinda would have been happy with just one glass but Reg insists she drink more to accompany him. Unknown to Belinda, Reg has spiked the wine with vodka. Belinda becomes so drunk she hardly knows what she is doing. She plunges a fork into Reg's hand just for a laugh thinking he would not mind. Reg takes the pain and accompanies her home. Belinda attempts to enter the wrong flat with Harry's key and breaks down the front door when the key does not work. Reg leads Belinda to the bedroom and suggests they have sex. Belinda is too

drunk to refuse. She passes out just as Reg climbs on top of her. He has sexual intercourse with her despite her condition.

Discuss the criminal liability of Belinda and Reg for the offences in this question.

*B: S18 wounding/voluntary/involuntary intoxication/drunken mistake in Consent
Criminal damage/drunken mistake*

R: Rape/consent/capacity/s75 evidential presumptions against consent