# Answer guidance

## Question:

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.

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 Derek’s liability.

## Key issues:

* Anne: assault by penetration – capacity to consent
* Anne: rape – statutory presumptions
* Bina: rape – deception
* Anne and Bina – s20 GBH, possible rape by deception

## Key law

You will find relevant legal rules in:

* Rape: s1 SOA 2003, section 9.2
* Assault by penetration: s2 SOA 2003, section 9.3
* Consent: section 9.2.2
	+ Definition of consent: s74 SOA 2003
	+ Intoxication: *Bree*
	+ Unconsciousness/presumption of non-consent: s75 SOA 2003
	+ Identity deception: s76 SOA 2003, *McNally, R (on the application of ‘Monica’) v DPP*
* S20 GBH: *Dica, Konzani,* chapter 8

## Hint(s):

* Remember that where a presumption under s75 or s76 does not apply, there may still be a lack of freedom/capacity under s74.