

Examiner's interview 2009: F4 - Corporate and Business Law.

Interviewer: Hello. Welcome to the examiner's interview for F4, *Corporate and Business Law*. The examiner – David Kelly – has provided the answers and his words are spoken by an actor.

The interview covers a range of issues, focussing on candidates' performance over the last 3 exam sessions and how to improve it.

Can you please begin by reviewing past paper performance for December 07, June 08 and December 08, highlighting some areas for discussion?

Examiner: Yes. I will start by looking at what was done well.

First of all, I would like to say that candidates have consistently done well in the employment aspect of the syllabus.

In addition, the replacement of the 20 mark questions by 10 mark questions has improved the performance in Contract. This means the questions are less complex. It is possible, therefore, to set more questions covering the syllabus more broadly, but not in less depth in each area.

As this is the first written paper after the Knowledge module – which is entirely assessed by objective test questions – this gives a gentler introduction to written questions than the style of the previous paper would have permitted.

Interviewer: So, in December 2007 which particular areas would you highlight as having been done well?

Examiner: Question 2 was on contract law, the doctrine and exceptions to the privity of contract, and the intention to create legal relations. The candidates were able to give a full account of the relevant principles and provide case authority to support their explanations.

Question 4 was on the clauses in a company's memorandum of association. This was answered well too.

Question 7 was on the role of the auditor in relation to companies, and the way the relationship is regulated by company law. Candidates seemed to have a good grasp of this area.

Question 8 required an analysis of a problem in an applied format on the perspectives of the law of contract – focusing on the creation of

contractual relations. This question was answered well by many candidates.

Interviewer: What about June 2008?

Examiner: Again, Question 2 was done well – it was on the meaning of offer and invitation to treat.

Question 4 was another question well answered by many candidates. It was on the doctrine of separate personality.

Question 5 asked candidates to consider various investment mechanisms available to investors including ordinary shares, preference shares and debentures. This was the best answered question, although with ordinary and preference shares there was a tendency to define them in terms of each other.

Question 7 was on the common law rules to distinguish contracts of service from contracts for services. This question was done well with good case authority to support the answers.

Question 8 was on the remedies for breach of contract. Candidates displayed good understanding of the various remedies available.

Interviewer: Quite good news so far then. What about the December 2008 examination?

Examiner: Question 2 required an understanding of what is meant by breach of contract paying particular attention to anticipatory breach. It was encouraging to see case law being cited in support of explanations.

Question 7 required an explanation of the grounds upon which dismissal may be fair, and the meaning and effect of constructive dismissal. This seemed to be well understood.

Question 8 required an analysis of a scenario relating to offers, invitation to treat, and option contracts. Again, the standard of many answers in this area was encouraging.

Interviewer: Thanks. What about the areas which weren't handled so well by candidates?

Examiner: Candidates are treating the problem and application questions the same way they dealt with the 20 mark application questions. This means that they are spending too much time dealing with these, to the detriment of their performance. Candidates should manage their time better – they have sufficient time to deal with all questions equally well.

For the first two examinations under consideration in this period, the main cause for concern for the markers was the lack of knowledge about the law of tort generally and negligence in particular. This was particularly disappointing as it appears that many candidates were electing not to study this new part of the syllabus. This impression was supported by the fact that a good number of candidates just tried to use contract law to answer the tort questions, with negative results. The December 2008 paper did see *some* improvement in the treatment of tort, but it still remains an area of concern.

In December 2008, the single most damaging factor for the performance of the candidates was the almost total lack of awareness of the existence, let alone the detailed provisions of, the Companies Act 2006. Three of the questions – numbers four, five and six – focused on the provisions of that Act, in areas where the law had changed significantly. Very few candidates appeared to be aware of the provisions, but perhaps of more concern, a

considerable number appeared not even to be aware of the existence of the 2006 Act, repeatedly referring to the provisions of the Companies Act 1985. The really surprising and disappointing thing is that this was the second F4 in which the 2006 Act has been the basic legislation. The response to question four was inadequate, given that there had been a recent article on that very topic in *student accountant*.

Interviewer: So, in specific terms, what wasn't done well in December 2007?

Examiner: Question 1b was on the jurisdiction of the criminal and civil courts. Many candidates attempted to answer in terms of the hierarchy of authority in the context of judicial precedent rather than jurisdiction.

Question 3 was on remoteness of damage in the law of tort. The majority of candidates ignored the reference to tort and answered on the basis of contract law.

Interviewer: What about June 2008?

Examiner: Question 1 was on the common law and legislation. Candidates did not do particularly well, which is surprising given that the first question is always

on aspects of the legal system. A number of candidates did not even attempt this question.

Question 3 was on the standard of care owed by one person to another in relation to the tort of negligence. The majority of candidates did not answer the question asked and provided a general explanation of the law of tort or the duty of care. Candidates have not yet come to terms with this new area of the syllabus.

Question 10 was on insider dealing. There was a general lack of detailed knowledge about the meaning of insider dealing and the contents of the Criminal Justice Act 1993, and those who had knowledge tended not to apply it properly.

Interviewer: Were there any specific areas not done well in the December 2008 exam?

Examiner: Yes, there were a few areas. Question 3 required an explanation of the concepts of contributory negligence and consent. Candidates were not comfortable with this area of the law. More practice is needed.

Question 4 required an explanation of the different types of share capital and the difference between nominal value and market value of shares.

This required an understanding of the Companies Act 2006 and the majority of candidates were unaware of the changes introduced.

Question 6 required an explanation of the duty of directors to promote the success of the company and to whom such a duty is owed. This required reference to the Companies Act 2006. Only a small minority of candidates were aware of the Act.

Question 9 required candidates to examine the law relating to the power of companies to change the articles of association. A number of candidates misinterpreted this question as relating to directors' duties.

Interviewer: Having reviewed the past performance of candidates, are there any key lessons to be learned?

Examiner: Candidates still seem to have a predisposition to provide prepared answers to questions, even where these are not appropriate or relevant. This was particularly evident in the December 2008 examination, where candidates showed a tendency to misinterpret questions in order to allow them to deliver the answers they had prepared.

Interviewer: Finally, is there anything new about the syllabus or future exams that you would like to flag?

Examiner: Yes. In the light of recent events we may see a move in emphasis away from Insider Dealing under the Criminal Justice Act 1993, to the more relevant offence of Market Abuse under the Financial Services and Markets Act 2000.

Interviewer: Do you envisage any change in the style or format of the exam?

Examiner: No, I plan no changes in format or style and no material addition or alteration of content is envisaged.

Interviewer: Thanks very much.