

## **CAAV EDUCATION AND EXAMINATION COMMITTEE**

### **REPORT OF THE WRITTEN BOARD FOLLOWING THE 1999 EXAMINATION**

#### **PAPER 1**

##### **QUESTION 1**

57% of candidates successfully answered this compulsory question; a pass rate significantly above the overall pass percentage.

The question sought to test candidates' overview of the current agricultural economy in both arable and beef sectors, and in turn their views as to how current returns might impact rents being reviewed from 1996.

The second part of the question required a knowledge of the preliminary procedures and time limits involved in preparing for an Arbitration.

As the pass rate reflects, the question was generally well answered with practically all candidates having a grasp of the declining commodity values and the reasons for them. The best answers were illustrated with indicative commodity values and how they had changed over the last three years.

While the great majority of answers correctly identified the procedures for appointing Arbitrators and the important 35 and 56 day time limits (with the frequent practice of extending the latter by application to the President of the RICS) a number of answers contained advice to the landlord to take the initiative in appointing an Arbitrator when clearly it was not in his interest to do so.

It was also disconcerting to read that a number of candidates thought that the rent review procedure was dealt with by the Agricultural Lands Tribunal!

Once again, the longest answers were not necessarily the best. Planned and structured letters ordering the advice in a logical format scored highest marks.

##### **QUESTION 2**

The question was set in two parts. The first section was looking for advice on a sensible enterprise mix on the holding described, bearing in mind the fixed equipment that was available. The second and more important section asked for an explanation of how the current CAP control systems would affect the chosen enterprises. Candidates were asked to present the answer in the form of a briefing note.

Many candidates overlooked the first part of the question which meant that their answers lacked structure. There was temptation to regurgitate everything that they knew about the Common Agricultural Policy and Agenda 2000 without relating it to the holding in question. However, the overall understanding of the types of control system that currently exist was good.

The best answers set off by determining an appropriate farming system and identifying the benefits and short comings of the chosen enterprises. A brief explanation of the general nature of the CAP system followed by way of background information. The more enlightened candidates also referred to Agenda 2000 at this stage. With regard to the chosen enterprises, a detailed account of how the mechanics of the individual schemes worked then followed – this gave candidates the chance to display their knowledge of the subject.

The majority of answers were not presented in briefing note form as requested – rather they were delivered as an essay. In some cases no reference was made to IACS and candidates were not always clear on the restrictions that apply to suckler cow premium on holdings that support a dairy herd. Of those that passed this question, 60% scraped through on the pass mark.

## **PAPER 2**

### **QUESTION 1**

Answered by 61 – 26 passed (43%), 35 failed (57%).

The Question was framed thus:-

*“You act for a 52 year old tenant who took occupation of his 120 ha holding in 1978. He has two married daughters, one of whom works part-time on the holding.*

*He has received a letter from his Landlord’s Agent offering him an additional 80 hectares to add to his existing holding on condition that the new letting and existing tenancy are contained under a 30 year Farm Business Tenancy.*

*Write a letter to your tenant client identifying the issues that he should consider, including your advice as to whether he should accept the Landlord’s offer.”*

A correct answer would have included reference to the following:

1. The Farm Business Tenancy would give an assured tenancy for 30 years over 200 hectares. Although the tenancy would then be 82, it would allow him to continue farming for, probably, as long as his daughter wished to help him, although the farm could not be sub-let to her. This would only be advantageous if the daughter did wish to farm and to take on more responsibility, as under the present situation, she did not have a certain right to succession under the 1986 Act. The daughter’s long term plans, therefore, needed to be ascertained.
2. The economies of scale in taking an additional 80 hectares would be a factor, tempered with the increased necessity for buildings and / or extra machinery.

3. The current tenancy carries two succession rights (daughter and grandchild) and brief synopsis of succession procedure (i.e. eligibility and suitability etc.) was looked for. Also, comment on the fact that daughter was only part-time but possibly chance of improving that position. Comment also that succession would be lost under a Farm Business Tenancy.
4. Comparison of rent formulae under 1986 and 1995 Acts and possibly that 1995 Act rents would be higher.
5. Commentary on fact that tenancy under 1986 Act could be terminated at 12 months notice by tenant, (although not well advised to do so!) but that a 30 year Farm Business Tenancy would commit landlord and tenant to each other and tenancy for 30 years. This leads to inflexibility in tenant's choices and recommendation that 5 year break-clause was looked for in the answer.
6. Question of position regarding improvements under 1986 Act tenancy and their inclusion in 1995 Act tenancy needed to be addressed.
7. Question of the milk quota (if any) and the Tenant's compensation for milk quota under the Agriculture Act 1986 also needed to be addressed.
8. Comment on advantages to Landlord of new Farm Business Tenancy for whole 200 hectares from Inheritance Tax point of view (Agricultural Property Relief) and that this should be used by tenant to his advantage.
9. Advise would be to tell Landlord that tenant would accept Farm Business Tenancy on extra 80 hectares but continue under 1986 Act on original tenancy unless the disadvantages can be negotiated away with the landlord and also that break-clause would be included in favour of tenant only.

The answers failed to highlight all the matters listed above and many failed to mention the importance of "break-clauses". Whilst a perfect answer was not expected, too many papers missed out on the salient features. It was noticeable that the papers which assumed various factors not in the question generally gave the poorest answers. The moral of that must be that the candidate should read the question very carefully and stick to the details. Assumptions only tend to cloud the picture.

The standard of presentation was better than 1998, in that most candidates answered the question with a properly-crafted letter with paragraph headings and a logical progression.

### **Model Answer**

Dear John,

Thank you for giving me the letter from you landlord, after a recent meeting and, to summarise, the situation currently, as I understand it from you, is as follows.

1. You occupy on a tenancy under the Agricultural Holdings Act 1986 (the 1986 Act), a 120 ha holding which you took in 1978, when you were 31 years old, and you are now 52.
2. Of your two daughters, only one works part time on the holding.
3. Your landlord has offered you a Farm Business Tenancy on a further 80 hectares provided that the tenancy of both the new and existing holdings are amalgamated into one holding on a Farm Business Tenancy for 30 years under the Agricultural Tenancies Act 1995 (the 1995 Act).

You ask for my advice as to how to respond to this offer and I set out below the points for and against the proposal.

#### For the proposal

1. You would have an assured tenancy for 30 years, until you were 82, of the whole 200 hectares. This would allow you to continue farming for that length of time and also to bring in your daughter to help you and, perhaps, take on more of the management of the farm, although you would not be allowed to sub-let the farm to her. This is only an advantage if your daughter does want to farm with you and take on more responsibility. As she would not have a certain succession right under the 1986 Act, this might be an advantage to you and her but you will need to know your daughter's long term plans as regards the farm.
2. The additional 80 hectares will enable the fixed costs to be spread over a bigger area but, on the other hand, you may need to invest in more machinery and buildings to accommodate this land and possibly take on more labour, although many operations can be carried out by contractors.

#### Against the proposal

1. As your existing tenancy started in 1978, the succession provisions of the 1986 Act will apply. In essence, this means that an eligible person (i.e. a close relative, being wife, son, daughter, brother or sister), provided they are suitable, could take over the tenancy on your retirement at age 65 or above or on your death. To be eligible, the applicant must also have obtained their living or the majority of it off the holding and must not occupy a commercial unit other than the one for which the tenancy is being applied. As I understand that your daughter works part time on the farm, provided more than half her income is from the farm, she would be eligible. She would also have to pass a suitability test in that she is healthy, qualified and has sufficient financial resources to farm the holding properly. This right to a possible succession, which would also apply to one of your daughter's children or her husband, would be lost if you took a Farm Business Tenancy, as succession does not apply to tenancies under the 1995 Act.
2. The rent under a 1986 Act is fixed in accordance with the formula in Schedule 2 and can only be reviewed every three years, and only then provided a notice

is served. The rent level is fixed in accordance with the productive capacity and related earnings capacity of the holding, amongst other matters, with scarcity being disregarded and also the rent level is that which a prudent and willing landlord would accept from a prudent and willing tenant. Under the 1995 Act, the rent will be reviewed every three years unless the agreement specifies otherwise and the rental is to be assessed on the open market basis as between a willing landlord and a willing tenant. This formula, compared to that under the 1986 Act, does give rise to higher rental levels.

3. Under the 1986 Act tenancy, you would be able to terminated the tenancy after having served one year's notice which expired on a term date. (You would not be well-advised to do so, however, as, if you did want to retire, we would wish to carry out some negotiations with the landlord in order to obtain the best possible deal for you – the service of a notice to quit by you would take away all your bargaining strength, so please do not serve any notices unless you have spoken to your solicitor or me about it first!). This means that if circumstances dictate you would be able to give up the tenancy without any great delay or problems. However, under a 30 year Farm Business Tenancy, that would mean exactly what it says – you and the landlord will be committed to each other for 30 years, unless the tenancy agreement contains what is known as a “break-clause”, in that, say every 5 years you would be able to terminate the tenancy. Without such a break clause, you would be tied-into the personal tenancy for the whole 30 years, and, if you died within the 30 years, so would your personal representatives. Given the state of farming currently, I would strongly advise that, if you do enter into the Farm Business Tenancy, you do insist on a break clause being included as otherwise you would lose all flexibility and would not be able to give up the tenancy if, for instance, you found a better farm to which you wished to move.
4. Under any new tenancy, we would have to carefully look at the position of any improvements you have carried out on your existing holding and carry these forward into the new tenancy. Under the 1986 Act, as you will know, landlords have been able to write-off improvements over 10, 15 or 20 years but this is not allowed under the 1995 Act, the value of improvements being the value they add to the farm as a farm.
5. On the assumption that the farm is a dairy farm, any compensations you are entitled to under the Agriculture Act 1986 for Excess Quota and Tenants' Fraction of Standard Quota will have to be calculated and included in the Farm Business Tenancy, if you do enter into one, so that at the end of that Tenancy, you or your heirs remain entitled to the compensation.
6. The advantage to the landlord of converting the old tenancy into a new one under the 1995 Act, along with the other 80 hectares, is that it gives him a doubled relief under the Agricultural Property Relief provisions of the Inheritance Tax Regulations. In effect, 100% of the value of the land, as opposed to 50%, becomes eligible for the relief, as matters stand at the moment. This is an important relief for the landlord and some advantage should accrue to you for agreeing to the Farm Business Tenancy, if you do so agree.

In summary, as you can see, I am more against you accepting the proposal that I am for you accepting it, for the reasons set out above. Unless you can alter some of the disadvantages in negotiations with your landlord, I would advise that you should say to him that you are perfectly willing to accept the 80 hectares on a Farm Business Tenancy but that you wish the original tenancy to continue under the 1986 Act.

Where and when I can help further, let me know.

Yours sincerely

## **QUESTION 2**

Answered by 4 – 2 passed (50%), 2 failed (50%).

The question was framed as follows:-

*“Having recently qualified as a full member of CAAV, your partner has instructed you to review office procedures in relation to obtaining ISO 9002 certification. He has directed you towards the issues set out below which will be discussed at the next partners’ meeting.*

*Professional Indemnity*

*Clients’ Money*

*Employment Lay and Contracts of Employment*

*Health and Safety Policy*

*Office Systems*

*Please provide him with a report setting out the basic requirements under each heading.”*

A correct answer would have included reference to the following.

1. An explanation as to what ISO 9002 certification is and its objectives. This should include the fact that it was a quality assurance scheme, the quality relating to the adequacy of meeting clients’ requirements and thus giving the clients confidence in a practitioners work. The objectives would be to improve and sustain internal controls so that extra confidence was given to the clients.
2. Professional Indemnity – An explanation as to what it is and why it is needed, who needs such cover, the amount of such cover and further background information such as the need to be insured when the claim is made and to advise insurers of a pending claim and also to hold run-off cover.

3. Clients' Money – An explanation as to what constitutes clients' money, why it is held and how it is held, the need for separate bank accounts, the need for proper and regular statements of balances, the audit requirements of the CAAV, RICS, ISVA and the need to comply with Institution and Association rules.
4. Employment Law and Contracts of Employment – The answer would have included comments on the need to comply, brief details of employment law regarding unfair dismissal, anti-harassment, race, sex and discrimination, maternity issues, work and time directive, minimum wage, fairness at work, unfair dismissal and redundancy payments. Also, the need for contracts of employment as required under the Employment Rights Act of 1999 and the particulars that would need to be included in such contracts.
5. Health and Safety Policy – The requirements under the 1974 Health & Safety at Work Act, the general themes thereof, Health and Safety Regulations 1992, risk assessment, health & safety policy required, the presence of an accident book and first aid equipment, details of the company's Health & Safety policy.
6. Office Systems – Efficient office systems would lead to ISO 9002 certification and include:-
  - a) setting down of complaints procedures for both staff and clients;
  - b) deadlines for the acknowledgement of correspondence;
  - c) the date stamping of all incoming mail;
  - d) the confirmation as to who is to sign reports and valuations;
  - e) ways of dealing with conflicts of interest;
  - f) telephone message systems;
  - g) the taking and keeping of hard copies of both email and faxes.

As stated above, the question was answered by only four candidates of which two passed and two failed. The two that failed, failed as much from their lack of complete answers as anything else.

### **QUESTION 3**

This question sought general information on a choice of three from five topics, (several candidates wasted time answering all five parts!)

Sufficient information was required to demonstrate a good working knowledge of the topics, in order to be able to advise clients appropriately.

- a) BEN 19: very confused ideas were presented on the alternative bases available, which extended into the treatment of subsidies, and which animals could be included in to the 'herd basis' valuation.

CAAV Publication No. 170 refers

b) Capital Gains Tax in relation to property: a brief explanation was required to include background and methodology with other relevant details. This should have included comment on:

- base value for computation
- indexation
- taper relief
- other reliefs to include:- Annual gains
  - :- Retirement
  - :- Rollover
  - :- Principle Private Residence

Comment on the treatment of statutory compensation payable under AHA, and sale of Milk Quota would have assisted in demonstrating a good working knowledge.

c) Agricultural Property Relief – IHT: this answer should have included the levels of relief and description of the property to which it may apply.

Few candidates were aware of all the implications.

d) Capital Allowances – Income Tax: a working knowledge of these allowances and basis of relief was required, together with consideration of any necessary adjustments for private use, or temporarily enhanced allowances.

e) Gifts made with the reservations of benefit – IHT: some explanation was required of the implications for the donor's estate all as highlighted in the decision of the House of Lords in the case 'Ingram v C.I.R.', subsequently reversed by the Chancellor in the 1999 Budget.

f) Betterment:- identify any changes in planning designation on the retained holding  
:- distinguish relevance of decisions in:

- Cooke v Secretary of State for the Environment (1974) 27 P & CR 234
- Portsmouth Roman Catholic Diocesan Trustees v Hampshire County Council (1979) 40 P & CR 579

And hence set off against either total compensation claim, or just that amount in respect of severance/ injurious affection.

Several candidates offered a (late) solution to this aspect by suggesting that the 'severed' land be sold into separate ownership, thereby avoiding this deduction!

There is much useful reading material available, as well as various reported Lands Tribunal decisions, which would assist candidates gain a working knowledge of these matters.

## **QUESTION 4**

Rural Planning (Re-use of Farm Buildings)



Report on Candidates' Answers by  
A.C. Robinson BSc FRICS FAAV

What is clearly apparent in marking the question is that candidates in general had a clear grasp of the relevance of Development Plans, Local Plans and Planning Policy Guidance Notes.

However, candidates did not spend time before answering the question in working out the best way in which to impart this knowledge to their client.

They also failed in general to pick up on the broader issues raised by the question, namely feasibility, finance, taxation and the longer term future effects on Church Farm.

Many candidates also failed to describe adequately the planning process and the structured approach required for submitting and monitoring a planning application. Above all, there was a general failure to leave the client with a professional view of his best way forward.

Candidates must remember that a few minutes taken in considering the matter and planning a letter is time well spent. It is, after all, the reality of professional life.

## **QUESTION 5**

### Compensation

This question was modelled on the case on Wymondham by-pass, which was heard by the Lands Tribunal this year and a synopsis article was included in the CAAV Newsletter No. 94, March 1999, *Alston (J) & Sons Ltd v Highways Agency* LCA/81-2/1997, (Rating and Valuation Reporter, July/ August 1999 – Vol. 39, Nos. 7/8)

Generally the answers demonstrated a definite lack of personal experience in dealing with compensation claims. Candidates were vaguely aware of text book guidance on compensation matters but appeared unlikely to be able to deal with such a scenario without being guided by their senior partner!

It is appreciated that schemes such as the one described in the question are rare occurrences at present, but the provisions for compensation are part of the foundation knowledge required by members and different aspects are frequently used in the everyday routine of valuation.

To be successful in their answer the candidate needed to offer advice to include the following matters:

- 1) Value of land taken:- consider date of valuation, zoning/ allocation in Local Plan and possibility of change to higher value use than agricultural (Sec. 17 Certificate of Alternative Development may be an option);
  - what is the value of a strip of land for by-pass?;

- 'before and after' valuation may be helpful;
- 'lotting' may provide better guidance on valuations;
- impact of accommodation works on value.

2) Injurious Affection and Severance to land, dwellings and sporting rights:

- 'before and after' valuations may be appropriate
- intrinsic value of 'estate'
- any special purchases in the market?
- review impact on valuation of accommodation works provided by Acquiring Authority
- possible impact of changes in farm enterprises/ rotations on freehold value
- extra 'fencing' liability
- adjustment of freehold value for increased costs of agricultural operations
- opportunity to 'mitigate' claim.

3) Disturbance claim:- only in respect those matters suffered by claimant due to 'entry' on land for completion of scheme and not included in other heads of claim.

- distinguish claims against contractor for negligence on their part
- include reference for reimbursement of Surveyor's fees and legal costs
- interest on any outstanding balance of compensation due to claimant (advance payment can be claimed)
- 'Farm Loss Payment' if claimant qualifies
- 'Gwyn Williams' diary of incidents arising from entry and works.