

CAAV EDUCATION AND EXAMINATION COMMITTEE

**REPORT OF THE WRITTEN BOARD FOLLOWING THE 2002
EXAMINATION**

PAPER 1

QUESTION 1

The majority of candidates answered this question with approximately 75% obtaining the relevant pass mark or above.

The question asked candidates to advise their client on the letting of his farm and to:

- a. Set out confirmation of the basis under which the farm would be let.
- b. Set out the basis of their professional costs and terms of business.
- c. Set out the information they would require their client to produce so that they could prepare relevant letting particulars.
- d. Set out in basic terms the information they would require from prospective tenderers so that they could make an informed decision when selecting the new farm tenant.

Candidates had a basic understanding of Farm Business Tenancies but many failed to explain in enough detail the intricacies of this type of Agreement and the benefits and dis-benefits.

Generally candidates did well at setting out their terms of business, stating either an hourly rate or a percentage of the first year's rent. They also set out fully and properly the position regarding advertising costs, disbursements and VAT.

Answers were, however, 'thin' in my view in seeking the pertinent information from the client for the letting of the farm. Many failed to say they needed a copy of the Rural Payments Agency milk quota printout and some even failed to secure a copy of the IACS Field Data Sheets from their clients.

With regard to the proposed tenders, many candidates failed to make any mention of business/ farming plans, capital requirements, budgets and cash flows.

Generally, however, candidates answered this question well and had clear understanding of what was required and the information that was required.

QUESTION 2

This question sought to test candidates' knowledge of the rent review and early termination options available under the 1995 Agricultural Tenancies Act for incorporation within a proposed 10-year Farm Business Tenancy.

Attempted successfully by 22 out of 35 candidates, this was a popular question and for the most part pleasingly answered. The majority of candidates had a good basic grasp of the rent review options under a Farm Business Tenancy of either no review,

an agreed formulae not involving 'the exercise by any person or any judgement or discretion', or the statutory machinery.

The frequency of review, the requirement for notice and application of the 1996 Arbitration Act Code were generally well understood. It was evident also from the answers relating to the provision of break clauses and notice periods that the majority of candidates had been involved with the drafting of Farm Business Tenancies.

QUESTION 3

This was a standard taxation question and asked for a file note on immediate and potential capital taxation liabilities, i.e. Capital Gains Tax and Inheritance Tax together with the appropriate reliefs and allowances relating to the respective tax regimes.

26 candidates attempted an answer but, disappointingly, only 11 candidates gained a pass mark.

A 'textbook' answer would have sufficed and those that passed did so well with a summary in note form of the types of tax and the related reliefs and allowances. Most managed to include some options available to Major Burke on the disposal of his assets.

The failed answers were muddled and confused by reciting the wrong reliefs to the relevant capital tax, and often with no mention of IHT.

A few candidates lost marks by providing a lengthy description and not brief notes as asked for.

PAPER 2

QUESTION 1

Some candidates made heavy weather of this question. Whilst they were able to distinguish between Rent Act 1977 and Housing Act 1988 Tenancies, they failed to expand on matters such as security of tenure, succession and scarcity. So far as the Rent Act Tenancies were concerned, candidates were generally aware of the role of the Rent Service but their knowledge of procedural points was clearly sketchy. A few knew about such things as the Rent Acts (Maximum Fair Rent) Order 1999 and the need to serve Form 1 Notices following the Rent Officer's determination but many did not. The question was also looking for a comment on the Rent (Agriculture) Act 1976 and its relevance to the portfolio of properties – some overlooked it altogether. Turning to the Housing Act Tenancies, it was important to distinguish between Assured and Assured Shorthold Tenancies. Some candidates merely confirmed their answers to Assured Shorthold Tenancies and many were unaware also of the enactment of the 1996 Housing Act and its implications. Better answers flagged up the significance of Section 20 Notices and pointed out that Assured Shorthold Tenancies became Periodic Tenancies if they were allowed to run on. There was confusion over the purpose of the Rent Assessment Committee and not everybody appreciated it had a role to play under the Housing Acts.

Valuation of the properties threw up some interesting ideas! Capitalisation of the income flow and market evidence were the main determinants and were acknowledged by most candidates. However, related factors such as condition of the property, repairing obligations, age of the tenants and the potential for considerable rental uplift was often overlooked. Good candidates suggested the need for a structural survey and drew attention to the relationship between demand and the level of rent that could be expected. They also pointed out that properties could be sold as and when they became vacant.

28 candidates attempted the question of which half obtained the pass mark. The best answers dealt with the subject on an ordered basis and these were easy to follow. Frequently though, candidates presented information in a 'jumbled' fashion which was far harder to assimilate. As ever, the message to candidates is to take the trouble to present answers professionally and answer the sections in the order in which they are asked bearing in mind that scruffy and disorganised scripts only serve to frustrate examiners and could lead to lower marks.

QUESTION 2

This question was answered by approximately half the candidates sitting the examination, with approximately 70% obtaining the relevant pass mark or above.

The question asked candidates to set draft Heads of Terms for a licence/ lease covering the letting of a range of former farm buildings and to comment on the difference. It also asked candidates to advise the client on practical and taxation issues with regard to the letting.

Candidates generally understood the difference between a licence and a lease and clearly understood that the Landlord and Tenant Act 1954 would apply. Some failed to advise that the lease could be taken outside "54 Act security" if both parties consented to this.

Heads of Terms were set out in detail, although many failed to include a "permitted user" clause and many also failed to mention "assignment".

Practical issues were picked up but the majority of candidates failed to make any mention of services for the buildings and how they should be split. Some even failed to deal with car parking and general highway issues.

The taxation element of the question was generally well answered. There was some confusion with regard to Agricultural Property Relief and business Property Relief but frankly this was no surprise. The important fact was that candidates had a basic understanding and realised that they would have to advise their client to speak to the accountant before progressing.

This question was satisfactorily answered by the majority, who clearly had had "hands on" experience of dealing with an instruction of this nature.

QUESTION 3a

The question was attempted by 13 candidates of which 7 passed, achieving 13 of more marks, a pass rate of 53.84%.

Of those candidates who failed, many missed deducting variable costs. The question stated fixed costs were included in the contractor's payment but variable costs would then normally be deducted from income before arriving at the net income.

As usual, I would make the plea that candidates must carefully read the questions, confirm in their own mind what the Examiner wants and frame the answer accordingly. Do not include more than is asked for.

QUESTION 3b

9 candidates attempted the question but only 2 achieved a pass mark of 13 – 22.22%.

Most candidates did not correctly take into account the 38 ha owned for three years – this qualifies for three fifths of a full apportionment, not nil as many candidates said. Some candidates failed to distinguish between land to which milk quota could be apportioned (i.e. all land used by dairy cattle, as defined in *Puncknowle v Kane*) and “relevant hectares” being the land used for dairy cattle in 1983, for the standard quota calculation.

Rental values ascribed to the tenant's improvements were also generally very low and did not take into account the large contribution these must have made to the initial allocation of milk quota in 1983, although no-one valued them too highly – most seemed to have grasped the point that any rental value had to be tempered by the total area of land used by dairy cows.

QUESTION 4

Attempted by 35 candidates, 22 answers were successful, a pass rate on this question of 70%. The crucial starting point for a successful answer was the identification of the tenant's right to use the landlord's Section 12 Notice to pursue a (downward) review of the rent. A Section 12 Notice, once served, cannot be withdrawn unilaterally by either party. The background information was skewed to lead the candidates to the prospect of a rent reduction.

Generally well answered, once the key fact had been identified, candidates were familiar with the procedure for the appointment of an Arbitrator, the 35-day time limit for the submission of Statements of Case and 56-day extendable time limit for the issue of the Award.

QUESTION 5

Generally, this was a very well answered question by the 43 candidates who attempted it, with an 86% pass rate.

The question related to report writing and professional conduct and ethics. It was divided into broadly two sections; the first to set out the preliminaries to be established, and secondly to detail the procedures to be followed when reporting to a new client.

Easy marks were obtained in the first part by candidates who referred to the RICS Red book valuation manual, possible conflicts of interest and Professional Indemnity Insurance, together with the fee basis.

Candidates who did well in the second section on procedures provided detailed Heads of Terms for the report and a mention of to whom the report would be addressed, the purpose of the loan and, most essentially, an inspection of the Estate.