

# REPORT ON CAAV WRITTEN EXAMINATIONS 2007

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# Paper 1

## Question 1

From the scenarios presented below, pick **four out of five** options and write short notes upon the methodology in carrying out a valuation of the assets. Include in your answers what statutory provisions, case law, guidance and/or similar points that may apply.

- a) Valuation of a 50 hectare grassland farm with a substantial house for the administration (probate) of a recently deceased client's estate.
- b) Valuation for stocktaking purposes of :-
- [i] 20 homebred fattening cattle
  - [ii] 100 tonnes of milling wheat in store
  - [iii] 7 bags of three year old nitrogen in 600kg bags stored outside
- c) [i] Winter OSR sown on 1<sup>st</sup> October 2007 in a Michaelmas tenancy on a takeover date of 6<sup>th</sup> April 2008 for an 1986 Act tenancy
- [ii] A field scheduled as permanent pasture in the tenancy agreement ploughed out without consent in September 2007 valued at 6<sup>th</sup> April 2008 for a valuation for 1986 Act tenancy
  - [iii] A midden/heap of farmyard muck 40m x 6m x 2m adjacent to an intended potato field.
- d) Three hectares of building land with planning permission for housing - Valuation for sale.
- e) A vacant farm bungalow, subject to an agricultural occupancy clause - valuation for sale.

Answer four out of options (a) to (e). Each option is worth 5 marks

Attempted by 52 of whom 23 achieved a pass mark.

Candidates were required to answer four out of five parts, each worth 5 marks equally spread. The question ranged over various valuation scenarios to include Inheritance Tax, Business Economic Note 19, tenant right matters at the end of tenancy and market valuation of both a housing site and a bungalow, subject to agricultural restrictions for the purposes of sale.

The best of the candidates answered by following the instructions in writing **short notes** and by organising their answers in sections as directed by the question namely;

1. Methodology
2. Statutory Provisions
3. Case Law, guidance and similar points.

The very best answers considered other aspects under the heading "similar points", for example;

1. Removing restrictions as an option before selling the agricultural farm bungalow and indicating the significance to a client, together with the mechanics of achieving this.
2. Recognising that ploughing out a scheduled permanent pasture without consent was in fact a dilapidation and not a claim for tenant's pasture; in this particular case, again the best answers dealt with the question by expressing the remedy to be claimed as an end of term claim and the overriding measure diminution of the reversion.

### Planning Your Answer

It is always wise, having read the question to provide a planned answer in the form of notes at the start of the answer. Under exam conditions, it is easy to embellish parts of an answer and severely underwrite other parts, or indeed forget to answer the questions at all which did happen this year. I would strongly recommend attempting all sections of a question, missing parts is less likely with a planned answer using notes. Where answers are not capable of completion due to time pressure, the planning notes are a great help to examiners and I personally am prepared to award marks if the answer is incomplete from the notes if the time constraint is obvious. I do not however expect to see planning notes alone becoming the extent of the answer in all cases.

## Question 2

Your client, Professor Field, was bequeathed a 400 acre cereal farm in 1980 by his aunt.

Up until the mid-1980's the farm was held on a typical agricultural tenancy, when the tenant went abroad unexpectedly leaving no successors.

Professor Field is considering selling off 55 acres of the farm, the portion east of the main trunk road, to an adjoining agribusiness, Cropwise Farms Ltd. There are no buildings or dwellings on this part. The land is currently in-hand and farmed on a contract farming arrangement in association with a neighbouring farmer, John Smith Farms. Cropwise Farms Ltd is land-hungry and has already indicated that it "is prepared to pay the going rate to purchase land". Currently, in Professor Field's area, bare land for cereals is fetching around £4,000 per acre on the basis of moderate demand.

You have been asked to give advice on the likely level of Capital Gains Tax liability Professor Field is due if the disposal date were this November.

The Professor has also asked what sort of valuations are required, what level of fee would be required for your advice and what negotiations are likely and with whom. Professor Field is a higher rate taxpayer.

Compose a straightforward **letter** to Professor Field outlining the issues involved. Your letter must include the following:

- |  |           |
|--|-----------|
| (a) The base value for the calculation                       | (3 marks) |
| (b) Ideas as to any likely overbid by the eventual purchaser | (4 marks) |
| (c) The best method of sale                                  | (2 marks) |
| (d) Tax calculation methodology and any reliefs available    | (5 marks) |
| (e) Likely pitfalls to be encountered                        | (4 marks) |
| (f) Likely fee structure                                     | (2 marks) |

Attempted by 35 of whom 19 achieved a pass mark.

The answers to this question were fairly good although by no means outstanding. Most candidates had grasped the idea of writing a straightforward letter on what is a fairly complicated subject. The better candidates distilled intricacy into day-to-day language and yet still preserved the essentials, less able candidates either over complicated their letter or over-simplified it to the point that very little information was disseminated. Candidates offering the right balance were few and far between.

The key to the correct construction and structure of the letter was in the question. If the headings were used as the basis of each section, candidates would be well on their way to producing, if not a perfect answer, one which made sense.

Good detail gives the examiner confidence in the ability of the writer. A general first paragraph setting out the task, advising the involvement of a Chartered Accountant and the rules governing the writer's actions by the RICS / CAAV is a very useful start.

The content of each section should have contained the following for maximum marks

### (a) Base Value

A note that the valuation date in the current scenario is 31 March 1982 for an answer in 2007, being before the recent CGT changes. There should follow a brief explanation of indexation and why this is important in 'indexing down' gains so that the gain in value between this date and the value at the date of sale is not so oppressive. Mention of the 'kink' test would have gained bonus with the examiners. This is where the market experienced an upward kink before 1982. This had to be carefully demonstrated. It is necessary to explain that whilst HMRC may accept the valuer's valuation at 31 March 1982, it may ask the District Valuer to review that valuation and, if necessary, negotiate an

agreed figure. It is useful here to state that you would be prepared to undertake such negotiations.

At this point in the letter candidates should set out what their valuation is and how they came to that conclusion. Candidates should explain that, at the deemed date of disposal, 31 March 1982, the land was tenanted and that the asset was worth, say, £x per acre. Some sales evidence needs to be alluded to together with settlements with the DV to back them up. A note as to open market sales with VP would be an advantage as a check to the value subject to tenancy.

Good candidates mentioned the impending change in the tax regime and that a sale now would, almost certainly, be an advantage. This shows the examiners that such candidates are not just aware of what the Government is proposing, but the practical implications of such changes.

Several candidates failed to record a value at all and a number got the indexation date wrong.

#### (b) Overbid by Cropwise

The examiners were looking for assumptions and a little boldness here. Several candidates failed to mention anything at all on the potential overbid. A percentage uplift or a 'stab' at a figure would give the examiners some understanding that the candidate was thinking that there may be a bid higher than pure agricultural value (or that some farmers might be willing to pay well).

Candidates who scored well mentioned competing bids by Cropwise and John Smith Farms; some even mentioned other potential purchasers such as institutions and the likely level of interest given the state of the market.

The examiners were looking for other reasons for competing bids – that likely bidders were land hungry, had considerable assets, probably owned land nearby, needed more land for specific needs (say potatoes, beans, biofuels etc.). They were also looking for the level of bid – based on, say, some known purchases. It would not be unreasonable to mention a range of figures, say, £5,500 – 6,000.

#### (c) Best method of sale

The examiners were looking for a reasoned analysis of what they considered the best method of sale given the circumstances. They were not looking for 'It is considered the best method of sale is by public auction'. Unfortunately a number of candidates mentioned a preferred method and no reasons. A suggestion as to how to tackle this part of the letter would be as follows.

"As to the method of sale may I suggest a disposal by sealed bid. My reasons for this particular method are that, once it is known that two or more parties are interested in purchasing the land, a date can be set for all bids to arrive – this foreshortens the length of the process and concentrates the minds of the bidders. In view of the stature, nature and financial standing of the potential bidders, the bids are likely to be very strong indeed. I have several good instances of taking the sale of similar land to sealed bids and my clients have been very pleased with the results".

Of course, there are other methods of sale – auction, private treaty, informal tender. The examiners had no preference but a preferred method and good reasons for that choice scored full marks.

(d) Tax calculation methodology

The examiners were not looking for an exact style of answer here but the calculation should have included the following components.

- ◆ Base value and associated costs
- ◆ Indexation (31 March 1982) valuation
- ◆ Cost of sale
- ◆ Indexation allowance to be applied
- ◆ Other deduction – (taper relief, roll-over)
- ◆ Annual allowance to be deducted
- ◆ Result multiplied by rate of tax 40%

(e) Likely pitfalls

The examiners were looking for the candidate properly thinking what may arise to thwart this whole process – obstacles that may appear to disturb the smooth running of the sale and beyond.

The paragraph should contain the following points:

- ◆ Difficulties with the District Valuer – that he or she may have very good evidence of value at 1982.
- ◆ The figure put in at 31 March 1982 may be too high – is there good evidence to back it up?
- ◆ The A/A+B formula may be counter-productive.
- ◆ A sale to Cropwise could be difficult to effect if they realise they may be the highest bidder.
- ◆ Other bidders may drop out if they know that Cropwise is in the market. Choosing the method of sale will be critical in order to achieve the most advantageous price.

(f) Fee

Most candidates answered this part of the question well. The question asked for a fee in respect of dealing with the tax issue in the proposed disposal of the land. Good candidates offered a complete service to Professor Field and did not miss the chance of giving fee levels for the valuation for tax, negotiation with the DV and for the eventual disposal of the land. In an exceptional cases a fee was mentioned to take the matter to the Lands Tribunal should negotiations fail with the DV!

The examiners were, ideally, looking for:

- ◆ Fixed fee for the valuation advice
- ◆ Price per hour for negotiations (higher price per hour for appearing as expert witness in the LT)
- ◆ A percentage for the sale of the land (in the range 1-1.5%)

### Question 3

*A farmer client expanded his business by taking on 200 hectares of bare let land in November 2004, under a separate agreement, to add to his existing holding which he has held under a full agricultural tenancy since November 1980.*

*The landlord of both holdings has indicated that he believes rent reviews are due. Your client has asked if the procedure is the same for both tenancies.*

*Please outline in your answer:-*

- 1. The procedures that should be adopted. (5 marks)*
- 2. The basis for the rent review for each tenancy. (5 marks)*
- 3. The position if the parties are unable to reach agreement. (5 marks)*

*The landlord has also said that he would like to amalgamate the two holdings and let them under a single agreement, in return for which he would forego any increase in rent for a further 3 years.*

- 4. Your client has asked what might be behind this proposal and on what terms should he consider this request? (5 marks)*

This was sat by 73 candidates, of whom 30 achieved a pass mark.

The question asked you to advise a tenant farmer client on the differences between rent reviews under the two Acts in respect of procedures, the basis for rent and arbitration/dispute resolution, and also asked you to consider and advise with regard to a request to amalgamate the two holdings, each held under separate codes, into a single tenancy. Only one candidate failed to recognise that we were dealing with tenancies under both the 1986 and 1995 Acts.

As stated in the guidelines, to obtain the highest marks a candidate had to state the relevant Act etc and a significant number failed to mention the appropriate sections for the rent review notices. Even fewer mentioned the need to refer to the terms of the tenancy, most specifically in relation to the 1995 Act tenancy where there is greater freedom of contract. There are of course informal arrangements that could be employed, as well as the formal mechanism of timing, service of notice, negotiation, time limits and arbitration/ADR; together with the various mechanisms that could be employed under the 1995 Act.

The basis for rent was in some cases answered very sketchily. The Acts lay out the bases as between prudent and willing or just willing landlords and tenants taking into account the TERMS of the TENANCY in each case together with, for the 1986 Act, its character and situation, productive capacity and related earnings capacity, comparables and disregards together with any other relevant factors – perhaps the value of the farmhouse ( if any). Not forgetting that the tenant is a hypothetical tenant for rent review purposes. For the 1995 Act there are specific disregards which were often forgotten, but scarcity is not one of them – the open market rules.

Part 3 asked for a review of the arbitration/ADR provisions. Again under the 1986 Act these are statutory and should be well known whilst under the 1995 Act you must look at the terms of the tenancy agreement. Arbitration under both is now governed by the Arbitration Act 1996 (if applicable to a 1995 Act tenancy) with its approach to procedures, other than for the initial appointment of the arbitrator which is crucial. Consider Calderbank offers and costs as these are highly relevant to your client. For the 1995 Act, ADR/experts may apply instead – you must ascertain this first before you can advise your client.

The last part of the question really revolved around the personal circumstances of the landlord. Do not be afraid to use assumptions in answering a question if this helps you. Arguably the

greatest benefit to a landlord in securing a new single tenancy would be to gain 100% relief from IHT – very valuable especially if the landlord is elderly with a potential charge to tax in the foreseeable future. In the recent past this would be strongly resisted by tenants for fear of losing the security of 1986 Act tenancy, but following the TRIG reforms of 2006 it is now possible to have a new 1986 Act tenancy subject to conditions - something only 1 or 2 candidates mentioned! Other relevant factors might have included SDLT, the timing of the change/ next review of rent and the fact that if amalgamation of the two tenancies would have taken the new single tenancy outside the provisions for TRIG you could have suggested leaving some of the land in a new FBT whilst allowing the landlord to have his amalgamation and so gain relief – this surely is of value to your client but could still further good landlord/tenant relations. Many simply latched on to the fact that any new tenancy would have to be under the 1995 Act and would therefore lose security/ succession rights and so advised against it – a lost opportunity.



## Paper 2

### Question 1

Your client, Col. Mustard, is the owner of the 1,800 hectare Woodley Estate. The Estate comprises some in hand woodland, 25 cottages in Woodley village and nine farms, all of which are let on AHA 1986 tenancies.

Bachelor farmer, Ted Ward, who has been tenant of Home Farm, Woodley for over 35 years has served notice to quit the holding with effect from 29<sup>th</sup> September 2008. The holding, which lies at the centre of the estate, includes:

- a large 6 bed farmhouse in need of modernisation and traditional buildings adjoining the farmhouse.
- on a site approximately 200 metres away and with a separate access is a 2,000 tonne bulk on-floor grain store erected by the tenant in 1985, a Dutch barn, an enclosed general purpose fertiliser/machinery store and workshop.
- land extending to 300 hectares of Grade 3 arable land, 20 hectares of permanent pasture and 10 hectares tracks, spinneys and uncroppable areas.
- two cottages: "Pastures" a 3 bed property close to the buildings which is vacant. The second is 1 The Town, a 2 bed property in the village has been occupied by Bob Smith and family, a tractor driver aged 58, employed by Ted Ward since 1980.

Your client wishes to re-let the holding and you are due to see him to discuss the options available. Prepare **notes** in advance of your discussion to cover the following:

1. End of tenancy procedures and claims (6 marks)
2. Options for re-letting and possible level of rents for each option (10 marks)
3. Likely timetable for letting (4 marks)

State clearly in your answer any assumptions you make.

Question attempted by 74 candidates of whom 33 achieved a pass mark.

### Part 1 – End of Tenancy Procedures and Claims

Generally candidates failed to apply their knowledge of end of tenancy matters to the facts presented in the question. Few mentioned checking the terms of the tenancy agreement in order to gain information on repair obligations and any specific matters for the last year of the tenancy.

The best candidates mentioned Single Payment Scheme issues, possible overlap of 10 month periods, who would hold the entitlements and potential Environmental Stewardship Scheme transfer issues.

The question deliberately sought a demonstration by candidates of their knowledge of improvement and fixtures, on which many were confused.

### Part 2 - Options

The best candidates reviewed the property as a whole and then its constituent parts and provided options for lettings in different combinations and rental levels.

Many failed to identify that there could be planning potential for both the traditional and modern buildings.

Some got distracted into the equestrian market for the pasture land without any thought whether this was feasible for the quantity of pasture land and how this would be managed by the landlord.

The best candidates mentioned the possibility of contract farming in passing with the attendant Inheritance Tax advantages without labouring the point against the requirement of the question.

### **Part 3 – Likely Timetable for Letting**

This was poorly answered. Candidates were expected to set out a timetable – a chronological sequence of events in connection with the intended letting to demonstrate that they knew what to do and when and fully demonstrate that they had an understanding of the matters to be dealt with, their interactions and timescale.

The best candidates set out a clear timetable and scored well.

Overall the question asked for the answers to be as notes, which many candidates failed to do.

## Question 2

A) You are being invited to act as an expert witness in a contested rent review which is going to arbitration but could ultimately end up in County Court litigation

[i] Describe the duties of an expert witness, and how you would fulfill these duties before and during the hearing and to whom you owe the duty of care. (4 marks)

ii] what rules govern the giving of expert witness evidence in court? (3 marks)

iii] explain the difference between witness of opinion and a witness of fact (2 marks)

[iv] You have been instructed by the parties to act as a single joint expert on a farm budget.

Prepare a draft appointment letter accepting instructions to act in this capacity. (8 marks)

B) In determining a rent review, what are the differences between an expert and an arbitrator? (3 marks)

State clearly in your answers any assumptions you make.

Attempted by 9 candidates of whom 3 achieved a pass mark.

In producing this examination report, I am mindful of the fact that only nine candidates attempted the question. The question, though specifically dealing with the roles of Expert Witness and the Civil Procedure Rules, was not particularly deep or complex and proved not to be difficult to those candidates who had either experience or who had covered the subject in their professional revision. In this case, parts A1, 2 and 3 were in my view straightforward marks. Part 4 required a fuller knowledge of the Civil Procedure Rules, Statements of Truth and similar matters but a candidate who had limited knowledge could get at least half marks from this section by preparing a straight forward appointment letter with some CPR embellishment.

Finally, part B in determining the difference between an Expert and an Arbitrator sought basic knowledge which should be clearly understood by all practitioners. The decision as to whether or not an Expert or an Arbitrator should be appointed pervades not only rent reviews but all other forms of dispute (in addition to ADR). Again, part B was neither a trick question nor difficult to those who had experience or who had undertaken basic applied revision of the subject.

The question was answered in surprisingly different ways by candidates. The best answers were provided by those who contained their answers within the sections and answered in a concise and analytical fashion, even to the extent of providing comparative bullet points. In my view, this demonstrated clear understanding in a logical manner. The longer essay type answers tended to lose sight of the fairly simple requirements of the sub questions, largely because planning notes were not used by most candidates at the start of the question.

Four out of the nine candidates who attempted the question passed, one with a perfect answer (20 out of 20), in the view of the examiner.

As with all examination questions, the best advice I can give is still to read the question thoroughly, determine with notes what is required of the question, answer in a structured manner part by part, avoiding overlapping, unless required to do so, one part with another. A short concise thoughtful answer is far better than a substantial essay type reply where the salient parts of the answer are hard to determine and candidates are likely to become bogged down and in doing so, lose the thread of the answer.

### Question 3

*A. You have been approached by a prospective new client who has asked you to explain why he should appoint a Fellow of the CAAV to act on his behalf rather than another agent who simply describes himself as land agent with no professional qualification.*

*Write a **LETTER** to this prospective client*

- (i) To explain why he should appoint a Fellow of the CAAV to act on his behalf. (2 marks)*  
*(ii) To set out the standard terms of engagement including all client relationship matters for a new client requesting general property advice. (8 marks)*

*B. You have received a telephone call today from a client who has complained that you have failed to ensure that a succession application on death was received by the Agricultural Land Tribunal within the relevant time period and it is now too late to make this application. Write a **FULL FILE NOTE** of the procedures that must now be followed, actions to be taken and the information that will be required in order to properly deal with this matter. (10 marks)*

The paper was sat by 57 candidates and passed by 26 candidates

This question was set as a straightforward question which should have been easily answerable by all candidates. It was very disappointing however to see how few candidates had apparently never even read the byelaws. This was even more surprising as I suspect that if the candidate was preparing for an APC exam they would have read the RICS byelaws. Easy marks were thrown away by those candidates who could merely refer to the exam and the CAAV motto. The byelaws are succinct and clear and, therefore, I shall not repeat here the standards set by the CAAV to allow a member to practice as a Fellow.

The second part of the question specifically required a standard terms of engagement letter to be drafted for a particular scenario of general property advice.

Candidates who decided to ignore this and create their own scenario of a property sale or valuation certainly didn't score any additional points. Candidates who made no attempt to relate the terms letter to the scenario given also lost points. However, it was the candidates who even stated in their response that they were not drafting out a terms of engagement letter who lost the most marks. Why these candidates decided to ignore the whole point of the question is bemusing, to say the least. It did mean that even if they stated what terms they would expect to include, they could only get half marks simply for the reason they did not answer the question and draft out the terms of engagement letter whereas those candidates who did read the question properly did, in the main, answer this part fairly well.

The points that should have been covered were:

- Full and proper name of client rather than just contact i.e. confirm billing address
- Clear identification of job/instruction including any limits on instructions
- Confirmation of name and qualification of person undertaking instruction
- Confirmation of basis of charging including hourly rate if appropriate
- Confirmation of any costs (in addition to professional fee) and basis for charging
- Confirmation of fee estimate if any and frequency of billing
- Request for ToE to be signed and returned/confirmation of procedure whilst ToE being returned or in event not returned
- Money laundering requirements
- Firm policy on availability/response times
- Full details of complaints procedure
- Storage of documents/use of photographs Data Protection etc

The final part of the question asked for a file note and again it was frustrating to see how many candidates simply did not provide their answer in the style of a sensible file note or did not even attempt to relate the file note to the scenario set. It was surprising to see how many candidates who did not understand the significance of the succession scenario set who also answered the succession question on the same paper! This question was not a question to test succession knowledge but candidates really should have known the fundamental point that the missed time limit was 'fatal' to a succession application on death and those candidates who did not clearly illustrated how they had skimped in their overall revision and preparation for this examination. The file note was expected to cover the following points:

- Notify your principal
- Locate terms of engagement
- Check precise terms of instruction
- Check date on which notice should have been served
- Do detailed file note of actions actually taken following instructions
- Draft full briefing letter for PII
- Ask client to follow complaints procedure

However, it was also expected to relate these points to the scenario and be constructed as a file note e.g. including file reference dates and times and identity of person writing the note

## Question 4

*You act for Mrs Brighteyes who is in a serious matrimonial dispute with her husband – the matter is heading for the divorce courts. Your client's solicitor has asked you to provide a valuation of 20 acres of agricultural land, part of the farm jointly owned with her husband. Three years ago your client and her husband entered into an option agreement to grant first refusal to a developer on the 20 acres. The developer has, for some time been seeking planning permission for a large new settlement. Discussions have also taken place in the interim at strategic planning level with the regional planners. The farm is freehold and the 20 acres is in hand. Normally land subject to an option would not be sold until planning permission was granted but the solicitors have asked for your views on the land's value as it may have to be sold in view of the escalating disharmony within the marriage.*

*A major developer-partner has just purchased a large tract (20 acres) of contiguous land, without planning permission, for £50,000 per acre. Agricultural land in this area is changing hands for around £3,250 per acre.*

*Set out a **straightforward report** (remembering that the report may be used in court) for the solicitors to include the following:*

- 1) Your valuation of the 20 acres stating any assumptions you make, including assumptions as the terms of the option, any relevant case law and any other matters that may affect your valuation. (14 marks)*
- 2) Suggestions to the solicitors as to how to maximise the benefit for Mrs Brighteyes. (6 marks)*

Attempted by 25 candidates of whom 15 achieved a pass mark

The question was, essentially, about the valuation of agricultural land with planning potential. It is accepted that, in the normal course of events, land with hope value is rarely sold but, for a number of reasons, it is called upon to be valued – for the bank, for Inheritance Tax or for the Courts (amongst others) and agricultural valuers are required to give an indication of value.

There were clear pointers within the question upon which to build an answer and the Examiners were not expecting anything too complicated or beyond the ambit of a competent practitioner. Standard report headings were expected, particularly; reason for report, experience and qualifications, plans/location/photos/tenure/planning/extent of discussions with the local and regional planners etc. and then some exploration of the values – with full planning/without planning/hope value if placed on the market at the date of valuation/some straightforward explanation of the option arrangement. It was expected to see a heading dealing with market evidence and one containing some relevant case law. Unfortunately not one script set out any appropriate case law dealing with the valuation of land with hope value. The examiners also were looking some form of heading dealing with claw-back. It would have been good to have seen some practitioners' views and some mention of the Expert Witness statement.

In terms of recommendations to the solicitors to maximise Mrs Brighteyes' benefit, the Examiners would have liked to see

- a suggestion that, if at all possible, the land should not be sold without the benefit of full planning permission.
- that if a sale were to take place there should be a claw-back clause included in the sale documentation to benefit the vendors in equal measure when planning permission were eventually obtained.
- or some reconsideration of the option agreement
- or that a deed of rectification be entered into that the land ceased to be owned jointly but half of it owned wholly by both parties and a joint access arrangement be included.

The expectation for all the recommendations is that some depth of thinking should be undertaken by the candidate to show some valuation logic and practitioner maturity.

Original thinking here, as long as the suggestions were properly explained, would be given marks.

## Question 5

Ian King successfully bid for the tenancy of Green Farm, Bourton on the Wold, in 1982. The tenancy commenced on 29<sup>th</sup> September. It is a 200 hectare principally arable farm with a suckler cow and beef fattening enterprise on 40 hectare of meadowland. Ian King has asked if you will call and see him and his two sons, Bill and Ben, to talk to them about tenancy succession rights.

The family is:

- Ian, the tenant, a fit and active 58 year old who wishes to take more time to pursue his hobby of sailing but would like his sons to succeed to the tenancy.
- Bill, the elder son, a keen mechanic who has built up a good business repairing agricultural machinery based in the farm workshop, helping out on the farm only at busy times. He lives on the tenanted holding with his wife who looks after their two children fulltime.
- Ben works on the farm but uses some of the spare arable machinery capacity to help out neighbours on a contract basis. Ben is also married, his wife works as a partner in a large city law firm specialising in mergers and acquisitions and they have no children. Ben's wife has just inherited 100 hectares of tenanted arable land with a house which will be available to be farmed and occupied by the family from September 2008.

They farm in partnership together.

Prepare a **briefing note** that you can talk through with your clients to cover:

1. The rights afforded by the tenancy and Ian's options (4 marks)
2. The rules governing tenancy succession (4 marks)
3. The application of these rules to the circumstances at Green Farm and a strategy to follow with action points for each of the three individuals (10 marks)
4. Ways in which the landlord may seek to vary the terms of the tenancy (2 marks)

State clearly in your answers any assumptions you make.

The question was attempted by 74 candidates of whom 43 achieved a pass mark.

### Part 1 – Rights afforded by the Tenancy

The candidates needed to identify the significance in the date of commencement of the tenancy, being Michaelmas 1982. As this was prior to 12 July 1984 it carried succession rights for two further generations provided the applicants were eligible and suitable as defined within the Act.

Succession could be on the death of the tenant but this was not applicable.

Succession could be on retirement but the tenant had to be aged 65 or over or in poor health. Neither of these were applicable.

Ian could wait until aged 65 or, if his landlord agreed, proceed by assignment.

If Ian proceeded by way of retirement at aged 65+ he must nominate a single person to succeed him and issue minimum 12, maximum 24, months' notice.

### Part 2 – The Rules Governing Succession

The best candidates set out the background to the close relative livelihood and commercial unit of production tests. They also expanded upon the suitability rules: age, health, training and agricultural experience and financial standing.

### Part 3 – Application of the Rules to Green Farm and Ian & Bill & Ben

The question demanded a briefing note to talk through with clients. The strongest candidates selected each individual and then ran through the eligibility and suitability criteria, making appropriate notes.



It was important to identify that the landlord's written consent for a diversified activity should be sought and important for the sons to live on their income from the holding. Ideally, they should establish separate bank accounts and be seen to be drawing money and living on it.

In addition, care should be taken with the additional 100 hectares to be taken on in September 2008, owned by Ben's wife. The best candidates advised that this should be contract farmed by the partnership with Ben's wife as the "Farmer" so it falls outside the commercial unit test.

Also important to show the preferred son is actively involved in the business, has responsibility and that their revenue and capital shares build up.

**Part 4 – Ways in which Landlord may seek to vary the terms of the Tenancy**

The best candidates identified that the landlord may seek an agreed succession under the TRIG reforms of the AHA 1986 which would give advantageous inheritance tax provisions to the landlord. In addition, the landlord may seek to vary rent, repair covenants, fixed equipment, clauses on Single Payment Scheme entitlements and insurance provisions.