

CAAV EXAMINATIONS 2015
NATIONAL WRITTEN PAPERS
REPORT BY THE EXAMINERS ON THE QUESTIONS

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For each question this report:

- sets out the question
- gives basic statistics on the results achieved
- gives the Examiners' report on the question and the answers marked.

PAPER 1

Paper 1, Question 1

Question

*This question has eight parts, (A) to (H). Please answer only **five** of them. Each carries an equal four marks.*

- (A) *Provide brief details on the three greening rules and the exemptions that apply under the new CAP regime.*
- (B) *For compulsory purchase:*
- i) What is the principle of equivalence as a measure of claim? (1 mark)*
 - ii) Give a list of Heads of Claim. (1 mark)*
 - iii) What is a Notice to Treat? (1 mark)*
 - iv) What is meant by the term Blight in the context of a Compulsory Purchase Scheme? (1 mark)*
- (C) *i) What does A.T.E.D. stand for? (1 mark)*
- ii) To what properties does ATED apply now? And from April 2016? (1 mark)*
 - iii) Give examples of circumstances when a property would be exempt or have relief from ATED. (2 marks)*
- (D) *The owner of an equipped farm with a house and buildings has opted tax for VAT in respect of the farm.*
- i) Why might an owner have opted? (1 mark)*
 - ii) What effect does the VAT liability have on the sale? (1 mark)*
 - iii) What practical implications arise for a buyer and how can the tax impact offset or minimised? (2 marks)*
- (E) *For a tenancy under the Agricultural Holding Act 1986 (in Scotland the Agricultural Holdings (Scotland) Act 1991):*
- i) What sections of the Act provide for the landlord's claims at the end of the tenancy? (1 mark)*
 - ii) What can a landlord make a claim for? (1 mark)*
 - iii) What notice provision under what section is a pre-condition of any claim? (1 mark)*
 - iv) What is the measure of a claim? Can it be capped? (1 mark)*
- (F) *When acting for a tenant of farmland being crossed by the proposed route of a public utility water pipe:*
- i) What is the likely nature and physical extent of the right that will be granted by the landlord?*
 - ii) Will compensation cover rent on the area affected by the works and following their completion?*
 - iii) Would you advise leaving land uncropped in advance?*
 - iv) What is the likely basis for the claimant's agent's fees?*

- (G) *Your client owns a mixed farm of 1,500 acres with a large farmhouse, three cottages (two let on AST's and one occupied by a farm worker), some farm buildings and areas of grass and woodland, both in managed softwood plantations and in spinneys and shelter belts. The farm is largely in hand but approximately 20 acres of grass is let for horses around the house.*
- i) *Which Act provides for BPR and what is it? (1 mark)*
 - ii) *What assets qualify for BPR? (1 mark)*
 - iii) *Give elements of your client's property that are unlikely in themselves to qualify for BPR. (2 marks)*
- (H) i) *Why would an Employer adopt a Lone Working Policy and to whom would it apply? (1 mark)*
- ii) *Does an Employee have any responsibilities in this regard and, if so, what are they? (1 mark)*
 - iii) *Give some examples of how an employer can control risk. (2 marks)*

Statistics

(i) Overall

Number taking this question	72
Average mark	68%
Top mark	86%
Lowest mark	24%
% achieving 65% or more	68%

(ii) By Parts

	A	B	C	D	E	F	G	H
Number taking	61	63	20	15	38	53	64	45
Average mark	78%	75%	55%	60%	56%	72%	68%	64%
Top mark	95%	95%	85%	90%	90%	95%	100%	90%
Lowest mark	27%	40%	10%	35%	10%	30%	25%	27%
% achieving 65% +	82%	80%	40%	33%	39%	79%	66%	62%

Report

The question was set in line with recent years on a “five from eight” basis seeking to test candidates’ knowledge across a wide range of both topical and technical subjects being:

- Greening
- Compulsory purchase
- Property taxation (ATED and, separately, VAT)
- End of tenancy claims under the 1986/1991 Act
- Pipelines
- Inheritance Tax (BPR)
- Employer’s Lone Working Policy requirements

In previous years, there was a sense that a strong contingent of candidates dived straight into the multiple choice question assuming their general knowledge would see them through. This year, compared with other questions on the Paper, there was a sense that candidates took more care to ensure enough knowledge could be applied to answer their chosen five parts well, hence only about half of the candidates tackled this question.

This more selective approach from candidates resulted in generally good marks being achieved across the board. In particular, the Greening question was well answered generally, which helped candidates pull up overall across the whole question if some of the other four parts attempted were less capably answered. Greening was an obvious likely subject, other less likely question topics were offered and candidates were generally attracted to questions relatively equally, although the ATED and VAT questions were least popular.

As ever, a good candidate produced a strong overall set of answers to all five parts attempted and there were few disasters, although there were candidates who missed parts of questions or whole questions – possibly owing to time constraints or potentially a lack of direct knowledge.

The pass rate for this question was encouraging, demonstrating candidates were generally well prepared and sufficiently able in enough of the syllabus to achieve, consistently, in excess of 65 per cent for this question.

Paper 1, Question 2

Question

Your client is the tenant of a 25 hectare holding, let to him in 1985, with a farmhouse, small range of dairy farm buildings and a detached two bedroom cottage. The cottage used to be occupied by your client's father but for the last three years has been let to a local primary school teacher.

The rent is due for review on 28th November 2015 and although you have not seen it yet, the tenant has told you that he received a notice in autumn 2014 from his landlord's agent.

*Provide **briefing notes** for a meeting that you will conduct with the tenant to advise him on:*

- *the process to be followed and what might be done if the rent is not agreed.* (5 marks)
- *the basis on which the rent is to be reviewed* (5 marks)
- *the factors to be taken into account* (8 marks)

18 marks in total

Give two brief examples of circumstances in which your firm may not have been able to accept instructions to act.

2 marks

Statistics

Number taking this question	129
Average mark	60%
Top mark	87.5%
Lowest mark	5%
% achieving 65% or more	40%

Report

This question required candidates to identify the type of tenancy, check the validity of the notice, detail the dispute resolution procedure and timescales, set out the statutory basis for the review and explain it, detail the disregards and consider the use of comparables, marriage value, Basic Payment Scheme, the treatment of the farmhouse cottage and buildings.

A few failed to identify it was an Agricultural Holdings Act 1986 tenancy (1991 Act in Scotland). Most knew the timescales for the service of the review notice and the better candidates set out the other details that need to be checked i.e. correct names and addresses, reference to arbitration and holding name.

Whilst most candidates could quote or paraphrase the Act on the basis of the review, this was not sufficient detail to score well. In terms of the 1986 Act, the question required an explanation as to what character and situation refers to, the meaning of productive and related

earning capacity, how comparables are dealt with, what is marriage value and relevance of *Childers v Anker*. Details of what was to be taken account of in the budget was also needed including BPS and cottage rent.

The majority were able to detail the disregards – tenant's improvements, tenant's occupation, dilapidations and high farming.

For the second part, most candidates were able to identify a conflict of interest and provide examples but few got another example. The better candidates mostly identified a lack of expertise. Another example is insufficient time.

This is a core area which often comes up in the examinations and candidates should therefore be well versed in it. The answers varied from very poor to very good. In general, however it was not answered well and many candidates did not set out clear logical answers. Some went for the scatter gun approach of putting down everything they knew which included irrelevant information such as a discussion of the recent changes to the English Model Clauses. The inability to provide a second example in Part 2 of the question is surprising bearing in mind these are matters identified in the RICS professional standards and ethics.

Paper 1, Question 3

Question

It is Friday afternoon and you are the only person in the office when a call comes in from Honest John the banker who needs a formal valuation of his client's estate for security purposes by a week next Thursday.

The property, in the next county, is a total of 1,500 acres with a farmhouse, farm buildings, a let cottage, 1,200 acres of pasture and arable land farmed in-hand and 300 acres of bare arable land let out on a fully secure agricultural tenancy.

Mr John has a copy of the most recent schedule of livestock and machinery, including HP agreements on two tractors, and he will e-mail this to your office.

Your colleague who usually does valuations is presently on holiday for 2 weeks, but you have agreed to do the valuation and agree to take this job forward.

- a) What are the key points to cover in your letter of instruction/ terms of engagement?*
- b) What paperwork would you want to collect or take copies of when you visit?*
- c) What assets would you want to inspect during your visit to the property and which would be excluded?*
- d) After describing the specific property assets, what more general headings might you expect to cover in the remainder of your report?*
- e) Are there any instances where you might have to decline the instruction or act differently from merely putting your standard letter of instruction in the post?*

20 marks in total

Statistics

Number taking this question	123
Average mark	73%
Top mark	92%
Lowest mark	36%
% achieving 65% or more	87%

Report

Commentary - This proved a popular question and should have been straightforward for those candidates who are involved in carrying out valuations from start to finish, especially those already qualified as RICS Registered Valuers. Good answers gave logical and concise points, as indeed should be the practice for any valuation exercise.

All parts of the questions were allocated equal marks.

Review of Answers to Each Part

- a) This was well answered in general. It is suggested candidates check their firm's standard letters of instruction for valuation work and familiarise themselves with the content. Reference must be made to the 2014 RICS Red Book (Valuation – Professional Standards), which also gives the terms to be included in such a letter. A number of candidates forgot the importance of the date of valuation.

Key points to cover:

- the client
 - purpose of valuation
 - date of valuation
 - basis of valuation (market value)
 - property address
 - status and name of valuer
 - summary and current use
 - clarification that it is a Red Book valuation
 - fees and expenses
 - assumptions and special assumptions
 - confidentiality and limitation of liability for use of the report
 - extent of investigations and sources of information
- b) Again, reasonably answered, although a number of candidates mentioned budgets/cash flows/accounts which are not relevant for a security valuation, nor are documents for items on HP.

Paperwork:

- tenancy agreements and any subsequent papers (e.g. re tenant's fixtures) for house and farm
 - any grant schemes
 - any planning permissions
 - boundary plans
 - IACS map
 - title deeds or evidence of limitations in title which may affect value
 - sporting records if applicable.
- c) Specific items had to be mentioned here rather than "inspect everything" or "don't inspect what is not needed" as some candidates suggested. Many candidates did not know or understand that livestock, machinery and chattels are not acceptable as security for a bank.

Assets to Inspect: farmhouse, cottage, farm buildings, land, services, access

Assets to Exclude: chattels in houses, livestock, farm machinery, any EU subsidy entitlements

- d) Again, those used to compiling full valuation reports should have found this part of the question easy, although there was some confusion over headings in the terms of engagement/instruction and the headings in the actual report.

General Headings:

Town and Country planning; planning permissions; development opportunities; contamination including asbestos and invasive species; conservation and environmental designations; tenure and possession; access; burdens and third party rights; flooding; market commentary; comparable evidence; final value.

- e) Some candidates only gave one example of instances to decline an instruction, but in fact there are a number, as detailed below. It was noted that this may have been due to candidates running out of time if this was their last question.

Instances to decline instruction:

- if you are an RICS member (or in an RICS regulated firm) but not an RICS registered valuer
- if you or your firm is not on the bank's panel of valuers
- if you have a conflict of interest
- if you do not have experience in valuation work
- if your work does not take you into the area where the property is located and you have no real knowledge
- if your diary is full and you cannot meet the deadline
- if your professional indemnity insurance policy does not cover valuations work or the total is likely to be above any limit covered by such policy
- if the client failed the money laundering requirements or refused to sign terms of engagement.

PAPER 2

Paper 2, Question 1

Question

Your client, Mr Seller, owns some traditional stone and slate farm buildings which have frontage onto the village high street. Next to the farm buildings is a two acre paddock with a pedestrian gateway and a 50 metre frontage onto the high street but most of this field lies to the rear of the buildings. The whole farm lies within the "village envelope" on the local development plan but the field has no specific zoning at present. The buildings are too small for modern agricultural use, although they have been used up to now for farm storage, and the site is at the very edge of your client's farm. Planning permission for four residential units has been obtained on the buildings and mains services, with capacity available, are located in the high street next to the property.

Your client is considering the sale of the buildings and paddock.

- A. What options does your client have to maximise the value of the buildings and paddock?*
- B. If the sale proceeded under the current circumstances how could your client receive further monies if the paddock is developed in the future? Would take such steps have an effect on the value of his interest in the property?*
- C. The solicitor mentions Stokes v Cambridge Corporation - summarise an explanation of this for your client, with an example based on the current scenario.*
- D. In what circumstances might going to auction be appropriate and what would need to be confirmed and/or provided to pursue that route?*

(20 marks)

Statistics

Number taking this question	67
Average mark	60%
Top mark	83%
Lowest mark	27%
% achieving 65% or more	42%

Report

- A. This asked for options that your client has to maximise the value of the buildings and paddock.*

For the buildings, the client could consider self-developing if he had the skills, finance, time and a relevant attitude to risk. Alternatively, he could connect services to the four residential units already consented in the traditional barns and sell as serviced plots. He could review and clear down planning conditions to remove uncertainty from purchasers.

In respect of the land, you are told that it is within the village envelope and therefore it seems sensible to explore planning possibilities from the local planning authority. The maximum return for the client would be if he carried out this work at his own expense but, alternatively, he could look at promotion or option agreements although it would mean that part of the value was lost - this route may be appropriate if it was a longer term prospect with the local planning authority.

Some paddock land might be added to the barns as garden providing it did not impact on the development potential overall. It was perhaps better to seek planning consent on the paddock before marketing the barns in order to prevent conflict with potential new owners and restrictions.

Consideration should be given of the times of year to sell and also method of sale.

Some candidates talked about permitted development rights which were not relevant in the context as the question clearly states that the buildings already have planning permission.

- B. How could the client reserve his position to partake of uplift in value at some point in the future?

There are three methods available:

- i) Overage clause or claw-back
- ii) Ransom strip
- iii) Restrictive covenant

The best candidates talked about the pros and cons of each route. The best also set out a likely range of overage payments and timescales that might be appropriate and suggested figures together with what types of development might be allowed without triggering the overage or restrictive covenant provisions. They also set out when the payment would be made, i.e., on grant of planning consent or sale or implementation.

- C. *Stokes v Cambridge* is a ransom strip case. It was clear that a quarter of those attempting the question did not know this and therefore failed to score any marks.

The best candidates gave an outline of the case, the principle of a ransom strip as key to unlock value in other land. They gave a potential range of the uplift in value that might be appropriate and that the *Stokes v Cambridge* level of one-third was applicable in that case but might vary in other cases.

Candidates then moved on to apply a ransom strip situation by retaining a ransom strip for access or services alongside the road frontage. The best gave potential figures and a brief, worked example.

- D. Candidates were first asked to identify when an auction might be appropriate and the best set out the following:

- Where the seller wants a known timescale.
- Where the seller wants a known process.
- Where a property has a difficult history which could be over such things such as planning or contamination.

- Where there needs to be a transparent process, perhaps for charities or others.
- Where there is significant competition.
- Where market value is difficult to assess.
- The buyer and seller would be committed on the fall of the hammer with a known contract.

Candidates were then asked what information would need to be confirmed and provided to pursue an auction route. The best included the following:

- Terms of business with client.
- Marketing particulars
- Auction pack to be prepared by the agent and solicitor.
- Venue if appropriate and date of sale
- Viewing programme
- Title documents
- Plans/maps
- Contract and special conditions appropriate to the property.
- Services availability and connections.
- Planning history
- Searches - local authority and environmental searches
- Any restrictive covenants
- Any leases
- Guide price
- Reserve price
- Deposit sum

Paper 2, Question 2

Question

An 8 acre field in a built-up area on the edge of town is jointly owned by three people. Your client has a one-sixth undivided share in the field.

The three joint owners have signed an option with a developer on the 2 acres which front the main road, with the remaining 6 acres being ear-marked to donate to the local council for public/community use and benefit. The land lies within an area designated as a preferred site for residential development.

*You have been asked to provide a valuation for Capital Gains Tax purposes of your client's one-sixth share. Please set out with **explanatory notes** for the benefit of your instructing solicitor:*

- a) The considerations relevant to the valuation and the approach you would take (10 marks)*
- b) The methodology of the valuation itself (10 marks)*

Statistics

Number taking this question	29
Average mark	44%
Top mark	85%
Lowest mark	0%
% achieving 65% or more	28%

Report

This question relates to valuation and the examiners were looking for advice as to how the valuation might pan out and how you, as the agricultural valuer, would be tackling it. It was not asking candidates to display all the knowledge they could muster about Capital Gains Tax. The land had not been sold and this was clearly set out in the question: '*An 8 acre field is jointly owned by three people*'. If it had been sold, the examiners would have said so. The examinees' skill and judgement was required to give an indication to the solicitor of one of the three joint owners as to what to expect, should the land, and more importantly a one-sixth share in the land, be sold.

The examiners hinted heavily in the question posed that they were looking at valuation matters, particularly in the phrases: '*considerations relevant to the valuation*' and '*methodology of the valuation itself*'.

The examiners were looking for clear, cogent thinking in three main areas:

First, what would the valuation of an 'option to purchase' look like and how might it be structured?

Second, what valuation issues might be encountered – what would be the 'hope value' of this land as it did not have planning permission and how may that have been established? Would

this be from the development appraisal route or, possibly, would it be derived from direct market evidence of land sold without planning permission?

Third, how would the examinee, as the valuer, deal with a one-sixth minority shareholding? What would be the likelihood of a purchaser being found for this share in the market?

Additionally, marks would be awarded for candidates who thought more widely, particularly looking at the value of the adjoining 6 acres (CGT would not merely be charged on the 2 acres within the preferred location for residential development but also on the area of land that was to be gifted) and those who were able to mention case law relating to 'hope value' and the treatment of minority shares.

(a) Considerations

As the question required explanatory notes only, under (a) the examiners were looking for brief mentions of the following:

- A likely value of, or at least a mention of the six acres adjoining the potentially developable area.
- Any possible affordable housing/s.106 elements as part of the final value.
- The impact of the Option Agreement on value now – would this be a material influence?
- The terms of option (e.g. percentage of market value and deductible elements).
- A judgement of 'existing use value' as a base for a consideration of enhanced value.
- An understanding of market value if planning permission were granted and the use of comparable evidence?
- A reference to Local Authority housing and supply pipelines/allocations as an influence on timing and likelihood of the granting of planning permission.
- An explanation of the need to assess the likelihood of development – for instance timing/risk/competition/location.
- Consultation with the developer and assessment of available services.
- At what level 'hope value' might be pitched as, say, a percentage of market value with residential planning consent.
- An understanding of what the market really would offer for this minority shareholding in a speculative situation, in other words a 'stand back' approach.

(b) Methodology of the valuation

To gain maximum marks the examiners were expecting mention of the following, in whatever form, (including a valuation format but that was not essential):

- How to arrive at an estimate of current market value as if with planning permission, i.e. finished unit price, cost to develop, s.106 costs, infrastructure, net developable area, affordable housing element.
- What are the influences on the discount that needs applying to current market value? These may include:
 - Assessment of yield.
 - Assessment of timing for development.
 - Assessment of risk of no development.
 - Developers discount in an option deal.
 - Any relevant case law.

- How to deal with the minority shareholding, having arrived at the valuation of the whole. What would a sensible percentage discount be as a one-sixth share is being valued and why?
- Evidence of an understanding of how to structure the mechanics of the valuation itself.

The successful candidates demonstrated that, whilst CGT was mentioned, this should not dominate their answers but concentrate on the valuation aspects, as required by the examiners. Almost all of the successful candidates mentioned that the valuation came under the RICS Valuation – Professional Standards (Red Book) 2014 and made special mention of UK Guidance Note 3, some setting out all the special assumptions (which was not needed but demonstrated that they knew the subject well).

Several candidates concentrated on Capital Gains Tax only and regurgitated everything they knew about the tax. One candidate rehearsed everything about CGT to the complete exclusion of any valuation considerations or methodology as required by the question.

The examiners were pleased to note that some case law, regarding the valuation of undivided shares, was mentioned – *Wight and Moss v CIR (1986)* in particular albeit that this was not a case on the valuation of *minority* shares. No mention was made, by any candidate, of the *Charkham* case, which looked at the valuation of minority shares in a tax context, but, where percentage deductions were suggested by candidates, generally, they were sensible, at 15%+.

On the issue of what constituted ‘hope value’, some candidates mentioned either the *Prosser* or the *Fifield* case (some, both) which gave a good indication as to where land, with some hope of development, lay in terms of value as a percentage of the value of land with full permission.

As is often the case, candidates either quoted wrong sections or Acts of Parliament that didn’t exist.

Overall the marks indicated either that candidates knew the subject well and scored appropriately or that there was very little understanding of the subject and that examinees simply recited unhelpful and irrelevant tax facts.

Paper 2, Question 3

Question

Albert Giles died two weeks ago. He was tenant of a 200 hectare arable and stock farm in your area. His tenancy began in 1962. His son John Giles has asked you to advise him on whether and how he might succeed to the tenancy.

John has worked on the farm for the last 10 years as an employee of his father. John owns and lives on a nearby 20 hectare farm which he owns and runs himself during evenings and weekends with the help of his wife. They milk a small herd of cows.

Write **briefing notes** for John on:

- a) *his potential qualification for succession* (10 marks)
- b) *the procedure that must be followed for him to achieve succession with any steps the landlord may take to challenge it.* (10 marks)

Statistics

Number taking this question	142
Average mark	56%
Top mark	87%
Lowest mark	10%
% achieving 65% or more	25%

Report

This question was about tenancy succession. Candidates were asked to write briefing notes for a meeting with a potential applicant following the recent death of his father. This question was the most popular with over 80 per cent of candidates attempting it.

The question was in two parts: the first dealt with the potential or eligibility for succession and the second dealt with the procedure to follow.

In general, English and Welsh candidates dealt with the eligibility side of the 1986 Act quite well and most candidates achieved a pass in this section. However the procedural part clearly posed greater problems for candidates and was not so well understood.

Very few candidates directed their clients to check the terms of the tenancy agreement for any relevant provisions on succession and most seemed to think that there was a legal requirement to notify the landlord of the tenant's death in advance of an application for succession. Clearly any requirement to notify the landlord only comes from a term of the tenancy and not from legislation other than serving a copy of any succession application.

Issues that were consistently overlooked were the consequences of the landlord failing to serve a Case G notice to quit, the possibilities of multiple succession applications by other eligible parties and the practical effects of a Tribunal Direction in favour of the applicant.

Those candidates who only dealt with the first part on eligibility moderately well, frequently lost vital marks on these preceding issues and, in consequence, failed overall.

The average mark for this question was only just over 50 per cent and the examiners felt that it had probably been attempted by many candidates who had little or no practical experience of succession but thought they knew enough theory to pass. Unfortunately, they tended to be found out on the procedural issues. In general, the success rate for the question was well below the average.

Three Scottish candidates answered this question and although a small sample, it was dealt with rather better. Common errors were failure to define “near relatives”, confusion between bequeathed tenancies and intestate applications and failure to consider whether the tenancy agreement prohibited bequeathed succession.

Paper 2, Question 4

Question

You act for the owner of a large rural estate who has recently been approached by an events company. They would like to hold a mass participation outdoor obstacle race (as part of a series around the UK) and expect some 5,000 participants. Having not been involved in such an event before, you have sought advice from colleagues with relevant experience within your firm. They helpfully flagged the list of important matters for you as estate manager to consider.

- a) *You have agreed in principle a deal with the events company for this event, and there is a Trustees' meeting in two weeks' time. **Summarise** the key Heads of Terms and the approach to the income for the Trustees so that they can ratify the proposal for you at the meeting*

(13 marks)

- b) *There is also a monthly estate management meeting looming at which all heads of department will be present. To prepare for the meeting, write **notes** for yourself on the wider issues to bring to the attention of estate staff (those at the meeting will include the head gamekeeper, the clerk of works, the farm manager, the head forester and house manager).*

(7 marks)

Statistics

Number taking this question	86
Average mark	53%
Top mark	73%
Lowest mark	23%
% achieving 65% or more	15%

Report

- I thought would be well answered but overall very poor and was disappointed generally
- A lot of it was 'common sense' and I had hoped would be better answered.
- Lot of poor layouts for Heads of Terms which should be "bog standard" and trotted off pat and hence score well!
- Bad handwriting making heavy weather for marking.
- Those who wrote less and got main headings in Head of Terms and a short explanation afterwards scored better than those who wrote pages of text - a lesson for candidates!
- Four candidates took a wrong interpretation of Part b) and thought we were asking for a general topical update for Heads of Department and not specifically about the obstacle course – a shame and was not marked, so as to be consistent and fair to all

Paper 2, Question 5

Question

Your client is an owner occupier of a large mixed enterprise farm. A proposal for a wind farm now looks as though it might come to fruition. The developer's plans propose that three 1 MW turbines will be erected on your client's land. Wind speed monitoring and all other screening tests have been concluded and the developer now wants to proceed to the next stage.

- a) *For a client meeting, write **notes** for yourself about:*
- i) *what agreements would be likely to be required and how you would approach achieving them. (3 marks)*
 - ii) *the key heads of terms you would wish to see in:*
 - *the option (4 marks)*
 - *the lease (4 marks)*
 - iii) *a guide to the financial returns your client might expect to receive from each stage. (3 marks)*
- b) *Your client's brother, for whom you act on an occasional basis, owns the adjoining farm. The land is let out on a long FBT (LDT in Scotland). The wind farm developer wishes the power export cable to run over the brother's farm (no turbines are proposed on the brother's land) as the only alternative grid condition point involves a much longer distance. A meeting is in the diary with your client's brother.*

*Write **notes** for this meeting of the key matters you wish to bring to his attention.*

(6 marks)

Statistics

Number taking this question	58
Average mark	65%
Top mark	90%
Lowest mark	30%
% achieving 65% or more	57%

Report

The question was to be answered in two parts. 14 marks were available for Part A and 6 marks for Part B. Both required answers in effective note form but in different contexts.

The best answers were well structured in a logical sequence and their knowledge was seen to be implied to the situation rather than simply regurgitation of known facts.

Those who failed, largely failed as a result of not planning their answers in advance.

Part A

Candidates did get the majority of the Heads of Terms for the Option and the Lease but many did not appreciate the usual practice of attaching a draft Lease to an Option; the Option having a trigger point for the exercise of the draft Lease.

The examiner accepted the point that most candidates have not had first-hand knowledge of a windfarm negotiation and therefore did not expect detailed notes. In consequence, the financial returns which were shown varied greatly from the very low levels to beyond fantastic. This was not considered to be a significant factor except at the worst excesses.

The principle of a base rent with a percentage top up was to be expected within the answer, preferably the “higher of” rather than, as one candidate stated, the “lower of”! I suspect the latter would attract a very unhappy client for obvious reasons.

Part B

Candidates did not realise the relative strength of the brother’s position.

Only approximately half the candidates realised the potential conflict of interest which was surprising. This should be the first matter which should have come to candidates’ minds given the degree of accent given within the question itself.

The question provided for more than one potential answer to the situation. Few answers were complete but, as examiner, I thank the candidate who thought laterally and pointed out that the cable may be useful for a potential windfarm on the brother’s property and so reserved rights and potential capacity. This, in my view, was a good lateral thought over the usual answers to the question. It may have also given more practical all round situation with mutual agreement between the brothers though it may not totally nullify the ransom.

The tenancy element was not well handled or appraised by the majority of candidates. Most sought part possession of the holding with planning permission requiring a minimum of 12 months’ notice rather than relying upon or pointing to the potential that the landlord’s reservations would allow for the creation of a suitable easement limiting the tenant’s compensation to disturbance.

In essence, consent from the tenant was not strictly needed. However, his goodwill was and the generous disturbance package would have been the obvious way to approach the matter to obtain the tenant’s goodwill.

Very few candidates got all matters correct, however, the majority were able to provide a satisfactory answer which was on the whole encouraging.

Paper 2, Question 6

Question

An existing client has asked you to advise him about the arrangements for three cottages he has on his farm.

Cottage No. 1 is vacant and your client wants to house a new shepherd in the cottage. Your client proposes deducting a modest rent from his wages.

Cottage No. 2 has been lived in rent free for thirty years by a tractor driver who retired ten years ago. He has now died and his widow would like to remain in the house.

Cottage No. 3 was let “informally” to a family friend five years ago at a rent of £100 per month. Your client now wishes to enter into a new agreement, hold a deposit and charge a commercial rent.

*Set out in **point form** your advice for each cottage:*

- i) explaining the basis on which each cottage would be occupied in the future*
- ii) explaining your client’s repairing liability for the cottages in the future*
- iii) advising on any statutory and regulatory requirements that your client will need to meet in connection with the lettings*

15 marks (5 marks for each cottage)

Explain briefly how the landlord could charge a rent for Cottage No 2 (2 marks)

Explain briefly what has to be done to secure the new agreement for Cottage No 3 (3 marks)

Statistics

Number taking this question	104
Average mark	58%
Top mark	87%
Lowest mark	20%
% achieving 65% or more	30%

Report

While a large number of candidates tackled this question, very few candidates answered all parts of the question well.

Most English candidates were familiar with the latest regulations introduced by The Deregulation Act and the Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015. These (and equivalent points elsewhere in the United Kingdom) were easy marks for knowledgeable candidates.

Most candidates appreciated that in England and Wales the letting of Cottage No 1 would create an Assured Agricultural Tenancy. Not everyone realised that this would give the tenant security of tenure and a succession and therefore failed to recommend service of notice under the Housing Act 1988 Sch.2A paragraph 9 to create an AST before the tenant took occupation. Most candidates realised that to create an AST they would need to charge at least £250/annum but failed to warn of the effect of deducting a rent from the worker's wage on the minimum wage requirement.

The questions about Cottage No. 2 were answered very well by some. They understood this was a Rent (Agriculture) Act 1976 tenancy and the widow was entitled to succeed. They also understood the procedure to obtain a Fair Rent for the cottage, few mentioned the interim measures to obtain a rent pending registration, but as they are encountered rarely in practice candidates were not expected to quote chapter and verse on this.

Cottage No. 3 was recognised by most as being let on an AST. Better candidates explained why. There was no right or wrong approach to the question of how the letting might be put on a more formal footing whether by serving notice or negotiation but generally this was not done well.

The question of repair liability was not answered well in general and missed many of the key obligations. In England and Wales, s.11 of the Landlord and Tenant Act 1985 applies to all three tenancies and good candidates recognised this and saved themselves a good deal of writing.

The questions asked for an answer using bullet points relatively few did so. A lot of candidates were clearly under time pressure but produced muddled and long-winded answers which missed the key facts