

CAAV EXAMINATIONS 2007 – ORAL QUESTIONS

CAAV EXAMINATIONS – NOVEMBER 2007

National Oral Questions

Note – Each Examination Centre should select three of these six questions for use. Those three chosen questions are to be asked of all candidates attending the Oral. Each question carries 5 marks and so this section of the Oral carries 15 of the 50 marks with the remaining 35 marks turning on the topic.

Centres with candidates whose experience is in Wales or Scotland should consider this when selecting the questions and marking any points arising from that practice which may be given in their answers.

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QUESTION 1

In the light of the Antrobus and McKenna cases what are the principal issues which affect whether a property will have the benefit of Agricultural Property Relief?

- Agricultural land and pasture should generally have the benefit of APR
- Farm buildings will do if they are used for agriculture in association with the land and of a character appropriate to the holding. Beware intensive buildings with very little land (e.g. *Williams*) they should be ancillary to land
- To be a farmhouse, the dwelling must be used to manage the farming of the unit (see McKenna, Higginson and comments in Antrobus 2 on the day to day farmer)
- Farm houses and cottages may have the benefit of APR if they are of a character appropriate to the land. (Antrobus 1). Five tests were identified in Antrobus 1:
 - i) The appropriateness of the house to the holding
 - ii) Is the house proportionate to the farming activities
 - iii) The elephant test – you will recognise that the property is of a character appropriate when you see it
 - iv) The educated layman test – would an educated layman consider the property to be a farm or a house with land
 - v) What historical association is there between the house and the remainder of the holding and how long has the holding been of its current scale
- If owner-occupied, the property must have been occupied for the purposes of agriculture for the 2 years prior to the date of transfer or death. Where let, it must have been owned for 7 years and occupied throughout for the purposes of agriculture.

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QUESTION 2

Why have fewer farms come to the market in the last 5 years?

- Combination of both short term and long-term issues:
- **Short term:**
 - First, the uncertain rules and lack of early detail in respect of the Mid Term Review and as to any formal means to preserve or transfer entitlements
 - Second, once rules and mechanisms were established an anxiety amongst some to ensure that they captured entitlements before they took the farm to the market
 - Third, an anxiety as to the precise impact of the new regime on the land market
- **Long term:**
 - As the agricultural industry and land occupation, and to a lesser extent ownership, consolidates into fewer hands there will by definition be fewer potential vendors and thus fewer farms to come to the market
 - Farmers are showing less and less propensity to retire completely and sell their holdings. Rather they often semi-retire remaining on the holding and scaling back their own activity, using others to farm the land for them under the relatively new alternatives of FBTs (only available since 1995) or other arrangements.
 - Landlords are less inclined to sell entire farms, many preferring rather to rationalise lettings and exploit revenue opportunities, particularly in a low inflation generally low investment rate economy
- There may in addition be specific local issues

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QUESTION 3

What are the key considerations for a landowner letting land and buildings for livery?

- Whether the letting is non-exclusive through a licence or exclusive through a tenancy
- The tenant's proposed use of the land i.e. is this recreational or business use.
 - ❑ If there is no business use, then tenancy probably under common law
 - ❑ If business use, tenancy will be either FBT (if the use is agricultural) or under Landlord and Tenant Acts
 - ❑ Commercial uses include livery, schooling and events
- The potential impact on future Inheritance Tax liabilities and reliefs
 - ❑ Equestrian uses other than predominant grazing (sometimes challenged), stud farms, meat production and farm use will not qualify the land for APR
 - ❑ These other uses may qualify for BPR but landlords allowing tenants to diversify into equestrian activities risk losing APR on that part of the holding
- The potential assessment to National Non-Domestic Rates
- Aside from the inclusion of standard issues; term and provisions for notice, rent and rent reviews, repairs, agreements should include specific clauses over the control of horses, not allowing them to stray, maintaining welfare and maintaining adequate insurance

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QUESTION 4

Identify the main differences between a Wayleave and an Easement?

- A wayleave is a temporary right taken by an operator to enter onto land, install services and subsequently to repair or inspect them
- A wayleave may run for a fixed term or from year to year
- Landowners may terminate wayleaves under certain circumstances
- Wayleaves payments are by way of an annual, revenue, payment
- An Easement is in effect a permanent wayleave
- Easement payments are single capital payments
- Once granted by Deed of Grant, an Easement cannot be rescinded by the landowner

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QUESTION 5

What have been the main constraints of set-aside this year (2007)?

- The number of set-aside entitlements held by the claimant
- Set-aside period is 15th January to 31st August
- Set-aside land can be in a single block or a number of blocks but each must be at least 0.1 hectares (0.24 acres) except for watercourse, hedge, wood margins and against SSSIs.
- Land cannot be used for non-agricultural use during set-aside (local or charitable events may be permitted)
- Cultivations may take place from 1st July to control weeds
- Set-aside land cannot be used for agricultural production other than non-food crops but after 15th July crops can be sown for use after 15th January 2008
- Non-food crops grown on set-aside are either:
 - ❑ Crops which have potential food/animal food use – these must be grown under contract with a collector /processor in place before 15th May
 - ❑ Crops which have no food/animal feed potential – these do not need a contract but a declaration must be included in the SPS application
- No fertilisers can be applied to the land except 30kg N per hectare to help establish wild bird cover. Manure can be applied but not to the extent which will destroy the green cover

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QUESTION 6

What are the key pieces of information you would wish to know from a client who asks you if he should remain in arable farming? *Where appropriate, this question can be asked in terms of dairy farming.*

- The scale of the enterprise
- Financial performance (management rather than tax accounts) and benchmarking information if that is available
- The occupation and tenure of the land involved in the business and whether there are any significant potential changes in the foreseeable future, e.g. a tenancy coming to an end
- The suitability, capacity and standard of the fixed equipment and the likely need for significant investment over the foreseeable future
- Labour and family resources, the prospect, inclination **and capacity** of a successor and any delay until they are ready to take over
- The broader capital base of the business and family and its ability to provide for future financial demands, e.g. retirement/taxation
- The future of the farm – would it be sold or retained? what alternative enterprises might be available?
- The health, energies and inclinations of the client; and above all
- What prompted them to ask the question!