

**CAAV 2009 NATIONAL EXAMINATIONS  
WRITTEN BOARD'S REPORT ON QUESTIONS**

**Paper 1, Question 1**

The aim of this question was to test candidate's report writing and communication skills. It used as a vehicle the exercise of preparing a tender application for the tenancy of a 500 acre holding available on a long let, as advertised in a local newspaper. The question also required the preparation of a covering letter to accompany the tender application. It was attempted by 82 candidates of whom 42 (51%) passed.

**Part I**

A tender document, in a report format, was required with numbered headings, sub headings and clear sections. It should have addressed the matter of preparing an application for a tenancy and not negotiating the terms of a tenancy agreement as one or two candidates tried to do.

The starting point, as with any formal report, should have been a title page which less than 50% of candidates included. Only 4 candidates provided a contents page and *no* candidates included a disclaimer!

Moving on to the main report, a logical starting place was to provide details of the applicant e.g. full names (husband and wife if appropriate), together with a full postal address, plus family details, e.g. children's names, ages etc. Most candidates provided this information although sometimes it was spread out in different places within the report.

An important section of the tender document is to provide the prospective landlord or his agent with detailed information of the applicant's experience and background, what their involvement with the existing farming business had been over the last 5 or so years and an outline of the current farming business. The aim of this section is to demonstrate to the landlord or his agent that the applicant has been closely involved with the farming business and is ready to take responsibility for his own agricultural unit. This part of the question was well answered although surprisingly few candidates included any financial evidence of the performance of the existing business such as the inclusion of the last 3 years farm business accounts as an appendix – surely a pre-requisite for any tenancy application of this sort.

A vital element of the tender document would of course be the applicant's proposal for the tenanted holding. This should include a general description and overview of the proposal together with stocking/cropping plans, possibly building use and backed up by gross margins, cashflow budgets and profit and loss forecasts. The vast majority of candidates provided full and comprehensive answers to this element of the question.

Any application for a tenancy of this size should include a section dealing with finance and capital requirements. This would set out how much investment will be required to purchase stock and/or machinery and importantly, how it will be financed, e.g. from business reserves or through a bank loan. Any bank borrowings required should include details of the term, interest rate etc. Most candidates addressed this point.

In addition to demonstrating the profitability and sound financial basis of the existing business, a landlord would want additional confirmation of an applicant's ability/experience, financial standing etc., via various references. This would normally include:

- Bank Manager/Accountant;
- Previous or existing landlord/landlord's agent;
- Character reference from someone who has known the candidate well over a period of years and can vouch for their experience and ability e.g. neighbouring farming mentor.

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Some candidates omitted this section completely although most mentioned the need for references. Only a few candidates referred to the three different types of reference.

A good tender application should look at future proposals for the farm and possible diversification opportunities. This demonstrates to the landlord vision, innovation and forward thinking and allows the agent preparing the tender application to differentiate his client from all the other applicants. Too many candidates omitted this section altogether or paid little thought to it.

The final element of the tender document should have been the rent tendered and, with two exceptions, every candidate included this.

**Part II**

The aim of the covering letter was for candidates to show how they, as agent to the prospective tenant, could promote their client and enable their application to stand out from all the others. It was a clear opportunity for candidates to demonstrate their written communication skills and use both common sense and imagination.

What was required within the letter was reference to the enclosure of the tender document and then promotion of the client. This may have included references as to how long the agent has known them, how well their stock sold in the local market, the applicant's reputation as an award winning cereal farmer, that they had a proven financial track record, substantial assets in land/buildings etc, etc. Another way of trying to set your client apart and to demonstrate your client's confidence in his ability, is to invite the landlord or his agent to visit and inspect the existing farm and look round the farming operation.

As a matter of course, candidates should have offered to answer any queries or provide additional information. It is also worth "personally recommending" your client as a suitable, long-term tenant.

The majority of covering letters were well laid out and constructed and virtually every candidate referred to the enclosure of the tender document and offering to provide additional information. Those that scored the highest marks really promoted their clients and helped to make their application stand apart from all the others.

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**CAAV Paper 1, Question 2**

The question asked the candidate to prepare a letter to a banking client confirming instructions to carry out a bank valuation on a 500 acre holding with which they were asked to enclose their Conditions of Engagement, **AND** they were asked to set out **in heading form** what those Conditions of Engagement should cover.

The second part of the question asked candidates to prepare an outline of their valuation report setting out **in headings** with a brief explanation of each heading the contents of the report stating where necessary any assumptions.

Given that this is core work for many, 137 candidates attempted the question and 100 (73%) obtained a pass.

In the first part we were looking for a well crafted letter together with the headings as referred to above. The quality of letter was highly variable with some candidates failing to set the letter out properly which inevitably lost marks on what should have been a relatively simple task. The best answers dealt with issues such as timescale for contacting the farmer and supplying the report, confirming that the valuation would be dealt with in accordance with the Red Book and confirming fees. In addition you were asked to enclose your firms Conditions of Engagement and it was expected that these would be in duplicate with a request that the second copy be signed and returned to confirm your clients acceptance of them. Some candidates incorporated the Conditions of Engagement within the letter but were not marked down because of this.

Given the weight of marks available for this part of the question we were not expecting an exhaustive list for the Conditions of Engagement but they were expected to include such matters as the client, the purpose of valuation, the basis of valuation, conflicts of interest and complaints handling procedures. As mentioned, some candidates included these within their letter rather than separately which ensured that marks were not lost but this in some cases affected the quality of the letter which did then lose marks.

The valuation report was set out in heading form as requested and was generally comprehensively answered. Good marks were awarded for a well set out report with well structured headings which the majority of answers had, but at times the explanations were just too brief. We were not looking for a report itself, although a skeleton report with the appropriate detail was felt sufficient to explain the headings. One candidate was brave enough to state that the farm comprised 500 acres of land only and thus saved some of the descriptive detail but so long as the remaining content was good this would not have lost marks. Those answers that had no explanation inevitably scored less well as candidates were not asked simply for the headings alone.

The best answers included the basis of valuation, assumptions, caveats, sources of information, qualifications of the valuer, a description of the property broken down into appropriate headings with the type of detail one would expect including an appreciation of planning and environmental issues and any rights benefiting or affecting the property. All of the reports should have contained an appraisal of the market, comparables and consideration of the suitability of the property for security but a number of answers omitted these important elements which should have been obvious if candidates considered the purpose of the report.

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**Paper 1 Question 3**

The taxation question was, effectively, made up of two sections (i) a scenario requiring a **report to your client's solicitors** on the issue of Agricultural Property Relief (APR) and Business Property Relief (BPR) for Inheritance Tax purposes and (ii) a request for **short notes** on two recent tax cases.

Of the 146 examinees who sat the written paper 71 candidates attempted the question and 35 (49%) passed.

Part (i) – the scenario – was answered well with an average mark of 8.54 out of 12 (71.2%)

Part (ii) (a) – Nelson Dance case – was answered very poorly with an average mark of 0.65 out of 3 (21.7%)

Part (ii) (b) – Earl of Balfour case was answered fairly well with an average mark of 2.91 out of 5 (58%)

Part (i) Scenario.

The examiners asked for advice to the solicitor to the beneficiary of the Estate of a deceased spinster who left 35 acres of land which was occupied on an oral grazing licence by a grazier. The grazier fertilised the land and the deceased's involvement in the land was merely to receive the yearly licence fee. The land had sold for significant development value with planning permission having been achieved twelve months before the deceased's death. The question clearly asked 'to what extent' was APR & BPR applicable.

The circumstances mirrored those in the recent Northern Irish Court of Appeal judgement of *McCall v HM Revenue & Customs 2009* and it was expected that this case should have been mentioned and that the situation and outcome be set out in any answer.

The examiners were expecting a clear definition of both reliefs contained within the Inheritance Act 1984 and, in respect of APR, an agricultural value of the land – as this would be the extent of the APR. A reasonable justification of agricultural value was sufficient. Several candidates confused the extent of APR by invoking Antrobus 2. The land was used for agricultural purposes and, therefore, was wholly capable of having APR applied at 100%. The 'ownership' provisions were expected, together with current IHT exemption limit of £325,000.

Several examinees failed to mention any case law at all or the wrong case law; several juxtaposed taxation cases and then became puzzled. Some started off well, got sidelined, and then spoiled a promising answer with completely the wrong consequence. A considerable number of candidates failed to inform the examiners 'to what extent' APR would be forthcoming. A very straightforward estimate of agricultural value would have sufficed and some justification of that valuation would have scored even better.

As the scenario was so close to the circumstances in the McCall case the examiners expected that the result of the examinee's answer would have been the same as that in the case. The majority of the answers suggested that BPR would not have been granted by HMRC but, surprisingly several answers said that, for various (some really quite ingenious) reasons BPR would have been possible. One answer suggested that Miss Ming should reengineer the business so that she was more in control of it. This would have been difficult as she had died! Some mention of the facts of the McCall case were expected – (1) that the land had not been cultivated by the deceased and that the grass had not been sown or grown in the manner of a crop (2) that the land appeared to be an investment and not a business of the deceased (3) that

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Paper I Q3 cont'd .....

the grazier had the benefit not just of the grass but of the space to graze and (4) that the deceased mere management of the investment would be insufficient to qualify for BPR – this would have assured full marks.

Part (ii) (a) the Nelson Dance case

This is important litigation relating to whether BPR was available. Full points would have been forthcoming if the following matters had been covered.

Prior to his death Mr Dance, who ran a larger farming business, transferred land and cottages into a settlement in 2002. He died in 2004. HMRC said that this was the transfer of assets in a business but not a transfer of a business. It went to the then Special Commissioners and HMRC lost the case. There was an appeal to the High Court and the case turned on whether there was a loss to the donor. The judge held that there was a loss to the donor's estate. If this was the case, he said the buildings and land were assets. Mr Dance had less business property after the transfer than before. If this were the case, there must be business property and, therefore, BPR relief must be granted.

This part of the question was answered really poorly with many candidates scoring no points. The case was covered in the CAAV Newsletter.

Part (ii) (b) the Earl of Balfour case

This case is known as *Andrew Brander (representative of the Fourth Earl of Balfour) v. HMRC (2009) – first tier Tax Tribunal – previously Special Commissioners* and is another important piece of litigation to decide whether or not BPR was available. It involved a large landed estate in Scotland.

The case featured the Whitinghame Estate Trust which was run personally by the Earl of Balfour. There were many cottages let farms and in hand farms. The trustees were passive and met very rarely. The question put by HMRC was was this a just a collection of investments or a proper farming business? HMRC argued that it was investment orientated. Managing agents were able to establish that more income was derived from the farming enterprise than the investments. More labour was used in farming than in the investments and managing agent's time was  $\frac{3}{4}$  on farming and  $\frac{1}{4}$  on investments.

The general assessment and impression was that the investments were subsidiary to the farming, forestry woodland and sporting activities and, therefore, it was a farming business first and foremost – hence BPR was applicable. An appeal has been lodged.

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**Paper 2 Question 1**

This question was attempted by 86 candidates of whom 37 (43%) passed.

**(i) (3 marks)**

Average mark = 1.9 = 63.6%

The candidates needed to identify taxation advantages of contract farming agreement in Bill Sykes's situation.

Ideally candidates would have looked at each of the principal taxation areas in turn and briefly identified the benefits. For Income Tax this would have included income to be treated as earned income and the ability to offset expenses. Capital Gains Tax, continued availability of entrepreneurs relief, ongoing VAT registration enabling reclaim.

Many candidates correctly identified Inheritance Tax as being a key concern to Bill Sykes and principally Agricultural Property Relief. Whilst many pointed out that APR would be available on the agricultural value of the agricultural land even if let under a farm business tenancy it was the ability to claim APR on the farmhouse that was a particular attraction.

The best candidates also dealt with Business Property Relief (BPR) on any value over and above the agricultural value.

**(ii) (5 marks)**

Average mark 3.3 = 67.0%

The majority of candidates understood the principles of the contract farming agreement in that the farmer provides land and buildings which he contributes to the agreement in return for a prior charge. The contractor owns machinery and provides labour for operations in return for a contracting charge.

The farmer instructs the contractor to carry out the farming operations on his behalf in accordance with the farming policy which is dictated by the farmer and it is the farmer who should buy variable inputs, make claims for the Single Payment Scheme, environmental schemes and similar.

The best candidates made it clear that the farmer had to take risk and be an active participant in the arrangement at regular, well documented meetings to verify this.

**(iii) (3 marks)**

Average mark 1.8 = 58.7%

This section merely required an indication of prior charge for the farmer, the contracting fee for the contractor and the profit split between them. As contract farming agreements take many forms wide ranges were allowed providing the overall result was credible.

The best candidates talked about tiered profit share ratios and fuel escalator charges for the contractor.

There was no requirement for detailed budgets within this section.

**(iv) Areas to be covered in the agreement (6 marks)**

Average mark 3.7 = 62.2%

The weaker candidates generally scored well on this section, feeling confident in producing "heads of terms" type headings. The best candidates demonstrated a thorough knowledge of contract farming agreements and provided further detailed insight into the areas to be covered within the agreement to accurately identify the obligations of both parties.

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Paper II Q1 cont'd .....

The best candidates distinguished between the areas subject to agreement being separate to the cropped areas subject to the cultivation charge, farming policy, management of bank account, maintenance of field boundaries and ditches and tracks, what would be chargeable to the agreement, the farmer would remain responsible for SPS application and environmental schemes, selling of produce and similar.

**(v) (3 marks)**

Average mark 1.7 = 56.8%

This simply required candidates to set out what they would do and when in a timetable format. Surprisingly few did this.

The best candidates talked about the prospect of a tender to encourage competition between contractors, meeting with the contractors, viewing their holdings and the importance of finding somebody who could work well with the client.

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**Paper 2 Question 2**

This question was attempted by the majority of candidates (130), of the 130 who attempted the question 72 (55%) obtained a pass mark. The spread of marks from candidates indicated that while some candidates did very well others either made a poor choice, or were less than comfortable with the subject.

The Examiner's analysis of the 45% unsuccessful proportion of candidates included the following reasons for the shortfall

[A] Most candidates recognised the risk from the fact that Golden Acre was an unwritten tenancy but few have recognised the risk by not pursuing a Section 6 Notice immediately.

Certain candidates suggested that negotiation of an FBT was appropriate (without serving a Section 6 Notice) which would have in any event negated any meaningful negotiations anyway, and given forewarning to Fred Flint to assign his tenancy to the Reverend Green's certain disadvantage.

Most candidates realised the significance of the date 12<sup>th</sup> July 1984 and how this would affect the relative negotiating positions of the parties and the form of tenancy to be established. (The unsuccessful candidate generally failed at the Section 6 hurdle). This in practice would have been a fundamental issue if it had not been addressed making the potential sale by the Reverend Green far more difficult either to Fred Flint or the market generally.

(Average mark for this section of the question 3.3 out of 5)

[B] *Second part of the question*

Few candidates referred to Schedule 1 of the 1986 Agricultural Holdings Act by way of providing the basic template for a basic written agreement.

Most had headings, which covered Section 1 and went far beyond without reasoning.

The poorer candidates missed quite significant points such as non-assignment (as provided for within Schedule 1) and, included items such as break clauses and the fact the matter was referable to the ALT! as opposed to arbitration. In practice a break clause would be likely to be unacceptable to Fred Flint who has an Agricultural Holdings Act 1986 tenancy.

The best answers recognised that Schedule 1 provided the basic agreement, and that the terms that had been agreed either verbally otherwise could be included by mutual agreement if identifiable.

(The average mark for this section was 3.2 out of 5)

[C] This part of the question was answered in the most positive way.

Establishing the date for the last rent review, the term dates in the settlement of the agreement is an essential.

The process had been settled following up with a Section 12 Notice under the Agricultural Holdings Act 1986 giving a minimum of 12 months notice and a maximum of 24 months notice was nearly wholly confirmed by candidates.

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Certain candidates attempted to hedge their bets with an AHA/FBT approach in the alternative which is perhaps the wrong approach (as explained in part 1 above) the relevant areas of legislative authority provided some interesting references!

Many failed to understand that the arbitrator requires appointment before the term date.

(The average pass rate for this section of the question was 3.4 out of 5)

[D] This section of the question was least well answered (2.8 out of 5).

Candidates did not provide illustrative calculations in the main to establish where their reasoning was derived from.

Term and reversion calculations often meant figures below the tenanted value were recommended to be accepted by the Reverend Green from Fred Flint or others.

It was obvious that Fred Flint was the main potential market, and therefore once agreement had been reached under the Agricultural Holdings Act 1986, and the rental reviewed, the landlord would be dealing from a position of strength relatively and Fred Flint would be the obvious first point of contact.

The concept of marriage value and the relativity of the parties was missed from many answers.

In my view to compare and contrast the figure likely from Fred Flint in marriage value with the likely market value to investors was wise and a sensible approach and should help to justify the course of action recommended.

The best answers considered development claw back/overage, and/or the possibility that planning permission for alternative uses could be a consideration in which case Reverend Green could obtain enhanced values following planning consent with Notice to Quit. While this was not in the text those who assumed this in my view had taken the picture on board more fully and to Reverend Green's potential advantage.

It was pleasing from the Examiner's view point to see 55% pass rate. Those who failed often were knowledgeable, but lacked the ability to lay out the knowledge in a practical advice to Reverend Green.

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**Paper 2, Question 3**

This question related to affordable housing – rural exception. The question was answered by 6 candidates and of those none achieved a pass mark. This was remarkably few and it could have been a really useful choice had candidates looked beyond the issue of the 'rural exception' label. It would appear, however, that the subject matter may have looked too specialised for most candidates and those that did attempt it did not really show sufficient depth of knowledge to achieve a pass mark.

The syllabus area which the question was intended to address was 3d Residential and Other Development in the Countryside under the heading of Non Agricultural Uses. and therefore was a valid area of the syllabus but the probability is that a more general question about development in the countryside on a subject matter that wasn't so specialised may well have been answered by more candidates. That said, with a degree of common sense and general planning knowledge, the question should have been capable of being attempted by examinees.

Few candidates had a proper understanding of the planning policy issues or the valuation issues and knowledge relating to the various types of affordable housing and the vehicles available to the estate for delivering it.

It was disappointing to the examiners that more did not attempt the question as it was relatively straightforward and even more disappointing that none achieved the 65% pass mark required.

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**Paper 2 Question 4**

This question was attempted by 107 candidates and 65 (61%) passed

This was a straightforward 'no frills' question to answer but for this reason the candidates had to prove they really did understand and know the subject in order to answer it well. In essence, the answer required the candidate to:

- a) demonstrate knowledge and understanding of the difference between Prior Notification and a full Planning Application by comparing and contrasting the two procedures; and
- b) demonstrate the practical (i.e. not just the statutory) process of a full planning application

The first part of the question required a general summary of some of the main points including the legislation, GPDO size and location limits, amount of information required for prior notification as opposed to an application, timescales involved, fee and information to be provided to LPA.

The second part required the candidate to understand the practical steps to be taken as well as the statutory procedures for a full planning application. This included pre-application consultations, information to be provided with the application, cost indication, site visits and notices, advertisements, factors considered by LPA, use of delegated powers.

It was expected that the answers would be in the form of briefing notes and would cover 2 to 3 sides of A4 paper. With some prior thought as to what the examiner was looking for, easy marks were obtainable for a 'text book' answer. In general the question was reasonably well answered although only a few candidates achieved high marks, the remainder being marked down for missing out on some fundamental issues. Unfortunately, some of the candidates wrote an essay type answer covering every aspect they knew about 'planning' and concentrating more on the farming and finance criteria of the question without reading the question thoroughly to realise this was to do with planning procedures and these did not make the grade.

Other candidates clearly demonstrated that they did not have a specific knowledge of either practical planning applications/prior notice processes and felt they could skirt over the fundamental points. As this was a straightforward question on a core subject on an established planning process, the candidates were not given marks if they could not produce a convincing answer.

Some specific examples of important points that were missed were reference to the specific legislation. Also some omitted the ability (or clearly did not understand the use of delegated powers) to make the decision. Many were confused by the different timescales and also the requirement for Statutory Consultation (as opposed to 'popping round' to have a chat to the neighbours and Parish Council etc!), and the involvement of Case Officer.

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**Paper 2 Question 5**

This question related to wayleaves and easements and was attempted by 59 candidates of which 27 (46%) passed.

In the examiners' view this was a very straightforward question and they had anticipated that it would be answered by many more candidates.

The syllabus area it addressed was wayleaves, easements, communication masts etc. under the heading of identification law, valuation and marketing of rural property and chattels.

In the examiners' view candidates, in general:

- i) Failed to identify the three principle bases on which the electricity company could be granted the rights - easement, wayleave or compulsory purchase.
- ii) Had little knowledge of the advantages and disadvantages of each of those options.
- iii) answered best the issues of valuation implications although there was a general weakness surrounding the valuations of easements and wayleaves whereas the more practical elements of a claim were well answered.
- iv) were unable to think outside the box as to what other advice might be relevant in the circumstances save as to purely practical issues. Very few candidates mentioned lift and shift clauses, diverting the route or undergrounding the cables.

Generally answers were disappointing for such a straightforward question.

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**Paper 2 Question 6**

This question asked the candidates to consider advice on Health & Safety issues for a small estate on the edge of a town which comprised arable land, woodland and sawmill, let cottages and traditional and modern buildings all constructed prior to 1960. Candidates were also told that there were suckler cow and sheep enterprises, all farming and forestry operations were carried out by a work force of 6, and that the farm had visits from a local school during lambing time.

The first part of the question asked candidates to identify the possible risks that may be present - in order to inform the owner. It did not really require any specialist knowledge of Health and Safety legislation but an appreciation of the risks associated with a rural property and its various component parts. The best answers addressed each of the factors mentioned in the question, particularly taking into consideration the fact that all forestry and farming work was carried out by estate staff. In some cases that fact was overlooked but it was central to the question. Enshrined in H&S legislation is the well being of employees and this was not always recognised.

Most candidates however did cover many of the possible risks which included electrical, gas and fire safety within the cottages, issues concerning suckler cows, school visits and liability, public access/trespass and escape of stock, tree safety particularly in relation to highways, condition of buildings including the presence of asbestos and risk assessments and working conditions for staff taking into consideration the various operations that they would be undertaking on the farm and within the woodlands and sawmill such as materials handling and storage, working practices, use and maintenance of machinery and equipment and the like.

The second part required the candidates to write brief notes on areas of legislation that may be applicable. Candidates were expected to identify the key areas which included the Health & Safety at Work Act 1974 together with some of the principal regulations including the Control of Substances Hazardous to Health Regulations 2002, the Control of Asbestos Regulations 2006, the Occupiers Liability Acts 1957 & 1984 and the Gas Safety ( Installation and Use) Regulations 1998 and to write notes on their application. Most importantly it was expected that the threshold of 5 employees would be recognised in requiring a written H&S policy to be in place and other supporting information made available, together with the need to carry out risk assessments for work activities, as well as notes on other duties under the other pieces of legislation. It was accepted that answers could be quite wide and credit was given for other areas of legislation which was relevant, but the above were considered to be of greatest importance.

Of the 47 candidates who attempted the question 29 (62%) achieved the pass mark.