

2009 CAAV EXAMINATIONS
NATIONAL WRITTEN PAPERS
SAMPLE SUCCESSFUL ANSWERS

The following answers to questions from the 2009 examinations are some of the actual scripts that gained good marks.

Written under examination conditions, they are not perfect answers – nor correct in every detail.

They are not necessarily those which gained the highest marks, but they demonstrate the type of answer that is expected by the examiners with an appropriate level of knowledge and the skills to communicate it to others.

Note - Where an answer included planning notes they are reproduced in italics.

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PAPER 1, QUESTION 1

The Question

You have been contacted by an existing client who has seen an advertisement in the local newspaper for a 500-acre farm to be let on a long tenancy.

Your client is an established beef and sheep farmer with approximately 1,200 acres, partly owned and partly tenanted. He sees this 'to let' farm as an excellent opportunity for his son who is married with a young family. He has a very clear idea of how they would manage and farm the holding but needs assistance in bringing these ideas together on paper to submit a formal tender application and has asked for your help.

- i) Prepare a **framework document** setting out the section and sub-section headings, with brief explanatory text, of the tender submission you would prepare in applying for this tenancy. **(10 marks)**
- ii) Prepare an appropriate **covering letter** to the landlord's agent to accompany the farm tender. **(10 marks)**

The Sample Successful Answer

- i) **Tender document for 500 acre farm** should include, in full:
 - **Background** – currently farming approximately 1,200 acres (partly owned and partly tenanted), looking to expand as opportunity for son to farm in his own right. Clarify whose name(s) would be on the tenancy agreement (will depend on age of the son, but the landlord may prefer to grant a joint tenancy to father and son, for security).
 - **Details of son (and father)** – age, background, experience in farming, interests relating to farming.
 - **Training and qualifications** – details of father and son, appropriate to agriculture.
 - **References (professional and character)** – from current landlord and other professionals e.g. accountant, solicitor, bank manager.
 - **Current farm** – offer opportunity for landlord or landlord's agent to visit and inspect, provided the farm is kept tidy and shows ability to farm well. Provide history of yields, gross margins, success in competitions etc, to provide evidence of ability.
 - **Financial details** – provide any evidence of financial security possible, as landlord wants to ensure rent will be paid. If investment in the holding is proposed by the tenant, provide details of estimated costs and evidence of where the funding will come from.

- **Diversification** – provide rough details of any proposals or potential diversification opportunities or interests.
- **Proposals** – from the information provided by the landlord’s agent or the tender pack, confirm details of farming system to be used, for example cropping for each field, use for each building, whether land will be used for arable or livestock production etc. Include proposals to enter Environmental Stewardship etc. Improvements you would make to the holding (which will be influenced by the length of the tenancy). Clearly state who would be involved with farming the holding and each person’s responsibilities (e.g. management, accounting, day to day work).
- **Budget** – based on detailed costings (in line with the proposals above) produce a budget for the farm.
- **Rent offer** – figure to be proposed (confirmed in words), based on budget and market value in the area (which will be strongly influenced by the demand and competition for the land). Typically 50 % of net profit from budget, but could be much higher if there is strong demand for land in the area.

(ii) The Letter

A Valuer
Sign and Seal
Barchester
BC1 1AT

Mr Landlords–Agent
Land Agency Ltd
Cathedral Close
Barchester
BC1 2AA

SUBJECT TO CONTRACT

12th November 2009

Dear Mr Landlords–Agent

Five Hundred Acre Farm, Barchester

I enclose a tender submission for Five Hundred Acre Farm, on behalf of my client, Mr A Tenant and would be grateful if you would confirm receipt. As you will see, the rent proposed by my client is £37,500 per annum and is proposing to use the land for beef and sheep production. He is also interested in looking into the possibilities of diversifying into campsite use in the future, should your client be willing to support the change.

Mr Tenant has a great deal of experience of farming, as he has grown up on Client’s Farm, just down the road from Five Hundred Acre Farm, and has been involved in agriculture from a very young age. He is particularly keen to enter the land into Environmental Stewardship and is also willing to co-operate with your client’s running of the shoot, assuming it will continue and rights are reserved by your client.

Client's Farm is run by Mr Tenant and his father and is an extremely well-kept and managed holding. If you or your client would like to visit Client's Farm at any stage during your decision making, then please do let me know.

I have worked for Mr Tenant as his Agent for six years and have always known him to be an honest, hard-working young man and he is greatly respected in the farming community.

If you would like any further details on the tender submission, please do let me know.

Yours sincerely

A Valuer

Enc – Tender Submission

PAPER 1, QUESTION 2

The Question

You are instructed by the Loyal Bank of Mercia Plc (High Risk Department) (HRD) to carry out a revaluation of Higher Farm – a 500 acre holding, for security purposes, following a review by the bank of the client’s banking facilities.

- i) Write a letter to the Loyal Bank of Mercia Plc (HRD) confirming your instructions and enclosing your Conditions of Engagement for undertaking a security valuation and set out, **in heading form**, what those Conditions of Engagement should cover
(5 marks)
- ii) Prepare an outline of your valuation report to the Loyal Bank of Mercia Plc (HRD) setting out, **in headings**, with a brief explanation of each heading, the contents of your valuation report stating, where necessary, any assumptions.
(15 marks)

Sample Successful Answer

i) **The Letter**

Address 1
Address 2
Address 3

Loyal Bank Mercia PIC (HRD)
Address 1
Address 2
Address 3

Your ref:
Our Ref:

12/11/09

Dear Sir/Madam

Re: Revaluation, Higher Farm

I write in connection with the above mentioned matter. Before we can continue and accept the instruction we are required to have a signed instruction letter and now supply you with our terms of engagement for secured lending purposes.

I would be obliged if you could sign and return this letter of instruction to confirm you are in agreement as to the scope of work we are to undertake and confirmation of acceptance of our terms of engagement.

To briefly summarise the terms of engagement attached to this letter we are to undertake a Red Book (Valuation Standards 6th edition) valuation for secured lending purposes on Higher Farm, which extends to 500 acres (202ha). The valuation is a re-valuation due to restructuring of your client’s borrowings.

Our fees in connection with this matter will be £3000 plus VAT at the prevailing rate, plus any disbursements which typically are OS Plans (Promap), mileage and plan copying. Mileage will be charged at 60p/mile from this office, other disbursements will be at cost.

Once we have your confirmation to this letter of instruction and the terms of engagement set out overleaf it would be useful to have the client's contact details in order to make contact and inspect the farm.

We confirm that at present we are not aware of any conflicts of interest, however should any arise we will inform you in writing and make a decision as to how to proceed thereafter.

I look forward to hearing from you.

Yours faithfully,

Terms of Engagement:

- Scope of the work to be undertaken
- Fees
- Disbursements
- Complaints handling procedure
- Conflicts of interest
- Level of PI cover confirmation sufficient is available
- Confirmation that valuation undertake in accordance with Red Book
- Inspection Issues
- Information obtained – state where information comes from
- Valuation will not be available for use by 3rd parties without valuer's prior consent
- Ability to appoint sub contractors – eg: Contamination Reports/ Inspections

ii) Outline of Valuation Report

Our Ref:

VALUATION REPORT IN RESPECT OF:

**Higher Farm
Address 1
Address 2
Address 3**

Date of Report: 12/11/09

Address to:
Loyal Bank Mercia (HRD)

- 1) Purpose of Valuation: Why is the property being valued, as per instruction? This case, secured lending purposes for what is perceived a high risk client.

- 2) The Client: Who has provided the instruction (name, address and contact name should be stated)?
- 3) The Property: Where and what is the property? Description and location required.
- 4) The Interest to be Valued:
 - (a) Freehold or leasehold interest being valued?
 - (b) The owner or person whose interest is being valued.
- 5) Date of Valuation:
 - (a) On what date is the report issued for?
 - (b) What date was the farm worth £XXXX.XX?
- 6) Inspection of the Holding:
 - (a) What date was the property inspected?
 - (b) Conditions on the day of inspection.
- 7) Limitations of Inspections: Were there any limitations to the inspection? ie: was anywhere inaccessible or locked or did Health and Safety prevent access to lofts.
- 8) Qualifications and Experience of Valuer: Ensures that the valuer has sufficient experience in that specific area of work.
- 9) Basis of Valuation: Eg: If comparable, ensure that your comparables are listed in the report or appendices.
- 10) Access/Highway: Comment upon issues relating to access. Is it good/bad, shared, owned or a right of way grant.
- 11) Easement/wayleaves/pipelines: Comment on location and any wayleave payment that are apparent.
- 12) Assumptions: Any assumptions made as a result of inspection of the holding.
- 13) Special Assumptions: Special assumptions usually come from the instructions (Eg: value assuming planning consent has been granted).
- 14) General Condition of Property: Maintenance and reinstatement required or not?
- 15) Contamination Issues: Comment on whether from inspection it wasn't apparent that any contamination was evident or any test carried out or reports undertaken.
- 16) Single Payment Scheme/Quota/ELS: Comment on entitlements and quotes and ELS – may affect value.
- 17) Appendices: Should contain plans of holding and letters of instruction (signed) and photographs or plans of buildings and land.
- 18) Sign and Date the Report: If re-valuation was undertaken by same valuer then depending on timescale, say less than 12 months you could make an assumption that nothing has materially changed.

Advisable to revisit the holding and start the valuation process again. High Risk Department so you need to cover yourself professionally as the bank perceive the client to be risky.

PAPER 1, QUESTION 3

The Question

You have been asked by the beneficiary of some land to give advice for Inheritance Tax purposes on whether you consider Agricultural Property Relief (APR) and Business Property Relief (BPR) would be available following the death of the owner, Miss Ty Ming.

The property comprises 35 acres of agricultural land near to a market town. Planning permission for residential development was granted twelve months before death. The land fetched £5.1m net of agents' and solicitors' fees which was considered 'pleasantly surprising' by the selling agents in the current economic climate.

The land was, immediately prior to Miss Ming's demise, held on an oral grazing licence arrangement, through a local letting agent. This arrangement was, however, confirmed in writing. Investigations found that the graziers fertilised the land themselves and that it was used exclusively by one grazier. Previously graziers were found by the beneficiary's letting agents. Miss Ming was interested in the activities of the graziers but only to the extent that she derived a yearly licence fee off the land.

- (i) Write **a report to your client's solicitors** setting out reasons why you consider APR and BPR may or may not be granted by HMRC for Inheritance Tax purposes and to what extent.

Ensure you mention any case law which backs up your views. **(12 marks)**

- (ii) Write **short notes** on the following recent cases:
- a) The Trustees of the **Nelson Dance** Family Settlement v HMRC **(3 marks)**
b) Representatives of Earl of Balfour v HMRC (2009) **(5 marks)**

Sample Successful Answer

NB The answers here are a composite, drawing on more than one answer and offers two sample answers to part (i))

- (i) **The Report – Two examples of this part of the answer are offered**

Example 1

An Agent
A Building
Main Road
Casterbridge

11th November '09

Our ref:

A Solicitor Esq
Messrs Solicitor & Co
The Road
Casterbridge

Dear Mr Solicitor,

Re: The Estate of the late Miss T Ming Dec'd

Further to my recent correspondence with AN Other regarding Miss Ming's estate, they have requested I write to you regarding the possible reliefs from Inheritance Tax (IHT) that may be available. For simplicity, this report will take the form of a letter. In order to address the situation, I will run through the tax possible reliefs, and apply them to this situation.

This tax is generally applicable in all situations but there are two principle sources of relief available.

INHERITANCE TAX

This is a tax chargeable on death at a rate of 40% of any assets over the nil rate band which is for the 2009/10 tax year £325,000. This can be doubled up between spouses, but I am aware that Miss Ming never married.

This tax is generally applicable in all situations but there are two principle sources of relief available.

AGRICULTURAL PROPERTY RELIEF (APR)

This is available on the agricultural value of any relevant property, such as agricultural land, farms, and certain farm houses (if certain criteria is fulfilled). It is not available on any development value or any value over and above agricultural value. In hand land will generally qualify for 100% APR and that let with exclusive possession to the tenant, such as on an Agricultural Holdings Act 1986 tenancy will only qualify for 50%. I will assume that Miss Ming has owned the land for the qualification period of 2 years (although there may be argued to be 7 years in this case).

BUSINESS PROPERTY RELIEF (BPR)

The gaining of BPR relief is the most important factor in this case as there is considerable development value in the holding. The estate of Miss Ming deceased must to prove to the HMRC that the land was held for the purpose of a business and to derive a profit from it rather than holding the land as an investment.

The case law which is current on this matter is McCall vs HMRC. This is a case which took place in Northern Ireland and referred to conacre which is the Northern Ireland equivalent of grazing agreements. In this case it was shown the owner of the property was not fertilising the land but merely making it available to the grazier. It was therefore held that the land was only held as an investment producing an annual rent and not performing a business activity and deriving a profit. Therefore BPR could not be claimed on the development value of the land.

The facts of the McCall case apply in this instance and therefore the property will not qualify for BPR as the late Miss Ming was carrying out no business activities with the land.

CONCLUSION

The estate of the late Miss Ming can claim APR on the agricultural value of the land, but cannot however claim BPR on the development value.

Yours sincerely,

An Agent

Example 2

REPORT TO HUNTLEY AND BYERS SOLICITORS REGARDING APR AND BPR AVAILABILITY ON LAND PASSING AT MISS MING'S DEATH

Caveat: This report has been drafted in good faith based on the information, verbal and written, received from our client, Mr B. We have not inspected the land in question and assume title to be good and the facts given to us to be true.

This report will first deal with Agricultural Property Relief (APR) availability on the 35 acres and the actual financial implications of this.

It will secondly deal with the availability of business property relief and to what extent this may be granted in terms of figures by HMRC.

- 1) Inheritance Tax is payable on the value of the deceased's estate, set as at the date of death, at a rate of 40%. This tax liability can be offset to some extent by various IHT reliefs, of which APR and BPR are the most useful.
- 2) APR is a relief available on the agricultural value element of property only,
ie: the value of each asset (where applicable) if subject to a perpetual covenant on its use remaining agricultural. On farm land, as in this case, the relief is easily obtainable on the agricultural value of the land because of its very nature. Ag. value of farm houses, cottage and buildings are often more complicated but this is outside the scope of this report.
- 3) APR is available at 2 rates, either 100% (owner occupied land or tenancy began since September 1995) or 50% (tenanted land where tenancy agreement began before September 1995). In the case of Miss Ming, it is presumed that she had owned the 35 acres for a minimum of 2 years before her death and therefore she is entitled to APR @ 100% of the Ag. value. The existence of grazing licenses, even if determined in truth to be FBTs, will not amend this. If the licences are found to be tenancies because of exclusive occupation, term and rent passing then she will still qualify for 100% APR as she has owned the ground for over 7 years.
- 4) I believe APR will be applied by HMRC in this case to the following extent:

Acreage 35

Ag. value (assuming £5,000/ acre pasture land)

Ag. value = £175,000

Relieved @ 100% leaving tax liability (assuming no other reliefs) on remainder as follows:

£5,100,000 – 175,000

= £4,925,000 @ 40%
= £1,970,000 to pay in tax.

- 5) BPR is a second generous tax relief available on business assets of the deceased @ a rate of either 100% (most common) or 50% on some shares. To be a business asset it must have been used by the deceased in a business activity immediately prior to the death. Farm building and stock for instance qualify for BPR, where APR may not otherwise be available. Generally the remaining value of land over and above its agricultural value will qualify for BPR (ie: any value attributed to lifestyle purchasers etc) if the land is used by the business. The acid test in Miss Ming's case is whether the 35 acres was a business asset, in which case she could get 100% relief on the remaining death value of £4,925,000, or whether in fact it was an investment and purely providing an income.
- 6) Current leading case law on this subject is the 2007 Irish case, heard by the Special Commissioner of the personal reps of McClean and McCall. In a very similar situation of land having a major element of development value in its whole value. The key determinant is the involvement of the owner – “farmer” in the management of the land. We are told that Miss Ming took no active management role and that her graziers looked after the ground including fertilising and hedging. I believe without a doubt HMRC would not accept therefore that Miss Ming was in management control, despite employing an agent which effectively removed her management capacity even further.
- 7) The McKenna case @ Rosteaue developed the purpose of occupation test – in essence you have to be a farmer to claim reliefs and McClean developed the bundle of sticks argument – is the rent either investment income (I believe so in this case) or a return for selling a crop, ie: the grass.
- 8) I do not believe that any of the ground would qualify for BPR, especially as the value was increased massively by planning permission being granted, an obvious indicator that the land was not ever going to be retained as a business asset. Therefore the total IHT bill still remains @ £1,970,000.
- 9) Other reliefs are available. A deed of variation for the will to make best use of reliefs and quick succession relief may also be of benefit. This works on a taper basis reducing the amount of “double taxation” if one death follows the other quickly.

If you have any queries please do contact me to discuss further.

(ii) Case Notes

(a) The trustees of Nelson Dance Family settlement vs. HMRC 2008

Main point: By passing assets from your farming business on to family members or into trust, you can in effect “bank” BPR @ the date of transfer to protect it being lost on retirement or death, should the dec'd no longer be farming.

Background: Nelson Dance passed various business assets to a family trust and then died nearly 2 years later. The HMRC argued that the assets were not eligible for BPR on his death as they were not in his business and his personal representatives successfully argued that the

assets were used in his business, @ date of transfer to trust and that is when the BPR could be claimed from. HMRC appealed and lost.

(b) Representatives of the Earl of Balfour v HMRC (2009)

This case looked at whether a mixed estate could claim BPR on those parts of the estate which were let as they all formed part of one large business.

The Earl of Balfour was a very hands-on manager of his estate running a very large in hand farm together with several let cottages.

It was shown by the estate that the turnover from the farms was greater than that of the let cottages and the predominant activity was the farm.

Also staff worked between both the farms and the cottages with no set times or salary divisions.

The Earl of Balfour's representative and heir Andrew Brander has been successful in his attempt to have the estate assessed in the round and have the BPR claim assessed across the whole estate.

The decision is however not yet finalised as HMRC has appealed the decision.

PAPER 2, QUESTION 1

The Question

You act for Bill Sykes, owner of Green Farm, Lavington. The holding comprises 200 hectares Grade 3 combinable cropped arable land, 8 hectares permanent pasture, a four bedroomed detached farmhouse constructed in 1980 and subject to an agricultural occupancy condition, grain storage for 1,200 tonnes, workshop and machinery store and some stables housed in traditional buildings.

Mr Sykes has, to date, been farming the holding on his own with assistance from his wife at busy times. Aged 68 he has decided it is time to do less after harvest 2010. Bill likes the farming lifestyle and does not wish to move house. His accountant has told him that a contract farming agreement would suit him and he has asked you to meet him to discuss.

In advance of your meeting write a **briefing note** to cover:

- i) The taxation advantages of a contract farming agreement in Bill Sykes's situation. **(3 marks)**
- ii) The basic principles and mechanisms of a contract farming agreement. **(5 marks)**
- iii) The likely levels of return for both farmer and contractor on a £/ha or percentage basis as appropriate. **(3 marks)**
- iv) Headings of areas to be covered in the agreement. **(6 marks)**
- v) Timetable for setting up the agreement. **(3 marks)**

Sample Successful Answer

(i) Taxation Advantages

- Assuming that Bill Sykes is currently farming as a Sole Trader or Partnership and he retains this status in a Contract Farming Agreement he will retain the benefit of his profit from farming under the agreement being treated as trading income and not investment income (should he let the property).
- A CFA will enable Bill Sykes to remain as a farmer thereby ensuring that agricultural property owned by him should qualify for Agricultural Property Relief from Inheritance Tax.
- The assets held by Bill Sykes should also remain eligible for Business Property Relief under Inheritance Tax. If he let the land and buildings his business would likely be held as a business comprising of investments which would not be eligible for BPR (see McLewn case 2008).
- By remaining as a farmer under a CFA and actively engaging in decision making the house may remain eligible for APR. If Bill Sykes ceased making any farming decisions then the availability of APR would cease (see McKenna v IRC 2007 case).
- By keeping property in hand any "hope value" of the traditional buildings would qualify for BPR.

(ii) Basic Principles and Mechanisms of a CPA

Notes: Sykes farmer

1st Charge – guaranteed payment

Contractor: Contractor

*1st Charge to cover cultivations
handing any reps etc.*

Precludes Tenancy

Profit Share

By agreement who is responsible for what

- Central Bank Account

The CFA is a contract between the Farmer (Bill Sykes) and the contractor. Terms vary but essentially a central farming business account is set up. The contractor makes a “First Charge” which is a contribution to the costs of his obligations eg: cultivations, grain handling, labour, repairing obligations.

- The farmer may also take a payment as a guaranteed payment or rent equivalent (note: if there is not enough surplus the farmer’s payment will be reduced as he is still the farmer taking the risks).
- The variable costs for production eg: seeds, fertilisers and sprays will be paid for out of the central account and all sales proceeds paid back in.
- The farmer will claim Single Payment as he is still in occupation of the land although depending on the terms of the agreement this may or may not be placed in the central account.
- If there is any surplus in the account at the year end (ie: income – rent equivalent and contractor’s 1st charge variable costs) then the divisible surplus may be distributed as per the terms of the agreement.
- Terms of individual agreements vary greatly. Some only involve a “Rent Equivalent” to the farmer with the contractor taking responsibility for all else.
- Essentially the agreement still involves the farmer being liable for the risk and therefore maintaining trading status.

(iii) Likely returns experienced are:

- i) Farmer - £170 /ha – Where SPS centrally pooled and contractor liable for building maintenance and hedge cutting.

Contractor - £225/ha – In above agreement to cover costs of cultivation maintenance etc.

- Divisible surplus (if available) was split 50/50 giving both farmer and contractor an extra £25/ha each.

- ii) Farmer - £225/ha and SPS receipts and ELS income.

Contractor – Any profit he could make on the sale of the crop.

- All Costs and cultivations responsibility of the contractor therefore return unknown.

iv) Headings

- 1.0 Farmers details (Bill Sykes, Green Farm, Luvington)
- 2.0 Contractor’s details (TBC)
- 3.0 Start date of Agreement

- 4.0 Term of Agreement
- 5.0 Review/Break Clauses of agreement
- 6.0 Farmer's prior charge (rent equivalent) and date payable
- 7.0 Contractor's fee and date payable
- 8.0 Divisible surplus split arrangements (if applicable)
- 9.0 Terms to be included in agreement eg: SPS, ELS, Professional fees
- 10.0 Farmer's responsibilities eg: book keeping, accounts, SPS claims
- 11.0 Contractor's responsibilities eg: cultivations, building repairs, etc.
- 12.0 Dispute Resolution procedures
- 13.0 Occupation Clauses eg: merely licence to enter and no tenancy to be created by contractor.
- 14.0 Field/land Schedules to be included in agreement.
- 15.0 Gross Compliance Indemnity
- 16.0 Insurance Liabilities
- 17.0 Management prescriptions and requirements of any schemes.

(v) Timetable for setting up the agreement could be as follows:

Immediately – Construct a tender pack and advertise the availability of a CFA opportunity and invite tenders or expressions of interest from local contractors.

Jan – Feb – Interview and identify preferred contractor taking into account their current farming system. At the same time need to discuss likely financial implications of potential contractors in terms of contractor's fees etc.

March – April – Negotiate final heads of terms for agreement and responsibilities. Sign agreements.

May – Sort out any bank accounts required and final details.

June/July/August – Both parties busy with harvest.

September – Commence agreement from bare stubble post harvest.

September – Consider dispersal sale of surplus equipment.

PAPER 2, QUESTION 2

The Question

Your client, the Reverend Green, has been gifted Golden Acre, an 8 hectare arable field, from his maiden aunt, Miss Brown. The land is occupied by Fred Flint, a 55 year old farmer, who owns and farms land extending to 300 hectares on three sides of Golden Acre. Mr Flint has been in occupation for at least 25 years and the current rent passing is £600 per year. There is no written tenancy agreement. Reverend Green has no knowledge of agriculture or farming but hopes the gift might help fund his retirement in some way, preferably by a sale.

Write **bullet points** in readiness for a meeting with Reverend Green to cover:

- i) The existing tenancy arrangement and how this might be formalised. **(5 marks)**
- ii) The basic terms to be embodied in any written agreement and dispute resolution mechanism available if the parties fail to agree. **(5 marks)**
- iii) Comment on the rent passing and outline any action you propose and what level of rent might be achievable and what dispute resolution mechanism is available. **(5 marks)**
- iv) Any suggestions you have for sale with indicative values and calculations. **(5 marks)**

Sample Successful Answer

(i) Formalising the Agreement

- Agreement started approx 25 yrs ago – likely to fall under AHA 1986. Ensure agricultural use – avoid any L+TA 1954 issues.
- Serve S6 AHA 1986 in person. Must be received. No case law on time limit demanding for agreement to be recorded in writing. Danger of oral tenancy being silent on Assignment. Assignment to a company would infer lifetime security of tenure.
- Check payment of rent and any history in the agreement if available. May be likely that Fred Flint has farming company, where cheques may have been signed from and accepted. Also, possibility of partnership which would also mean security of tenure for both parties.
- Any evidence of start date? 25 yrs – 1984.
12 Jul 1984 – Succession date. Impact on value.
- Any evidence of condition of holding. Photos, plans etc.
- Has agreement been lost or was there never one? May tenant have a copy?
- Serve S48 notice advising of change of landlord.

ii) Basic Terms and Dispute Resolution

- Landlord, address, agent?
- Tenant, address, agent?
- Area – digital plan. Schedule of areas.
- Rent – figure and when payable. Term dates.
- Start Date

- Type of occupation – AHA 1986
- Repairs – check history. Likely to be model clauses SI1473/1973.
- Assignment – bar on assignment.
- Subletting – bar on assignment.
- Sporting Rights – withhold? (unlikely – 8ha field)
- Indemnify?
- The Dispute Resolution procedure for this would be to apply for Arbitration to the President of the RICS. However, both parties could agree to appoint an independent expert to reduce costs, etc. The arbitrator will take into account the historical actions by both parties, acting on evidence submitted by both parties. This may be done by written reps or an oral hearing.

iii) Rent Review

- The rent passing works out to be £600/ 19.77ac = £30/ac. Although it is bare land, there is likely to be scope for a rent review.
- The basis of rent is Rent properly payable in regard to terms of tenancy, productive capacity and related earning capacity, character and situation of the holding and any comparables.
- Likely rents on similar holdings is in the region of £60 - £65 /acre.
- For an 8ha arable field, I would consider gross margins dependent on the type of land and potential yields, etc.
- Once this is done, if evidence suggests an increase, serve S12 notice on tenant 12m – 24m before term date. Preferable to agree rent rather than go to arbitration, which should be fully maximised in order to reduce costs.
- The tenant owns adjacent land, so potential marriage value to be included to reflect lower fixed costs due to nearby holding. The last acre of production is always the cheapest.
- If no agreement can be made, application to President of RICS required with £115 fee before term date.
- Arbitrator opens file (charges fee) and will act if parties can not agree. Usually agreement made before written reps/hearing as large costs – specifically for a 8Ha field. NB: If no agreement use Calderbank for costs. Very expensive process, nevertheless.

iv) Suggestions about Sale

- Best value would be if sale to the tenant due to marriage value of interests, and potentially marriage value with existing holding.
- Private sale could be achieved – much lower costs.

Say MV - £6000/ac with VP

Tenanted Value

Term 1 – (Until next review) -----

Say 2 years @ 1% at existing rent.

Term 2 – (NB Life tables – Mr Flint 55 years old) -----

At say 3% at comp rent.

Total: -----

PAPER 2, QUESTION 3

The Question

You act for the Snobsville Court Estate owned by the Rt. Hon Geoffrey Hardup and his family. The estate comprises 2,500 acres of let and in hand land, forestry and a portfolio of commercial property situated within the local village of Snobsville which is inhabited substantially by commuters who all work in the nearby city and by second home owners who visit the area at weekends and for holidays.

Your client was at a dinner party over the weekend where he heard talk of a “loophole” in the planning system whereby he could obtain planning consent for residential development on green field sites in the greenbelt/countryside areas on the fringe of Snobsville and thereby generate a significant capital injection to the estate, which is much needed.

He has telephoned your secretary in a state of great excitement requesting to see you urgently to discuss this news and enquiring as to why you have not mentioned to him this loophole that is “affordable housing – rural exception”.

Please prepare **notes** for your meeting setting out:

- i) The planning policy issues surrounding and the definition of affordable housing – rural exception **(5 marks)**

- ii) The valuation issues surrounding this planning exception and the likely returns to the landowner **(5 marks)**

- iii) The various types of this affordable housing exception and vehicles available to the estate for selling land for it and how they might influence the subsequent use of that housing and how that may or may not benefit the estate. **(7 marks)**

- iv) The tax implications of any such sale **(3 marks)**

No adequate example answer available.

PAPER 2, QUESTION 4

The Question

Your client is a tenant of a 200-acre holding on a private estate. In addition he owns 150 acres of accommodation land approximately two miles away. He also purchases from the Estate 100 acres of grazing on an annual basis under a grazing licence.

It is a mixed livestock farm with 100 dairy cows plus all youngstock (dairy and beef) and 700 breeding ewes. All the buildings including the farmhouse are located on the tenanted holding. Some of the livestock buildings are becoming outdated and your client is considering two options; either,

- a) to erect a 15m x 30m livestock building to house just the dairy replacements, which he can finance from the farming business' financial reserves, or,
- b) to put up a 30m x 30m livestock building to house both the dairy replacements and beef cattle, for which he will need additional bank borrowings.

The chosen building will be located on the 150 acres of accommodation land your client owns.

Prepare **briefing notes** in readiness for a meeting with your client at which you will:

- i) Explain the two types of development control procedures in relation to the two options your client is considering **(8 marks)**
- ii) Describe the planning process that your client should follow for option b), from submission of application to determination including the additional information and documentation you will need to submit in support of the application **(12 marks)**

Sample Successful Answer

Introduction Notes

Client – Tenant 200 acre holding

Client – Owns 150 acres. Accommodation land 2 miles over, grazing 1 mowing license – 100 acres.

Mixed Farm – 100 dairy cows and followers

700 sheep.

Two options for buildings: 15x30 (450m² - GPDO) dairy young stock no finance

30x30 (900m² - full planning) dairy young stock + beef – finance

Building located on own land.

Briefing notes

The two types of development control are covered by the Town and Country Planning Act 1990. The smaller building measuring 15m x 30m could be erected under the Town and Country Planning Act (General Permitted Development Order) 1995 as long as the following conditions are met.

- The building is below 465m². The proposed building is 450m² so all in order.
- The building is more than 400m away from a protected dwelling, this does not include the farm house.

- The building is for agricultural use.
- The eaves height is below 12 metres, this must be reduced if the location is within 3km of an aerodrome.
- The building must not be within 25 metres of a classified road.
- The building must be located on a holding comprising 5ha +. This is not an issue in this case.
- Prior determination or 28 days notice must be served through council.

The council may request full planning or give guidance as to location or construction.

Full planning permission would be required for the dairy and beef building – 30m x 30m = 900m². This is due to the size being above 465m².

Full planning would be gained by completing the 1 App form available through local councils.

The 1 App form would be accompanied by plans showing the site of the proposal and more detailed plans of the building.

A design and access statement would be required and would show use, size, scope, management, layout and construction of the building.

Part II - The planning process for option B is as follows:

- Complete the 1 APP application form from the local council, this is a standard form used for most councils.
- Prepare a location plan and detailed plans of the proposal. The detailed plans are usually drawn up by an architect or the firm providing the building.
4 sets will be required. Scale?
- A design and access statement should be put together to be sent with the application. This should include use of the buildings, size of the building, scope of the building, maintenance, layout of the building and adjoining green landscaping, how it will blend in with surroundings.
Construction – how will the building be constructed?
- Consider speaking with local parish council prior to putting in application if required could request decision made by planning committee.
- Forward application to the council.
- The matter will then be decided by delegated powers or by committee (if requested).
- If the application is discussed at committee you or your agent and or any objectors will have the right to speak at the meeting.
- The planners will then give the decision, this could be to approve the application, approve the application with conditions or to turn down the applications.
- You have the right as an applicant to appeal to the decision (if unsuccessful) but this can only be on a point of law whilst the planning committee have not followed statute of legislation ie: meeting their decision.

The local development plan should be consulted prior to putting in the application.

There are rumours at the moment that a Community Infrastructure Levy is to be charged on all new buildings that have been granted planning permission after the local development frame work has been agreed by the local authority.

The Community Infrastructure Levy would be a further planning tax and is being argued by NFU CLA and others. There may be an agricultural exemption.

If planning is granted the works must start within 3 years or the permission is lost and the process must be repeated.

PAPER 2, QUESTION 5

The Question

You have been approached by your clients the Muggins Family who own a 450-acre farm on the outskirts of the local market town adjacent to one of the junctions on the by-pass that serves the same.

Last week they received a visit from wayleaves officers representing the regional electricity company who were approaching them with regard to a proposed new 132kv overhead power line that they wish to construct to serve a new commercial development site adjoining your clients' property. The proposed route will cross your clients' farm from the south-east corner to the north-west corner and pass within 500m of the main farmhouse and steading which includes a range of redundant, traditionally constructed stone barns. The electricity company have indicated a very flexible approach as to how the matter can be dealt with legally.

The Muggins Family have asked you to attend a meeting with the family next week to discuss these proposals and in particular:

- i) On what bases the electricity company could be granted the right to construct the proposed electricity line **(4 marks)**
- ii) The advantages and disadvantages of the various alternatives open to them **(4 marks)**
- iii) The valuation implications and compensation alternative open to them including the heads of claim and principles of calculation of such compensation **(8 marks)**
- iv) Any other advice you think relevant in the circumstances **(4 marks)**

Please prepare **notes in a bullet point manner** in preparation for the proposed family meeting.

Sample Successful Answer

Basics of Rights: Electricity Act 1989

The family could agree to the wayleave in return for an annual payment. However if they choose not to allow the electricity company to erect the apparatus then the company can use its compulsory purchase powers and request the Secretary of State to grant a necessary wayleave which normally takes 2 – 3 months. The Secretary of State has to take account of the public benefit of the wayleave and therefore a necessary way leave is usually granted.

If the family allowed the company to have a wayleave it would constitute a temporary right for an annual payment. They would have the option to terminate on giving 12 months notice. However in practice the company would be granted a necessary wayleave by the Secretary of State. A wayleave however does not confer an interest in land and is legally seen to be a license. The family could decide to enter into a deed of easement under which the company would gain a permanent right which is transferrable with land. This would mean that the family could gain a compensation payment for the reduction in value of the farm house under

Land Compensation Act 1973. As the line passes within 500 metres of farm house a payment will be due, which could be 8-10 per cent of market value of house. An easement has to have a dominant and servient tenement which there is in this case. The easement right stay with the land so if the family sold the land, the right would pass with it.

If a wayleave has been chosen the family are only entitled to an annual payment to take account of the overhead power line. If an easement is granted the family can take a capital payment based the injurious affection to their land, this is usually between 1 and 10 per cent.

The family would need to be compensated for loss of crop during the work and arrangements for temporary access and fencing during construction. The extent to which the line sterilises development needs to be clarified as this will therefore increase the capital payment, given that the farm is on the outskirts of a market town this is likely to be a factor.

The overhead line is servicing a new commercial development. If the line cannot be re-routed around the client's land, it's unlikely that the family have a ransom on development because they can use their compulsory purchase powers.

It should be established whether the redundant traditional buildings have any hope value for development. It may be that the line restricts development.

Owner Relevant Advice

- When do the electricity company intend to carry out the work?
- Clarification that the electricity company will pay the client's surveyor's costs based on what is reasonable.
- A record of condition should be taken before they gain access.
- Client to clarify any time and losses incurred due to the installation of the line.
- Can the line be re-routed around the client's land?
- The electricity company to indemnify the client against any losses due to the line installation.

PAPER 2, QUESTION 6

The Question

You have recently received instructions from Bruce Pom who owns an estate extending to 1,600 acres on the edge of a town. The estate comprises arable land, woodland and saw mill, let cottages, traditional and modern and farm buildings all constructed prior to 1960. There is pasture land utilised for a suckler cow and sheep enterprise.

All estate farming and forestry operations are carried out by a workforce of 6 staff under the direction of the Farm Manager, Mr Slack. As a favour to his wife, a teacher in the local school, Mr Slack allows school parties to visit at lambing time.

Mr Pom has been living and working abroad for the last 25 years but, having retired, he has returned to the UK to live on the estate. He is concerned about possible health and safety issues and has asked for your help as Mr Slack has been quite evasive.

- i) Identify the possible risks that may be present **(12 marks)**
- ii) Write **brief notes** on areas of legislation that may be applicable **(8 marks)**

Sample Successful Answer

Briefing Notes

Risks – Possible on 1,600 acres.

ARABLE LAND

- Movement of working machinery. Working hours.
- Spraying implications
- Unsuitable trained
- Storage of chemicals/oils/sprays

WOODLAND AND SAW MILL

- Operation of machinery
- Protective clothing not available
- Storage of oils/petrol/working tools
- Adequate training? Is the farm manager competent to do this, NO!

LET COTTAGES

- Damp? Local Authority
- Electrical appliances/furniture/PAT
- Gas Safety
- General Condition of buildings
- Fire Safety
- Legionnaires disease/hot water tanks
- Asbestos lagging on pipes
- Contractors/Tenants working on property and managing the site.

TRADITIONAL AND MODERN FARM BUILDING

- Asbestos – where is it? Who knows about it?
- Use by employees – hours/class type of building
- Condition - +45 years and most buildings.
- Suitability for use ie: wheat stored in cattle yards!

ANIMALS AND PUBLIC ACCESS

- Public footpaths across pasture land
- Young calves and cows (NFU – signs)
- Warning notice
- Condition of fencing/is it stock proof?
- Negligence on stock keeper

TRAINING

- Are the staff adequately trained?
- Forestry operations run by farm manager
- School parties allowed to visit are any of the staff health and safety trained.
- Ecoli scares! Are there the correct facilities available – clean hands – for school trips to be arranged.
- Occupier's liability insurance.

KEY AREAS OF LEGISLATION

HEALTH AND SAFETY AT WORK ACT 1974

- The basis on which all health and safety is built.
- Employers have responsibility towards employees and third parties (contractors).
- Adequate training needs to be provided so an effective place of safe working can be established.

HEALTH AND SAFETY AT WORK REGULATIONS MANAGEMENT

- This sets out the implementation of the H&SAW Act 74
- Risk assessments must be carried out i) Identify risk
ii) Evaluate risk
iii) Record risk
iv) Manage the risk
- Health and safety possibly plan needs to be established – 5 or more employees. However I would advise always have one in place.
- Ensure all staff are properly trained and that there is a designated officer on site – who is trained, records and deals with all health and safety issues.

CONTAMINATION OF SUBSTANCES HAZARDOUS TO HEALTH (2006)

- Ensure dust, fertilisers and other areas of contamination are fully identified.
- All fertiliser bags should carry COSHH stamp.

RECORD, INJURIES, DISEASE AND DANGEROUS OCCURRENCE REGULATIONS (RIDDOR)

- Ensure that all accidents are recorded.

ASBESTOS REGULATIONS 2002 & 2006

- Ensure that there is an asbestos register in place for all farm building and residential property.
- Ensure type 1, 2 and 3 surveys expected, where removing or recording asbestos.
- Make sure all parties are aware asbestos is present.
- Ensure the register is managed by a qualified and appropriate member of staff.

HEALTH AND SAFETY SIGN AND NOTICE REGULATIONS

- Ensure correct sign are displayed where risks are present.
- Moving vehicles in and around the farm.
- They must be pictorial and not just written.

CONSTRUCTION, DESIGN AND MANAGEMENT REGULATIONS 2007

- Ensure that CDM Requirements are abided by: 500 man day
30 days
- Apply to businesses only.
- CDM co-ordination should complete form ID notice for HSE application.
- When using contractors.

LET COTTAGES

- Get all appliances PAT tested prior to letting.
- Ensure any furniture let with properties is fire proof.
- Ensure all gas is tested prior to letting property.
- Get electricals tested every 5 years for precautions.
- Ethical practice to insert smoke alarms.
- Ensure adequate insurance cover.
- Public liability insurance.
- Occupier's liability insurance.
- Employer's liability insurance.