CAAV EXAMINATIONS 2018

NATIONAL WRITTEN BOARD

CHAIRMAN’S REPORT BY DAVID BLAKE – JANUARY 2019

**1. GENERAL OBSERVATION 2018 WRITTEN PAPER**

This year 143 candidates sat the National Written papers. Last year 132 sat the papers. The pass rate was 40.55% (55% last year).

Candidates Passes Pass Rate

 (Written)

2013 124 45 36%

2014 149 71 48%

2015 162 69 43%

2016 163 98 60%

2017 132 73 55%

2018 143 58 40.55%

Once again, the Written Board had gone to some trouble to set two papers which covered the syllabus with an appropriate range of questions. As usual there were no deliberately laid traps.

This year the marking was completed by the evening of the second day and this was in large measure due to the percentage using a laptop. The following morning was used to check that all scrips had been marked, checking arithmetic and other matters.

The examiners find typed papers much easier and quicker to mark. In some respects, this may be because it proves that answers given on a laptop tend to be more succinct and more orderly in their layout and approach. I would make an appeal that we collectively do all we can to maintain confidence in the use of laptops for future years.

Once again there was a wide range of marks. It was noticeable that a large number of candidates’ papers showed a wide variation in marks with some questions answered particularly well, demonstrating good knowledge and practical experience, with the remaining questions answered poorly with little grasp of the issues. This may show that candidates are specialising in particular fields of expertise at an early age and are not all receiving the broad range of experience to cover the whole syllabus.

I would repeat last year’s Written Board Chairman’s irritation with candidates answering on both sides of the papers, using pencil, and paper with no margins (conveners please note). I would add one more frustration, which is the candidate who prefaces his or her answer with notes and then fails to make it clear that they are notes and not the main answer.

**2. QUESTION REPORTS**

A short question by question report for most questions is attached at Appendix II. Each report has been prepared by one of the examiners who marked the question concerned.

**3. WRITTEN BOARD STRUCTURE**

I was pleased to be able to welcome Gareth Lay to the Board. Unfortunately, Ellie Allwood and Tim Cooper were unable to join us for marking this year. Sarah Tyson was able to set two questions but unfortunately was unable to join us for the marking session. Her position there was very ably filled by Hugh Jones who also provided us with the necessary Scottish expertise. Whilst in my view there was just a sufficient number of markers, there is need for a turnover of examiners to ensure that the examination team is refreshed. Thought perhaps needs to be given to introducing a more formal structure and progression between practical examiners, written examiners and monitors, with a pool of experienced markers available to deal with any increased number of candidates.

**4. GUIDANCE FOR FUTURE CANDIDATES**

My predecessor, David Steel, set out a comprehensive guide for candidates last year. I can do no better than repeat his comments below:

1. Attend a Written Board Workshop or other tutorial on the Written if at all possible – lots of good tips and guidance are provided at these!
2. Do a ‘question plan’ before you launch into your answer – it will be time well spent to collect and gather your thoughts.
3. Read the question and answer the question – if it asks for advice about timescales or costs then provide them, not everything you happen to know about the subject area!
4. Less is more – often some of the best answers are the shortest. This was in evidence in this year’s scripts in several cases.
5. Read the full question – the subject area being tested might not be the key words your eyes are initially drawn to
6. Pay close attention to the mark allocation, and divide your time up accordingly
7. Time is precious, use it well – know exactly how long you have for each question before the exam starts. Don’t be tempted to spend longer on the questions you are comfortable with – the ones you are less easy with will need just as much, if not more, thinking time!
8. Whether handwriting or using a laptop, simple formatting of your answers will help – white space between sections, bullet points, headings and underlining etc. all helps. Blocks of prose are rarely sought and testing to mark!
9. Laptops – do consider using a laptop – especially if your handwriting is as poor as mine! It will (generally) lead to clearer, crisper, better formatted answers. Do also spend a few minutes formatting answers if at all possible – headings, justification, tables etc. (see point 8 above.)
10. Each question is marked out of 100 – linked to point 6 above, be aware that, while for the overall examination each question carries the 20 marks shown on the question paper, the Written Board marks each question out of 100 to be fairer to candidates. That means that each subdivision is grossed up by a factor of five and so a 5 mark part of a 20 mark question is worth 25% of that question – judge your time accordingly.

**5. THANKS AND ACKNOWLEDGEMENTS**

I am grateful for all the help I have received from my fellow Written Board members, Sarah Tyson, Charles Meynell, David Steel and Gareth Lay, and all the former Chairs who came back to assist with the marking. Tribute must be paid to Jeremy Moody for his guidance, calm judgement and the breadth of his knowledge which includes devolution proofing the papers and to Dorota Szmid who provides fantastic support. All candidates can rest assured that their marks will have been checked and checked again. I must conclude with a particular word of thanks to David Steel and Jim Major for their help in general and with the moderating review session in particular

Finally I wish my successor the best of luck for 2019.

*David Blake*

*Haywards Heath*

*West Sussex*

*January 2019*

**APPENDIX I**

|  |  |  |
| --- | --- | --- |
| Average marks | Paper 1 | Paper 2 |
| **2018** | **61.48%** | **60.60%** |
| 2017 | 70.12% | 61.85% |
| 2016 | 71.41% | 54.33% |
| 2015 | 66.95% | 56.72% |
| 2014 | 59.50% | 60.00% |
| 2013 | 56.16% | 64.03% |
| 2012 | 59.00% | 63.94% |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | No. Taking | Av. Mark | Top Mark | Lowest Mark | %/>65% |
| **Paper 1**  |  |  |  |  |  |
| Question 1 | 93 | 46.22% | 97.50 | 14.00 | 61.30% |
| *(a)* | *53* | *62.14%* | *100* | *30* | *35.84%* |
| *(b)* | *58* | *65.14%* | *100* | *20* | *60.34%* |
| *(c)* | *63* | *54.20%* | *100* | *10* | *34.92%* |
| *(d)*  | *93* | *96.19%* | *100* | *25* | *61.29%* |
| *(e)* | *73* | *62.30%* | *100* | *12.5* | *53.42%* |
| *(f)* | *71* | *67.75%* | *100* | *25* | *64.78%* |
| *(g)* | *80* | *63.84%* | *100* | *25* | *55%* |
| *(h)* | *29* | *58.35%* | *100* | *10* | *55.17%* |
| Question 2 | 125 | 64.16% | 85 | 25 | 61.6% |
| Question 3 | 56 | 44.15% | 84 | 13 | 25% |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Paper 2** |  |  |  |  |  |
| Question 1 | 104 | 54.00% | 85 | 25 | 17.30% |
| Question 2 | 77 | 62.17% | 90 | 25 | 50.64% |
| Question 3 | 76 | 70.79% | 96 | 39 | 71.05% |
| Question 4 | 28 | 58.82% | 77 | 35 | 46.42% |
| Question 5 | 80 | 61.26% | 88 | 17 | 48.75% |
| Question 6 | 62 | 58.85% | 87.50 | 20 | 48.38% |

**APPENDIX II**

**PAPER 1 – QUESTION 1**

Most, but not all, of the candidates read the instructions and answered five out of eight questions.

Question A was not particularly well answered, with only a handful of candidates realising that potential purchasers of the farm needed to be warned of the family link.

Question B was generally well answered with most appreciating the change in assessing consideration.

Question C was not well answered. Many missed the timing issues.

Question D was a popular question and most candidates covered the essential points.

Question E most answers showed a better understanding of Rollover Relief than Holdover Relief.

Question F was well answered.

Question G most appreciated the distinction but few addressed the allocation of costs.

Question H was tackled by the least number of candidates who in most cases knew enough about VAT to provide a satisfactory answer.

Disappointingly, a number of candidates still fail to relate their answer to the question asked but instead relied on a scattergun approach, in the apparent hope that an examiner would award random marks for random facts.

**PAPER 1 – QUESTION 2**

* This is very much a ‘core’ topic and so a typical Paper 1 type question and hence unsurprisingly it was answered by the highest number of candidates for all Written Board questions (i.e. 125)
* For the most part it was answered pretty well – as borne out by the pass rate stats for this particular question
* The first part of the question was really looking for a clear ‘step by step’ guide as to how the rent review process works and who does what when etc. Only in a very few cases was this well laid out. It often (disappointingly) turned into a ‘brain dump’ of everything known about AHA rent reviews!
* The basis of review (for English and Welsh candidates under Schedule 2 of the AHA 1986) and the ‘regards’ and ‘disregards’ were well answered– but not enough thought went into applying this to the particular question scenario e.g. the farm buildings being a mix of tenant’s fixtures and improvements and how rent should be attributed and dealt with regarding the farmhouse, cottages, etc.
* The published question was unfortunately found to be ambiguous as it referred to a notice received by the tenant in August 2018 (for an autumn 2019 review) and hence valid but then went on to say ‘last week’ (i.e. November 2018). In marking this question, we didn’t score this either way (i.e. both were deemed correct) as it was more about the process and procedures rather than the validity of the actual notice.
* The question asked for ‘meeting notes’ but there were a lot of blocks of text and not enough bullet points as hoped for.
* In several cases candidates answered all three parts in continuous text i.e. no space at all between each section leaving the marker to decide where each part ended!
* Good answers to the first part of the question set out a clear ‘timeline’ and described each key stage in a bit more detail, starting with acknowledging and checking the notice, and then visiting the holding, information gathering, etc
* Only passing references to comparables and how used and related – this was a surprise.
* Most understood the need to assume the hypothetical tenant and stated the difference between productive and related earning capacities
* There were not that many references to farm budgets and their makeup, reference and application – i.e. a split in the bottom line ‘divisible surplus’ between landlord and tenant
* Only a few candidates stated how the new rent once agreed should be recorded i.e. by memo signed and annexed to the tenancy agreement
* Not many pointed out that the landlord’s rent review notice could work against him and the rent could go down as well as up
* The second part of the question referred to dispute resolution. Most referred to arbitration and its legislative context, methodology, basic steps and cost etc. The better answers then went on to refer to alternatives in terms of mediation and independent experts
* The third part of the question regarding Brexit and its possible impact and implications was generally well answered. Candidates had a good awareness as to how rents might be affected in the next couple of years
* The key point was that, if the rent was set from autumn 2019, the next rent review date would be autumn 2022, and so only the latter half would be affected by the first reductions in BPS in England and Wales, limiting their impact. It would really be the next rent review cycle where the major force of subsidy change may be felt
* The best answers to the Brexit question gave some general context and then applied this to the question scenario with specific advice and options and impartially gave some practical suggestions about what could be done, e.g.
* Defer rent review until 2020 or 2021 when the position might be clearer both as to subsidy and produce prices
* Allow the tenant to diversify income and convert buildings
* Share income by subletting the cottage
* Factor in BPS monies eroding down from 2021-2027 in budgets when discussing rents
* Work with tenant to trim costs (both variable and fixed) to shield against falling farm incomes from farm subsidies
* Not many stated it was a good opportunity to have a wider/general discussion between landlord and tenant with outcomes that might include surrender of whole or part, permitted diversification, etc.

**PAPER 1, QUESTION 3**

**A** – Most candidates understood the implications of both a 92 year old tenant and an assured tenancy but tended to simply apply a discount to value rather than consider life tables – which might be more realistic in practice?

A proportion of candidates applied the principle of deferred vacant possession value but spoilt it by assessing future vacant possession value by capitalising the anticipated market rent.

Generally, there was a poor understanding of the concept of Present Value.

Most also checked that there was no successor and, on balance, this question was reasonably well answered.

**B** – Most candidates understood that this was an investment/term and reversion question but answers illustrated the fact that they did not understand the application of this principle. Several looked to capitalise the rent until the next review, rather than to the end of the term, without any explanation as to why.

Although most English and Welsh candidates mentioned the Landlord and Tenant Act 1954, some thought that this meant the tenant had to renew and therefore simply valued in perpetuity.

There was no consideration of alternative use.

**C** – Most suggested that this was a simple comparable valuation but some suggested that the contractor would be paying rent and that this should be capitalised.

I would have thought a full answer included inspecting the land, getting a plan and areas, making sure it was eligible for support, ensuring that there were no designations, assessing land grade, etc.

**D** – Again, a fairly straightforward comparable valuation but requiring inspection, measurement, considering position and so on. Investigation of any occupancy restriction was understood but I think only one raised the possibility of the farmhouse being tied to the farm as a whole (as frequently happens in Scotland under a s.75 agreement – also England and Wales under s.106 agreements).

There was one suggestion that value was reduced unless it could be demolished and either more houses or flats built on the site!

**E** – Most candidates went straight into a residual valuation without querying/investigating what the planning permission was for, whether it was full or outline, what developer contributions there might be, what restrictions there might be on the servicing, access and so on.

A good proportion understood the concept of starting work to preserve the planning permission but there was no mention of other consents which also should be investigated – or at least a check made to see whether or not they existed.

There was limited reference to comparable sales.

**F** – Most understood the potential for alternative use and said that they would investigate the potential for permitted development in England (not applicable in Scotland). No real reference to inspecting the property, assessing potential restrictions or abnormal costs.

Most assumed residential use without checking policy. A high proportion went straight into a residual valuation rather than using comparables.

Hope value was mentioned.

**G** – I think only two candidates went down the route of measuring the standing timber to assess value. The majority simply referred to comparable sales and included land and timber together.

One or two candidates tried to capitalise the income from the woodland. One suggested selling the trees at £10 each as they were Christmas trees!

No one mentioned felling licences, approved woodland management plans or any designations, restrictions, etc.

Limited reference to actual timber values.

**I** – While there was general recognition that the new Electronic Communications Code was likely to result in a lower rent, most simply anticipated that there would be a new lease and some then capitalised the new rent in perpetuity rather than for the term.

Generally, the impression throughout the question was that term and reversion were not properly understood.

**J** – What was a very simple question was generally poorly answered with a high proportion of answers going down the stocktaking route, limited comment with regard to inspection to assess storage and visual condition, measurement of the clamp, weighing bales, and so on.

**General Comments**

With the overall low scoring on this question, I would have the following comments:

1. Given that only approximately a third of the candidates attempted this question, they clearly did not like it which might normally reflect not having covered the subject in their work experience and/or tutorials.
2. Overall, if candidates had answered the last four questions as well as they had answered the first six the percentage obtaining a pass would have been very significantly higher. The Guernsey holiday cottage question tripped a very high proportion up, going down the capitalising of profit route, which would not have been correct even if it had been on their doorstep, and ignoring the fact that it was outwith their area.
3. While most appeared to know about the new Electronic Communications Code, relatively few fully understood the principles of valuing a mast site.
4. There is clearly very limited knowledge of mature woodlands/timber valuation.
5. To practical valuers, the silage question should have been a simple, high scoring answer.

Overall, there was a lack of understanding of what information needed to be gathered as part of the valuation process, particularly for the development site/planning questions.

**PAPER 2, QUESTION 1**

Answered by 104 candidates and so deemed to be a popular choice by many. The following issues arose;

1. Many candidates did not read the question and dived onto offloading as much data on Class Q and Class R for permitted development in England. The question was more concerned with general diversification business advice and options for alternative re-use. Where candidate had imparted their knowledge in the wrong section of the question, some adjustments were made to allow for extracts of answers which appeared on later responses.
2. The candidates were not allocating the quality and type of answer commensurate to the marks available – such as 3 bullet points for a 5 mark question.
3. When considering the answer, the candidates need to give more thoughts to the National Planning Policy Frameworks for their part of the UK.
4. Many candidates did not sense check some of their costs of conversion details in part C. i.e. making reference to costs of conversion of the barn at £120/m², rather than £1200/m2
5. There was a general failure to bring external issues into the answers e.g. not just planning matters, but also taxation.
6. Despite poorer levels of marks, the model answers have all been answered in some form within each of the range of papers.
7. Reading answers in typescript is much easier.

**PAPER 2, QUESTION 2**

Your client was an aging owner occupier farmer with a mixed holding. He was looking to scale back farming operations and he had a keen young neighbour. Although the question referred to grass and arable the questions centred around the 300 acres of arable land.

The candidates were asked to comment upon the possible options for farming the arable land, what might be the most tax efficient method for the client and what other impacts it might have on his tax arrangements, particularly relating to the farmhouse. They were then asked to outline the basics of a contract farming agreement and prepare a budget to demonstrate they understood the workings of such arrangements.

1. Most candidates identified that the options were a Farm Business Tenancy under the Agricultural Tenancies Act 1995, either short or long duration (SLDT or MLDT in Scotland). Alternatives would have been contract farming agreements (either stubble-to-stubble or by operation), share farming and the best also identified that the parties could enter into a joint venture company or partnership. Generally, candidates scored well in this section.

2. Having been advised that your client's accountant favoured a contract farming agreement for the arable land, candidates were asked to explain why that was likely to be the most tax efficient approach.

 The best identified that it maintained trading status for the client with the benefits that that brought in relation to Inheritance Tax and the ability to claim agricultural property relief and business property relief.

 The best talked about continuing to trade and offset certain expenses against the business and maintaining VAT status. Although not requested in the question some talked about the ability to maintain the position for entrepreneur's relief should the client wish to sell and retire at a later stage.

3. The client was concerned about the ability to maintain best tax arrangements for his farmhouse.

 The key points were picked up by most candidates in that he needed to remain in occupation, direct operations from the farmhouse and be actively involved in the running of the business. That was best achieved by regular, minuted meetings held in the farmhouse. No details were given of the size of the farmhouse and the best candidates identified that if the house was very large then there could be a risk.

 Case law examples were requested. Most candidates mentioned at least one of the Antrobus cases; the best outlined the five tests from Antrobus 1. The best candidates also dealt with McKenna (Arnander) case and the need to continue active involvement.

4. Candidates were asked to set out the structure and workings of a typical CFA. This was something that candidates could easily have learnt prior to the day as there was no particular requirement to refer it back to the question. Many scored well on this area, identifying that the landowner (Peter Turnbull) would be the farmer and Matthew Brown would be the contractor. In brief, the farmer would remain in control and be responsible for the following:

* Contributing land, buildings and capital.
* Agreeing cropping policy with the contractor, which the contractor would then implement.
* Setting up a separate bank account (typically known as No.2 Account) for the purchase of variable inputs, seeds, fertilisers, sprays and meeting other costs that were applicable to the farmed area.
* Having all purchases invoiced to him.
* Claiming Basic Payment, which may be included or excluded from the CFA depending on the overall terms.
* Claiming environmental scheme payments, which again may be included or excluded from the CFA. If the income was included, then the costs relating to them should also be deducted.
* Dealing with crop marketing. The crops are the farmer's crops and sold in his name. The contractor might assist with market information.
* Receiving a prior charge for the provision of land and buildings.
* Taking risks.
* Making decisions.

The contractor provides:

* A skilled workforce.
* Implementation of the cropping plan as directed by the farmer.
* Machinery.
* An undertaking not to disturb Basic Payment Scheme claim.
* An undertaking not to disturb environmental claims.

and receives a contractor's charge at the cost level – most gave a range between £100 and £120 per acre cropped.

After harvest, sales CFA accounts are prepared. Other costs that might be deducted could include agronomy, storage of crops, drying of crops, accountancy, bank charges, maintenance matters, hedge cutting, electricity, water and any other pertinent costs.

 Once the divisible surplus was arrived at it would be split between the farmer and the contractor and it could be in up to three different tiers.

 The important element was that there was no fixed income for the farmer; he was taking risk.

 Most candidates did well in this section but few identified that there would be other costs that could be incurred over and above the variable inputs and few gave any regard as to where the crops might be stored.

5. Budget: The best candidates constructed a budget structure and populated it with sensible, credible figures. They worked from output, deducted variable costs and then deducted the contractor's charge, the farmer's first charge and other costs (as detailed in 4) and then divided the residue in accordance with the tiers.

 Many candidates failed to complete the calculations to complete the set of figures for the parties. Very few included additional costs in the budget.

 There was a wide range of yields, prices and contract charges, farmer's first charge and variable input costs but providing they were credible marks were awarded.

**PAPER 2, QUESTION 5**

This was a relatively straightforward CPO question that most candidates should be able to answer well by demonstrating knowledge and understanding.

Part a) requested an outline of the process and timeline for a CPO. Many candidates set out a ‘text book’ answer, possibly demonstrating learning through tutorial; others were less structured and omitted many stages of the process.

Part b) sought measures to mitigate the effects of the scheme. Answers were variable but nearly all suggested the acquiring authority construct a bridge or underpass to 10 hectares of severed arable land. Only one candidate identified that on a simple cost-v-benefit analysis the works would exceed the severance claim (works, say £1M; claim say £30,000-£40,000) and therefore this item would not succeed.

Part c) asked for illustrative heads of claim with suggested figures based upon current values. Again, many candidates produced well-structured answers, but some missed basic items or lacked detail and several confused calculations between hectares and acres, with some alarming figures. A simple “sense check” would have identified the error.

Part d) invited a debate on betterment, the scheme suggesting the new road would ‘frame’ a possible development site in the future. Many noted this potential but very few developed their answer as to how this may be argued. The severed land could be accessed off the existing road, leading to a discussion of how much and against which Heads of Claim any betterment would be offset.

The paper was answered by 79 candidates, demonstrating it is core to the curriculum. The marking range indicated that those who are well prepared and active in CPO could pass with top candidates reaching good marks.

**PAPER 2, QUESTION 6**

End of Tenancy Matters

The question provided candidates with significant information concerning a scenario of a Notice to Quit on a livestock holding, requiring them to give advice regarding improvements, fixtures, tenant right, dilapidations, cottage occupation, employment and an agri-environment agreement.

* 62 Candidates answered the Question
* Top mark - 87½%
* Bottom mark - 20%
* 30 Passes (65% or more), i.e. 48%

The question gave enough information for candidates to meet examiners’ expectations but there was still some confusion/mis-reading for England and Wales between 1995 and 1986 Act bases.

Knowledge was largely satisfactory but surprisingly little drill down by many on the procedural requirements on claim process. Broadly the difference between improvements and fixtures was well answered but only the best candidates (70% plus marks) made good reference to the question’s scenario and applied it to the tasks set by the examiners.

Mostly, the cottage occupation detail was well answered. Very surprisingly, 40% of candidates had no idea what TUPE is; many relating it, if recognising it as a right at all, to occupation rights rather than employment.

The better candidates went far enough, for example, to say landlord’s “written” consent, rather than just consent.

There were good results for those correctly answering, with uncomplicated answers, parts 3 and 4.

Agri-environment – The question was largely well answered but only a few candidates recognised “force majeure” as an option.

A fairly technical Question resulting in good marks for those who studied end of tenancy law and could link knowledge to understanding and so to advice.