**CENTRAL ASSOCIATION OF AGRICULTURAL VALUERS**



**CAAV EXAMINATIONS 2016**

**10TH NOVEMBER 2016**

**NATIONAL ORAL QUESTIONS**

**Each Group is to choose TWO questions from the four and then**

**ask those same two questions of all the candidates in that Group**

**QUESTION 1**

Your client (a tenant with security of tenure under the Agricultural Holdings Act 1986 (1991 Act in Scotland) aged 82 has come to see you with his daughter, aged 50, and granddaughter aged 25, to discuss the possibility of either his daughter or granddaughter succeeding to the tenancy on his death.

**Questions - England and Wales**

1. Under what Act did three generation succession come in?

 **Answer** - The Agriculture (Miscellaneous Provisions) Act 1976 (**1 mark)**

1. In what year was the automatic right to succession removed from new tenancies?

 **Answer** - 1984 (12th July) **(½ mark)**

1. Which or both of the daughter and granddaughter could be able to apply for succession and why?

 **Answer -** Only the daughter can apply as only she fulfils the close relative test. The granddaughter is ineligible as she is not defined as a close relative by the Act. Succession cannot jump a generation.  **(1 mark)**

1. To what body is the application for succession made? What is the time limit for this? Can it be extended?

 **England** – First-tier Tribunal (Property Chamber) (Agricultural Land and Drainage)

*(Full name not required)*

 **Wales** – Agricultural Land Tribunal for Wales **(½ mark)**

 The application has to be made within the period of three months beginning with the day after the date of death. **(½ mark)**

 This time period cannot be extended  **(½ mark)**

E) What are the time limits for the landlord:

 - to serve a notice to quit on the death of the tenant?

 - to reply to the Tribunal following receipt of the copy of notice of application for succession?

 **Answer -** The landlord must serve the notice to quit within three months of receiving written notification of the tenant’s death from his personal representatives or notice of an application for succession, whichever happens first.

 **(½ mark)**

 The landlord must reply to the Tribunal within 28 days after the date on which he is provided with a copy of the application.

 **(½ mark)**

**Questions - Scotland**

1. Which or both of the daughter and granddaughter could succeed and why?

 **Answer –** The tenant could bequeath the lease to either under the Succession (Scotland) Act but the landlord could serve an incontestable notice to quit on the granddaughter as she is not defined as a near relative by the 1991 Act.

However, the granddaughter would become under the Land Reform (Scotland) Act 2016 when s.107 comes into force.

  **1 mark**

1. What are the time limits for the legatee and the landlord?

 **Answer** - The legatee must give notice of the bequest or acquisition to the landlord within 21 days of the tenant’s death (if on bequest) or acquisition (if intestate succession).

 The landlord then has one month in which to object by counter notice.

 **1 mark**

1. On what grounds might a landlord best object to the succession and where is any dispute heard

 **Answer** - reasonable grounds concerning the person – such as poor character, insufficient skill/knowledge to manage the holding, inadequate financial resource

 Disputes are heard by the Land Court

 **1½ marks**

1. On what grounds might a landlord succeed with a notice to quit on a near relative successor?

 **Answer** – for a lease granted in or after 1984, the Court **must** consent where the landlord can prove that the tenant has:

* insufficient financial resource
* insufficient training or experience

to farm the holding with reasonable efficiency.

Otherwise the Court will consider whether a fair and reasonable landlord would not insist on possession despite showing:

* Pre 1984 tenancies
	+ tenant’s insufficient training or experience
	+ the holding is not a two man unit and the landlord intends to amalgamate it with other land
	+ the tenant already occupies a two man unit

 - 1984 and later tenancies

* + the holding is not a two man unit and the landlord intends to amalgamate it with other land
	+ the tenant already occupies a two man unit

**1½ marks**

**QUESTION 2**

Your client (an owner occupier) has been served a notice by the local water company to enter his land and lay a new water pipe (30mm in dimeter)

1. Under what Act, and what section, would the notice be served? **½ mark**

**England and Wales** – Water Industry Act 1991 – S.159

**Scotland** – Water (Scotland) Act – S.23

1. How long a period would the notice give before the water company could enter?

 **England and Wales –** Reasonable notice, deemed by the Act to be42 days (6 weeks) for a service pipe – 3 months otherwise.

 **Scotland –** Reasonable notice. If there is an objection, then after two months the issue is referred to the Sheriff Court

 **½ mark**

1. What is the basis of compensation for the right taken? Name a case in which this has been considered. How might you prove your claim?

 **Answer** - The basis of valuation is an amount equal to the amount of depreciation in the value of the landowner’s property

St John’s College v Thames Water

 Other cases include - Logan v Scottish Water; Bestley v North West Water

 Before and after valuation of the landowner’s interest. St John’s used half the value of the permanent strip. Consider the effect on the rest of the land?

 **2 marks**

1. Assuming that the affected field is growing a crop of winter wheat, what are the main heads of claim for compensation for the exercise of the right to lay the pipe?

 **Answer** - Loss of crop

 Extra time in managing the rest of the field

 Extra costs of cultivations after the land has been re-instated

 Extra costs of boundary maintenance

 Costs of replacing lost fertility to the working width

 Future losses of crop

 Costs of re-instatement of drainage

 Client’s time

 **(2 marks in total, ¼ mark for each)**

 *(THIS IS NOT AN EXHAUSTIVE LIST)*

**QUESTION 3**

Your client is the owner of a grassland farm and has been approached by two local villagers who would like to rent one of his paddocks to graze their horses. He has asked for your advice on preparing an agreement.

1. What are the four types of agreement, depending on the arrangement between the parties, that you are likely to utilise?

**Answer Scotland**

Licence Grazing or Mowing Let

Business Tenancy Short Limited Duration Tenancy

Farm Business Tenancy Limited Duration Tenancy

Common Law Tenancy Non-agricultural tenancy

 **1 mark**

1. What information do you require from the parties to determine which type of agreement is required?

**Answer**

**England/Wales**

Is there consideration in exchange for the arrangement (money or money’s worth?) – if not, Licence.

Does the arrangement give exclusive possession? – if not, Licence.

Is the use wholly or primarily agricultural?

If yes, is there a business involved? If yes - Farm Business Tenancy, if no - Common Law Tenancy.

 If the use is not wholly or primarily agricultural is there a business?

If yes - Business Tenancy

If no, is the letting going to be to a company, club or other body?

If yes – Business Tenancy, if no – Common Law Tenancy.

 **2 marks**

**Scotland**

Is the use wholly or primarily agricultural?

If yes, is there a business involved?

If yes, how long is it to be for?

* less than a year with a break in occupation before any successor letting, then a grazing let
* if for up to five years, then an SLDT
* if more than ten years, then an LDT

If no – then a non-agricultural tenancy. **2 marks**

1. What advice would you give to your client regarding the proposal and planning permission?

**Answer**

**General/England**

If the villagers’ horses are turned out onto the land with a view to merely feeding them from the land, then the land will be used for grazing as opposed to it being used to keep non-agricultural horses and the land use will normally be an agricultural use under planning law (see the definition of agriculture in the Town and Country Planning Act 1990 and case law) and planning permission will not be required.

Supplementary use of the land, for example supplementary feeding, exercise or recreational use will most likely require planning permission.

Candidates may refer to the National Planning Policy Framework (Section 3) and the Local Planning Authority’s local plan which may have specific guidance.

**Wales**

Section 6.11 of Technical Advice Note 6 (TAN6) states the definition of agriculture includes the breeding and keeping of livestock and the use of land as grazing land (again following the definition of agriculture in the Town and Country Planning Act 1990 and case law). Livestock has been held to relate only to livestock bred or kept for agricultural purposes. Land can be said to be used for grazing if horses are turned on to it with a view to feeding them from it but not if they are kept on it for some other purpose (such as exercise or recreation)when grazing is seen as completely incidental and inevitable. A planning application will normally be required for the use of land for keeping horses and equestrian activities unless they are kept as “livestock” or the land is used for “grazing”.

**Scotland**

Scottish Planning Policy (February 2010) makes no specific reference to horses so refer to the General approach above. Scotland has the same definition of agriculture in the Town and Country Planning (Scotland) Act 1997

 **2 marks**

**QUESTION 4**

Your client is proposing to construct an agricultural building which is close to a Site of Special Scientific Interest. He thinks a planning permission might impose special restrictions and has asked you to advise him on what he should do next.

1. Under what Act and what type of application would you advise your client to submit to the Local Planning Authority in respect of the proposed development?

**Answer**

A Certificate of Lawfulness of Proposed Use or Development (CLOPUD) under section 192 of the Town and Country Planning Act 1990 (section 151 of the Town and Country Planning (Scotland) Act 1997). **1 mark**

1. Your client has also converted outbuildings adjoining the farmhouse to a house for his son without obtaining planning permission. He has now received a letter from the Local Planning Authority regarding a breach of planning control. He claims the conversion works were completed 5 years ago.
2. An application for what type of Certificate should your client submit to the LPA to avoid being subject to a potential Enforcement Notice?

**Answer**

Certificate of Lawfulness of Existing Use or Development (CLEUD)  **½ mark**

1. What does a CLEUD establish?

**Answer**

An existing use of land or buildings is lawful;

Any operations which have been carried out in, on, over or under land are lawful; or

Any other matter, constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful.

 **1½ marks**

1. What are the time limits for enforcement action after which the uses or operations become lawful and when does the period commence?

**Answer**

Four years for building, engineering, mining or other operations in, on, over or under land from the date the operations are substantially completed.

Four years for the change of use of a building, or part of a building, to use as a single dwelling house from the date of the breach of planning control was committed.

Ten years for all other development from the date the breach of planning control was committed.

 **2 marks**