

**CAAV EXAMINATIONS – NOVEMBER 2012**

**National Oral Questions**

**Note – Each Examination Centre should select three of these six questions for use. Those three chosen questions are to be asked of all candidates attending the Oral.**

**Each question carries 5 marks and so this section of the Oral carries 15 of the 50 marks with the remaining 35 marks turning on the topic.**

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

**Question 1**

What is the effect of an Agricultural Occupancy Condition on a residential dwelling both in terms of occupation and value?

**Answer**

- Dependant on the individual wording of the condition, the AOC usually restricts lawful occupation to:
  - someone employed or last employed in agriculture
  - in the locality
  - a dependant of that person
- The AOC will reduce the value compared to that of unencumbered property. A 1/3 discount over unaffected market value is a widely quoted figure but this should be balanced against the particular circumstances of the property.
- Examiners should look for an understanding that a 1/3 discount is not set in stone. A grand farmhouse with no land attached on the edge of a large fashionable town may be subject to a higher discount, whilst a functional house in the centre of a large productive farm, surrounded by modern farm buildings may be subject to a lesser or indeed no discount.

## CAAV EXAMINATIONS 2012 – ORAL QUESTIONS

### **Question 2**

- A What is a Section 12 Notice under the Agricultural Holdings Act 1986?  
*Scotland – What is a notice served under section 13 of the Agricultural Holdings (Scotland) Act 1991*
- B Who can serve it?
- C Give an example of the timing of such a notice and the rent review date.
- D If you fail to agree the rent where can you take the issue?
- E What alternatives are open to your client?
- F To whom would you apply if you can't agree and when?
- G What does making the application cost?

### **Answer**

- A It is a notice which demands that the rent payable in respect of a holding as from the next termination date shall be referred to arbitration.  
*(For Scottish candidates – to the Land Court).*
- B The landlord or the tenant
- C At least 12 months in advance of the term date  
*Example: if term date is 25 March notice served prior to 25 March 2013 for effect 25 March 2014.*  
For a review, at least three years since the last one.

### **England & Wales**

- D Go to Arbitration
- E Apply to the President of the RICS, mutually agree an Arbitrator or seek the appointment of an arbitrator – all before the term date.
- F Apply to the President of RICS before term date.
- G The RICS charges - £115 (no vat). The CAAV charges £100 (inc VAT). Making an agreed appointment will cost whatever the agreed arbitrator charges.

### **Scotland**

- D Go to the Land Court
- E Can mutually agree an Arbitrator or seek the appointment of an arbitrator by reference to an Arbitral Appointments Referee such a SAAVA
- F The Land Court.
- G The professional cost of preparing the application papers. Making an agreed appointment will cost whatever the arbitrator charges.

**Question 3**

You are instructed to sell a dilapidated farmhouse with buildings and 10 ha (25 acres) for a National Charity.

1. Describe the possible methods for selling the property
2. If the chosen mode was auction and you had a cash offer over the guide price prior to auction. Explain your considerations in advising your client as to how to proceed.

**England & Wales**

3. Under what legislation does a sale take place for a Charity?
4. In some cases a Charity can dispose of land without an order from the Charity Commission or the Court. What would they need to do?

**Scotland**

3. What are the charity trustees' duties when considering the sale or lease of a property?
4. How might they best show they had done this?

**Answer**

1. a Private Treaty  
b Tender – Formal or Informal  
c Auction
2. Is the purchaser proceedable ie. funds available , legal work done , structural survey carried out etc

Is this the best offer we could realistically achieve and by going to auction we would not achieve more.

How much interest is there, particulars sent out, viewings, sale contract packs requested, other offers for instance?

**England & Wales**

3. Charities Act 2011 (formerly 1993)
4. Get a report from a Chartered Surveyor under S.119 of the Act (formerly S.36)

**Scotland**

3. The interests of the charity override all other considerations, including the personal interests of trustees (s.66 Charities and Trustee Investment (Scotland) Act 2005). So the duty is to secure the best value.
4. The trustees may wish to assure themselves of this in any case by instructing a relevant professional opinion.

**Question 4**

You are instructed by a bank to undertake a valuation of a 200 ha (500 acres) farm for secured lending.

1. How do you check if there is any conflict of interest?
2. Can you complete the valuation if the owner is a client for whom your firm manages the farm as part of a larger estate?
3. How do you deal with the situation where your firm has a client confidentiality agreement for the promotion of a development on adjoining land which is not yet in the public domain?

**Answer**

- 1 a The valuer and the firm have a duty to identify any actual or potential conflict of interest. All registered firms and valuers should have a system to check (by email or other means) that there is no previous or current involvement which may be a threat to the valuer's independence or objectivity.
- 1 b The process should be recorded and a statement to that effect noted in the report.
- 1 c Where the valuer has a current involvement with the owner but not the property this should be disclosed. A proportion of fees less than 5% of turnover may be considered "minimal".
- 2 Yes, providing the situation is fully explained to the parties, managed and disclosed in the report. Banks may have their own standard but minimum requirements ensure:
  - All individuals acting for conflicting clients must be different and physically separate.
  - Information must be kept inaccessible and separate from either party.
  - The management of the conflict must be by a senior independent person who has no involvement with the instruction and can, if required, evidence that "Chinese walls" have been maintained and managed correctly.
- 3 There is a general duty to treat information relating to a client as confidential where that information becomes known as a result of a professional relationship and is not in the public domain. If adequate disclosure cannot be made without breaching the duty of confidentiality the instruction should be declined.

**Question 5**

You are asked to sell a dilapidated farmhouse part of which, including the staircase, has been damaged by fire. What is your liability for health and safety and how do you deal with it?

**Answer**

- The Health and Safety at Work Act 1974 requires that your firm and individual staff are responsible for a safe working environment and adopt safe working practices.
- Employer must provide training and personal protective equipment to make employees safe and to ensure the safety of those around them.
- Employee must report anything that may constitute a hazard or an incident likely to result in injury or a claim.
- In practice:
  - The property should be inspected by a surveyor competent to assess its condition.
  - If it is unsafe then measures (signage, fencing, boarding up) should be put in place to exclude access.
  - If it can be made safe then access can be permitted, subject to warning of its condition and obtaining written acknowledgement of that warning being given before entry. Hard hats or other equipment should be worn, notices posted on parts that are potentially dangerous and persons should be accompanied throughout their visit. Children should be excluded from inspection.
  - A clear statement as to condition and risk should be stated in the particulars.
  - The duty of care for health and safety extends beyond the duty to your vendor client to achieve a sale.

**Question 6**

Apart from the details of the parties and their professional advisers can you identify and expand upon five key points to be included in Heads of Terms for letting a rural building for commercial use.

**Answer**

- Demise:
  - The description of the property
  - Rights granted and reserved
  - A plan
- Rent:
  - Amount, frequency and date of payment
  - Review provisions
  - Deposit or guarantee
  - VAT
- Repairs, maintenance, alterations and outgoings:
  - Liability between the parties; tenant to pay rates, services and other outgoings exclusive to the demise.
  - Recharge provisions
  - Maintenance of common areas/service charge
  - Consent for alternations and reinstatement at end of lease
- Term and security of tenure:
  - Fixed term/periodic
  - Included/Excluded from the provisions of the Landlord and Tenant Act 1954 Part II
  - Break clauses
  - Forfeiture
- User:
  - Permitted use (precise or Use Class)
  - Change of use within same Use Class
  - Compliance with planning and statute
- Alienation:
  - Assignment
  - Subletting
  - Sharing occupation
- Works/Capital allowances:
  - Schedule of works, by whom and when
  - Treatment for rent and rent review
  - Landlord to retain all unclaimed capital allowances
- Dispute resolution:
  - Arbitration
  - Expert
  - Time of/not of the essence
- Costs:
  - Liability upon each party and indemnity
  - Cost of dispute resolution
  - SDLT

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